



## Convention on Biological Diversity

Distr.: Limited  
30 October 2024

Original: English

### Conference of the Parties to the Convention on Biological Diversity Sixteenth meeting

Cali, Colombia, 21 October–1 November 2024

Agenda item 20

#### Marine and coastal biodiversity, and island biodiversity

### Further work on ecologically or biologically significant marine areas

#### Draft decision submitted by the Chair of Working Group II

*The Conference of the Parties,*

*Reaffirming* Articles 3, 4, 5 and 22 of the Convention on Biological Diversity,<sup>1</sup> as well as its decisions VIII/24 of 31 March 2006, IX/20 of 30 May 2008, 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 its paragraph 3, 14/9 of 29 November 2018 and 15/26 of 19 December 2022,

*Recalling* resolution 78/69 of the General Assembly of the United Nations on oceans and the law of the sea of 5 December 2023 and its preambular paragraphs on the United Nations Convention on the Law of the Sea,<sup>2,3,4,5,6</sup>

*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,

<sup>1</sup> United Nations, *Treaty Series*, vol. 1760, No. 30619.

<sup>2</sup> United Nations, *Treaty Series*, vol. 1833, No. 31363.

<sup>3</sup> 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 agenda item 20 of the sixteenth meeting of the Conference of the Parties to the Convention on Biological Diversity cannot be construed as a change in the well-known legal position of Türkiye with regard to said instrument.

<sup>4</sup> The Bolivarian Republic of Venezuela considers that the United Nations Convention on the Law of the Sea is not the only legal instrument that governs activities related to the seas and oceans. Therefore, it disassociates itself from the reference to said international instrument, and its participation in the discussions under agenda item 20 cannot be considered as a change in its national position regarding the United Nations Convention on the Law of the Sea.

<sup>5</sup> Colombia reaffirms that the United Nations Convention on the Law of the Sea is not the only legal instruments governing all of the legal activities carried out in the oceans and seas. The participation of Colombia in the discussions under agenda item 20 of the sixteenth meeting of the Conference of the Parties does not affect its status or rights, nor can it be interpreted as a tacit or express acceptance of the provisions of the United Nations Convention on the Law of the Sea, an instrument to which Colombia is not a Party.

<sup>6</sup> El Salvador is not a State Party to the United Nations Convention on the Law of the Sea. It therefore reiterates – as it has done in other international forums – that its participation in addressing some issues raised during the sixteenth meeting of the Conference of the Parties does not, under any circumstances, affect in any way its legal status in relation to said international instrument or the rights or obligations that may arise from it. In the same sense, El Salvador avails itself of this opportunity to state that the aforementioned Convention does not have a universal character, as there are other international instruments that also govern the various activities that take place in the seas and oceans.

*Recognizing* that the description of ecologically or biologically significant marine areas is an important scientific and technical process that can make a crucial contribution to the implementation of the Kunming-Montreal Global Biodiversity Framework<sup>7</sup> 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,<sup>8</sup>

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;<sup>9</sup>

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

3. *Stresses* that the modification of descriptions of ecologically or biologically significant marine areas and the description of new areas meeting the criteria for such areas is strictly a scientific and technical exercise, does not imply the expression of any opinion whatsoever concerning the legal status of any country, territory, city or area, including maritime zones, or of their authorities, or concerning the delimitation of its boundaries and does not have economic or legal implications and that any action or activity carried out on the basis of the present decision shall be without prejudice to, and shall not be relied upon as a basis for asserting or denying any claims to, sovereignty, sovereign rights or jurisdiction, including in respect of any disputes relating thereto;

4. *Requests* the Executive Secretary, subject to the availability of financial resources, and on the basis of the advice of the Informal Advisory Group on Ecologically or Biologically Significant Marine Areas and in consultation with the Bureau of the Subsidiary Body on Scientific, Technical and Technological Advice, to continue to facilitate the description of areas meeting the criteria for ecologically or biologically significant marine areas and to facilitate the modification of the descriptions of ecologically or biologically significant marine areas through the holding of additional workshops, in line with paragraph 36 of decision X/29, paragraph 12 of decision XI/17 and paragraph 6 of decision XII/22, the outcomes of which would be without prejudice to relevant international processes in the case of areas beyond national jurisdiction;

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

6. *Adopts* 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;

7. *Requests* the Executive Secretary to facilitate a review of the effectiveness of the implementation of the modalities contained in the annex 10 years after the adoption of the present decision and to submit the results of the review for consideration by the Subsidiary Body on Scientific, Technical and Technological Advice;

8. *Invites* Parties, other Governments, competent intergovernmental organizations, indigenous peoples and local communities and other relevant stakeholders to collaborate in the implementation of the modalities;

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<sup>7</sup> Decision 15/4.

<sup>8</sup> A/CONF.232/2023/4.

<sup>9</sup> CBD/EBSA/EM/2023/1/3 and CBD/EBSA/EM/2023/2/3.

9. *Acknowledges* the potential 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 outlined in the annex to the present decision and the future 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, respecting the mandate and the jurisdictional scope of each legal instrument and framework;

10. *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 consideration 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**

1. Nothing in the present modalities shall prejudice the rights, jurisdiction and duties of States under the United Nations Convention on the Law of the Sea, including in respect of the exclusive economic zone and the continental shelf within and beyond 200 nautical miles.<sup>3</sup>

2. 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 or a modification to the ranking of the area against the criteria for such areas or a change in the location, shape, depth or size of the area,<sup>10</sup> may be proposed for any of the following reasons:<sup>11</sup>

(a) For areas beyond national jurisdiction:

(i) Newly available or accessible knowledge, including traditional knowledge, innovations and practices of indigenous peoples and local communities, on features associated with the area;

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

(iii) Scientific errors identified in the description;

(b) For areas within national jurisdiction, preferably any of the reasons noted in paragraph 2 (a), but possibly any other reason, deemed valid by the State within whose jurisdiction the modification is proposed.

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

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

(b) For areas within national jurisdiction, the State within whose jurisdiction the modification or description is proposed.

4. 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, indigenous peoples and local communities, with their free, prior and informed

<sup>10</sup> A modification can also entail removing the description from the repository or information-sharing mechanism and moving it to the respective archive.

<sup>11</sup> The reason or reasons for a modification must be provided in the submission.

consent,<sup>12</sup> and women and youth organizations, in accordance with relevant national legislation, international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples,<sup>13</sup> and human rights law;

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

(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 the 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.

5. With respect to any submission for the modification of an existing description or the description of a new area, any State may formally communicate to the Executive Secretary, at any time, an objection to the inclusion of a description or a 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 the withdrawal of the objection is communicated to the Executive Secretary by the objecting State.<sup>14</sup>

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

6. 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 the Conference of the Parties has considered and requested the Executive Secretary to include in the repository and transmit to the General Assembly of the United Nations for its information and relevant processes, as well as to relevant international organizations;

(b) An archive of 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.

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

(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;

(b) 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, as well as any comments received on such submissions and any responses to those comments;

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

(d) 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

<sup>12</sup> “Free, prior and informed consent” refers to the tripartite terminology of “prior and informed consent”, “free, prior and informed consent” and “approval and involvement”.

<sup>13</sup> General Assembly resolution 61/295, annex.

<sup>14</sup> 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.

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;

(e) 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;

(f) An archive of previous versions of descriptions of ecologically or biologically significant marine areas held in the information-sharing mechanism, 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;

(g) 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;

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

(i) 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 criteria for ecologically or biologically significant marine areas**

#### **A. Modification of the description of ecologically or biologically significant marine areas or description of new areas meeting the criteria for ecologically or biologically significant marine areas within national jurisdiction**

*Inclusion in the repository for ecologically or biologically significant marine areas<sup>15</sup>*

8. The submission<sup>16</sup> of a modification or a 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 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 relevant national legislation, international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples, human rights law and, where appropriate, the Mo'otz Kuxtal Voluntary Guidelines.<sup>17</sup> 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 a notification, for information purposes, regarding its intent to submit a description or a 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 paragraph 4 of the present decision before submitting it to the Secretariat.

<sup>15</sup> An inclusion under the present section entails consideration of the submission by the Conference of the Parties and the Subsidiary Body on Scientific, Technical and Technological Advice.

<sup>16</sup> 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.

<sup>17</sup> Decision XIII/18, annex.

9. Upon receipt, the Secretariat shall make the submission available through the information-sharing mechanism for ecologically or biologically significant marine areas and issue a notification to provide information on the submission and communicate its inclusion in the mechanism. The submission shall be open for comments by Parties, other Governments and relevant organizations for a period of six months, and the Secretariat shall transmit any comments received to the proponent.

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 the comments, if any, and, if necessary, provide a revised version of the submission to the Secretariat;

(b) Not address the comments and not proceed further, in which case the information-sharing mechanism will show a record of the submission and the comments, and the actual submission and comments will be available from the Secretariat upon request;

(c) Request the Secretariat to remove its original submission from the information-sharing mechanism, in which case the submission and the comments will be removed.

11. If comments are received and the proponent decides to address them and, if necessary, provide a revised version of the submission to the Secretariat, the Secretariat shall 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 paragraph 4 of the present decision before it is submitted to the Subsidiary Body.

12. The submission shall be provided to the Conference of the Parties for consideration on the basis of a recommendation of the Subsidiary Body. The Conference of the Parties shall decide whether the submission is to be included in the repository for ecologically or biologically significant marine areas. A record of the submission shall remain 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<sup>18</sup>*

13. The submission<sup>19</sup> 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 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 relevant national legislation, international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples, human rights law 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 a notification, for information purposes, regarding its intent to submit a description or modification before the submission is 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 paragraph 4 of the present decision before submitting it to the Secretariat.

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<sup>18</sup> An inclusion under the present section does not entail consideration by the Conference of the Parties or the Subsidiary Body on Scientific, Technical and Technological Advice and cannot apply to the descriptions of ecologically or biologically significant marine areas considered and endorsed by the Conference of the Parties held in the repository.

<sup>19</sup> 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.

14. Upon receipt, the Secretariat shall make the submission available to Parties and other Governments only and issue a notification to Parties and other Governments to provide information on its availability. Following a five-month period to allow for States to apply the provisions of paragraph 5 of the annex of the present decision, the submission is then included in the information-sharing mechanism. After inclusion, the proponent may request that the submission be open for comments by Parties, other Governments and relevant organizations for a period of six months, and the Secretariat shall 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.

**B. Modification of descriptions of ecologically or biologically significant marine areas or description of new areas meeting the criteria for ecologically or biologically significant marine areas beyond national jurisdiction**

16. The submission<sup>20</sup> of a modification or a 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 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 relevant national legislation, international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples, human rights law and, where appropriate, the Mo' otz Kuxtal Voluntary Guidelines.

17. Before providing 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 shall include a record of the submission, as received, in the information-sharing mechanism of ecologically or biologically significant marine areas and disseminate information about the submission through a notification. The submission shall be open for comments by Parties, other Governments, competent intergovernmental bodies and relevant organizations for a period of six months.

19. The submission, as well as any comments received in response to the notification, shall be provided for discussion at a workshop on ecologically or biologically significant marine areas held pursuant to paragraph 4 of the present decision, the outputs of which shall be submitted to the Subsidiary Body and the Conference of the Parties for their consideration.

20. The Conference of the Parties shall decide 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 shall remain in the information-sharing mechanism, regardless of whether it is included in the repository or not.

**IV. Correction of editorial errors**

21. 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, shall issue a notification to provide information regarding the editorial error and the requested correction and shall implement the

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<sup>20</sup> 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.

correction three months after the issuance of the notification.<sup>21</sup> A footnote is to be added to the corrected description to indicate that an editorial correction was made, and when. A report on corrections made to address editorial errors shall be submitted by the Secretariat to the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties, for information.

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<sup>21</sup> In the case of corrections of editorial errors of descriptions within national jurisdiction, the Secretariat shall consult with the State within whose jurisdiction the correction is proposed.