Briefing

Governance, fisheries

Keywords:
Least Developed Countries (LDCs), oceans, sustainable fisheries

iied

Issue date
July 2017

Policy pointers

Benefits from activities on the high seas should be shared equitably between nations. A trust fund should be established to manage and distribute the benefits.

The global governing body of any new international instrument must include a committee of scientific and non-scientific bodies that oversees capacity building and technology transfer to help less wealthy countries participate in the conservation and sustainable use of the oceans.

Bioprospecting for marine genetic resources in waters beyond national jurisdictions should be regulated under the new agreement by scientifically informed thresholds.

Ecological and socioeconomic factors should both be central to determining the size and location of area-based management tools, such as new marine protected areas.

Governing the high seas: priorities for the Least Developed Countries

The United Nations has resolved to develop a new international and legally binding agreement for international waters. Once activated, such an instrument will help balance conservation, social and economic objectives. But any new agreement must properly consider concerns from countries most affected by the world's rapidly changing use of the 'high seas'. In particular, countries' abilities to participate in negotiations, and to assert an equitable claim over ocean resources, depends partly on their capacities and development stage. This briefing sets out the Least Developed Countries' priorities for a new agreement, and their views on institutional arrangements for a suitable governance structure.

The United Nations Convention on the Law of the Sea (UNCLOS), which was codified in 1982 and came into effect in 1994, is a comprehensive framework for governing the oceans. However, beyond calling on states to cooperate in conserving living resources on the high seas, its scope is limited to territorial waters, leaving waters beyond national jurisdictions (which comprise 64 per cent of the ocean's surface) largely ungoverned.

Recognising this critical gap, the United Nations General Assembly adopted a resolution[1] in 2015 stressing "the need for the comprehensive global regime to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction." A new legally binding instrument, once agreed and activated, would help strike a balance between conservation, social and economic objectives.

It is in everyone's interest that countries fully participate in formulating such a new instrument. In particular, global agreements must take into account the concerns of countries with limited capacities and those most affected by rapidly changing extractive and non-extractive activities in the oceans (shipping, waste disposal, etc). This briefing identifies priority issues for the Least Developed Countries (LDCs).

Marine genetic resources

Marine genetic resources (MGRs), and how these are defined and can be harvested, are a top priority for the LDCs. LDCs want commodities excluded from new rules designed to regulate use of MGRs, and instead dealt with under benefit-sharing arrangements. For example, the LDCs consider that fish, as a commodity, should be excluded. This is particularly important where taking fish for their genetic resources could

deplete stocks that coastal communities rely on for livelihoods.

The group of LDCs propose scientifically informed thresholds should be established to regulate access to, and bioprospecting for, marine genetic resources (especially fish) in areas beyond national jurisdiction. If catches of any particular fish species, ostensibly caught as part of bioprospecting for MGRs, rise beyond a certain amount (which would vary depending on species and habitat variability), they should be considered a commodity. Threshold levels for each fish stock should be determined by a scientific body established under the global governing body (see section on institutional arrangements below).

Access to marine resources on the high seas has not been equitable to date

Access and benefit sharing

Countries' ability to access the vast potential benefits of using and managing areas beyond national jurisdiction (the 'high seas') is limited by their technical and financial capacities. Because of this, access to marine resources on the high seas and benefit sharing from those resources have not been equitable to date. This warrants the establishment of an equitable benefit and cost-sharing mechanism under the new legally binding instrument. The mechanism should:

1. Enhance low-income countries' capacities to sustainably use the resources
2. Ensure data and scientific knowledge on areas beyond national jurisdiction are shared, in line with the principle of common heritage of humanity and UNCLOS Articles 242 and 244 on the publication and dissemination of information and knowledge
3. Promote genuine partnerships and cooperation in scientific and economic exploration of the high seas
4. Distribute monetary and non-monetary benefits equitably between nations, taking into account the needs and interests of those furthest behind, and
5. Establish an access and benefit-sharing trust fund. LDCs should be amongst the fund's primary beneficiaries. The fund should consider exempting LDCs from obligations to pay into it when carrying out extractive and non-extractive activities in international waters.

Area-based management tools

Well-designed and well-managed marine protected areas (one form of area-based management tools, or ABMTs) are known to safeguard biodiversity, bolster climate resilience, and also provide ecological benefits to neighbouring ecosystems by protecting marine flora and fauna that help maintain ecosystem stability. These benefits are amplified when marine protected areas are large, well managed, isolated and long lasting. Thus, ABMTs are likely to become crucial and cost-effective instruments for governing the high seas in a way that maintains the benefits of a healthy marine environment for current and future generations.

There is an environmental continuum from waters under national jurisdiction to areas beyond national jurisdiction. Many species use all of these different areas at different stages of their life cycles. The scientific community has established that unsustainable, unregulated and destructive practices on the high seas would be detrimental to fishing activities in territorial waters. Therefore, great care must be taken to address the potential impacts that activities on the high seas may have on activities elsewhere. Any new global agreement should be mindful that marine resources are crucial for livelihoods and food security in many coastal communities and economies, particularly in low-income countries.

Ecological benefits of sustainable management regimes in areas beyond national jurisdiction (such as fish stocks replenishing because of a well-managed marine protected area) will vary according to location, species involved and biophysical characteristics of the habitat. Certainly, ecological factors — such as an area's special importance for life cycles of particular species, the habitat's significance for endangered species and its biological productivity — should be considered when designing ABMTs.

Additionally, ABMTs on the high seas may help restore some national fisheries, bringing benefits to coastal communities. So it will be necessary to assess how projected ecological and economic gains from ABMTs (including from marine protected areas) are likely to be distributed. This distribution of benefits should be a core part of the process determining the size and location of area-based management plans.

The new instrument must also be mindful of ecological connectivity between marine areas under different jurisdictions. When protected areas prohibit damaging activities within their boundaries, they can often displace a portion of these uses to adjacent areas (termed 'leakage'). This can undermine conservation objectives. ABMTs should ensure 'zero net loss' of the values and functions of biodiversity. One way of mitigating leakage is to give a global governing

body a mandate to monitor and assess risks of leakage and introduce countermeasures.

Environmental impact assessments

It is crucial that a new, legally binding instrument for the high seas sets up clear criteria and procedures for carrying out environmental impact assessments (EIAs). This should include defining the impact threshold that would trigger an EIA, who will conduct an EIA and what activities should be subjected to EIAs.

EIAs should be triggered and reviewed by a scientific committee, to be established under the body governing any new global instrument. One of the challenges will be establishing expected outcomes, since data on baseline conditions for the high seas are often poor. In the interest of avoiding duplication and not undermining existing instruments, the UN System of Environmental-Economic Accounting (SEEA), which provides a standardised framework for natural capital accounting, can be employed. The SEEA is a system for organising statistical data so that they give coherent indicators and descriptive statistics that can be used to monitor interactions between the economy and the state of the environment. This methodology could be used by a scientific committee to establish baselines for comparison with what is expected and what actually happens as a result of any activity (assessed by ex-ante and ex-post evaluations).

Regular monitoring and reviews of activities after the initial EIA are needed to assess any unexpected impacts arising during the activity.

A deposit fund must be established to mitigate possible harmful effects on the environment caused by any activity. In line with the 'polluter pays principle', proponents of the activity should deposit a sum of money (to be determined by the governing body) which would be returned once the activity ceases, an ex-post EIA is satisfactorily completed and the global governing body's scientific committee gives clearance. The ex-post EIA would ensure environmental protection had been upheld.

Capacity building and technology transfer

Capacity building and technology transfer will be needed to ensure that all countries can participate in the sustainable use and conservation of waters beyond national jurisdiction. This is a very important issue that needs to be given sufficient attention. The Istanbul Programme of Action (IPoA) has already established a set of widely agreed principles and concrete action plans for developing the LDCs. A new instrument should therefore adequately reflect these principles and approaches, which have been universally agreed by LDCs' development partners. It is crucial to avoid duplication, or any undermining of IPoA action plans.

Capacity building and technology transfer under a new international instrument should encompass:

1. Investment that builds human capital in LDCs
2. Access to information and data, and
3. Institutional capacity building and actions that enhance LDCs' ability to identify, assimilate, transform and apply scientific knowledge and technological knowhow.

Within the global governing body of any new instrument there needs to be a committee, made up of representatives from scientific and non-scientific bodies, that oversees the delivery and effectiveness of capacity building and technology transfer.

It is crucial to promote policy coherence and consistency across international economic, financial and trading systems. This is needed to increase international support measures for developing countries, making these more efficient and effective. The new international instrument should make provisions that eliminate barriers to technology transfer, including, but not limited to, unfavourable trade regimes.

One of the most important principles of capacity building and technology transfer is building countries' productive capacities. This entails training people to understand the details of new technologies and also helping countries acquire the means to apply technology in specific institutional, production and operational processes.

Other principles include taking an integrated approach that views the development process and priorities in LDCs in a comprehensive and holistic manner. This overcomes the problems that commonly arise when what is actually delivered, in terms of capacity building and technology transfer, diverges from initial commitments.

Even though LDCs should be given priority and preferential treatment, access to the benefit-sharing fund should not necessarily be limited to developing countries. The fund could be used as an incentive instrument to promote genuine partnership between international businesses and institutions in low-income countries, including both private and public actors. Technology

transfer should be strengthened and integrated with capacity-building activities in line with UNCLOS Part XIV, in particular Articles 266 and 269 on promoting the development and transfer of marine technology.[2]

Institutional arrangements

The group of LDCs calls for a global governing body to be established alongside the new international instrument. This body should not undermine existing relevant legal instruments and frameworks, or relevant global, regional and sectoral bodies. By that we mean its measures should be "no less effective than international rules, standards and recommended practices and procedures", in line with UNCLOS Article 208 (3). The governing body should welcome input from existing regional and sectoral organisations, civil society and other stakeholders.

The governing body should, at a minimum, have the following subsidiary bodies:

- A decision-making process, for example a regularly scheduled intergovernmental conference
- A secretariat
- A compliance committee (which could be within the secretariat), and
- A scientific and/or technical advisory body.

The international governing body should have the ability to establish additional subsidiary bodies as needed. These may include:

- A trust fund
- A contingency fund (which could be organised within the trust fund)
- A clearing house mechanism
- A financial administration body
- A committee on capacity building and technology transfer, and
- An entity overseeing access and benefit sharing of marine genetic resources.

The scientific body, among other things, should be responsible for:

- Setting thresholds regulating bioprospecting for marine genetic resources
- Overseeing the creation, implementation, monitoring and review of area-based management tools, including marine protected areas and reserves, and
- The EIA process, including setting thresholds regulating bioprospecting for marine genetic resources, and ex-ante, periodic and ex-post evaluations of extractive or non-extractive activities.

Essam Yassin Mohammed

Essam Yassin Mohammed is a senior researcher in environmental economics and leads IIED's work on ocean and fisheries economics.

This briefing is informed by a series of meetings held with delegates and technical experts from the Least Developed Countries.

Contact
Essam Yassin Mohammed
eymohammed@iied.org

80–86 Gray's Inn Road
London, WC1X 8NH
United Kingdom

Tel: +44 (0)20 3463 7399
Fax: +44 (0)20 3514 9055
www.iied.org

IIED welcomes feedback via: @IIED and www.facebook.com/theiied

Support for this project was provided by The Pew Charitable Trusts. The views herein are those of the author(s) and do not necessarily reflect the views of The Pew Charitable Trusts.

Notes

[1] www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/292 / [2] Convention on the Law of the Sea, 10 December 1982, 1833 U.N.T.S. 397, entered into force as the "United Nations Convention on the Law of the Sea" on 1 November 1994.