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WORLD COMMISSION ON ENVIRONMENTAL LAW
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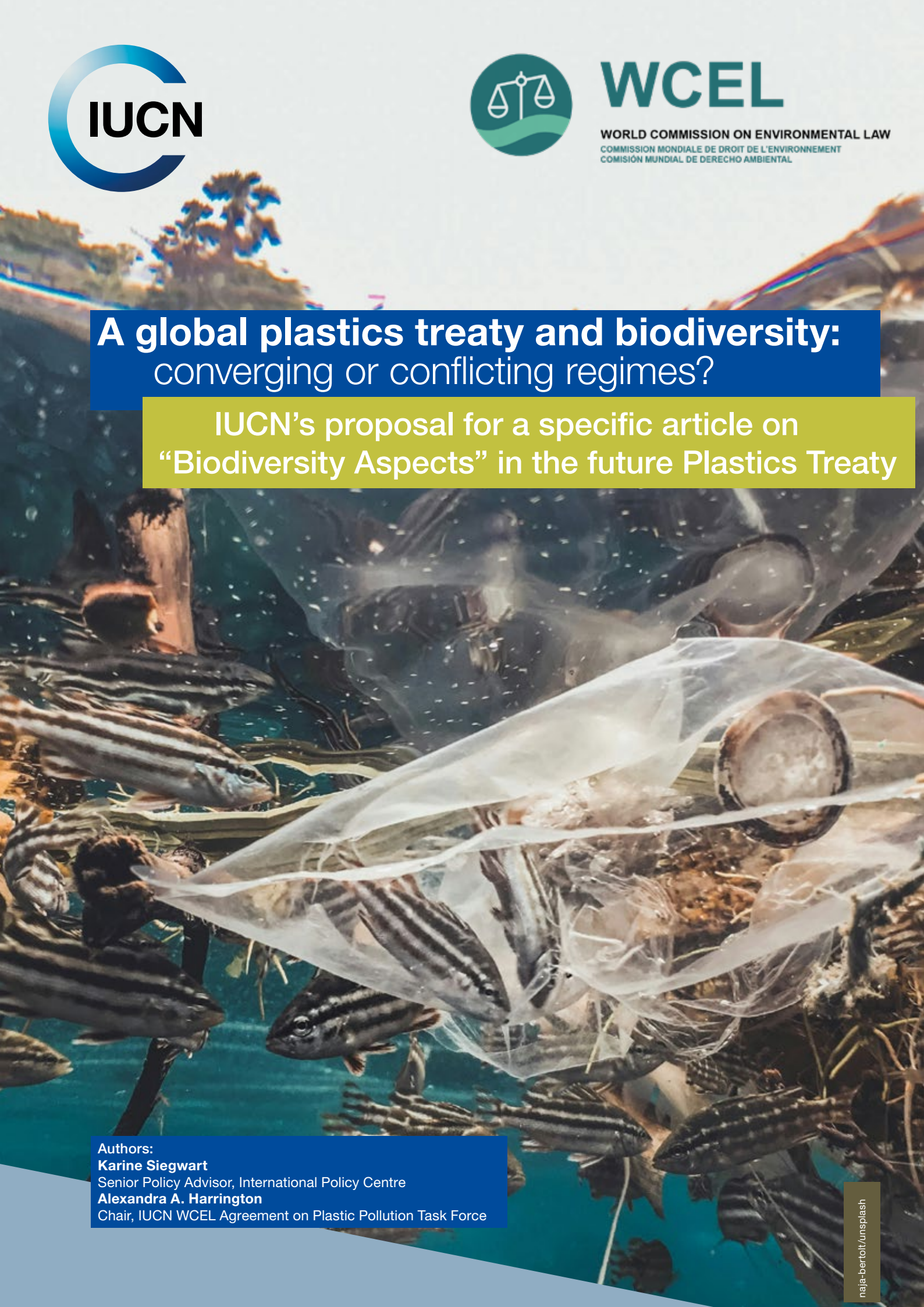
A global plastics treaty and biodiversity: converging or conflicting regimes?

IUCN's proposal for a specific article on "Biodiversity Aspects" in the future Plastics Treaty



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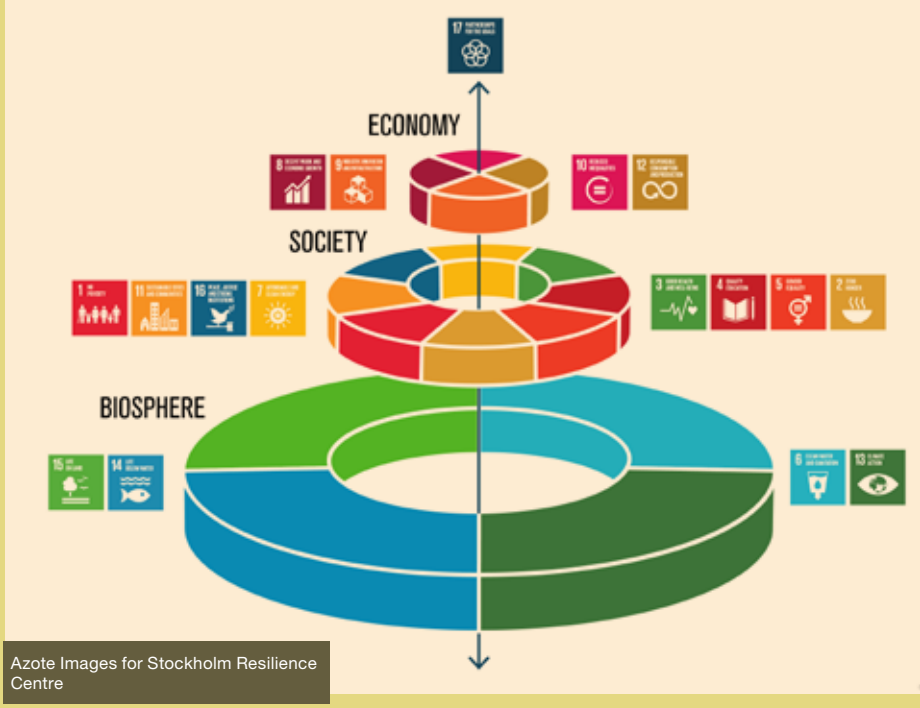
Addressing a triple planetary crisis

As one of the pillars of the triple planetary crisis, biodiversity loss is a critical matter of science and policy. Importantly, 'biodiversity' has come to play a prominent role in international law, including in multilateral environmental agreements (MEAs), as well as in other areas such as trade. This includes a focus on the connections between plastic pollution and biodiversity loss and the degradation of ecosystems at the global, regional and national levels. Such connections have been highlighted by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystems Services (IPBES) report,[1] stressing that (plastic) pollution and climate change are key drivers of biodiversity loss. Likewise, UNEP's International Resource Panel's (IRP) *Global Resources Outlook* declared that approximately 90% of global biodiversity loss is due to the extraction and use of resources, including those involved in plastic production.[1] According to a recent IUCN report,[2] the state of biodiversity is in severe decline, with deforestation, land degradation, and species extinctions all moving in the wrong direction to meet the Sustainable Development Goals (SDG).

At its sixth session in February 2024, the sixth session of the United Nations Environment Assembly (UNEA) stressed the need to address the interlinkages between all forms of pollution, including plastic pollution, and the 2022 Kunming-Montreal Global Biodiversity Framework (GBF). This included a call for Multilateral Environmental Agreements (MEAs) relating to chemicals, waste and pollution to align themselves and their practices with the implementation of the GBF at all levels. Additionally, new instruments and international undertakings, such as the High Seas Treaty,[3] the Global Chemicals Framework,[4] and the work of the World Trade Organization Plastic Pollution Dialogue demonstrate the steady increase in recognition of the linkages between plastic pollution and biodiversity loss as well as the GBF. In particular, GBF Targets 7, 14, and 18 connect to the international and national obligations of States relating to pollution, especially plastic pollution, as well as the need to address subsidies and trade measures that impact on biodiversity.

This is of particular importance in the context of the ongoing process of the Intergovernmental Negotiating Committee (INC) on Plastic Pollution for the creation of an international legally binding instrument (ILBI) to address plastic pollution, including in the marine environment. The ILBI is expected to underline the connections between plastic pollution, biodiversity loss and the degradation of national, transboundary, and international ecosystems, as well as circular economy solutions, innovations, and trade, which are nature positive and fundamental to society and economy.

Following the conclusion of the INC-3 session in November 2023, the INC Secretariat was requested to provide a comprehensive document, the Revised Zero Draft (RZD), as the first attempt at a full treaty draft to form the basis of negotiations during INC-4 in April 2024. The RZD was released in December 2023 and has been the subject of IUCN and IUCN WCEL analysis as well as proposed edits to the legal text.



Azote Images for Stockholm Resilience Centre

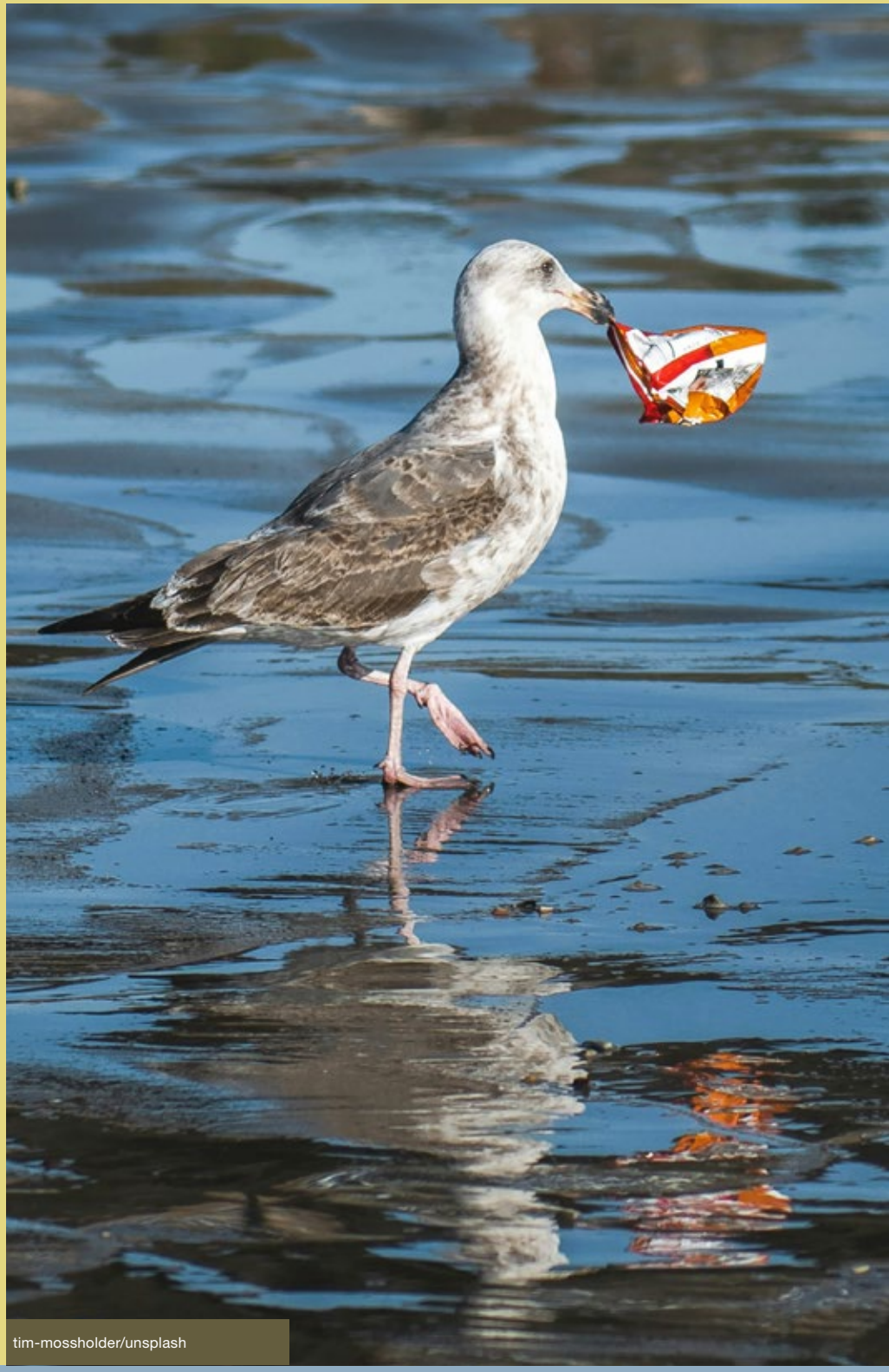
The natural world versus plastics pollution

IUCN has consistently emphasised the connections between plastic pollution and biodiversity loss, as well as the need to ensure that this link is clearly articulated in the final text of the ILBI. IUCN has also noted that these issues are inherently connected to the ILBI's potential to address not only biodiversity, but also social and economic harms. In that sense, IUCN Members at the 2021 World Conservation Congress in Marseille strongly endorsed IUCN's solid engagement and action regarding plastic pollution mainly through two resolutions, namely:

- Resolution 019 Stopping the global plastic pollution crisis in marine environments by 2030; and

- Resolution 069 Eliminate plastic pollution in protected areas, with priority action on single-use plastic products by 2025.

Based on these IUCN Resolutions and the need for GBF implementation and alignment, one of the critical elements of IUCN's proposals for the RZD and the final text of the ILBI is the **inclusion** of explicit references to the connections between plastic pollution, circular economy solutions and biodiversity and ecosystems protections. While these references are commonly found in the preambular texts of treaty instruments, IUCN asserts that the protection and restoration of biodiversity, and nature per se, must be incorporated in the legally binding control measures and enforcement terms of the ILBI, who must align with the concept of nature-positive measures that have been established as benchmarks, together with a circular economy. Circular economy has important potential benefits for nature, but needs to be integrated more closely with biodiversity policies and strategies. This will help ensure unintended negative impacts are avoided while strengthening circular economy's positive contribution to nature.[5]



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Proposing a dedicated article in the Plastics Treaty

Specifically, IUCN proposes the inclusion of a specific article on "Biodiversity aspects" in Part IV.8*ter* of the ILBI, following the Part IV.8*bis* of the RZD, which currently addresses "Health aspects."

The box below shows the proposed text for Part IV.8*ter*:

Although express, freestanding articles relating to biodiversity are limited in treaty law, it should be noted that many MEAs were adopted when the international protection of biodiversity was a new legal phenomenon and that recently adopted treaties, such as the High Seas Treaty, include biodiversity as a wide-ranging issue rather than only in a preamble. Additionally, recent soft law instruments, such as the 2023 Global Framework on Chemicals, have established strong connections between the regulation of chemicals, pollution and wastes, and biodiversity protection as well as the overall GBF.

8*ter* Biodiversity aspects

1. **Recognising the critical intersections between plastic pollution, circular economy solutions and innovations across all phases of the plastic lifecycle and impacts on biodiversity at the international, regional, national and local levels, Parties shall:**

    a. Promote the development and implementation of strategies and programmes to identify and protect biodiversity, particularly species, including migratory species, ecosystems, terrestrial resources, and marine resources, from the short-, medium- and long-term impacts of plastic pollution across the plastics lifecycle. These measures shall include strategies and programmes relating to the impacts of and risks posed by legacy plastics to biodiversity, particularly species, including migratory species, ecosystems, terrestrial resources, and marine resources;

    b. Promote the development and implementation of science-based educational and preventive programmes on the intersections between plastic pollution and circular economy solutions, and innovations across all phases of the plastic lifecycle and impacts on biodiversity;

    c. Facilitate the incorporation of international, regional and national laws, policies and regulations addressing biodiversity in developing and implementing laws, policies, and regulations on plastic pollution, on circular economy solutions, on innovations across all phases of the plastic lifecycle, and in implementing this instrument;

    d. Facilitate the incorporation of laws, policies, and regulations on plastic pollution, circular economy solutions and innovations across all phases of the plastic lifecycle, and implementing this instrument into laws, policies, and regulations relating to biodiversity; and

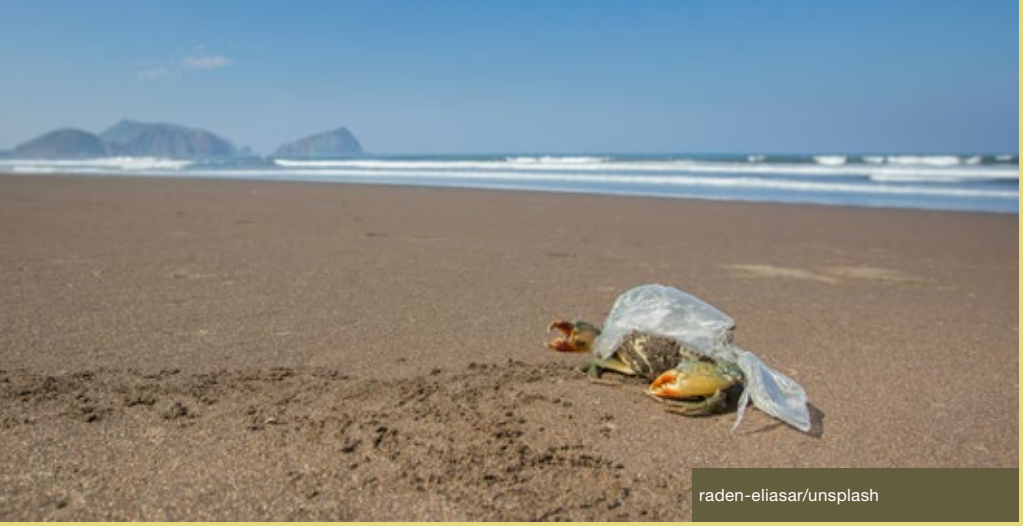
    e. Ensure that biodiversity impact and assessment are included throughout the national plan communicated pursuant to [Part IV.1] and national reports communicated pursuant to [Part IV.3].

2. **The governing body, in considering biodiversity and environment issues or activities, shall:**

    a. Consult and collaborate with the governing bodies of relevant international and regional treaty regimes, including the Convention on Biological Diversity;

    b. Promote cooperation and exchange of information with the intergovernmental organisations, and other relevant stakeholders as appropriate; and

    c. Take into account the commitments of Parties under the Kunming-Montreal Global Biodiversity Framework and related policies, standards, and guidelines.



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Why is a dedicated article on biodiversity important?

The inclusion of a dedicated article on biodiversity in the ILBI would:

Facilitate the coordination of obligations under existing MEAs due to a growing trend of incorporating biodiversity into their functions and implementation. Indeed, since the 2022 adoption of the GBF under the auspices of the Convention on Biological Diversity, it has become common for MEAs to focus on the alignment of its established targets. For example, at the 2023 Minamata Convention on Mercury Conference of the Parties (COP) 5, a decision was adopted to encourage State Parties to include mercury regulation on their actions under the GBF, and vice versa, as well as to encourage work between the relevant secretariats.[6] In December 2023, at Barcelona Convention COP 23, the Parties recognized the inherent necessity of addressing plastic pollution and protecting biodiversity in the Mediterranean region, with a focus on the importance of the GBF to achieving the regional post-2020 Biodiversity Framework.[7] In February 2024, the Convention on Migratory Species COP 14 adopted a decision, stating "CMS engagement in CBD processes including the Global Biodiversity Framework," as well as measures that bring the regulation of species of concern in alignment with the requirements of GBF.[8] Similarly, the CITES Strategic Vision: 2021–2030, adopted before the GBF, explicitly connects reporting and compliance that addresses both the requirements of CITES and of the CBD system, including the planned post-2020 framework that was ultimately to become the GBF.[9]

Ensure that the legal and scientific connections between plastic pollution, circular economy, and innovations across all phases of the plastic lifecycle and the protection of biodiversity, as well as the requirements under the GBF, are rooted in international law and in the national laws that implement the respective commitments. This would advance the use of nature-positive measures and provide a catalyst for innovation in plastics that would also protect biodiversity, the environment and human health. It would further ensure regime coherence between existing MEA provisions and practices, allowing State Parties to avoid duplication or contradictions in their international commitment and national laws, while following the trend toward biodiversity inclusion and assessments across MEAs, including in the national action plans and reporting requirements.[10] In particular, it could support governments and companies in their preparation of comprehensive and inclusive nature strategies that link to concrete short- and long-term action plans, and emphasise the importance of knowledge sharing, technology transfer, and collaboration across regions.

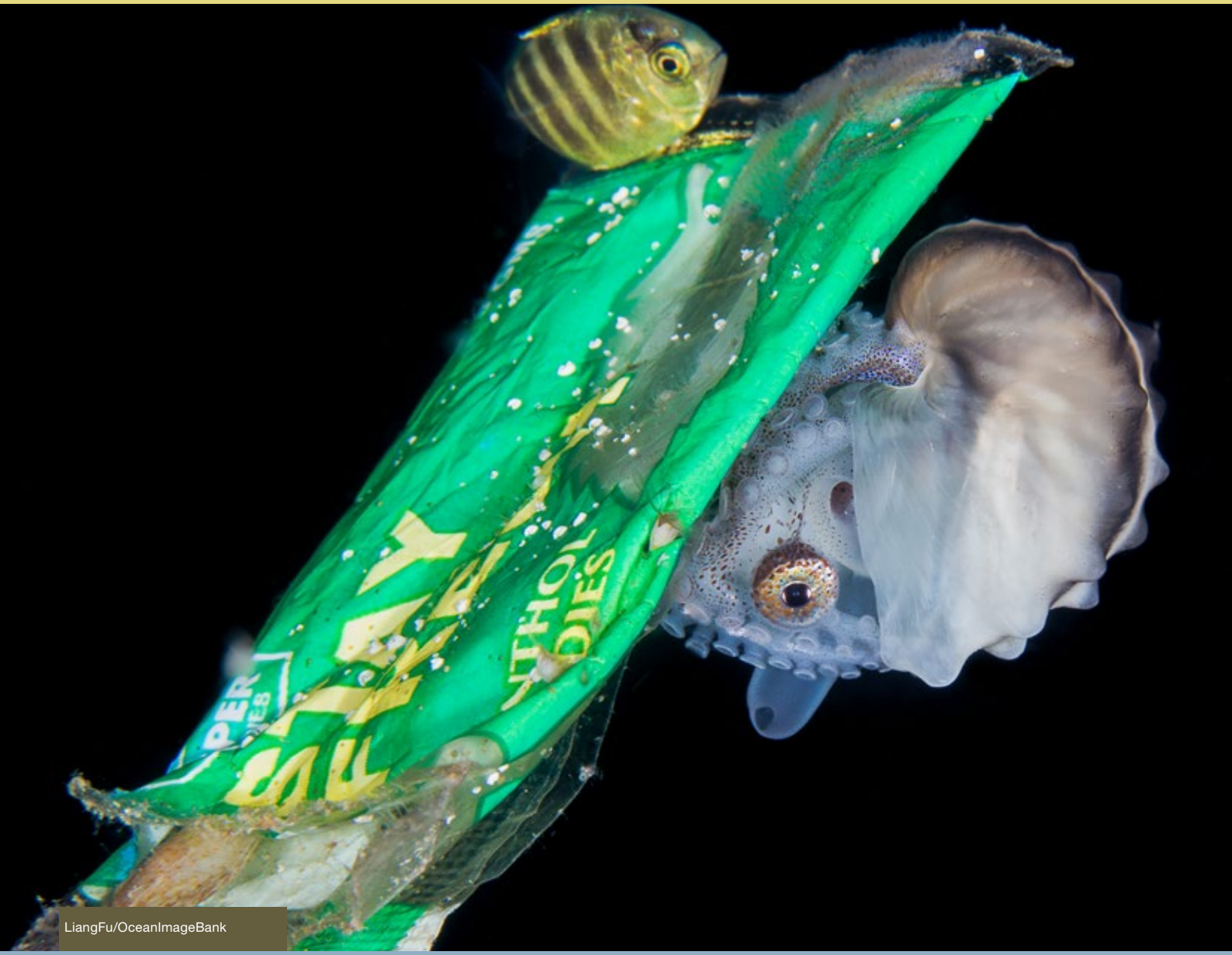
Simultaneously, such a dedicated article could guide multi-stakeholder collaboration for midstream solutions (reduce, reuse, refill, and repair of plastics and products that contain plastics) and demonstrate how to close the loop for circularity and protect nature and people depending on such solutions. Emphasis will be on the role of indigenous peoples, women and youth, local communities, both formal and informal sectors and businesses, especially SMEs.

Advance the interlinkages between plastic pollution and biodiversity in the context of international trade law. This is an area in which the WTO has become increasing active through the Plastic Pollution Dialogue, as well as the terms of the Fisheries Subsidies Agreement, which also connect to the marine aspects of the ILBI. It would also connect with the shift to include environmental and biodiversity protections in free trade agreements and regional trade agreements,[11] and with the discussions surrounding safe and environmentally sound alternatives and substitutes for plastics, especially those known as 'bio-based' products[12].

Conclusion

IUCN and WCEL proposal of a dedicated article would guarantee that the text of the ILBI reflects commitments of States to the GBF and biodiversity principles that cut across legal regimes and generate areas of legal, regulatory, and science-based convergence. It would place policy, science and knowledge of stakeholders in a position to assist in understanding the ways in which the ILBI can be used to facilitate advancement of biodiversity protections and reductions in biodiversity loss.

The inclusion of a dedicated article on biodiversity in a future ILBI would thus serve to address many of the core harms caused by plastic pollution in the context of nature, as well as in terms of human health and climate change, and help to shape circular economy solutions and trade that benefits nature and people.



LiangFu/OceanImageBank

Notes

1 International Resource Panel, Global Resources Outlook (2019).

2 The report, Seven years to save nature and people: A proposed set of policies and actions for the SDG Summit, examines the four **'nature-related' SDGs**: **6** – Clean water and sanitation; **13** – Climate action; **14** – Life below water; and **15** – Life on land. IUCN is the custodian of five indicators for SDGs 14 and 15, based on our work on protected areas and the IUCN Red List of Threatened Species™.

3 See 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 (June 2023).

4 Report of the International Conference on Chemicals Management on the work of its fifth session, SAICM/ICCM.5/4 (also in Arabic, Chinese, French, Russian, and Spanish) (2023).

5 An IUCN report makes clear that to fulfil its promise, circular economy must take biodiversity into account. The report acknowledges the strong potential of circular economy to achieve the international community's environmental targets. It also points out that some theories or practices associated with the of concept circular economy today need to be reconsidered carefully to ensure that there is no risk to biodiversity and people. For instance, a growing demand for bio-based materials to replace plastics can result in increased land-use pressures and habitat losses. Therefore, the design and performance standards and criteria for plastic circular economy models and businesses will be critical. These existing tools should be further strengthened to integrate metrics relating to circular economy systems, which include biodiversity and nature aspects. Essential data sets that contribute towards developing metrics and disclosure frameworks for circularity and monitoring, including from IUCN, exist.

6 For further information,please see: **for Minamata Convention**: i) Mercury and the Kunming-Montreal Global Biodiversity Framework, UNEP/MC/COP.5/25/Add.1 (2023); ii) UNEP-MC-COP.5-20-Kunming-Montreal-Global-Biodiversity_English.docx (live.com); iii) **for SAICM**: SAICM-ICCM.5-4 - AMENDED ADVANCE - 19.10.2023.docx (live.com); iv) **for BRS Conventions**: Interlinkages between the chemicals and waste multilateral environmental agreements and biodiversity: Key insights.

7 Barcelona Convention COP 23 commits to a green transition in the Mediterranean, Press Release, 8 December 2023.

8 CMS Contribution to the Kunming-Montreal Global Biodiversity Framework, UNEP/CMS/COP14/Doc.17 (2024).

9 CITES Strategic Vision: 2021–2030 (2020).

10 CIEL/IUCN WCEL Brief on 'National Implementation Plans and National Actions Plans: Key Elements for Consideration in the Context of a Treaty to End Plastic Pollution'.

11 IUCN, WCEL and CIEL jointly developed a brief on "WTO Rules and Key Elements for Consideration in the Context of a Treaty to End Plastic Pollution", outlining that trade policies be designed inclusively to foster non-discrimination and assistance to developing countries to allow them to tackle plastic pollution in a way that meets their obligations both under trade law and MEAs, while advancing on the SDGs (WTO-Rules-and-Key-Elements_May25_V2-3.pdf (ciel.org).

12 See https://unctad.org/publication/plastic-pollution-pressing-case-natural-and-environmentally-friendly-substitutes.

For further readings, we recommend:

IUCN dedicated webpage on the Intergovernmental Negotiation Committee on Plastic Pollution: https://www.iucn.org/incplastics

IUCN and IUCN WCEL Legal briefings for negotiators: https://www.iucn.org/story/202308/new-iucn-and-iucn-wcel-legal-briefings-plastics-treaty-negotiators-three-languages (in English, French and Portuguese)

IUCN work on the ground: https://iucn.org/search?key=plastic; through the AFRIPAC project: https://www.iucn.org/our-work/projects/afripac-effective-plastic-treaty-capacity-building-africa-and-african-sids; and the End Plastic Pollution International Collaborative (EPPIC) project: https://www.iucn.org/our-work/topic/plastic-and-other-pollution/end-plastic-pollution-international-collaborative-eppic

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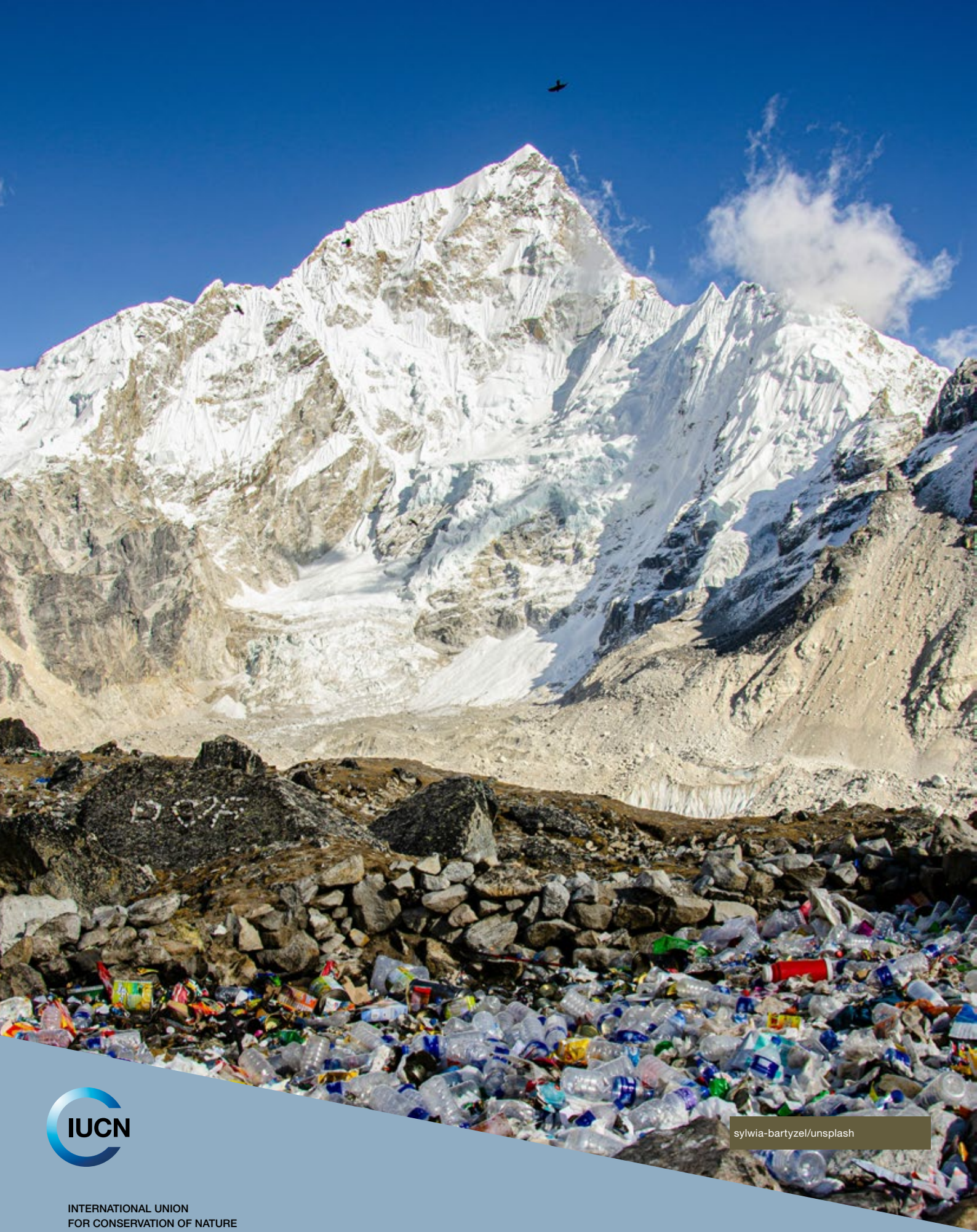

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