

**Annex VI: Interim Agreement between the Government of the Republic of
Angola and the Government of the Republic of Namibia and the Government of
the Republic of South Africa**

INTERIM AGREEMENT

BETWEEN

**THE GOVERNMENT OF THE REPUBLIC OF
ANGOLA**

AND

**THE GOVERNMENT OF THE REPUBLIC OF
NAMIBIA**

AND

**THE GOVERNMENT OF THE REPUBLIC OF
SOUTH AFRICA**

ON

**THE ESTABLISHMENT OF THE BENGUELA
CURRENT COMMISSION**

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PREAMBLE

The Government of the Republic of Angola, the Government of the Republic of Namibia and the Government of the Republic of South Africa (hereinafter referred to in the singular as a “Contracting Party” and in the plural as “Contracting Parties”):

Recognising the unique character of the Benguela Current Large Marine Ecosystem, the threats to it, and its significance for their socio-economic development and for the well-being of their people;

Conscious of their joint responsibility as custodians of this globally significant large marine ecosystem to conserve it for the benefit of present and future generations;

Recognising that effective long-term cooperation between them in implementing an ecosystem approach to the management of human activities affecting the Benguela Current Large Marine Ecosystem requires the establishment of stable institutional arrangements;

Recalling their common commitment recorded in the Strategic Action Programme adopted and signed by them between 10 November 1999 and 25 February 2000 to establish a Benguela Current Commission;

Have agreed as follows -

ARTICLE 1. USE OF TERMS

For the purposes of this Interim Agreement -

“Adverse impact”

- (a) includes any actual or potential detrimental effect on the Benguela Current Large Marine Ecosystem that results directly or indirectly from human conduct originating wholly or partly within the territory of a Contracting Party or from a vessel or aircraft under its jurisdiction or control; and
- (b) includes any actual or potential detrimental effect on legitimate uses of the Benguela Current Large Marine Ecosystem, on the health of people in the Contracting Parties or on their ability to provide for their health, safety and cultural and economic well-being, which occurs or may occur as a consequence of a detrimental effect referred to in (a); but
- (c) does not include any actual or potential detrimental effect that is negligible or which has been assessed and determined to be acceptable under this Interim Agreement;

“BCLME Programme” means the Benguela Current Large Marine Ecosystem Programme established in accordance with the United Nations Development Programme (“UNDP”) project document RAF/00/G32/A/IG/31 signed by representatives of the Governments of Angola, Namibia, and South Africa, and the UNDP in March 2000;

“Benguela Current Large Marine Ecosystem” means the relatively large marine ecosystem associated with the Benguela Current and characterised by distinct bathymetry, hydrography, productivity and trophically dependent populations, that is bounded by the high water mark along the coasts of South Africa, Namibia and Angola and:

- (a) to the North by the line of latitude 5° South;
- (b) to the South by a boundary 200 nautical miles South of the baseline along South Africa’s mainland from which the extent of South Africa’s territorial sea is

measured in accordance with the 1982 United Nations Convention on the Law of the Sea;

(c) to the East by the meridian 27° East; and

(d) to the West by the 0° meridian;

“Commission” means the Benguela Current Commission established by Article 5 and includes any committees, sub-committees or working groups established from time to time by an organ of the Commission in accordance with this Interim Agreement;

“Ecosystem” means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

“Ecosystem Advisory Committee” means the Benguela Current Ecosystem Advisory Committee established by Article 5 and described in Article 9, and includes any sub-committees or working groups established by it in accordance with Article 9(4);

“Environment” includes, but is not limited to, the whole or any component of:

- (a) nature, which includes air, water (including the sea), land (including soils and minerals), energy and living organisms other than humans;
- (b) the interaction between the components of nature and between those components and humans; and
- (c) physical, aesthetic and cultural qualities or conditions that affect the health and wellbeing of humans;

“Management Board” means the management board of the Contracting Parties described in Article 7, and includes any committees or working groups established by it in accordance with Article 7(10);

“Ministerial Conference” means the conference of the Ministers described in Article 6;

“Pollution” means the introduction by humans, directly or indirectly, of substances or energy into the Benguela Current Large Marine Ecosystem, which results or is likely to result, in hazards to human health, harm to living organisms and ecosystems, damage to amenities or interference with legitimate uses of the Benguela Current Large Marine Ecosystem, including fishing and navigation;

“Secretariat” means the secretariat of the Commission described in Article 8;

“Strategic Action Programme” means the Strategic Action Programme for the Benguela Current Large Marine Ecosystem adopted and signed during the period from 10 November 1999 to 25 February 2000 on behalf of the Republic of Angola by the Minister of Fisheries and Environment and the Minister of Petroleum; on behalf of the Republic of Namibia by the Minister of Fisheries and Marine Resources, the Minister of Environment and Tourism, and the Minister of Mines and Energy; and on behalf of the Republic of South Africa by the Minister of Environmental Affairs and Tourism and the Minister of Mineral and Energy Affairs, as revised from time to time by the Ministerial Conference; and

“Trans-boundary adverse impact” means an adverse impact that extends beyond the territory of the Contracting Party in which the physical origin of the adverse impact is situated.

ARTICLE 2. OBJECTIVE

1. The objective of this Interim Agreement is to give effect to the Strategic Action Programme by establishing a Benguela Current Commission in order –

- (a) to establish a formal institutional structure for cooperation between the Contracting Parties that will facilitate the understanding, protection, conservation and sustainable use of the Benguela Current Large Marine Ecosystem by the Contracting Parties; and

- (b) to further the objectives recorded in the Strategic Action Programme.

ARTICLE 3. JURISDICTIONAL SCOPE

This Interim Agreement applies to the area of the Benguela Current Large Marine Ecosystem to the extent that it falls within the internal waters, territorial seas or exclusive economic zones of the Contracting Parties, as well as to all human activities, aircraft and vessels under the jurisdiction or control of the Contracting Party to the extent that these activities, or the operation of such aircraft or vessels result, or are likely to result, in adverse impacts.

ARTICLE 4. COOPERATION

The Contracting Parties shall co-operate in good faith in the implementation of this Interim Agreement, including co-operating in –

- (a) building the capacity of the Management Board, the Secretariat, the Ecosystem Advisory Committee, and any other subsidiary bodies established in accordance with this Interim Agreement;
- (b) implementing the Strategic Action Programme; and
- (c) negotiating, agreeing, and bringing into force a more comprehensive legal instrument in accordance with Article 10.

ARTICLE 5. ESTABLISHMENT OF BENGUELA CURRENT COMMISSION

1. The Benguela Current Commission is hereby established.
2. The Commission has the following organs:

- (a) the Ministerial Conference referred to in Article 6;
 - (b) the Management Board referred to in Article 7;
 - (c) the Secretariat referred to in Article 8; and
 - (d) the Benguela Current Ecosystem Advisory Committee, referred to in Article 9.
3. The structure of the Commission is represented in the diagram in Annex 2 but if there is a conflict between the text of this Interim Agreement and Annex 2, the text of the Interim Agreement shall prevail.
 4. The working languages of the Commission shall be English and Portuguese.

ARTICLE 6. MINISTERIAL CONFERENCE

1. The Ministerial Conference shall consist of national delegations from each Contracting Party, each led by a Minister authorised to represent that Contracting Party.
2. The Ministerial Conference shall evaluate the implementation of this Interim Agreement and in particular shall –
 - (a) approve any changes to the Strategic Action Programme;
 - (b) mandate the taking of whatever action may be necessary or appropriate to facilitate the effective implementation of the Strategic Action Programme; and
 - (c) take all measures necessary to expedite the negotiation, conclusion, signature, ratification and implementation of the comprehensive legal instrument referred to in Article 10.

3. Meetings of the Ministerial Conference shall be chaired on a rotational basis by the heads of delegation of each of the Contracting Parties, proceeding in the order that the Contracting Parties notify each other in accordance with paragraph 1 of Article 16 that they are bound by this Interim Agreement.
4. Decisions of the Ministerial Conference shall be taken by consensus between the delegations of all the Contracting Parties except that in relation to any matter that only affects two Contracting Parties, the Interim Agreement of those Contracting Parties shall be sufficient for the Ministerial Conference to take a decision on that issue.
5. Meetings of the Ministerial Conference shall be convened by the Secretariat either in accordance with a decision of the Ministerial Conference, or at the written request of any Contracting Party.
6. Any State which is not a party to this Interim Agreement and any other body or agency, whether governmental or non-governmental, whose experience or expertise is relevant to the activities of the Commission, or any in relation to matters dealt with in the Strategic Action Programme, which has informed the Secretariat of its wish to be represented as an observer may be admitted to a meeting of the Ministerial Conference, unless one or more of the Contracting Parties present, object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Ministerial Conference.

ARTICLE 7. MANAGEMENT BOARD

1. The Management Board shall consist of national delegations from each Contracting Party, each led by a Director-General or Permanent Secretary, or his or her nominee.

2. The role of the Management Board is to promote a co-ordinated regional approach to dealing with management issues concerning the Benguela Current Large Marine Ecosystem, and its functions include –
 - (a) coordinating the implementation by the Contracting Parties of the Strategic Action Programme and this Interim Agreement; and
 - (b) advancing and representing the common interests of the Contracting Parties in matters concerning the Benguela Current Large Marine Ecosystem.
3. The first meeting of the Management Board shall be held within three months of this Interim Agreement entering into force in accordance with Article 16 and at that meeting the Management Board shall adopt rules and procedures for itself and determine the initial composition of the Ecosystem Advisory Committee and of the committees referred to in paragraph 10(a).
4. Unless the Management Board decides otherwise, each of its meetings shall be chaired by the head of a delegation on a rotational basis, proceeding in the order that the Contracting Parties notify each other under paragraph 1 of Article 16 that they are bound by this Interim Agreement.
5. Decisions of the Management Board shall be taken by consensus between the delegations of the Contracting Parties except that in relation to any matter that only affects two Contracting Parties, the Interim Agreement of those Contracting Parties shall be sufficient for the Management Board to take a decision on that matter.
6. Meetings of the Management Board shall be convened by the Secretariat, either in accordance with a decision of the Management Board, or at the written request of any Contracting Party.
7. The Management Board shall adopt rules and procedures for itself and for any committee or working group established by it under this Interim Agreement.
8. The Management Board shall -

- (a) interpret and apply the policy decisions of the Ministerial Conference;
 - (b) oversee and direct the activities of the Secretariat, the Ecosystem Advisory Committee, and any committee or working group established by it in accordance with paragraph 10;
 - (c) develop and approve budgets, action plans and work programmes for the Commission;
 - (d) integrate the recommendations of the Ecosystem Advisory Committee and any subsidiary bodies established in accordance with this Interim Agreement and resolve any conflicts between their recommendations;
 - (e) appoint and oversee the Executive Secretary of the Secretariat and appoint the Ecosystem Advisory Committee co-ordinator;
 - (f) co-ordinate the implementation of the Strategic Action Programme;
 - (g) review periodically the effectiveness of the implementation of the Strategic Action Programme and where necessary make recommendations to the Ministerial Conference concerning amendments to the Strategic Action Programme;
 - (h) establish mechanisms for interacting with the private sector, non-governmental organisations, and other stakeholders and communities;
 - (i) ensure that there is adequate consultation with stakeholders in relation to the development and amendment of the Strategic Action Programme and other action plans; and
 - (j) facilitate and support the process of negotiating and adopting a comprehensive legal instrument in accordance with Article 10.
9. The Management Board may make recommendations to the competent authorities of a Contracting Party, on management issues relating to the protection,

enhancement and ecologically sustainable use of the Benguela Current Large Marine Ecosystem and of any aspect of it, including recommendations in relation to any matter referred to in Annex 1.

10. The Management Board –
 - (a) shall at its first meeting establish the following committees which shall continue to exist until the Management Board decides otherwise:
 - (i) a minerals and petroleum committee;
 - (ii) a marine living resources committee; and
 - (iii) an ecosystem health committee; and
 - (b) may establish one or more additional committees or working groups to deal with specific issues of concern to two or more of the Contracting Parties.
11. Each committee or working group shall determine its own rules of procedure to the extent that these have not been determined by the Management Board.
12. Working groups may include any person with appropriate expertise or who represents a particular sector or group of people with an interest in the matter being dealt with by the working group.

ARTICLE 8. SECRETARIAT

1. The Management Board shall within nine months of the entry into force of this Interim Agreement, appoint an Executive Secretary of the Secretariat and a co-ordinator to co-ordinate the activities of the Ecosystem Advisory Committee.
2. The Executive Secretary shall:
 - (a) direct and manage the Secretariat;

- (b) supervise the co-ordinator of the Ecosystem Advisory Committee; and
 - (c) report to the Management Board.
3. Until the person appointed as Executive Secretary in accordance with paragraph 1 takes up that position, the Coordination Unit of the BCLME Programme shall perform the functions of the Secretariat of the Commission and the Chief Technical Adviser of the BCLME Programme shall perform the functions of the Executive Secretary of the Secretariat, but the consent of the Steering Committee of the BCLME Programme shall be required for this arrangement to be continued after 31 December 2007.
4. The functions of the Secretariat are:
- (a) to facilitate the implementation and effective monitoring of the Strategic Action Programme;
 - (b) to carry out the tasks assigned to it by the Management Board;
 - (c) to arrange and support meetings of the Ministerial Conference, the Management Board, the Ecosystem Advisory Committee, and other subsidiary bodies established under this Interim Agreement, including taking and keeping minutes of such meetings;
 - (d) to negotiate with donors interested in supporting the implementation of the Strategic Action Programme;
 - (e) to perform the financial and other administrative services required for the proper and efficient operation of the Commission;
 - (f) to formulate draft work programmes and prepare draft budgets for the Commission;
 - (g) to prepare plans, projects, assessments, reports and other documents required by the Commission and to assist the Ecosystem Advisory Committee and

subsidiary bodies established under the Interim Agreement to prepare such documents;

- (h) to obtain and update regularly information required by the Contracting Parties for the implementation of this Interim Agreement and of the Strategic Action Programme;
- (i) to facilitate the exchange of information in order to promote the objectives of this Interim Agreement, including by ensuring that up-to-date information relevant to the implementation of this Interim Agreement is disseminated to all Contracting Parties and to the public;
- (j) to prepare reports on its performance and on the performance of subsidiary bodies established in accordance with this Interim Agreement and to present them to the Management Board; and
- (k) to perform any other functions delegated to it by the Ministerial Conference or the Management Board.

ARTICLE 9. ECOSYSTEM ADVISORY COMMITTEE

1. The Ecosystem Advisory Committee shall consist of experts nominated by each of the Contracting Parties who shall be appointed and supervised by the Management Board.
2. The role of Ecosystem Advisory Committee is –
 - (a) to support decision-making by the Management Board, the Ministerial Conference and the Contracting Parties by providing them with the best available scientific, management, legal and other information, and expert advice concerning the conservation and ecologically sustainable use and development of the Benguela Current Large Marine Ecosystem; and

- (b) to build capacity within the Contracting Parties to generate and provide the information and expert advice referred to in (a) on a sustainable basis.
- 3. The Ecosystem Advisory Committee shall determine its rules of procedure to the extent that these have not been determined by the Management Board.
- 4. The Ecosystem Advisory Committee may establish working groups or subcommittees to assist it in the performance of its functions.
- 5. Working groups may include any person with appropriate expertise or who represents a particular sector or group of people with an interest in the matter being dealt with by the working group.
- 6. The Ecosystem Advisory Committee shall meet at least once annually and shall make decisions by consensus.
- 7. The Secretariat shall convene the first meeting of the Ecosystem Advisory Committee within three months of the first meeting of the Management Board convened in accordance with Article 7(3).
- 8. The Ecosystem Advisory Committee shall submit annually to the Management Board, a draft work plan and budget for the forthcoming two years and a draft annual report of its activities during the previous year.

ARTICLE 10. NEGOTIATION OF COMPREHENSIVE LEGAL INSTRUMENT

The Contracting Parties shall use their best endeavours to bring into force by no later than 31 December 2012, a binding legal instrument that will establish a comprehensive framework to facilitate the implementation by the Contracting Parties of an ecosystem approach to the conservation and development of the Benguela Current Large Marine Ecosystem.

ARTICLE 11. FINANCIAL RESOURCES

The Commission shall be funded from funds provided by the Contracting Parties and donors. Unless otherwise agreed, the Contracting Parties shall contribute in equal proportions to the budget of the Commission.

ARTICLE 12. SETTLEMENT OF DISPUTES

1. In the event of a dispute between Contracting Parties concerning the interpretation or implementation of this Interim Agreement, the Contracting Parties concerned shall seek a solution through negotiation.
2. If the Contracting Parties concerned cannot settle the dispute through negotiation they shall agree in good faith on a dispute resolution procedure which may include jointly seeking mediation by a third party (which may be a Contracting Party that is not involved in the dispute).

ARTICLE 13. MARITIME BOUNDARIES

The Contracting Parties have entered into this Interim Agreement without prejudice to any claims that they may have in relation to the delimitation of their maritime boundaries and nothing in this Interim Agreement or done pursuant to it, shall be construed or interpreted as conduct on the part of a Contracting Party signifying that it either consents to, or disputes, a particular maritime boundary.

**ARTICLE 14. RELATIONSHIP WITH OTHER INTERNATIONAL
AGREEMENTS**

1. The provisions of this Interim Agreement shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would threaten the health of the Benguela Current Large Marine Ecosystem or any part of it.
2. The Contracting Parties shall implement this Interim Agreement in a manner that is consistent with their rights and obligations under the international law of the sea.

ARTICLE 15. AMENDMENT OF THIS INTERIM AGREEMENT

Any Contracting Party may propose amendments to this Interim Agreement and all amendments to this Interim Agreement must be agreed to in writing by all the Contracting Parties.

ARTICLE 16. ENTRY INTO FORCE AND DURATION

1. This Interim Agreement shall enter into force on the thirtieth day after two or more Contracting Parties have notified the other Contracting Parties in writing of their consent to be bound by the provisions of this Interim Agreement.
2. Nothing in this Interim Agreement shall be interpreted or construed as requiring it to be ratified, accepted or approved by the legislatures of the Contracting Parties and each Contracting Party must determine the process to be followed under its law for this Interim Agreement to become binding.
3. Copies of the signed Interim Agreement, the notifications referred to in paragraph 1, and any instruments of ratification, approval or acceptance that may have been

required by the laws of the Contracting Parties, shall be deposited with the Executive Secretary of the Southern African Development Community.

4. Unless all the Contracting Parties agree otherwise in writing, this Interim Agreement terminates on 31 December 2012.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective governments, have signed the English and Portuguese texts of this Interim Agreement, both texts being equally authentic.

On behalf of the Government of the Republic of Angola:

Done at this day of 2006 in triplicate.

Minister of Fisheries

Done at this day of 2006 in triplicate.

Minister of Urbanisation and the Environment

Done at this day of 2006 in triplicate.

Minister of Petroleum

On behalf of the Government of the Republic of Namibia:

Done at this day of 2006 in triplicate.

Minister of Fisheries and Marine Resources

Done at this day of 2006 in triplicate.

Minister of Environment and Tourism

Done at this day of 2006 in triplicate.

Minister of Mines and Energy

On behalf of the Government of the Republic of South Africa:

Done at this day of 2006 in triplicate.

Minister of Environmental Affairs and Tourism

ANNEX 1**ADVISORY MANDATE OF THE COMMISSION****(Article 7(9))**

The Commission may, among other matters, consider and make recommendations, in accordance with national laws, to the Contracting Parties concerning –

- (a) the monitoring, control and surveillance of marine fisheries;
- (b) the determination of optimum levels of harvesting in respect of stocks which are known or suspected to be shared or straddling stocks, or where the harvesting of those stocks is likely to have significant impact on the Benguela Current Large Marine Ecosystem;
- (c) the conservation of the biological diversity of the Benguela Current Large Marine Ecosystem;
- (d) the implementation of integrated coastal management and of the ecosystem approach in accordance with international law and non-binding international undertakings made by the Contracting Parties;
- (e) the establishment of a system of marine protected areas;
- (f) the rehabilitation of environmentally degraded areas;
- (g) the coordination of regional efforts to conserve species such as sea birds which are not harvested;
- (h) the prevention of the introduction of harmful and invasive alien species (including the coordination of efforts to manage ballast water and sediment within the Benguela Current Large Marine Ecosystem);
- (i) responses to harmful algal blooms;

- (j) environmental impact assessment and other procedures for the planning and approval of new projects and activities which have the potential to impact on the Benguela Current Large Marine Ecosystem;
- (k) processes and standards for minimising and remediating the environmental impacts arising from marine prospecting, mining and dredging and from the exploration and development of oil and gas fields, including their associated pipelines;
- (l) contingency plans for dealing with extreme events and threats such as major oil spills;
- (m) the adoption and enforcement of harmonised regulatory frameworks for the discharge of sewage, pollutants, waste and other pollution control measures;
- (n) guidelines on water quality standards within the Benguela Current Large Marine Ecosystem;
- (o) maritime safety and related matters with the potential to impact on the Benguela Current Large Marine Ecosystem; and
- (p) the responsibilities, procedures and routines for the exchange of information and liaison between authorities in the different Contracting Parties.

ANNEX VII Minutes of the External Project Appraisal Committee Meeting

MINUTES OF THE BCLME SAP IMPLEMENTATION PROJECT EXTERNAL PROJECT APPRAISAL COMMITTEE (EPAC) MEETING, SWAKOPMUND HOTEL AND ENTERTAINMENT CENTRE, 22nd NOVEMBER 2007, SWAKOPMUND NAMIBIA

Present

- | | |
|---------------------------------------|--|
| 1. Francisca Delgado (INIP Angola) | 14. Manuel Xavier Junior (MinPET Angola) |
| 2. Johann Augustyn (MCM South Africa) | 15. Nico Willemse (BCLME Namibia) |
| 3. Mick O'Toole (BCLME Namibia) | 16. Hashali Hamukuaya (SEAFO Namibia) |
| 4. Japhet litenge (MWTC Namibia) | 17. Martha Mwadingi (UNDP Namibia) |
| 5. Teo Nghitila (MET Namibia) | 18. Nik Sekhran (UNDP GEF South Africa) |
| 6. Lebogang Motlana (UNDP Namibia) | 19. Gabi Schneider (MME Namibia) |
| 7. Ben van Zyl (NatMIRC Swakopmund) | 20. Cathy Kuske (BCLME Namibia) |
| 8. Rean van der Merwe (EcoAfrica) | 21. Lesley Staegemann (BCLME SA) |
| 9. Maria Sardinha (BCLME Angola) | 22. Francois Odendaal (EcoAfrica) |
| 10. Carlos Dos Santos (MUAU Angola) | 23. Nyambe Nyambe (SADC Botswana) |
| 11. Gabriela Do Nascimento (UNDP Ang) | 24. Larry Hutchings (MCM SA) |
| 12. Frikkie Botes (BCLME Namibia) | 25. Lebogang Motlana (UNDP Namibia) |
| 13. David Vousden (ASCLME) | 26. Mick O'Toole (BCLME Namibia) |

Apologies

Frans Tsheehama (MFMR PS-Namibia)
Moses Maurihungirire (MFMR-Namibia)
Monde Mayekiso (MCM-South Africa)

See the agenda for the meeting as Annex 1

1. Welcoming Remarks on behalf the UNDP Namibia Country Office *Mr. Lebogang Motlana, Deputy Resident Representative*

Lebogang Motlana (LM), UNDP Deputy Resident Representative, welcomed all on behalf of UNDP to the External Project Appraisal Committee (EPAC) meeting for the BCLME SAP Implementation (SAP IMP) Project. He expressed his appreciation of the work that has already been accomplished, and thanked all for having responded positively to the invitation. The positive response was described as a demonstration of participants' commitment, willingness to collaborate and work as partners. He emphasised the three countries' participation and inputs to the BCLME and BENEFIT as great contributions to the success of LME management. A hope, that the strong partnerships and collaborative efforts in the new phase of BCLME and future endeavours concerning the ecosystem, was expressed. He emphasised the SAP IMP Project as a means of support to the three governments and other national and regional stakeholders to address depleted fish stocks and ecosystem degradation through appropriate transboundary governance measures and the realignment of management interests that focus on a transboundary ecosystem approach to fisheries (EAF).

In response to the question, why an already GEF council approved project should be appraised, LM pointed out that there are a number of issues that have been raised about the management of the BCC that will need to be answered by the meeting. He highlighted the following issues to be addressed by the EPAC:

- **Clarification on the management arrangements, including administrative and financial arrangements, between the BCLME SAP IMP project and the Management dedicated to the BCC**
- **Deliberations on the consultancy for rendering the BCC a legal entity**
- Finalization of the recruitment of personnel by the BCC when the institution is not a legal entity
- The handing over of BCLME equipment to national governments
- The financial management of the BCC when it is not a legal entity
- The process of outlining and ratifying the international treaty that establishes the BCC

LM highlighted the below issues that are expected of the project and the institution:

- Increased involvement of all stakeholders in the operations of the project
- Enhanced research capacity, including the purchase of a research vessel
- Enhanced training and the retention of national research capacities
- Establishment of a data base incorporating data on the number of ships, their capacities, volume of their exports etc.
- Codification and regulation of the various clusters including artisanal fishing, recreational fisheries, and commercial fisheries across the three countries
- The prioritization of an ecosystem approach to fisheries and ocean governance
- Full implementation of the science plan in concert with the governance programme

He closed off by saying that the meeting will result in an improved ProDoc that three countries are comfortable with and, a document that addresses the identified trans-boundary concerns in the BCLME.

2. Opening Remarks on behalf of the BCC Management Board

Dr. Johann Augustyn, Chief Director MCM, South Africa

Johann Augustyn (JA), EPAC meeting chairperson, delivered opening remarks emphasizing the following:

- Objectives of the meeting as highlighted by LM.
- BCLME has developed science and strategies that need to be implemented to address depleted fish stock and degraded ecosystems.
- The major focus of SAP IMP Project is to assist the BCLME countries to adopt an EAF for the rebuilding of fish stocks, reduction in pollution and degradation of habitats, and the conservation of biodiversity.

3. Overview of the BCLME Programme

Dr. Mick O'Toole, Chief Technical Advisor

The meeting agreed that it was not necessary for Mick O'Toole (MO) to give the presentation as all participants are aware of the Programme.

See the BCLME Programme presentation as Annex 2

4. BCLME SAP Implementation Project

Nico E. Willemse, Local Project Development Coordinator

Nico Willemse (NW) presented key aspects of the SAP IMP Project which included the goal of the project, outcomes, key consultancies, incremental cost analysis (ICA), letters of endorsement, the project budget and project outcomes¹ to 4.

See the SAP IMP Project presentation as Annex 3

5. Discussion

LM cautioned that the SAP IMP Project cannot ratify the BCC Treaty as stated under Outcome 1 as a deliverable. NW responded by saying SAP IMP will support governments in development and ratification of a Treaty. Frikkie Botes (FB) pointed out it is a matter of semantics, as the Project Document (ProDoc) refers to 'Delivery Indicators' and not 'Deliverables'.

There is a need for D-LIST and the BCC to discuss and agree on a practical approach to obtain and disseminate technical information to all stakeholders. François Odendaal (FO) agreed and added that D-LIST is a knowledge management and is bottom up focused. As a web-based platform it provides access to information but also connects stakeholders and stores information in an easily accessible way. D-LIST can play a supporting function to the BCC. It is more than the project or the platform as its success is based on reaching out to people. He indicated that registration is free and it is an easy forum to be a part of.

They are exploring D-LIST for the Aghulas Somali LME to serve the purpose of engaging the public and share information in Africa. D-LIST is successful in many areas but Angola is still struggling. D-LIST is not isolated and will rely on the BCC to attract more stakeholders for participation in the SAP IMP Project. Nik Sekhran (NS) indicated that D-LIST should be linked with the BCLME website for awareness generation and improved information access. It can be used as a tool to improve stakeholder participation. MO indicated that BCLME is linked to D-LIST and D-LIST uses BCLME information and data.

Larry Hutchings (LH) asked why there are two websites, is this not duplication? FO indicated that D-LIST is not a website but rather a "community of practice". To cater for people who do not have internet access, information sharing is complimented through the use of radio, newspapers, consultations and participation by multi-disciplinary youth centres (MDYCs). D-LIST has an extensive library and a 911 Q&A function. Rean van der Merwe (RM) suggested adding more clarity about D-LIST in the ProDoc. The meeting noted that the role and key responsibilities of D-LIST/EcoAfrica in the SAP IMP project need to be better clarified because DLIST is envisaged to undertake some of the core implementation responsibilities related to output 3.4 and 4.1. In this regard, the participants agreed to make more explicit text in the prodoc, which provides for this role as well as adding DLIST/EcoAfrica as an implementing partner to the signature page.

Action 1: NW to review sections on D-LIST in the ProDoc to provide more clarity and add DLIST/EcoAfrica on the signature page as an implementing partner organization.

Carlos Dos Santos (CDS) inquired about the treatment of confidential government information and data. FO responded that D-LIST is not a vehicle for confidential information and data and, the level of access and security of D-LIST can be controlled for closed discussions. He also indicated that government officials participate in the forums to stay abreast on issues.

Martha Mwandingi (MM) noted that outputs 4.1 and 3.4 need to be linked or reconciled as they read very similar.

Action 2: NW to review outputs 3.4 and 4.1 in the ProDoc and create linkage to ensure synergies during project implementation.

MM noted the need to revise the project Total Budget and Work Plan (TBWP) to ensure that these comply with GEF Guidelines. NS added that there are stringent limits on travel and consultancies so there is a need to repackage the costs within and among outcomes. The GEF is of the opinion that

countries should cover the travel costs of officials during Project implementation. JA added that regional travel is very expensive and something that needs to be considered by the GEF.

Action 3: NW to revise the SAP IMP TBWP and submit to UNDP for review

Specific reference to the Orange River International Waters (ORIW) Project in the ProDoc was questioned. NS responded that this is important especially for the Ecosystem Coordinator to ensure synergies and collaboration with related projects in the region.

6. Monitoring and Evaluation of UNDP/GEF Projects:

NS presented the M&E requirements and framework. He briefly explained what the GEF is, gave a short break down of the GEF Operational Framework, the roles of the UNDP Country Office (CO), the Regional Coordinating Unit (RCU) and the Head Quarters (HG). He further elaborated on using M&E for adaptive management, reporting project changes, progress monitoring and reporting, Project Implementation Reporting (PIRs) for UNDP/GEF projects, division of accountability and final project evaluations.

LH pointed out that it can be a burden to report to different donors under one project. This can be quite burdensome with a number of donors and their reporting requirements. NS suggested that donors can harmonise outcome-based reporting as in the case of the CAPE Project.

Action 4: NW to consult with the CAPE Project about their approach to streamlining donor reporting and make recommendation to the PSC and MB.

NS mentioned that final evaluations are mandatory and usually carried out within 6 months of project closure. This is relevant to the BCLME Programme and a final evaluation might commence in Jun 08. He stressed the need to clarify how much money is still available under the BCLME Programme to motivate an extension. Remaining funds can be invested into the BCC but there is a need to work out practical arrangements. He stressed that SAP IMP will not fund the procurement of equipment as the BCLME Programme equipment should be used for SAP IMP.

NS indicated that SAP IMP will seek formal GEF endorsement by March 2008 for a seamless transition from the BCLME Programme to the BCC and the SAP IMP Project.

NS emphasized the importance of accountability and indicated that evaluations are commissioned by GEF when 'red flags' are raised. LM indicated that the UNDP Evaluations Office not only carry out evaluations in response to red flags but also to capture best practices and lessons learned.

MO announced that Iceland pledged US\$500,000 for the Training and Capacity Building (TCB) Coordinator. Funds in the SAP IMP Project currently for TCB should thus be reallocated.

Action 5: In relation to Action 3, revise the current budgeting for TCB and reallocate funds for other activities [NW].

See the Monitoring and Evaluation presentation as Annex 4

7. Management Arrangements

A question was raised about the location of the SAP IMP Project and whether it will be co-located with the BCC Secretariat. Namibia as the host country has not yet identified a location for the SAP IMP Project.

Action 6: MFMR to identify a location for the SAP IMP Project Management Unit (PMU)

NS emphasized that the SAP IMP Project budget does not cater for rental cost as this should be shouldered by the host country.

8. Staffing and recruitment

Prior to the discussion about staffing and recruitment under SAP IMP, the BCLME Activity Centre Directors and Administrative staff were requested to leave the room.

LM inquired whether there was any intention to retain BCLME staff for relevant positions that SAP IMP will support. He indicated that the BCLME Programme built the capacities and knowledge of people currently employed and retaining such people demonstrates continuity and strengthens requests from donors for further support. He also added the importance of UNDP's role in guiding and advising on such matters as they are ultimately accountable for the GEF investment.

Francisca Delgado (FD), the chairperson of the BCC Management Board, indicated that the MB made a decision to undergo a new staffing and recruitment process for the National Coordinators under the SAP IMP Project.

NS supported LM's view and added that for GEF it is most desirable not to lose skill of people in the Programme.

LM indicated UNDP's concern about the possible loss of experienced staff. He stressed that it is the project's responsibility to secure people who understand the operational systems. In response to FD's point about the MB decision, LM responded by indicating that unless an evaluation of staff performance prove otherwise, there seems to be no valid reason for embarking on a new recruitment process. He stressed the importance of annual performance evaluations as a tool to determine the suitability of staff. FD indicated that if the countries decided to do a new recruitment process it should be respected by the UNDP. LM indicated there is a need for discussion between UNDP and the MB as this has to do with funding parameters under the UNDP.

Gabi Schneider (GS) indicated that it does not make sense to let the existing staff go given their experience in the programme. She stressed that this matter should be dealt with timely as the current staff will look for other employment opportunities if their future with the BCLME looks uncertain. She also remarked that using experienced staff saves time and money during the recruitment process.

David Vousden (DV) emphasized that GEF initially was not going to fund staff costs. This decision was reversed on the basis of ongoing capacity building in the region as an exception. If there is going to be a new recruitment process, it might be an issue with the GEF.

JA suggested it appropriate for the UNDP to write a letter to the MB for consideration on this matter.

Action 7: UNDP to forward a formal letter to the BCC MB addressing concerns about losing experienced staff and offering guidance and advice on the matter.

The question of the roles of the BCC MB and the SAP IMP Steering Committee (SC) during project implementation was raised. The SC is directly accountable to the Project and is the appropriate forum for decision making on staffing issues. UNDP is represented on the SC.

9. Handover of Equipment to BCC

LM inquired about the status of equipment procured under the BCLME Programme and whether equipment will be handed over to national governments. If equipment is transferred to national governments will it be used for BCLME purposes and, will it be adequately maintained and insured as is the case under the BCLME Programme? Equipment includes four vehicles, computer hardware and software, office furniture and equipment. He also inquired how the handover of equipment will affect

SAP IMP as no equipment will be purchased for the project. He also stressed the importance of an annually updated inventory of equipment for tracking and auditing purposes.

JA suggested that equipment is not handed over to governments but rather transferred to the SAP IMP project as a simple solution. NS support maintaining the *status quo* until such time the BCC is a legal entity for the transfer of equipment.

Ben van Zyl (BvZ) stressed that until BCC is a legal entity, the equipment cannot be handed over to the Commission.

FD indicated that it was a MB decision to transfer the equipment to the ownership of the governments. MO indicated that it is important to check with the UNDP Resident Representative when the best time is for the transfer as BCC is not yet a legal entity.

JA indicated that some people might want to hold on to “their” computers and BCLME need to ensure that these are returned when the programme terminates.

LH suggested that this matter is left to the BCLME Programme, UNDP and the MB to sort out.

NS indicated that equipment can be bought for the BCC with remaining BCLME funds but there is need for clarity on how this will be handled.

Action 8: The BCLME PCU to determine available funds in the Programme and facilitate discussion between the BCLME Programme, the UNDP Namibia CO and the BCC MB about use of existing equipment and, procurement of equipment for the BCC.

10. Financial Management

LM stressed the importance of clarity between the SC and the BCC about the use of SAP IMP Project funds. He emphasized the importance of clarifying roles and responsibilities of the SC and the BCC to ensure a harmonious working relationship. NS stressed the importance of collective decision making between the BCC MB, the PSC and the UNDP/ GEF.

The matter of UNDP representation at the MB meetings was raised to ensure that UNDP advice and guidance is provided when necessary/ in a timely manner.

Action 9: Review the ProDoc regarding roles and responsibilities of the various stakeholders and discuss further clarification with UNDP and BCLME PCU. Ref to p. 73 of the ProDoc.

Action 10: UNDP represented at the next BCC MB Meeting as an observer.

11. Way forward

Martha Mwadingi (MM) presented the way forward until BCLME SAP IMP implementation. Key next steps and timelines are summarized below;

1. EPAC Minutes
2. Revisions to the Prodoc (TBWP, TORs, etc) by 30 December
3. Request for GEF CEO Endorsement by February 2008
4. GEF Review comments by end February 2008
5. Responses to the GEF SEC – two days after receipt.

Further issues:

- a) Clearance by GEF CEO by March 2008
- b) Delegation of Authority (DOA) from UNDP HQ to UNDP Namibia – April 2008

- c) ProDoc Signatures by end of April 2008 – MM mentioned that UNDP only requires one signature per country from the lead ministry (i.e. dealing with fisheries management and conservation)
- d) Recruitment of BCLME SAP IMP PMU – once all parties have signed the ProDoc (Write letter to management board)
- e) Inception Phase – Inception meeting August 2008

With regard to point c) above: GS suggested that by allowing more signatures on the ProDoc per country will improve the ownership of the Project. She emphasized that although a strong fisheries project, it is not only a project that will benefit fisheries. LM indicated that the signature page is the legal section of the ProDoc and is meant to protect the project staff and equipment. MO supported GS by highlighting the case of the Department of Minerals and Energy (DME) in South Africa not signing the BCLME ProDoc and thus withdrawn from the BCLME. He noted that by not allowing other ministries to sign may exacerbate the issue.

DV inquired about the appropriateness of other ministries' signatures to the ProDoc. LM indicated that the signature box can be expanded to allow more signatures but it should be indicated who the responsible government agency is. NS suggested that each country can decide who signs when the signature box is expanded. MM suggested determining per country which ministry wants to endorse the ProDoc.

FD indicated that in Angola the Ministry of Fisheries is the delegated authority by the President to sign the ProDoc.

JA offered to discuss the matter with the MCM DG and obtain feedback from South African authorities on the matter.

See the Way Forward presentation as Annex 5

Action 11: Expand the signature box in the ProDoc to cater for more signatories

Action 12: BCC MB and PSC members obtain clarity in their countries about signatures on the ProDoc.

12. Closing remarks

The Chairperson, JA, closed the meeting and expressed thanks to all participants for their participation and inputs. He emphasized the need to rapidly address the issues raised and to feed information back to EPAC members in a timely manner.