



United Nations  
Educational, Scientific and  
Cultural Organization



World  
Heritage  
Convention



Protecting sites of potential Outstanding Universal Value  
in marine areas beyond national jurisdiction:

# The practical modalities

Published in 2020 by the United Nations Educational, Scientific and Cultural Organization, 7, place de Fontenay, 75352 Paris 07 SP, France

© UNESCO, 2020. CLT-2019/WS/12



This publication is available in Open Access under the Attribution-ShareAlike 3.0 IGO (CC-BY-SA 3.0 IGO) license (<http://creativecommons.org/licenses/by-sa/3.0/igo/>). By using the content of this publication, the users accept to be bound by the terms of use of the UNESCO Open Access Repository (<http://www.unesco.org/open-access/terms-use-ccbysa-en>).

Suggested citation: UNESCO. 2020. Summary of expert workshop. Protecting sites of potential Outstanding Universal Value in marine areas beyond national jurisdiction: The practical modalities. Paris, UNESCO World Heritage Centre.

This document uses many elements from the 2016 report: Freestone, D., Laffoley, D., Douvère, F and Badman, T. 2016. World Heritage in the High Seas: An Idea Whose Time Has Come. World Heritage reports 44. <https://unesdoc.unesco.org/ark:/48223/pf0000245467>

The ideas and opinions expressed in this document are those of the participants in the December 2018 expert meeting; they do not constitute a statement of policy, decision or position on behalf of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

The designations employed and the presentation of material throughout this publication do not imply the expression of any opinion whatsoever on the part of UNESCO concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Cover photo: Crossota sp., a deep red medusa found just off the bottom of the deep sea. Alaska, Beaufort Sea, North of Point Barrow. © Kevin Raskoff / NOAA / Wikipedia

Graphic design: Aurelia Mazoyer  
Typeset: UNESCO/MSS/CLD/D  
Printed by: UNESCO

*Printed in France*

## Acknowledgments

UNESCO's World Heritage Centre is grateful for the support of the Agence Française pour la Biodiversité (French Biodiversity Agency) and the Prince Albert II of Monaco Foundation. Thanks to all the experts that provided their insights, in particular Mr Glen Wright who substantially contributed to the final summary report and who coordinated the feedback and comments from the participants in the expert workshop. Sincere thanks are likewise due to the Natural Resources Defense Council which co-chaired the December 2018 expert meeting.

This analysis aims to provide an overview to the World Heritage Committee of the possible practical modalities and recommended next steps to advance the protection of sites of potential Outstanding Universal Value in marine areas beyond national jurisdiction, in concordance with the 2011 independent evaluation by the UNESCO external auditor.

The 2018 expert meeting and its meeting proceedings, this document, looked at the legal context of protecting sites of potential Outstanding Universal Value in marine areas beyond national jurisdiction. The **gender context** was not specifically analyzed. For future detailed reflections on management of these places the important dimension of gender should be taken into account.

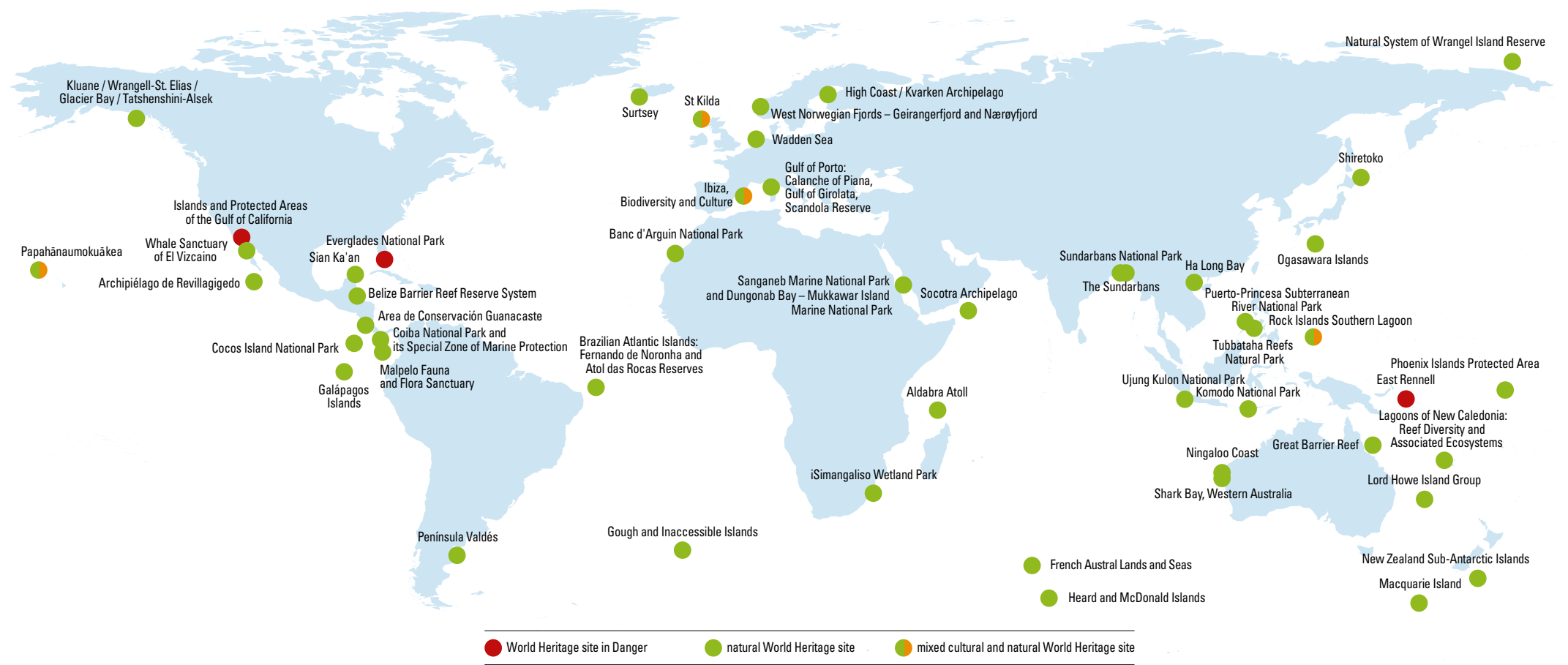
## Contact

Fanny Douvère  
Coordinator  
Marine Programme  
UNESCO World Heritage Centre  
[f.douvere@unesco.org](mailto:f.douvere@unesco.org)  
<http://whc.unesco.org/en/marine-programme>

# CONTENTS

<b>1. CONTEXT</b>	<b>5</b>	<b>4. RECOMMENDED NEXT STEPS</b>	<b>10</b>
<b>2. THE CONVENTION AND WORLD HERITAGE IN MARINE AREAS BEYOND NATIONAL JURISDICTION</b>	<b>7</b>	4.1. Harmonizing Tentative Lists	10
2.1. Addition of a site in marine areas beyond national jurisdiction to a Tentative List	8	4.2. Focus on areas with potential Outstanding Universal Value and advanced management	10
2.2. The nominating entity of a World Heritage site in marine areas beyond national jurisdiction	8	4.2.1. The Costa Rica Thermal Dome ('The Dome')	10
2.3. Management and protection	9	4.2.2. The Sargasso Sea	11
2.4. Evaluation and reporting	9	4.3. Drafting of possible amendments to Operational Guidelines	11
<b>3. ONGOING NEGOTIATIONS AT THE UNITED NATIONS FOR A TREATY ON MARINE AREAS BEYOND NATIONAL JURISDICTION</b>	<b>10</b>	4.4. Developing a work programme to support the protection of World Heritage in marine areas beyond national jurisdiction	12
		<b>5. CONCLUSIONS OF THE EXPERT WORKSHOP</b>	<b>12</b>
		<b>ANNEX I: WORKSHOP PARTICIPANTS (MONTE CARLO, MONACO, 11-12 DECEMBER 2018)</b>	<b>13</b>
		<b>ANNEX II: ABBREVIATIONS</b>	<b>14</b>

Figure 1: The 50 marine sites on the UNESCO World Heritage List distributed across 37 countries, 2019



# 1. CONTEXT

The 1972 World Heritage Convention ('the Convention')<sup>1</sup> recognizes that "parts of our cultural and natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole".<sup>2</sup> Today, over 1,000 sites in 167 countries have been inscribed on the UNESCO World Heritage List, including 50 marine sites.

Since its inception, World Heritage has become a hallmark for sustainable protection of the globe's most treasured places, from Peru's Historic Sanctuary of Machu Picchu to the United Republic of Tanzania's Serengeti National Park. In its day-to-day work, the Convention unites 193 States Parties behind the shared commitment to preserve the world's outstanding heritage for the benefit of present and future generations. It recognizes that the protection of these exceptional places is the duty of the international community as a whole and facilitates collective action across borders.

Sites are selected through a rigorous, multi-year review and only places of Outstanding Universal Value (OUV) make it on to the UNESCO World Heritage List. As a condition for receiving the prestigious World Heritage designation, nations commit to safeguarding their sites for future generations. Consequences for failing to adequately steward conservation include being placed on the "In Danger List" or being "Delisted" altogether. This oversight is carried out by UNESCO's World Heritage Committee with the support of advisory bodies and is the only such mechanism in the world.

The 50 marine sites on the UNESCO World Heritage List are recognized for representing globally outstanding natural beauty and marine ecosystems, major stages in Earth's history, and biodiversity hotspots. Since the inscription of Australia's Great



Participants of the 2018 expert workshop, Monte Carlo  
© UNESCO/mouv-up.com

Barrier Reef as the first marine site in 1981, marine World Heritage has grown into a global collection of unique ocean places stretching from the tropics to the poles (see Figure 1).

Currently only marine areas within national jurisdiction are protected through the Convention. The Convention's far-reaching inspirational vision, however, suggests that natural or cultural heritage of OUV, regardless of where it is located, should be recognized and protected. Yet, the practical modalities set out in the Convention emphasize the duties of States in relation to sites situated within their territory.<sup>3</sup> There is currently no specific guidance for States Parties on the process for nominating sites located in marine areas beyond national jurisdiction.<sup>4</sup> Nor is there currently a mechanism in place that allows the inscription and protection of these areas through the World Heritage Convention. Consequently, the experts considered that the

Convention currently does not fulfil the entire scope of its mandate since it excludes all potential sites of OUV in marine areas beyond national jurisdiction, which cover approximately half of the planet.

The IUCN 2010 Bahrain Action Plan for Marine World Heritage<sup>5</sup> suggested that in order to 'future-proof' the Convention, it is "critical that actions now commence to consider what might be protected in the open ocean and deep sea beyond national jurisdiction so that [...] the Convention can play a similar role to the one it has played for areas currently under its jurisdiction".

**"It is appropriate that States establish without delay workable provisions adapted for the High Seas..."**

**2011 UNESCO independent external audit**

In 2011, an independent evaluation by the UNESCO external auditor concluded that "it is appropriate that States establish without delay workable provisions adapted for the High Seas of which the natural heritage long preserved due to its isolation

1 UNESCO (1972) Convention Concerning the Protection of the World Cultural and Natural Heritage adopted by the General Conference at its 17th session, Paris, 16 November 1972: <http://whc.unesco.org/en/conventiontext/>.

2 Preamble, operative paragraph 6.

3 The Convention, Article 4. The Operational Guidelines.

4 According to the United Nations Convention on the Law of the Sea (UNCLOS, 1982), marine areas beyond national jurisdiction comprise two distinct components: "the Area", i.e. the seabed and subsoil beyond national jurisdiction; and the "high seas", i.e. the water column beyond national jurisdiction. The Area and its mineral resources are the "common heritage of mankind". Mining activities in the Area must be conducted for the benefit of mankind as a whole and are managed through the International Seabed Authority (ISA). By contrast, the high seas are governed by the longstanding principle of freedom of the high seas.

5 Laffoley, D. & Langley, J. 2010. (editors). The Bahrain Action Plan for marine World Heritage. Identifying priorities for marine World Heritage and enhancing the role of the World Heritage Convention in the IUCN WCPA Marine Global Plan of Action for MPAs in our Oceans and Seas. IUCN, Switzerland. <https://whc.unesco.org/document/105357>.

and the difficulty in exploiting its resources, is now threatened” and recommended that Parties “reflect on appropriate means to preserve sites that correspond to conditions of outstanding universal value which are not dependent on the sovereignty of States Parties.”<sup>6</sup>

In response, an expert meeting was convened (29-30 October 2015, UNESCO Headquarters, Paris), bringing together a gender-balanced group of leading authorities on policy, international law, the ecology and geology of marine areas beyond national jurisdiction, and World Heritage. Building on discussions at the expert meeting, a joint UNESCO-IUCN report was published in 2016, entitled *World Heritage in the High Seas: An Idea Whose Time Has Come*.<sup>7</sup> The report illustrated a sample of the potential OUV present in marine areas beyond national jurisdiction, identifying five sites that potentially meet the OUV criteria<sup>8</sup> and providing some initial reflections on options for enabling nomination and inscription.

A group of international experts (see Annex I) subsequently met in Monte Carlo, Monaco from 11-12 December 2018 to discuss possible practical modalities for how the 1972 World Heritage Convention could protect marine sites in marine areas beyond national jurisdiction. This report provides a summary of the discussions and conclusions of this expert meeting. Special attention was given to ensure gender balance among the meeting participants.

6 WHC-11/35.COM/INF.9A. Paris, 27 May 2011. <http://whc.unesco.org/archive/2011/whc11-35com-9Ae1.pdf>.

7 Freestone, D., Laffoley, D., Douvère, F. and Badman, T. 2016. World Heritage in the High Seas: An Idea Whose Time Has Come. World Heritage reports 44. <https://unesdoc.unesco.org/ark:/48223/pf0000245467>

8 The Lost City Hydrothermal Field; the Costa Rica Thermal Dome; the White Shark Café; the Sargasso Sea; and the Atlantis Bank.



1/ Great white shark at Isla Guadalupe, Mexico, August 2006. Animal estimated at 11-12 feet (3.3 to 3.6 m) in length, age unknown. © Pterantula (Terry Goss) via Wikimedia Commons.  
2/ A dumbo octopus displays a body posture never before observed in cirrate octopods. © Image courtesy of the NOAA's Office of Ocean Exploration and Research.  
3/ Diverse coral gardens and complex sea-cliff deep-sea communities characterized by large anemones, large sponges and octocorals at the Atlantis Bank, South West Indian Ocean. © The Natural Environment Research Council and IUCN/GEF Seamounts Project C/O Alex D Rogers.

Figure 2: Marine areas beyond national jurisdiction of potential Outstanding Universal Value

Ocean	Name	Main features that could make up the sites’ potential Outstanding Universal Value
PACIFIC OCEAN	<b>The Costa Rica Thermal Dome</b>	The Costa Rica Thermal Dome is a unique oceanic oasis, a wind-driven upwelling system, which forms a highly productive area and a critical habitat, which provides singular spawning sites, migration pathways and feeding grounds to multiple endangered and commercially important species.
	<b>The White Shark Café</b>	The White Shark Café is a pristine open ocean region approximately halfway between the North American mainland and Hawaii that is the site for the only known offshore aggregation of north Pacific white sharks. The Café provides a unique offshore habitat where these irreplaceable marine predators congregate in cobalt blue pristine waters.
ATLANTIC OCEAN	<b>The Sargasso Sea</b>	The ‘Golden Floating Rainforest of the Ocean’, the Sargasso Sea, is home to an iconic pelagic ecosystem built around the floating <i>Sargassum</i> seaweeds, the world’s only holopelagic algae. It was first viewed by Columbus on his first voyage in 1492 and has been a place of myth and legend ever since. Its global importance derives from a combination of physical and oceanographic structures, its complex pelagic ecosystems, and its role in global ocean and earth system processes.
	<b>The Lost City Hydrothermal Field</b>	The Lost City Hydrothermal Field is a remarkable geobiological feature (biotope) in the deep sea (700-800 metre water depth) that is unlike any other ecosystem yet known on Earth. The site, dominated by the <i>Poseidon</i> carbonate monolith (a 60-metre high carbonate edifice), was discovered serendipitously in 2000 during an <i>Alvin</i> dive on the Mid-Atlantic Ridge, and it is still being explored.
INDIAN OCEAN	<b>The Atlantis Bank</b>	The Atlantis Bank, located within sub-tropical waters of the Indian Ocean, was the first tectonic sunken fossil island ever studied. The complex geomorphology of old headlands, precipitous cliffs, stacks, beaches and lagoons harbours a very diverse deep-sea fauna at depths from 700 to 4,000 metres characterized by large anemones, large armchair-sized sponges, and octocorals. Large <i>Paragorgia</i> colonies are particularly notable.

Source: Freestone, D., Laffoley, D., Douvère, F. and Badman, T. 2016. World Heritage in the High Seas: An Idea Whose Time Has Come. World Heritage reports 44. <https://unesdoc.unesco.org/ark:/48223/pf0000245467>



4/ *Crossota* sp., a deep red medusa found just off the bottom of the deep sea. Alaska, Beaufort Sea, North of Point Barrow. © Kevin Raskoff / NOAA / Wikipedia.  
 5/ Dumbo octopus seen while exploring the west wall of Mona Canyon. © Image courtesy of NOAA Okeanos Explorer Programme.  
 6/ Looking straight down the axis of an Iridogorgia coral. Note the large shrimp on the left and a brittle star to the right. © NOAA Office of Ocean Exploration and Research, 2015 Hohonu Moana.

**Figure 3: Illustrations of potential Outstanding Universal Value in areas beyond national jurisdiction**



Source: Freestone, D., Laffoley, D., Douvère, F. and Badman, T. 2016. World Heritage in the High Seas: An Idea Whose Time Has Come. World Heritage reports 44. <https://unesdoc.unesco.org/ark:/48223/pf0000245467>

## 2. THE CONVENTION AND WORLD HERITAGE IN MARINE AREAS BEYOND NATIONAL JURISDICTION

The preamble of the World Heritage Convention states that “parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole”. The concept of Outstanding Universal Value (OUV) underpins the 1972 World Heritage Convention and is defined by the Operational Guidelines as “cultural and/or natural significance which is so exceptional as to transcend national boundaries and to be of common importance for present and future generations of all humanity.” Inscription of a site on the UNESCO World Heritage List depends on the determination of its OUV.

**Thus while the Convention was intended to apply to “world heritage”, the procedural provisions have so far only enabled nomination of properties situated on the territory of States Parties.**

The experts considered that nothing in the Convention or the Operational Guidelines suggests that sites in marine areas beyond national jurisdiction cannot be of OUV. As noted in the 2016 report, there are a variety of sites in marine areas beyond national jurisdiction that appear to meet the OUV criteria and “it is difficult to imagine that the Convention’s founders’ far-sighted vision of protection envisaged a future world where we intentionally or accidentally ended up excluding half the surface of the Earth”. However, a number of provisions, particularly those related to the process of nominating World Heritage sites, focus on sites “situated on the territory” of States Parties. Thus while the Convention was intended to apply to

“world heritage”, procedural provisions have so far only enabled nomination of properties situated within the national jurisdiction of States Parties. Acting in conformity with the spirit of the Convention, it is the view of the experts that this oversight could be filled through the inclusion of appropriate provisions in the Operational Guidelines, if States Parties wished to do so.

At the time the 1972 World Heritage Convention was negotiated, scientific understanding of the marine environment was far less advanced than it is today, especially with regard to the deep and distant waters of marine areas beyond national jurisdiction. Hydrothermal vents were not discovered until the 1970s. The first truly marine site on the UNESCO World Heritage List was not inscribed until 1981. The United Nations Convention on the Law of the Sea (UNCLOS), often called the “Constitution for the Ocean”, was not adopted until 1982 and did not enter into force until 1994.<sup>9</sup>

There has since been some evolutionary development in the application of the World Heritage Convention to marine areas and States Parties have proven to be flexible and adaptable in advancing the overarching goal of preserving sites of OUV. For example, Papahānaumokuākea (USA) and Phoenix Islands Protected Area (Kiribati), both inscribed in 2010, lie within the Exclusive Economic Zones (EEZ) of the respective States Parties, beyond their territorial seas. Under UNCLOS, every State has the right to establish a territorial sea of up to 12 nautical miles over which it exercises full territorial sovereignty. In the EEZ, up to 200 nautical miles, the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources of the waters and seabed. The inscription of these sites might indicate that States Parties consider that “territory”, for the purposes of the Convention, includes areas beyond the territorial sea of States Parties. These inscriptions doubled the marine areas listed under the Convention.

---

9 See, e.g. Koh, T.T.B. (1982). “A Constitution for the Oceans”, [https://cil.nus.edu.sg/wp-content/uploads/2015/12/Ses1-6.-Tommy-T.B.-Koh-of-Singapore-President-of-the-Third-United-Nations-Conference-on-the-Law-of-the-Sea-\\_A-Constitution-for-the-Oceans\\_.pdf](https://cil.nus.edu.sg/wp-content/uploads/2015/12/Ses1-6.-Tommy-T.B.-Koh-of-Singapore-President-of-the-Third-United-Nations-Conference-on-the-Law-of-the-Sea-_A-Constitution-for-the-Oceans_.pdf).

Given the foregoing, the experts consider that specific amendments to the Operational Guidelines may provide helpful guidance to States Parties on the process for nominating sites of potential OUV in marine areas beyond national jurisdiction. The following sections briefly summarize some of the key issues that may need to be addressed. A more detailed review of the Operational Guidelines and how they could be amended to allow protection of OUV in marine areas beyond national jurisdiction is currently underway and is expected to be available by the end of 2020.

## 2.1. ADDITION OF A SITE IN MARINE AREAS BEYOND NATIONAL JURISDICTION TO A TENTATIVE LIST

The Operational Guidelines currently define a Tentative List as “an inventory of those properties *situated on its territory* which each State Party considers suitable for nomination”<sup>10</sup> and state that the “*sole responsibility* for the content of each Tentative List lies with the State Party concerned”.<sup>11</sup> Nominations to the UNESCO World Heritage List are not considered unless the site has been included on a State Party’s Tentative List.

As publication of a Tentative List does not imply expression of any opinion of the World Heritage Committee, World Heritage Centre or UNESCO concerning the legal status of any area included therein, the workshop participants considered that nothing prevents a State Party from including sites beyond their territory or jurisdiction. However, as the Operational Guidelines envisage that properties will be located within the territory of States Parties, further guidance would provide clarity and assist States Parties wishing to add a site in marine areas beyond national jurisdiction to their Tentative List.

---

10 Operational Guidelines, paragraph 62.

11 Paragraph 68.



Participants of the 2018 expert workshop, Monte Carlo  
© UNESCO/mouv-up.com

**The Operational Guidelines encourage States Parties to harmonize their Tentative Lists at regional and thematic levels, i.e. to collectively assess their respective Tentative Lists to review gaps and identify common themes.<sup>12</sup>**

This could result in improved Tentative Lists, new nominations and co-operation amongst groups of States Parties in the preparation of nominations. International Assistance may be requested by States Parties for the purpose of preparing, updating and harmonizing Tentative Lists.<sup>13</sup> The International Council on Monuments and Sites (ICOMOS) and the International Union for Conservation of Nature (IUCN), as requested by the World Heritage Committee or as necessary, carry out thematic studies to evaluate proposed World Heritage properties in their regional, global or thematic context.<sup>14</sup> As these studies are informed by a review of the Tentative Lists and reports of meetings on the harmonization of Tentative Lists, the addition of sites to Tentative Lists could contribute to addressing thematic gaps.

The experts considered that a States Party or group of State Parties could thus decide to include an area of potential OUV in their respective Tentative List with a view to addressing the current gap on the UNESCO World Heritage List, e.g., marine sites in marine areas beyond national jurisdiction.

---

12 Paragraph 73.

13 Paragraph 75.

14 Paragraph 147.



Participants of the 2018 expert workshop, Monte Carlo  
© UNESCO/mouv-up.com

## 2.2. THE NOMINATING ENTITY OF A WORLD HERITAGE SITE IN MARINE AREAS BEYOND NATIONAL JURISDICTION

A site is usually nominated by the State Party on whose territory it is located; however, the experts are of the view that there is no such State Party for a site in marine areas beyond national jurisdiction. The nature of marine areas beyond national jurisdiction as a global commons suggests that in principle there is no legal reason to place restrictions on which States Parties may nominate a site in marine areas beyond national jurisdiction, while the World Heritage Committee acts on behalf of the international community as a whole and must consider the interests of all stakeholders during the nomination process. Nonetheless, guidance specifically tailored to marine areas beyond national jurisdiction could clarify the process for States Parties to nominate a site in marine areas beyond national jurisdiction, to join or support the nomination of a site in marine areas beyond national jurisdiction. Specific amendments to the Operational Guidelines could provide such guidance and clarification.

## 2.3. MANAGEMENT AND PROTECTION

The Operational Guidelines require that a nomination outlines the framework for protection and management of a site, including information regarding the “necessary protection mechanisms, management systems and/or management plans (whether currently in place or in need of establishment) that will protect and conserve the attributes that carry OUV, and address the threats to and vulnerabilities of the property. These could include

the presence of strong and effective legal protection, a clearly documented management system, including relationships with key stakeholders or user groups, adequate staff and financial resources (...) and effective and responsive monitoring.”<sup>15</sup>

There is a general obligation under UNCLOS to protect the marine environment<sup>16</sup> and UNCLOS requires States Parties to exercise control over vessels flying their flag. As a consequence, participants of the expert workshop considered that State Parties both under UNCLOS and the Convention would have obligations to ensure that their vessels respect any measures relating to a World Heritage site located in marine areas beyond national jurisdiction. International or regional bodies with a legal mandate could adopt specific management measures within their competency for World Heritage sites in marine areas beyond national jurisdiction. For example, the International Maritime Organization (IMO) and the International Seabed Authority (ISA) could institute management measures to protect a site from threats posed by shipping and seabed mining. Regional bodies, such as regional fisheries management organizations (RFMOs) and Regional Seas programmes, may also have a mandate covering marine areas beyond national jurisdiction, but these mandates are limited and their management measures may only be binding upon their Members.

However, there is currently no overarching framework for the conservation and sustainable use of marine biodiversity in marine areas beyond national jurisdiction that provides for the coordinated and coherent establishment of cross-sectoral area-

based management tools (ABMT), including marine protected areas (MPAs), which may be needed to ensure effective protection for a World Heritage site in marine areas beyond national jurisdiction. States are currently negotiating a new international legally binding instrument under UNCLOS for the conservation and sustainable use of marine biodiversity in marine areas beyond national jurisdiction (see Section 3). A future instrument could strengthen the legal framework to protect marine areas beyond national jurisdiction and provide appropriate mechanisms for the effective protection of World Heritage sites.

## 2.4. EVALUATION AND REPORTING

While States Parties have a shared responsibility for the protection of all World Heritage sites, the nominating State Party is generally responsible for reporting on the state of conservation of a site inscribed on the UNESCO World Heritage List. In the context of marine areas beyond national jurisdiction, the experts are of the view that it may not be appropriate to place responsibility for reporting upon a State Party in relation to an area that is not in its territory and that is inscribed on behalf of the international community as a whole. Guidance on reporting for a World Heritage site in marine areas beyond national jurisdiction could, for example, be modelled on existing guidelines for transboundary and serial World Heritage sites.<sup>17</sup>

<sup>15</sup> Operational Guidelines, Annex 5, item 3.1.e. .

<sup>16</sup> Article 192.

<sup>17</sup> A serial property includes two or more component parts related by clearly defined links. It is the series as a whole – and not necessarily the individual parts of it – which are of OUV. Operational Guidelines, Articles 137-139.

### 3. ONGOING NEGOTIATIONS AT THE UNITED NATIONS FOR A TREATY ON MARINE AREAS BEYOND NATIONAL JURISDICTION

In September 2018, following more than a decade of informal discussions, States began negotiations to elaborate an international legally binding instrument (ILBI) under UNCLOS for the conservation and sustainable use of biological diversity of marine areas beyond national jurisdiction. An Intergovernmental Conference (IGC) aims to develop a treaty that includes provisions on a range of issues, including “measures such as area-based management tools, including marine protected areas”. Three negotiating sessions have now taken place, with a final session planned in March 2020.

The workshop participants consider that there are several possible synergies between the IGC and World Heritage processes:

- Some of the points discussed above in relation to the possible protection of areas in marine areas beyond national jurisdiction under the World Heritage Convention have also been discussed in the negotiations for an ILBI.<sup>18</sup> These discussions may provide useful insight and inspiration for possible amendments to the Operational Guidelines;
- More detailed guidance on the process for nominating and protecting World Heritage sites in marine areas beyond national jurisdiction under the Convention could clarify the mandate and role of the Convention in marine areas beyond

<sup>18</sup> E.g. States are considering the modalities and institutional structures required for the establishment of MPAs and the possible roles for existing sectoral and regional organizations.

national jurisdiction, thereby ensuring that the UNCLOS negotiations do not undermine the Convention or impede evolutionary development of its provisions in response to the 2011 External Auditor’s report;

- The confirmation of OUV for a site in marine areas beyond national jurisdiction would highlight the need for effective management measures, while a future ILBI could provide a management structure for protection of a site inscribed on the UNESCO World Heritage List.

### 4. RECOMMENDED NEXT STEPS

#### 4.1. HARMONIZING TENTATIVE LISTS

As indicated in section 2.1, States Parties could harmonize their Tentative Lists to address thematic and regional gaps. International Assistance may be requested for the purpose of preparing, updating and harmonizing Tentative Lists.

#### 4.2. FOCUS ON AREAS WITH POTENTIAL OUV AND ADVANCED MANAGEMENT

The 2016 UNESCO-IUCN report identified five sites that potentially meet the OUV criteria. Of these, the experts consider that two in particular are the subject of considerable efforts by national governments and non-governmental organisations to promote stewardship. They are the Costa Rica Thermal Dome (‘The Dome’) and the Sargasso Sea. It may therefore be appropriate to focus on these two areas with a view to advancing the World Heritage Convention toward nominating

and protecting marine areas of OUV in marine areas beyond national jurisdiction.

Workshop participants considered that while both sites are already the subject of a robust body of scientific research describing their characteristics and functioning, further development and compilation of scientific information may be required in light of World Heritage nomination requirements. For example, in reviewing nominations, IUCN conducts a global comparative analysis, comparing the characteristics of a nominated site to other sites of a similar character already inscribed on the UNESCO World Heritage List. The sites identified as of potential OUV that were included in the 2016 report were subject to a preliminary comparative analysis with other similar ecosystems.

##### 4.2.1. The Costa Rica Thermal Dome (‘The Dome’)

The Dome is a highly productive and dynamic upwelling system covering a maximum area of about 1 million Km<sup>2</sup> of the Eastern Tropical Pacific, approximately half of which is in marine areas beyond national jurisdiction. The interaction between wind and ocean currents drive nutrient-rich cold water from the deep ocean to the surface, where it combines with sunlight and produces considerable algae growth. The Dome attracts a range of iconic highly migratory predators (such as tuna, billfish, sharks, manta rays, dolphins and whales, in particular endangered blue whales), and forms part of a migratory corridor for critically endangered leatherback turtles.<sup>19</sup> The Dome is exposed to potential impacts from shipping traffic, fishing, pollution from marine and land-based sources and climate change.

Considerable scientific research has already been conducted and part of The Dome is included within an “Ecologically or Biologically Significant Area” (EBSA), recognized in 2009 under

<sup>19</sup> Freestone, D., Laffoley, D., Douvère, F. and Badman, T. 2016. World Heritage in the High Seas: An Idea Whose Time Has Come. World Heritage reports 44. <https://unesdoc.unesco.org/ark:/48223/pf0000245467>



Participants of the 2018 expert workshop, Monte Carlo  
© UNESCO/mouv-up.com

the Convention on Biological Diversity (CBD). While competent bodies with a management mandate to address particular threats have been identified,<sup>20</sup> the experts are of the view that there is currently no management system in place that could adequately protect the site. A Costa Rican law requires the Government to ensure the protection and sustainable management of marine resources in the parts of The Dome within national jurisdiction and to promote the importance of managing the marine resources of The Dome internationally.<sup>21</sup> The workshop identified the following possible next steps toward nomination and protection of The Dome as a World Heritage site:

- Application to the World Heritage Fund for a working meeting toward harmonization of Tentative Lists among States Parties in the region;

- Coordination with regional governmental and non-governmental partners that have already indicated interest in initiatives to manage The Dome (e.g. the Central American Commission on Environment & Development and the Ministers for the Environment of Costa Rica and Honduras).

#### 4.2.2. The Sargasso Sea

The 'Golden Floating Rainforest of the Ocean', located within the North Atlantic sub-tropical gyre, is home to an iconic pelagic ecosystem based on the unique floating *Sargassum* seaweed. The Sargasso Sea provides habitat for many species of global conservation and commercial significance. It is the only known spawning location for European and American anguillid eels and provides crucial habitat for endangered sea turtles. The Sargasso Sea faces impacts from fisheries, plastic pollution, shipping traffic and vessel discharges, and climate change.

Ten governments have now signed the 2014 Hamilton Declaration on Collaboration for the Conservation of the

Sargasso Sea.<sup>22</sup> Pursuant to the Declaration, Bermuda established the Sargasso Sea Commission to exercise a stewardship role and to assist the signatory governments in developing proposals for conservation measures. Parties to the CBD have recognized the Sargasso Sea as an EBSA,<sup>23</sup> the Northwest Atlantic Fisheries Organization (NAFO) has closed vulnerable marine ecosystems to bottom fishing, and European eels have been listed under the Convention for Migratory Species (CMS), thereby stressing the need for international collaboration to ensure their conservation. The workshop identified the following possible next steps toward nomination and protection of The Sargasso Sea as a World Heritage site:

- A working meeting toward harmonization of Tentative Lists among relevant States Parties in the region and elsewhere;
- Consultation with the Members of the Sargasso Sea Commission and signatories to the Hamilton Declaration to explore the possibility of developing a World Heritage nomination dossier for the Sargasso Sea as a World Heritage site;
- Establishing regular exchange with States Parties surrounding The Dome to support, and learn from, actions taken in relation to The Dome.

### 4.3. DRAFTING OF POSSIBLE AMENDMENTS TO OPERATIONAL GUIDELINES

The experts considered that while the preamble and scope of the World Heritage Convention does not exclude marine areas beyond national jurisdiction as such and States Parties have the possibility to include areas of potential OUV in their Tentative

20 E.g. The International Maritime Organization (5% of shipping traffic passes through the Dome due to its proximity to the Panama Canal) and the Inter-American Tropical Tuna Commission (IATTC) (bycatch in tuna fisheries).

21 Ley 8436 – Pesca y Acuicultura, [http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm\\_texto\\_completo.aspx?param1=NRTC&nValor1=1&nValor2=54688&nValor3=115538&param2=1&strTipM=TC&Resultado=5&strSim=simp](http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=54688&nValor3=115538&param2=1&strTipM=TC&Resultado=5&strSim=simp).

22 See [http://www.sargassoseacommission.org/storage/documents/Hamilton\\_Declaration\\_on\\_Collaboration\\_for\\_the\\_Conservation\\_of\\_the\\_Sargasso\\_Sea\\_with\\_signatures.pdf](http://www.sargassoseacommission.org/storage/documents/Hamilton_Declaration_on_Collaboration_for_the_Conservation_of_the_Sargasso_Sea_with_signatures.pdf).

23 Decision XI/17 on Marine and Coastal Biodiversity: Ecologically or Biologically Significant Marine Areas (2012) UNEP/CBD/COP/DEC/XI/17, p.23, item 13, <https://www.cbd.int/doc/decisions/cop-11/full/cop-11-dec-en.pdf>.

List, amendments to the Operational Guidelines are advisable to ensure clarity regarding to the process of nomination, protection and evaluation/reporting of such areas.

**Considering that the World Heritage Convention predates UNCLOS, the lack of practical guidance for sites of OUV in marine areas beyond national jurisdiction is largely a historic oversight.**

Amendments could be developed by:

1. Analyzing the Operational Guidelines to identify provisions that may benefit from further elaboration to facilitate designation of sites in marine areas beyond national jurisdiction;
2. Highlighting options for targeted amendments to facilitate the nomination, inscription, management and international oversight of sites in marine areas beyond national jurisdiction;
3. Identifying existing concepts and language in the Convention, Operational Guidelines, decisions and other Convention documents that could be used to help clarify the process for nomination of sites in marine areas beyond national jurisdiction.<sup>24</sup>

#### **4.4. DEVELOPING A WORK PROGRAMME TO SUPPORT THE PROTECTION OF WORLD HERITAGE IN MARINE AREAS BEYOND NATIONAL JURISDICTION**

In order to support the drafting of amendments to the Guidelines and the advancement of work on the two sites described above, the experts are of the view that the World Heritage Centre, in collaboration with the advisory bodies, could develop a work programme and budget. The subsequent

identification of funding sources and the appointment of a coordinator would provide the resources needed to develop and operationalize the work programme.

## **5. CONCLUSIONS OF THE EXPERT WORKSHOP**

The expert meeting concluded that nothing in the text of the 1972 World Heritage Convention suggests that sites of potential OUV in marine areas beyond national jurisdiction are excluded from its ambit. The lack of specific provisions is rather a historical oversight that may be corrected through a review of the Operational Guidelines and provision of further guidance to States Parties to ensure that the Convention fulfils the full scope of its mandate and protect World Heritage wherever it is located.

In the interim, the expert meeting suggested that tentative Lists should be used to address gaps on the World Heritage List and two potential World Heritage sites, the Costa Rica Thermal Dome and the Sargasso Sea, may be appropriate sites to take forward in this regard. Both locations have been indicated to be of potential OUV in the IUCN-UNESCO 2016 scientific study on World Heritage and the High Seas and could serve as case studies for the nomination of a UNESCO World Heritage site in marine areas beyond national jurisdiction.

Next steps could include advancing work on these two initial sites, drafting of possible amendments to the Operational Guidelines to fill important gaps with regards to nomination, protection and management of sites in marine areas beyond national jurisdiction and developing a dedicated work programme and budget to support the protection of World Heritage in marine areas beyond national jurisdiction.



<sup>24</sup> E.g. the concept of universality in the Convention could provide a useful framework for reflecting the nature of marine areas beyond national jurisdiction as global commons.



## ANNEX I: WORKSHOP PARTICIPANTS (MONTE CARLO, MONACO, 11-12 DECEMBER 2018)

Name	Organization	Role
Mr David BALTON	Woodrow Wilson Center for International Scholars	Ambassador for Oceans and Fisheries, U.S. Department of State (retired)
Mr Tidiani COUMA	Government of Monaco	Secretary of External Relations, Department of External Relations and Cooperation
Ms Fanny DOUVERE	UNESCO World Heritage Centre	Coordinator, Marine Programme
H.E. Mr Bernard FAUTRIER	Prince Albert II of Monaco Foundation	Vice President and CEO
Mr David FREESTONE	Sargasso Sea Commission	Secretary General
Mr Jorge JIMENEZ	MarViva Foundation	Director
Ms Josephine LANGLEY	International Union for the Conservation of Nature (IUCN)	Member of IUCN World Commission on Protected Areas
Ms Phénia MARRAS-AIT RAZOUK	Agence Française pour la Biodiversité	Project Engineering for European & International Cooperation, Department for National, European and International Strategies
Mr Philippe MONDIELLI	Prince Albert II of Monaco Foundation	Scientific Director
Ms Nilüfer ORAL	Istanbul Bilgi University	IUCN Academy of Environmental Law
Mr Riccardo PAVONI	University of Siena	Professor
Ms Mechtild ROSSLER	UNESCO World Heritage Centre	Director
Mr Tullio SCOVAZZI	University of Milano-Bicocca	Professor of International Law
Ms Lisa SPEER	Natural Resources Defence Council	Director, International Oceans Programme
Ms Zhen SUN	World Maritime University - Sasakawa Global Ocean Institute	Research Officer
Ms Robin WARNER	University of Wollongong	Associate Professor
Mr Glen WRIGHT	Institute for Sustainable Development and International Relations (IDDRI)	Research Fellow

## ANNEX II: ABBREVIATIONS

ABMT	Area-based management tool
marine ABNJ	Marine areas beyond national jurisdiction
CBD	Convention on Biological Diversity
CMS	Convention on Migratory Species
EBSA	Ecologically or Biologically Significant Area
EEZ	Exclusive Economic Zone
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
IGC	Intergovernmental Conference on an international legally binding instrument 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
ILBI	International legally binding instrument
IMO	International Maritime Organization
ISA	International Seabed Authority
IUCN	International Union for the Conservation of Nature
MPA	Marine protected area
OUV	Outstanding Universal Value
RFMO	Regional fisheries management organisation
UNGA	United Nations General Assembly
UNCLOS	United Nations Convention on the Law of the Sea
UNESCO	United Nations Educational, Scientific and Cultural Organization





United Nations  
Educational, Scientific and  
Cultural Organization



World  
Heritage  
Convention

UNESCO World Heritage Centre  
7 Place de Fontenoy  
75007 Paris  
France  
<http://whc.unesco.org/>

with the support of

AGENCE FRANÇAISE  
POUR LA BIODIVERSITÉ  
ÉTABLISSEMENT PUBLIC DE L'ÉTAT

