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## IUCN WCEL Specialist Group Update

### Ocean, Coasts and Coral Reefs Specialist Group

Update: Fall 2020

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#### Introduction

The IUCN WCEL Ocean, Coasts and Coral Reefs Specialist Group (OSG) mandate is to work toward a healthy ocean, recognizing the special needs of coastal areas, coral reefs, and the high seas. OSG priorities, consistent with WCEL priority legal thematic areas are: recovery and conservation of biodiversity; ecosystem protection; and sustainable coastal and marine management. Priority cross-cutting themes are: climate change, protected areas, Arctic and Antarctic polar governance, and the compliance and enforcement of environmental laws.

OSG advances the goals of IUCN by promoting, developing and implementing international environmental law through a variety of activities. These include reports; convenings; participation in international meetings and negotiations including preparation of international draft agreement texts; representation in international courts and tribunals; collaboration with the IUCN Environmental Law Centre (ELC), Global Marine and Polar Programme (GMPP), and other IUCN Commissions; and supporting capacity building and the development of knowledge through the IUCN Academy and other scholarly activities.

The current chair of the Ocean, Coasts and Coral Reefs Specialist Group is Cymie Payne, Associate Professor, Rutgers University, USA. Cymie is an expert in international environmental law. She has appeared as counsel on behalf of IUCN before the International Tribunal for the Law of the Sea in its deep seabed mining and IUU fisheries advisory opinion cases; and as expert on environmental liability and compensation in the International Court of Justice case *Certain Activities (Costa Rica v. Nicaragua)*. She is a Fellow of the American College of Environmental Lawyers and a member of the International Law Association Committee on Sustainable Natural Resource Management for Development.

Currently, the positions of Deputy Chair and Junior Deputy Chair are being assigned.

## Priority Areas and Subject Matter Focus

Highlights of work in which the OSG is engaged include:

- Participation of OSG members in the 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 (UN General Assembly resolution 72/249);
- *Research Handbook on Ocean Acidification Law and Policy* (Edward Elgar, forthcoming), book project edited by co-chairs emeriti Nilufer Oral and David VanderZwaag, and OSG member Timothy Stephens;
- *Deep Sea Mining & the Law of the Sea* (Routledge, London & New York, forthcoming), book project edited by OSG members Robert Makgill and Virginie Tassin; and
- Numerous publications and reports by OSG members, several of which are available on the [OSG web page](#).

Through these activities, OSG is doing its part to “contribute to strengthening international governance mechanisms for marine areas beyond national jurisdiction, and Antarctica and the Arctic, including the establishment of marine protected areas” [IUCN 2017-2020 Programme Area 2.3].

## Marine Biodiversity in Areas Beyond National Jurisdiction

The Intergovernmental Conference (IGC) 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 (BBNJ) was convened following General Assembly [resolution 72/249](#) (24 December 2017). This negotiation is significant as it would result in the first treaty to address biodiversity in the high seas, which constitute 70 percent of the ocean and nearly half of Earth’s surface, with measures for marine genetic resources, including access and benefit-sharing; area-based management tools, including marine protected areas; environmental impact assessments; and capacity building and technology transfer.

OSG members, including the Chair, attended the BBNJ Preparatory Committee (PrepComm) and IGC meetings at UN headquarters in New York with the IUCN delegation, and currently participate in the Fall 2020 informal Intersessional meetings conducted on-line by the President of the IGC. OSG member Kristina Gjerde has led the IUCN delegation as Head of Delegation, and is the focal point for area-based management tools and marine genetic resources; OSG Chair Cymie Payne is the focal point for environmental impact assessment and cross-cutting issues, including compliance and dispute settlement. OSG members drafted and delivered IUCN interventions during the BBNJ and the Intergovernmental Conference, preparing reports, organizing and presenting at side events and workshops to inform State delegations, and collaborating with sister and member organizations, including the High Seas Alliance, Pew Charitable Trusts, American Society of International Law, the Inter-American Association for Environmental Defense (AIDA), and the Deep Ocean Stewardship Initiative (DOSI).

At the two 2019 IGC meetings at UN Headquarters-NYC, WCEL-OSG members made interventions on area-based management tools including marine protected areas, environmental impact assessment, marine genetic resources, dispute settlement, and compliance. OSG members contributions to the negotiation also included: preparing IUCN white papers, presenting workshops, working with the IUCN ELC and the GMPP, collaborating with sister and member organizations, and participating on state, IGO, and NGO delegations.

During both 2019 IGC sessions, the WCEL-Ocean Chair hosted planning meetings with WCEL, ELC, and International Council of Environmental Law (ICEL) members participating in the conference. OSG members have also presented at workshops and conferences on topics related to BBNJ, which are listed in the next section.

WCEL-Ocean, in collaboration with ELC, prepared [legal commentaries](#) on the two negotiating texts put forward by the President of the conference dated May 2019 and November 2019. Contributors included OSG legal experts in intellectual property, law of the sea, treaty law, general international environmental law, international organizations, and other relevant specialties. The commentaries were used as valuable sources of information and analysis by delegations to the BBNJ negotiations.

## **Other Initiatives**

WCEL has made significant contributions to the conservation of the marine environment through engagement by Ocean, Coasts, and Coral Reefs Specialist Group members with the international processes discussed here. However, there is much more that can be done with adequate financial support.

OSG planning sessions have identified the need for WCEL-Ocean to have a consistent presence at other relevant international meetings, but without financial support this is impossible. Current participation in international meetings, notably the BBNJ negotiation, has been dependent on members finding support from their own research funds, universities, or personal resources; and the serendipity of some members being located near the United Nations headquarters where the in-person meetings take place.

However, this reliance on other sources of funding and physical proximity excludes many WCEL members from active participation, particularly members from developing countries. It also limits the ability of the Specialist Group to work in an integrated fashion across the relevant regimes and bodies, including: BBNJ, UN Framework Convention on Climate Change, International Seabed Authority, International Maritime Organization, Food and Agriculture Organization, Regional Marine Fisheries Organizations, Convention on Biological Diversity, Convention on Antarctic Living Marine Resources, Sargasso Sea Commission, UN Ocean Decade, and UN General Assembly.

In 2019, the Ocean-SG affiliated the Rutgers Institute of Earth, Ocean and Atmospheric Science (EOAS), [link](#). The two organizations jointly hosted Kristina Gjerde's talk, *Protecting and Sustaining Ocean Life Beyond National Boundaries: Progress and Prospects for a New Treaty* (October 2019).

## Events, Publications, and Activities

During the period covered by this update, the OSG BBNJ working group prepared the following papers, which were distributed to delegates at the BBNJ negotiation:

- IUCN, *Comments* on the draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, A/CONF.232/2019/6 (August 2019) [link](#)
- IUCN, *Comments* on the draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, A/CONF.232/2019/6 (February 2020) [link](#)
- IUCN-AIDA-HSA, Policy Brief: *EIAs in ABNJ: Effects or location-based?* (May 2020) [link](#)

OSG members participated in and organized conferences and workshops related to the group's priority areas, some examples follow:

- Workshop on Environmental Impact Assessment in the new BBNJ instrument, *New York, January 2019*.
- Mare Geneticum and Ecosystem Approach: Power, Openness and Sharing, *BBNJ, United Nations, 29 March 2019*.
- Creating New Marine Protected Areas in Antarctica and the High Seas, *The Wilson Center, Washington, DC, 27 June 2019*.
- 3rd CARICOM Regional Workshop on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ), *Barbados, 16-18 July 2019*.
- Workshop on Drafting Legislation to Support Marine Spatial Planning, with Blue Prosperity Coalition, Environmental Law Institute, Waitt Institute, and IUCN Oceania *Auckland, September 2019*.
- Workshop on International Law & Governance Contributions to the Implementation of the UNFCCC Paris Agreement: Investment and Oceans, *Cambridge University, 26 October 2019*.
- [4th International symposium on ocean governance for sustainability](#), *November 2019*
- Assessing the Relationship between Access, Benefit-Sharing and Intellectual Property Rights over Marine Genetic Resources within the BBNJ negotiations, *Nottingham Law School, Nottingham Trent University, November 2019*
- The Rule of Law for Oceans, *Oslo, 4-5 November 2019*.
- Legal innovations for Sustainable Investments and Resilient Oceans and Advancing Ambition & Compliance on Climate Change through Law & Governance Innovations for Sustainable Investment & Resilient Oceans at the UNFCCC COP25, *Madrid, 2-13 December 2019*.
- Webinar series *Building Ambition for a New High Seas Treaty*, Spring and Fall 2020, IUCN Global Marine and Polar Programme and WCEL-Ocean.

These activities were particularly valuable in contributing to “Effective implementation and enforcement of laws and policies for valuing and conserving biodiversity and nature is accelerated” [IUCN Programme Area 1.2].

## ***Ocean, Coasts and Coral Reefs Specialist Group Role within IUCN***

The OSG has contributed to IUCN activities, in particular through its members' support of and contributions to the work of the Environmental Law Centre and IUCN Academy. Many OSG members participated in the [IUCN Academy of Environmental Law's 17th Colloquium, Achieving Sustainable Development Goals \(SDGs\): Law As Part of the Solution](#), in Kuala Lumpur, Malaysia, 4-9 August 2019. Members presented papers on ocean law and policy-related topics; titles of presentations by specialist group members may be found in the Colloquium Program, available on the Academy's website. These included:

- Md Saiful Karim (Queensland University of Technology, Australia) *Matsyanyaya in the Oceans: Environmental Justice in a Changing Climate*
- Anastasia Telesetsky (University of Idaho, USA) *Stemming the Tide of Marine Plastics: Are Existing Waste Management Laws and Policies Enough?*
- Elizabeth A. Kirk (Nottingham Trent University, UK) *Plastic Seas, Legal Fragments and Routes to Healthier Oceans*
- Erika Techera (University of Western Australia) *Fisheries Governance In The Indo-Pacific: Achieving The SDGS, Environmental Justice And Food Security*
- Laely Nurhidayah (Dr) (Indonesian Institute of Sciences) *Coastal adaptation laws and the social justice of policies to address sea level rise: An Indonesian insight*
- Michelle Lim and Liu Nengye (University of Adelaide, Australia) *From Shared Heritage to Shared Sovereignty in the South China Sea? – The Potential of the Ecosystem Approach in a South China Sea Condominium*
- Stefan Gruber (Kyoto University, Japan) *World Heritage in the Asia-Pacific: Controversies and Politics*

## **Membership Engagement**

The OSG has a large membership representing 57 countries. Members engage in research, diplomacy, teaching and outreach through IUCN; members are leaders in the field, nationally, regionally and internationally.

OSG engages its more than 300 members in research on specific topics to assist the BBNJ negotiation and other initiatives through a periodic newsletter, in-person gatherings, and webinars. OSG will continue to expand its participation in international governance mechanisms, resources permitting. Active engagement of OSG members from regions that are often under-represented is particularly welcomed, and such participation is especially dependent on new resources to support their expenses.

The goal for the OSG is to involve all of its members, to take advantage of their individual international expertise and perspective, as well as the extraordinary geographic coverage of their knowledge of their national law. Our vision is that members will mutually build capacity through this work. We welcome new ideas, new partnerships, project leadership and support. If you are interested in OSG membership, or would like to propose a project or partnership, please contact: [cp@cymiepayne.org](mailto:cp@cymiepayne.org).