



## HSA STATEMENT:

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### Pew Charitable Trusts Intervention on behalf of the High Seas Alliance, 4.3 & 4.4 Process in relation to ABMTs, including MPAs

September 13<sup>th</sup> 2018

Thank you Madam Facilitator,

The Pew Charitable Trusts on behalf of the High Seas Alliance would like to align with the statement delivered by IUCN. And echoing the FAO we very much appreciate the opportunity to have this additional time to continue this discussion and to express our views to address the process in relation to Area Based Management Tools, including Marine Protected Areas, on items in 4.3.

We were encouraged by the support for ABMTs, including MPAs, that we heard several days ago. With regard to the process for establishing MPAs, we strongly agree with the views expressed by many governments including the G77 + China, the European Union, Algeria on behalf of the African Group, Nauru on behalf of PSIDS, Bahamas on behalf of CARICOM, Argentina, Brazil, Singapore, Costa Rica, South Africa, Senegal, Kenya, and many others, for a global approach, a wide consultation process, a Conference of Parties and other essential institutional mechanisms.

As reflected in [UN General Assembly resolution 69/292](#), this process was first undertaken because of (and I quote) “the need for the comprehensive global regime to better address conservation and Sustainable use” (end quote) in ABNJ. That is why we are here: to create an agreement that moves us beyond the status quo, from fragmented and ineffective ocean governance to a comprehensive and efficient model for the conservation of the high seas and deep seabed marine biodiversity as a whole.

As many delegations have stated, the new instrument should confer authority to a Conference of Parties to designate MPAs and **adopt associated conservation and management measures** to meet the objectives of the protected area. The measures should be developed in consultation with, and build on the expertise of, competent regional and sectoral organizations. However, to avoid the creation of paper parks that are only protected on paper without effective management – it is crucial that the CoP have the ability to not only designate but implement marine protected areas.

Parties should then also be required to use their best efforts to ensure the adoption of appropriate complementary measures by competent regional or global organizations to which they are members.

After the consultation process and based on the recommendation by a Scientific Committee, the proposal would be submitted to the **CoP for a decision**, which should be taken by (qualified) majority voting, if consensus is not possible.

These are the key points we would like to make and we will submit our full submission to Papersmart.

Thank you Madam Facilitator

*(note: the longer intervention for Papersmart is appended at the end of this shorter intervention)*

Only a global approach to the designation and implementation of MPAs, including MPA networks, can ensure coherence, consistency and appropriate levels of protection across the full range of biodiversity and ecosystems in ABNJ.

The new instrument should confer authority to the CoP, via its Parties, to designate MPAs, in particular marine reserves, in ABNJ and for its Parties to adopt associated conservation and management measures to meet the objectives of the protected area. These measures should be developed in consultation with, and building on the expertise of, competent regional and sectoral organizations.

**We see the following details roles and responsibilities in relation to MPAs:**

For Proponents: States Parties, with the option for Observers to the Instrument, including Intergovernmental Organizations and Civil Society, to co-sponsor.

For Identification of areas: Proponents identify potential MPAs that meet the objective.

For Proposals: MPA Proposals should be formulated on the basis of the best available scientific information, follow an ecosystem approach and the precautionary principle, and should, at a minimum, include the following elements: spatial boundaries, conservation objectives, description of activities, proposed management and monitoring plans and consultation recommendations.

Consultation on and assessment of proposals: Proposal developed by proponents is submitted to the CoP for time-bound public consultation with all relevant stakeholders, including other competent organizations and frameworks with competence over activities within the boundaries of the MPA, relevant intergovernmental organizations and stakeholders. The (updated) proposal is submitted to the committee established under the new Instrument for scientific/technical review and then forwarded to the CoP for a decision, which should be based on the recommendations of the Scientific Committee.

Decision-making: Decisions shall be taken by (qualified) majority voting, if consensus is not possible.

Among other elements, the decision by the CoP will include the specific boundaries of the newly established MPA, and the specific measures to be taken to address the impact of activities on marine biodiversity in the MPA by States exercising jurisdiction or control over the activity by reason of flag,

nationality or beneficial ownership, or in which the proposed activity is organized or from which it proceeds; as well as a plan for monitoring, research and review.

### **Implementation:**

The responsibility to implement and ensure compliance with the MPA management measures should reside with the States exercising jurisdiction or control over the relevant activity by reason of flag, nationality or beneficial ownership, and the State in which the proposed activity is organized or from which it proceeds.

Parties shall also use their best efforts to ensure the adoption of appropriate complementary measures by competent regional or global bodies of which they are members.

Parties shall, individually or collectively, request non-Parties whose activities, vessels, or nationals operate in the protected areas to become Parties to the Instrument or to cooperate fully in the implementation of its measures.

### **Monitoring:**

There should be regular monitoring and assessment of MPAs and associated management measures to ensure they are meeting their objectives.

### **Reporting:**

Parties should report back annually to the CoP on the implementation of the MPA and its conservation and management measures.

The CoP should request competent sectoral/regional organizations to also report on progress in meeting the objectives of the MPAs. These reports should be made public in an expeditious timeframe.

### **Assessment and Review:**

The committee established under the new Instrument for scientific/technical review should undertake a regular review, every 2–3 years, of the effectiveness of the MPA network in order to identify gaps and recommend amendments.

Upon advice by the committee established under the new Instrument for scientific/technical review, the CoP should review the effectiveness of the measures adopted pursuant to the management plan and progress in meeting the objective(s) of the protected area in order to inform any adaptation required to the management plan.

### **ABMTs:**

With respect to sectoral ABMTs, the Instrument should require that States, acting through existing regional and sectoral organizations, cooperate to coordinate and review their activities in order to enhance the long-term conservation and sustainable use of BBNJ in a manner that complements and supplements the global MPA network. Such bodies should adopt and implement measures based on global standards and criteria, and report on progress on a regular basis.

Sectoral and regional approaches are no substitute for a global approach to MPAs, as such approaches would do little to move away from the status quo. The continuation of solely sectoral and regional approaches would not address the need for harmonized global standards, cross-sectoral coordination and protection, or oversight.

*ii. What institutional arrangements would be included in the instrument to give effect to the proposed allocation of roles and responsibilities under (i)?*

To be effective the new Instrument needs to be equipped with a robust institutional framework at the global level with decision-making, review and monitoring functions, including the power to designate marine reserves in ABNJ and adopt measures to protect them.

In particular such a framework should be composed of 1) a **Conference of the Parties** with decision-making, standard-setting, monitoring and review functions; 2) a **Secretariat** providing administrative and logistic support; 3) a **Scientific Committee** with recommendatory functions, composed of independent experts from different regions, including from existing scientific bodies and non-State nominated experts; 4) a Technical Committee to provide technical advice; 5) a **Compliance Committee** to facilitate compliance with the Instrument, including MPAs and management measures adopted therein; 6) a Dispute-settlement Mechanism, building on existing procedures under UNCLOS, to ensure effective implementation of the Instrument; 7) a **Clearing-house Mechanism** to facilitate sharing of information and 8) a **Financial Mechanism** to ensure effective implementation, especially by developing countries.

Such global arrangements could also be complemented by provisions for strengthening, coordinating and or creation of regional bodies focused on enhancing conservation and sustainable use of BBNJ at the regional level.

*iv. Would the instrument also address how the possible approaches would apply to the different types of area-based management tools?*

The Instrument should approach all ABMTs consistently, with the same principles and approaches.

#### **4.3.1 Identification of areas**

*a). Taking into account possible approaches as indicated in 4.3 above, what process for the identification of areas within which protection may be required, based on the best available scientific information, standards and criteria, would the instrument set out?*

Proponents should identify potential MPAs that meet the objective described in 4.1. In addition, the committee established under the new Instrument for scientific/technical review should be tasked by the CoP to conduct a regular review of the effectiveness and ecological coherence of individual MPAs and the global MPA network in order to identify gaps and recommend amendments and/or areas that should be part of the network.

Sectoral and regional bodies should be requested to identify possible areas for protection based on international standards, guidelines and criteria.

*b) Which standards and criteria, in addition to those included in Part III of the report of the Preparatory Committee, would be included in the instrument? How would existing criteria which are utilized by relevant global, regional and sectoral bodies be taken into account?*

MPA Proposals should be formulated on the basis of the best available scientific information, follow an ecosystem approach and the precautionary principle, and should, at a minimum, include the following elements:

- spatial boundaries of the proposed area;
  - description of the characteristics and biodiversity and/or scientific values of the area and the sensitivity of the species/habitats concerned;
  - the specific conservation objective(s) of the area and the necessary level of protection to achieve such objective(s);
  - description of current and potential impacts of activities that are causing or may be expected to cause damage to the proposed area, either individually or in combination with other threats;
  - priority elements of a proposed management plan to achieve the conservation objectives, including activities that should be restricted, prohibited, or managed in the MPA or parts thereof;
  - a plan for the continuous monitoring and research of ecological processes, habitats, and population dynamics, as well as impact of human activities; and
- identification of relevant competent bodies that have been and should be consulted with respect to monitoring, reporting and review.

The Instrument should be open-ended to adapt to changing conditions and the best available science, taking into account the precautionary approach.

It is important to take into account the approach utilized in CCAMLR and select MPAs according to the application of objectives, rather than criteria. <https://www.ccamlr.org/en/measure-91-04-2011>.

*How much detail would the instrument include in setting out the standards and criteria?*

The Instrument should aim at flexibility while adopting best international practices and standards consistent with the best available science, taking into account the precautionary approach. See response to (b) above with respect to applying objectives rather than criteria.

*Would the instrument provide for the possibility of reviewing and/or updating the standards and criteria?*

Yes. In addition to including a list of objectives and/or standards and criteria, the Instrument should require that the CoP adopts best international practice and standards consistent with the best available science, taking into account the precautionary approach. The instrument should provide for a mechanism to undertake periodic reviews of its effectiveness in achieving its objectives, including:

The Instrument should provide for systematic follow-up and review at the various levels, namely:

A holistic, multi-year transparent review by States Parties on the implementation of the Instrument and its effectiveness.

Periodic reporting by State Parties on the establishment or strengthening of national and regional action/regulatory regimes;

- A review of the mechanisms established under the agreement to ensure effective implementation; and
- Annual submission of reports, data or other information by States, regional and sectoral organizations, international organizations and civil society groups including NGOs. Reports should be made publicly available and all interested stakeholders, including civil society, should have an opportunity to make comment on the reports.

#### **4.3.2 Designation Process**

##### *(i) Proposal*

*a) Taking into account possible approaches indicated in 4.3 above, as well as the elements of proposals related to marine protected areas, and other area-based management tools where relevant, included in Part III of the report of the Preparatory Committee, what other elements would be included in the instrument? Elements to consider may include:*

##### *i. Who can make proposals?*

MPA Proposals should be put forward by States Parties, with the option for Observers to the Instrument, including Intergovernmental Organizations and Civil Society including NGOs, to co-sponsor proposals.

##### *ii. Who would the proposals be submitted to?*

The MPA Proposal would be submitted to the Secretariat, which will distribute it (via website, email to member states, etc.) to relevant States, regional and sectoral international organizations, stakeholders and the general public for time-bound consultation.

##### *iii. The content of the proposals, including the duration of the proposed measure.*

MPA Proposals should be formulated on the basis of the best available scientific information, follow an ecosystem approach and the precautionary principle, and should, at a minimum, include the following elements:

- spatial boundaries of the proposed area;
- description of the characteristics and biodiversity and/or scientific values of the area and the sensitivity of the species/habitats concerned;
- the specific conservation objective(s) of the area and the necessary boundaries, restrictions and spatial extent of protection to achieve such objective(s);
- description of current and potential impacts of activities that are causing or may be expected to cause damage to the proposed area, either individually or in combination with other threats;
- priority elements of a proposed management plan to achieve the conservation objectives, including activities that should be restricted, prohibited, or managed in the MPA or parts thereof;

- a plan for the continuous monitoring and research of ecological processes, habitats, population dynamics as well as impact of human activities;
- identification of relevant competent bodies that have been and should be consulted; and a plan for review, monitoring and compliance.

HSA believes that it would not be appropriate for the proposal to indicate the duration of proposed measures. However, upon advice from the Scientific Committee, the CoP should review the effectiveness of the measures adopted pursuant to the management plan and progress in meeting the objective(s) of the protected area in order to inform any required adaptation to the management plan.

*(ii) Consultation on and assessment of the proposal.*

*Taking into account possible approaches as indicated in 4.3 above, would the instrument specify the stakeholders who would be involved in the coordination and consultations process? If so, which stakeholders would be included?*

Stakeholders would include competent organizations and frameworks with jurisdiction over activities within the boundaries of the proposed MPA, relevant intergovernmental organizations, adjacent coastal States, civil society, academia, scientific bodies, indigenous peoples and local communities, the general public and any other relevant stakeholders.

*What modalities for coordination and consultations on the proposal would be included in the instrument?*

HSA suggests the following 3-step consultation process:

**Step 1.**

**1a.** A proposal developed by proponent(s) identified in 4.3.2 (i) is submitted to the Secretariat, which publicly distributes it to relevant stakeholders and the general public [identified in 4.3.2 (ii) b].

**1b.** All comments, including those of competent organizations consulted under Step 1, are made public on a website as they are received.

**1c.** Proponent(s) respond to public consultation and, if appropriate, revise(s) the proposal within a specific time frame.

**Step 2.** The (updated) proposal is submitted to the committee established under the new Instrument for scientific/technical review.

**2a.** If, after taking into account all inputs gathered during the public consultation, the response by any of the competent organizations or individuals that have been consulted in accordance to Step 1 is considered inadequate, including with regards to extent, boundaries and appropriate measures for protection, or if any of such competent organizations do not respond, the committee established under the new Instrument for scientific and technical review should recommend more effective measures for adoption by the CoP.

**Step 3.** After the proposal has been reviewed by the committee established under the new Instrument for scientific /technical review, the proposal, along with the scientific review and recommendations, public comments, and responses to public comments, is forwarded to the CoP for a decision.

During the consultation period, States should refrain from authorizing or permitting activities under their jurisdiction or control that might undermine the proposed protected area.

*What modalities for the provision of scientific advice on the proposal would be included in the instrument?*

See Step 2 above. The scientific/technical review process could include the establishment of a independent scientific experts from all geographic regions and with different expertise, to undertake pool of research, review proposals and draft advice and/or recommendations.

From the pool, independent scientists could be nominated to sit on the committee, while others could conduct a peer review of the advice before submission to the CoP. They should also undertake scoping activities when necessary.

*(iii) Decision-making.*

*Taking into account possible approaches as indicated in 4.3 above, with respect to decision-making and institutional set up:*

*What modalities for decision-making on matters related to area-based management tools, including marine protected areas, would be specified in the instrument?*

Based on scientific review and the outcome of the consultation process (see p. 3 above), the Parties, acting via a CoP, will designate the MPA, including:  
spatial boundaries;  
conservation objectives and the necessary protections to achieve such objectives, including the designation of no-take areas;  
a management plan that specifies activities to be prohibited along with associated management measures for vessels/nationals/activities under their jurisdiction or control to address the impact of activities on marine biodiversity in the area; and  
a plan for monitoring, research and review and compliance.

At the same time, the CoP will recommend that other competent organizations adopt complementary measures to meet the objective(s) of the area.

Decisions by the CoP should be taken by (qualified) majority voting, if consensus is not possible. For the Scientific Committee if consensus is not possible, the report containing advice and recommendations to the CoP should include all views advanced on the matter considered.

*What provisions, including any institutional arrangements, would the instrument include to give effect to the proposed allocation of responsibility for decision-making on matters related to area-based management tools, including marine protected areas?*

To give effect to the proposed allocation of responsibilities for decision-making on MPAs, the Instrument should set up a science-driven and time-bound consultation process with all relevant stakeholders, including regional and sectoral organizations and arrangements with competence over activities in the proposed area. Such organizations and arrangements will play a key role in the development of the MPA proposal and in the identification of the most effective management measures by providing technical expertise and data. The ultimate decision will be made by Parties, acting via a CoP. Parties will have the primary responsibility to implement the MPA and associated management measures to their nationals, vessels, and activities under their jurisdiction or control and use their best efforts to ensure the adoption of appropriate complementary measures by competent regional or global organizations to which they are members.

Parties should report annually to the CoP on the implementation of the MPA and its associated management measures and competent sectoral/regional organizations should also be requested by the CoP to report on progress in meeting the objectives of the MPAs. More information on proposed Institutional Arrangements is available at 4.3 (i) above.

*a) On what basis would decisions be made, with a view to enhancing cooperation and coordination, while avoiding undermining existing legal instruments and frameworks and the mandates of regional and/or sectoral bodies?*

Decisions should be made by Parties, acting within the CoP, based on the scientific review and the outcome of the consultation process, including the response by the competent organizations that have been consulted in accordance with Step 1 (see above at 4.3.2 (ii) b). This will ensure that decisions built on the expertise and data provided by those organizations and their competence is not undermined. But if the response is considered inadequate, including with regards to appropriate measures for protection, or any of such competent organizations do not respond, the committee established under the new Instrument for scientific and technical review can recommend more effective measures for adoption by the CoP.

The CoP should request competent sectoral/regional organizations to also report on progress in meeting the objectives of the MPAs on an annual basis. These reports should be made public.

*c) How would the instrument reflect the involvement of adjacent coastal States in the decision-making process?*

Noting the principle of due regard, the Instrument could provide a mechanism to ensure that adjacent coastal States are notified by the Secretariat about the decision-making process. The stakeholder consultation described above provides a mechanism to ensure that adjacent coastal States' views and interests are taken into account by the CoP before taking the final decision.