



## **Submission to Commission's Consultation on International Ocean Governance** *October 2015*

### Introduction

BirdLife Europe welcomes this consultation on International Ocean Governance. BirdLife Europe is a partnership of 48 national conservation organisations and one of six regional secretariats that compose BirdLife International. BirdLife Europe's unique local to global approach enables it to deliver high impact and long-term conservation for the benefit of nature and people. With regard to marine and fisheries issues, the BirdLife Europe's partnership work is focused on improving the situation for seabirds, including through monitoring and surveying at sea, thus enabling close relationships with fisherman and local authorities as means of implementing needed conservation measures. The scientific knowledge derived from our local work is translated to EU policy issues aiming at improving EU legislation that relates to the environment and biodiversity. The BirdLife Europe Partnership has over 4.100 staff members working on nature conservation, we represent more than 2 million members and we own or manage over 6.000 nature sites covering over 320.000 hectares. Our Partners are present in 47 European and Central Asian countries including all EU Member States.

### Summary of BirdLife's Position on International Ocean Governance

We take note of the need for a greater understanding of the current problems of international governance of the oceans. However, we feel that the ongoing consultation lacks sufficient analysis of the current situation in order for us to give a more elaborate response to the questions at hand. In particular, we would have expected thorough analysis on current existing problems and some clearer sets of alternative propositions for addressing these.

Nevertheless, we feel that several steps need to be considered in parallel to overcome the cause of poor international ocean governance, including implementing existing legislation and supporting the revision of a new agreement for High Seas.

We also fundamentally believe, and particularly for high seas activities, that the lack of transparency, and 'confidential data' clauses, including for Regional Fisheries Management Organisations catch and effort data, fisheries access agreements, vessel positional information, and ocean prospecting for mineral or hydrocarbon resources, is what drives poor ocean governance. Most ocean governance problems are not related to a lack of data, but a lack of data management and implementation of existing obligations. Furthermore, even with our existing knowledge, while considerably imperfect, there is still a lack of political will and ability to undertake and enforce appropriate management measures including Environmental Impact Assessments (EIAs).

Definition of the problem as defined by this consultation:

*Recent discussions and initiatives conclude that the current framework for international ocean governance is not effective enough in ensuring the sustainable management of oceans and their resources.*

*An example of this is the continuing problem of Illegal, Unregulated and Unreported (IUU) fishing, or the lack of implementation of relevant rules or ratification of relevant agreements that put sustainable management of fish stocks at risk.*

*Also, the sheer number of oceans-relevant international institutions and sector-specific agreements and rules complicates or even hampers implementation.*

Questions and Answers:

**1. Does this definition convey the problem? How would you change it?**

The definition does not convey the problem. The problem that is reflected is simplistic and does not reflect the language that has been used under UN negotiations in reference to international ocean governance (e.g. it should refer to the “conservation and sustainable use of marine biodiversity” and not the “management of oceans and their resources”). The problem does not reflect the lack of Marine Spatial Planning<sup>1</sup> and therefore also the inadequate management of a wide range of regional bodies responsible for different aspects of ocean activities, as well as the need for improved joint management especially in High Seas, and also the lack of rigorous and enforceable standards for best-practice Environmental Impact Assessment. Furthermore, the example used showcases only the traditional sector (fisheries). Instead, the definition should recognise the need to deal effectively with all kinds of resource-extraction relevant to marine (and adjacent coastal) environments.

Causes of the problem as defined by this consultation

*The following explains the cause of poor international ocean governance according to the European Commission:*

- *Gaps in the existing international ocean governance framework*
- *Inefficient use and implementation of the existing international ocean governance framework, or insufficient coordination among its components*
- *A lack of knowledge about the oceans*

Questions and Answers:

**2. Do you agree with this list? Is it needed to be more specific? What else would you add to this explanation? How would you rank these bullet points?**

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<sup>1</sup> BirdLife refers to ‘Marine Spatial Planning’ and not to ‘Maritime Spatial Planning’. We believe that the term Marine Spatial Planning is the correct term to refer to the achievement of healthy, clean and productive seas by ensuring effective management of human activities (maritime sectors) to preserve the marine environment.

The list does not represent the problem in its entirety. The gaps in the existing international ocean governance framework is mostly in relation to High Seas, for which there is somewhat of an ongoing process to establish one (UN mandate to develop a new international instrument relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (BBNJ)) and the process can, realistically, only be expedited, and not changed. Furthermore, the available knowledge we currently have about the oceans is more than enough to better manage our oceans by orders-of-magnitude.

We believe that we should be properly implementing existing obligations, ameliorating what is not working, and adding what is missing. We further do not think that these actions should be ranked as these are processes that should happen in parallel.

### Consultation: on the existing international Ocean Governance Framework

*The existing international Ocean Governance Framework is composed of many institutions, rules, processes, agreements and arrangements.*

*Some institutions operate at a global level, others at regional, national or sub-national level. Some have a general mandate relating to the oceans, the competence of others is limited to certain sectors or issues. Some agreements create legally binding obligations to the parties of that convention, others are non-binding.*

*The existing international Ocean Governance Framework is often not effective for the reason that agreed rules and policies are not ratified, complied with or implemented or due to an overlap or a lack of coordination between existing institutions and processes.*

*For example, lack of transparency or coherence of rules and differences in standards between regions, or the absence of rules in other areas can be an obstacle for operators, either because they distort the market at the global level, or due to the absence of rules which favours those who work on the basis of lower and environmentally more harmful standards. This in turn discourages innovation and technological progress and potentially harms high-quality operators including those from the EU. This may be even more of issue when considering that many highly innovative companies are SMEs.*

*Another gap is the management of marine resources by area. Whereas there are a large number of fisheries management organisations covering a significant proportion of the world's oceans, these organisations only cover fisheries management issues. Regional Seas Conventions deal with the environmental issues in their own geographical areas – which are often different from those covered by e.g. fisheries organisations. There is no 100% coverage of the world's oceans by these organisations, and whilst they cooperate in a number of cases, such cooperation is neither systematic, nor comprehensive.*

*Even though discussions on the launch of negotiations for an implementing agreement on biodiversity in areas beyond national jurisdiction are far advanced in the UN, in its absence, there are no rules or mechanisms for cross-cutting area-based management of human uses, or Maritime Spatial Planning, in international waters.*

*The set of international organisations dealing (in some cases partially or indirectly) with oceans and their governance is broad, but there is no overarching body at UN level with the mandate to coordinate their action in the context of oceans, leading to potential conflicts or overlaps.*

Questions and Answers:

BirdLife believes that to give more elaborate responses to the question below, there needs to be a more in depth analysis of the potential solutions for each question. The questions as they stand are very open-ended, making it difficult to give an adequate response.

**3. Are new institutions, new rules, new agreements, or new arrangements needed in order to improve the framework of global ocean governance?**

BirdLife believes that there is a need to assess the existing global and regional frameworks, including the United Nations Convention on the Law of the Seas (UNCLOS), as well as assess the current and foreseen threats to global oceans, in order to define an agenda for conservation and sustainable use of marine biodiversity in High Seas. That should include a new agreement for the conservation of biodiversity that would cover the current legal gaps and tackle the major threats. Nevertheless, this does not imply creating new institutional structures, but instead reforming existing structures. Furthermore, apart from tackling the aforementioned gap for an agreement that tackles the High Seas, BirdLife believes that the current framework of global ocean governance would benefit from a more thorough assessment of what works and does not work within the current situation and how modifying this could benefit the greater outcome. Further steps should then be taken as appropriate.

**4. Which areas or issues of global ocean governance are inadequately covered and could benefit the most from filling gaps in the current framework or from more organisation of the framework? How?**

BirdLife believes that the current global ocean governance does not tackle the conservation and sustainable use of marine biodiversity sufficiently in the High Seas. Furthermore, the current global ocean governance inadequately covers the linkage between Marine Spatial Planning (MSP) and Environmental Impact Assessment which at the moment fails to work properly in many cases, due to a lack of proper implementation of the EIA and the ecosystem based approach to MSP. Nevertheless, we also believe that actions through the current global ocean governance should not be stalled on the basis of waiting for further reviews and gap analysis of the current framework. Instead, both processes should occur under in parallel.

**5. Which geographic areas could benefit the most from more effective organisation or from filling of gaps in the institutional framework? How would they benefit?**

BirdLife believes that all geographic areas can benefit from an effective institutional framework. We therefore believe this question to be irrelevant to the purpose of assessing how the EU could contribute to achieving better international governance of oceans and seas (i.e. the aim of this consultation). Nevertheless, it is important to recognise that geographic areas would be covered by different agreements, with different organisation and institutional frameworks, and therefore would tackle the issue differently. It is therefore essential that to

assess these differences, not for scaling them against each other, but for understanding the positives and negatives of the different organisation and institutional frameworks.

**6. Which sectors of the economy could benefit the most from a more effective international ocean governance framework or from filling gaps in the existing set-up? How would they benefit?**

All sectors which exploit marine resources would benefit, albeit differently, from a more effective international ocean governance framework or from filling gaps in the existing set-up. In particular, the effective use of Environmental Impact Assessments (EIAs) under the existing system is potentially of benefit to all exploiting sectors. EIAs would support the establishment of spatial plans, and therefore be beneficial for planning the activities of all sectors at sea.

**7. Where is the greatest added value for the EU to address this framework problem?**

The EU is a member of several regional agreements. Its added value is to address the implementation of an international ocean governance framework following agreed decisions within the EU and also to establish financial incentives for other low-income countries to do so as well. Furthermore, it is important to acknowledge that there is an exploitation of resources by high-income countries (including the EU) in low-income countries. Therefore, it is important for the EU to address its actions outside of the EU in the same regulatory fashion that it already does within its borders. It should also invest in cross-border cooperation to enable the establishment of these agreed decisions.

**8. Which principles or objectives should guide potential action on the framework?**

Either within the current framework or any other framework that might be established in the future, the following principles should guide international ocean governance:

- Precautionary principle
- The 12 principles of the Ecosystem-based approach as established under the United Nations Convention on Biological Diversity
- Coherence with other international environmental agreements such as the UNCLOS and the Convention on Biological Diversity
- Polluter pays principle
- Principles of the Rio Declaration on Environment and Development including the principle (4) that environmental protection shall not be consider in isolation from development process and principle (7) on common but differentiated responsibilities

**9. How would you measure progress in improving the framework?**

We also believe that results-based indicators need to be developed to measure progress. Furthermore, progress should also be measured by assessing the increased synergies of the existing framework – assessing the overlaps, gaps, and conflicting decisions. However, progress in improving the framework should be mainly based on the progress of implementation of the existing decisions. As stated before, it is in BirdLife’s views that the current system does not need a complete “overhaul”. Instead, it requires actual implementation, the current deficit in which is derived from a lack of transparency – and

therefore a lack of cooperative data management, and the political will to do so. Where a gap has been identified, such as improving current agreements for the High Seas, we do believe this should be pursued. However, this does not imply that current actions should be stalled to wait for this improved agreement.

#### Consultation: lack of knowledge

*We may not understand the oceans sufficiently to take appropriate decisions, or gaps in surveillance systems or assets and capabilities for example can be a major obstacle to the development and application of rules to manage activities or even correctly enforce Marine Protected Areas. Lack of knowledge about positive or negative impacts of activities may lead to suboptimal results or even missing growth opportunities provided by making use of ecosystems as economic service providers as is the case for tourism.*

*Human well-being relies heavily on the ecosystem services provided for by seas and oceans. However multiple impacts on seas (unsustainable fishing, climate change, invasive alien species, pollution etc.) have put in risk many fragile marine ecosystems. In this regard, better knowledge is needed in order to identify the key threats and understand how different activities affect marine ecosystems. Lack of knowledge is therefore an important driver of the degradation of marine ecosystems, and it is many times the result of poor political will to undertake and enforce adequate impact assessments for maritime activities.*

Questions and Answers:

#### **10. Which areas of international ocean governance could benefit the most from better availability of maritime knowledge?**

Lack of knowledge is still a problem in the area of marine environmental protection and BirdLife believes that the improvement of data collection and availability could improve future governance framework for oceans, for which, as stated before, the lack of knowledge is very much associated with a lack of transparency of data. Reliable and accurate data are a precondition for both conservation of marine ecosystems and sustainable development of the marine space, and those are the areas that could benefit the most. Nevertheless, it is important to note, as already stated in our response to previous questions, that we already have sufficient knowledge to act (e.g. we have delineated within the UN important areas for biodiversity – EBSAs – but have failed to determine what these areas will inform and to which process/agreement). Therefore, although we do need to improve our knowledge this should not impede action now.

Enhanced knowledge of the marine environment facilitates and enables needed responses including the adoption of adequate and targeted action to support the conservation of the marine environment. Moreover, consistent datasets are necessary to assess the progress and the efficiency of these actions. For example the lack of knowledge on accidental catches of non-target species is an obstacle to enabling the implementation of tailored techniques.

Furthermore, the availability of marine knowledge can also contribute to a sustainable marine economy, providing a solid basis for integrated Marine Spatial Planning in line with an ecosystem-based management. Thus, economic operators can benefit from existing data in order to plan their activities based on more accurate assessments, with a view to minimising

the potential impacts on the marine environment, in keeping with EU and international environmental legislation.

#### **11. Where do you see the most obvious gaps in knowledge about our seas and oceans?**

The most obvious gaps in ocean knowledge concerns the high seas, including information on habitats and species, covering their distribution, movement, status, and interactions with the wider marine ecosystems<sup>2</sup>. Furthermore, understanding the impact of climate change on marine ecosystems is also still much unknown.

There are also important knowledge gaps on the impact of fisheries on the wider marine environment, especially on the incidental catch rates of non-target species, such as seabirds, which play a crucial role in ecosystem functioning. Further gaps include inadequate overlaying of information, especially spatially, on the most important areas for biodiversity and the intensity of human activities (including fishing effort/pressure).

There are also important knowledge gaps in our understanding of ecosystem processes, as well as the role and distribution of important ecosystem components such as microorganisms, benthic organisms etc.

Significant gaps can also be found in the area of ecosystem services. There is no doubt that oceans have an enormous potential in terms of ecosystem services, which remains however largely unassessed. There is therefore need for a coordinated process of mapping and assessment of the ecosystem services under this new international framework.

It should be noted that, in accordance with the ecosystem-based approach which must be respected in the new ocean governance framework, marine issues need to be dealt in a holistic way. Therefore, improved data collection and assessment systems should cover all ecosystem components (biotic-abiotic, commercial, non-commercial etc.) and the impact assessments under this framework should address the cumulative impacts of all human induced activities taking place in the area.

#### **12. How could knowledge about our seas and oceans be better shared among scientists and users (business, policy-makers...)?**

As already mentioned, BirdLife believes that the lack of transparency in many areas (Regional Fisheries Management Organisations catch and effort data, fisheries access agreements, vessel positional information, ocean prospecting for mineral or hydrocarbon resources etc.), often on the pretext of confidentiality, is a main driver for poor data management. Data is often collected and stored without however being available and shared to other users, resulting in knowledge gaps and duplication of work. Enhancing transparency on data collection and sharing can contribute significantly to dealing with knowledge problems in ocean governance.

Besides confidentiality reasons for exceptional cases (e.g. for military purposes), we could highlight the lack of coordination among different data holders and also the fact that different scientific methods are usually followed by different groups, leading to non-compatible

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<sup>2</sup> "not only .. the vast majority of the ocean still remains unexplored (estimates range up to 95%) but .. new species discoveries continue even in relatively well known areas", <http://www.iobis.org/node/404>

information sets. There is need for enhanced cooperation entities (scientific institutions, public sector, private sector, NGOs, civil society etc.) for information exchange.

Furthermore, a critical step towards the new ocean governance framework would be national adoption of agreed protocols and common guidelines on the basis of international best practices, setting the same methods for data collection and assessment at regional or international levels. These actions can improve the compatibility of different data sources and facilitate their exchange among stakeholders.

It is also important to involve all interested stakeholders, including fishers, in data collection, through incentives, training and education about the need for data collection and their potential benefits for improved knowledge. We also support the need to ensure access of scientific observers on fishing vessels in keeping with data collection protocols of different RFMOs and FAO guidelines.

### **13. What could be done to improve coordination in maritime research?**

As addressed before (see point 12), improved coordination on marine research is essential in order to address the existing lack of knowledge.

In our view, data collection synergies between different stakeholders are necessary, as well as the creation of data consolidation of already existing platforms and the adoption of common guidelines on monitoring and assessment.

Regional Seas Conventions can facilitate the coordination in maritime research, monitoring, data collection, guidance and the information sharing between stakeholders from different Contracting Parties.

### **14. Which economic activities and sectoral policies could benefit the most from better availability of maritime knowledge?**

BirdLife believes that the benefits available of maritime knowledge cannot be compared and contrasted across different sectors and economic activities. It is our opinion that all economic activities and sectoral policies would benefit separately from better maritime knowledge. Nevertheless, some of these benefits should be acknowledged:

- Tourism is closely linked to the ecosystem services and therefore tourism activities could highly benefit from better knowledge availability.
- Sustainable fisheries rely largely on knowledge and data about the fish stocks, the status of marine environment, the potential impacts of certain fishing methods on the wider ecosystem etc. Therefore, fisheries will also benefit from improved knowledge on marine environment, since the sustainable use of the seas (which is also in line with the Sustainable Development Goals) is the only way towards healthy and productive marine ecosystems, meaning better fishing opportunities for fishers.
- Taking into consideration that 70% of global trade is carried through the sea, it is evident that maritime transport is an important part of the global economy, but also having huge potential impacts on the fragile marine ecosystems. Therefore, enhanced maritime knowledge is important for marine transport operators with a view to better understanding of and preventing any adverse impacts of their activities on the marine environment.

Improved maritime knowledge can also benefit integrated coastal zone management as well as Marine Spatial Planning as a means of achieving sustainable development, minimising conflicts, and benefiting local economies. MSP, in line with the ecosystem based approach, including through the designation and management of Marine Protected Areas, must take into consideration all the ecosystem elements and any potential impact in an integrated manner. For that reason, data and knowledge about the different activities and their cumulative impacts is of great importance for ocean management as a means of ensuring the efficiency of economic activities at sea while minimising impacts on the marine environment.

#### **15. How would you go about measuring progress in the area of lack of knowledge?**

It is important to have quantifiable targets in order to measure progress, when applicable. For example an indicative target could be to halve the number of unassessed fish stocks by 2020. Targets could also be set on the percentage of species (including non-target species) for which accurate and reliable data are available. Other milestones could be the adoption of Protocols on monitoring and the establishment of a consolidated data from existing platforms. This should then be assessed on the base of indicators that should be developed depending on the targets.

Taking into consideration the multiple human induced impacts on marine environment and the important lack of information, it is urgent to drastically improve our knowledge about marine ecosystems, in order to adopt adequate, science-based measures to restore and conserve the fragile marine environment. Therefore the new framework should impose strict deadlines for progress in the area of lack of knowledge.