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Area-Based Management Tools Under the BBNJ Agreement: Towards Effective and Equitable International Implementation

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Introduction

Part III of the BBNJ Agreement is concerned with the establishment of a coherent and comprehensive system of area-based management tools (ABMTs), including marine protected areas (MPAs) [1], to conserve and sustainably use areas requiring protection in areas beyond national jurisdiction (ABNJ) [2]. Part III builds upon existing duties contained in the United Nations Convention on the Law of the Sea (UNCLOS), specifically in Part XII, as well as customary international law relating to the protection of the marine environment, including by establishing procedural mechanisms for the fulfilment of these duties in relation to the establishment of ABMTs, including MPAs, in ABNJ.

This Part of the Agreement aims at strengthening cooperation and coordination in the use of ABMTs, including MPAs, among states, relevant legal instruments and frameworks, and relevant global, regional, subregional and sectoral bodies (IFBs) [3]. Additionally, Part III aims to protect, restore, and maintain biological diversity and ecosystems to enhance productivity, strengthen resilience to stressors, including climate change, ocean acidification, and marine pollution, and support food security and other socioeconomic objectives [4]. In doing so, it also envisions supporting developing state parties through capacity-building and the development and transfer of marine technology in relation to developing, implementing, monitoring, managing and enforcing ABMTs [5].

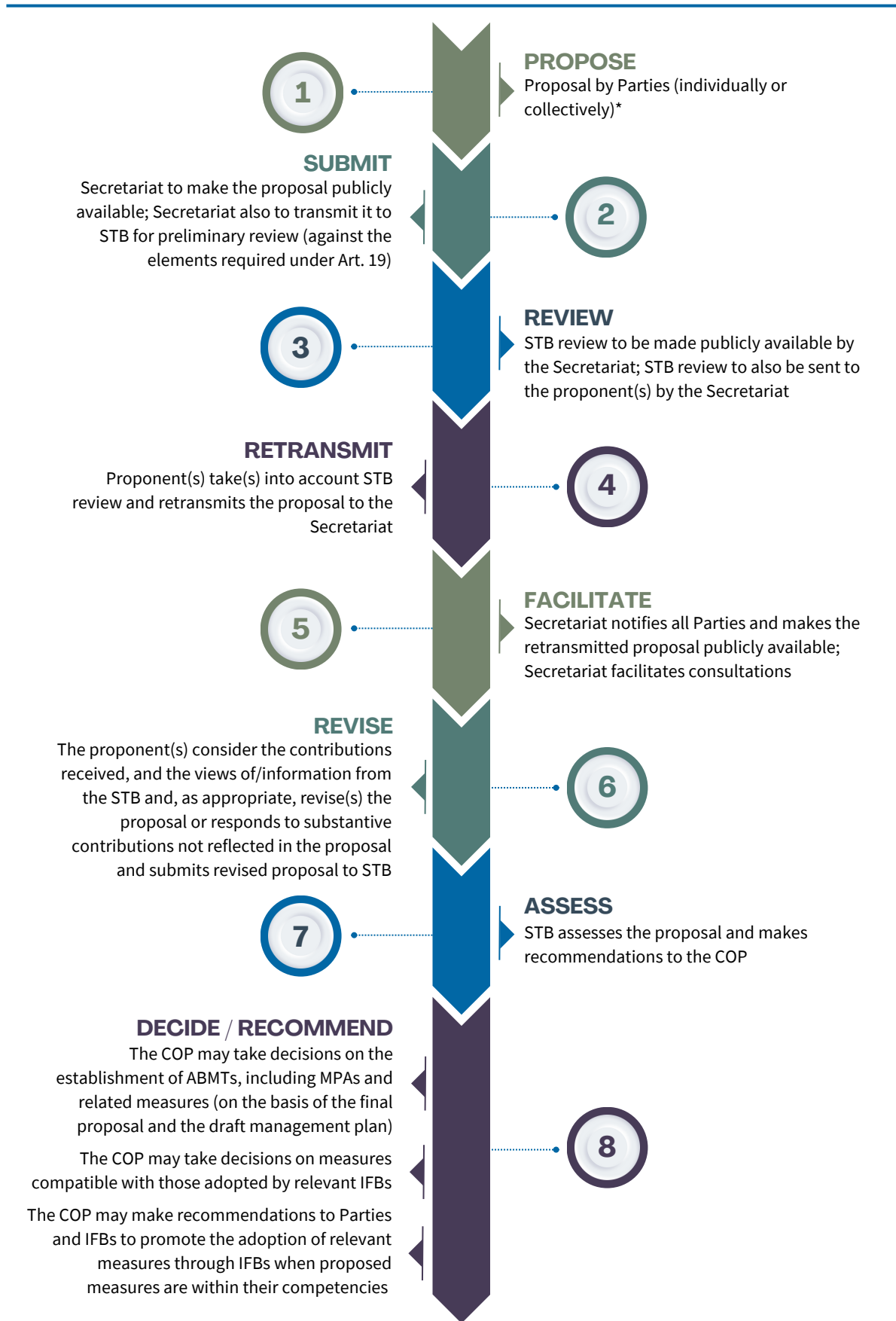
Implementation of Part III will rely on proposals made by parties, individually or collectively, regarding the establishment of ABMTs to be submitted to the Secretariat established under the BBNJ Agreement. The proposals must be elaborated on the basis of best available science and must include key elements listed in Article 19(4) of the Agreement. The role of the Conference of the Parties (COP) and of the Scientific and Technical Body (STB) in the establishment of ABMTs, with respective management plans, confirms the multilateral nature of the decision-making process contained in the Agreement with respect to Part III. At the same time, the interface between the COP decisions and recommendations with respect to IFBs is fundamental for the effectiveness of the measures adopted or recommended by COP.

The **purpose of this policy brief** is to support the effective implementation of Part III of the BBNJ Agreement, especially by focusing on how to enhance mutual supportiveness between the Agreement and IFBs to ensure coordination and coherence among these instruments [6], corresponding policies, regulations and management measures.

Key Messages:

- Several guidance documents will have to be developed by the COP and the STB for the effective and equitable implementation of Part III of the BBNJ Agreement. Some guidance documents are explicitly referred to in the Agreement. Others are not, but further clarity around certain provisions and terms could be beneficial to avoid lengthy case-by-case discussions at every COP in every occasion an ABMT/MPA is proposed. However, some flexibility is also recommended, as it allows for the evolutive interpretation of the treaty in light of best available science and best practices elsewhere.
- The establishment of mechanisms for enhanced cooperation and collaboration between the BBNJ Agreement (and its bodies) with IFBs will be crucial for the effective implementation of ABMTs/MPAs under the Agreement.
- Existing scientific and technical processes to describe areas important for biodiversity under other instruments (e.g. the Convention on Biological Diversity (CBD) Ecologically or Biologically Significant Marine Areas (EBSAs), among others) are crucial for the development of ABMT proposals and can underpin the needed synergies between the BBNJ Agreement and IFBs.
- Meaningful consultation of ABMT proposals through proactive engagement with IFBs and relevant stakeholders will be essential for the implementation and monitoring of the measures or recommendations concerning these ABMTs.
- The Clearing-House Mechanism (CHM) could play an important role in these consultations and engagement, as well as in providing a platform for coordination between the COP, the STB and other bodies of the Agreement and IFBs, connecting relevant information concerning the ABMT proposals and the eventually adopted ABMT, as well as serving as a bridge in the identification of capacity and technology needs of developing countries and IFBs for the implementation of ABMTs.
- The composition of the STB will need to be carefully considered to ensure that the objectives of Part III are achieved.

Process for Establishing ABMTs Under the BBNJ Agreement



* High seas pockets (Article 21(4)): the proponent(s) shall undertake targeted and proactive consultations including prior notification with coastal states; and consider the views and comments of such states on the proposed measure and provide written responses specifically addressing such views and comments and, where appropriate, revise the proposed measure accordingly.

Figure 1: ABMT, including MPA, establishment process

What additional instruments/guidance are required from the Conference of Parties and the Scientific and Technical Body to implement Part III?

To implement this Part in an effective, inclusive, and transparent way, the following decisions must be taken by the COP and the STB:

- The STB **at its first meeting** shall elaborate on the modalities for the consultation and assessment process for proposals, including the duration of the process, for consideration and adoption by the COP [7]. These modalities shall:
 - Take into account the special circumstances of small island developing states;
 - Be inclusive, transparent, and open to all relevant stakeholders, including states and global, regional, subregional, and sectoral bodies as well as civil society, the scientific community, Indigenous Peoples and local communities; and,
 - Incorporate targeted and proactive consultation requests, including prior notification, for proposals that involve an area entirely surrounded by the exclusive economic zones of states (also known as high seas pockets).
- The STB shall elaborate on procedures and guidance for the establishment of emergency measures, including consultation procedures, for consideration and adoption by the COP **at its earliest opportunity** [8].

Additionally, the COP **may consider and may adopt**, with input from the STB, guidance and procedures related to the following:

- Additional or revised indicative criteria for the identification of areas to propose an ABMT beyond what is currently specified in Annex I (see Figure 2) (Article 19);
- Further requirements regarding the contents of proposals, including modalities for the application of indicative criteria and guidance on the key elements to be included in proposals (Article 19);
- Further information regarding the COP's regular consultations to enhance cooperation and coordination with existing legal instruments and frameworks on ABMTs, including MPAs, and related measures (Article 22);
- To increase international cooperation and coordination to support conservation and sustainable use of marine biological diversity of ABNJ, the COP may decide to develop a mechanism regarding existing ABMTs, including MPAs, adopted by IFBs (Article 22(4)). This could include the possibility by COP to recognise ABMTs/MPAs adopted by existing regional bodies, such as regional seas commissions, extending their application to all parties to the Agreement. This provision was a compromise between those negotiators who wanted to have an explicit 'recognition' clause, especially regarding existing regional MPAs (e.g. OSPAR MPAs) and those who did not want to recognise these MPAs. In light of this agreed compromise language, if the COP decides to develop a mechanism for recognition, this process will have to be spelled out in a COP decision. A few options would entail an automatic recognition of an ABMT/MPA by the BBNJ Agreement COP, which is unlikely, given the fact that the consideration by the COP is subject to paragraphs 1 and 2 of Article 22, which refer to the final proposal and draft management plan, taking into account the contributions and scientific input received during the consultation process established under Part III and the scientific advice and recommendations of the STB. Therefore, it is more likely that if a mechanism is developed it would follow the same steps for the establishment of MPAs under Part III, although Parties may wish to streamline some of the steps accordingly as long as it does not compromise the integrity of the original process under the Agreement. The potentially agreed process/mechanism would also have to determine if the IFB responsible for the specific ABMT/MPA would be able to submit the proposal on behalf of its member-states or if any member-state of that IFB would be able to submit the proposal. While there was further clarity around this clause in previous versions of the Agreement [9], the agreed language in Article 22(4) may not be completely clear to those who were not part of the BBNJ Agreement negotiations.

Additional Instruments/Guidance (Continued)

Although not included in the text of the BBNJ Agreement, **other potential guidance** that the COP and the STB may want to develop in the longer term to strengthen the effectiveness of the Agreement relates to its opt out clause. Under Article 23 on decision-making, decisions and recommendations by the COP under Part III shall be taken by consensus. However, if no consensus is achieved, a 3/4 majority vote is possible after a 2/3 vote deliberation by those present and voting determines that all efforts to reach consensus have been exhausted (Article 23(2)). In this case, objections by any parties are allowed through the submission of a notification to the Secretariat within 120 days after the decision/recommendation is adopted by the COP (Article 23(4)). The Rationale for the objection must be provided and shall be based on one or more of the reasons provided under Article 23(5), namely: (a) the decision is inconsistent with the Agreement, or the rights and duties of the objecting party in accordance with UNCLOS; (b) the decision unjustifiably discriminates against the objecting party; or (c) ‘the party cannot practicably comply with the decision at the time of the objection after making all reasonable efforts to do so.’ Furthermore, the objecting party shall ‘to the extent practicable, adopt alternative measures or approaches that are equivalent in effect to the decision to which it has objected,’ and shall not take actions that undermine the effectiveness of the decision unless these actions are essential for the exercise of rights and duties of that party under UNCLOS (Article 23(6)).

For further clarity, there are experiences from RFMOs in dealing with opt out clauses, their rationale, and justifications, that the COP and the STB may wish consider as a basis for the elaboration of further guidance on the application of the BBNJ Agreement objection procedure. Subparagraph (c) of Article 23(5) is particularly vague and could benefit from more detailed elaboration in the form of procedural guidance. More guidance may also be beneficial in relation to what could constitute equivalent measures or approaches that the objecting party would have to put in place to not undermine the decision/recommendation of the COP. For instance, would the effectiveness of the measure be related to its biodiversity conservation outcomes?

While the Agreement does not call for the development of such guidance, if the COP wished to do so, this could fall under the mandate conferred under Article 47(6)(a) to adopt decisions and recommendations related to the implementation of the Agreement. In a similar vein, the STB could provide scientific and technical advice the COP on this matter if COP requests it to do so as per Article 49(4).

Ensuring effective and equitable implementation of Part III through policy coherence

Effective laws mean that they are applicable in practice [10]. In light of the fragmented nature of international environmental law, a systemic interpretation of treaties [11] contributes to their effectiveness, and in this light, coordination and coherence among biodiversity-related instruments is key to the achievement of the BBNJ Agreement’s objectives. Furthermore, an evolutionary interpretation [12] of the BBNJ Agreement in light of its COP decisions will also contribute to its effectiveness. The BBNJ Agreement notes the importance of policy and legal coherence in several of its provisions. For instance, the third preambular paragraph recognises ‘...the need to address, in a coherent and cooperative manner, biological diversity loss and degradation of ecosystems of the ocean...’. Among its principles and approaches that contribute to such coherence, the BBNJ Agreement includes the ecosystem approach [13], as well as an integrated approach to ocean management [14]. Both concepts entail cross-sectoral cooperation [15].

In this sense, the relationship between the BBNJ Agreement and IFBs is a key ingredient to the achievement of such policy and legal coherence towards an integrated and holistic ocean management. Article 5(2) of the Agreement on this relationship notes that the ‘Agreement shall be interpreted and applied in a manner that does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and that promotes **coherence and coordination** with those instruments, frameworks and bodies’ (emphasis added).

Article 8(1) on international cooperation also provides an obligation for parties to cooperate under the Agreement for the conservation and sustainable use of marine biodiversity of ABNJ, ‘including through strengthening and enhancing cooperation with and promoting cooperation among relevant [IFBs] in the achievement of the objectives of this Agreement.’

Ensuring effective and equitable implementation (Continued)

A way to achieve this is provided in paragraph 2 of Article 8, albeit, with a more nuanced and qualified language, which states that parties ‘shall endeavour to promote, as appropriate, the objectives of this Agreement when participating in decision-making under other relevant legal instruments, frameworks, or global, regional, subregional or sectoral bodies.’

The relationship between the Agreement and IFBs is key to the implementation of Part III and while Part III of the Agreement embraces a hybrid approach, that does not entail a top-down model that prevails over existing competent bodies in ABNJ. Instead, it attempts to reach a balanced approach where the COP shall take decisions on the establishment of ABMTs, including MPAs, and related measures based on the final proposal and draft management plan after considering the contributions and scientific input received during the consultations, and the advice from the STB [16]. However, in cases where the proposed measures are within the competence of other IFBs, the COP may make recommendations to the parties of the BBNJ Agreement and to these other competent bodies with a view to promote the adoption of relevant measures through such IFBs as per their respective mandates [17]. Part III once again reasserts the non-undermining clause of Article 5, by noting that COP decisions on the establishment of ABMTs, including MPAs, ‘shall respect the competences of, and not undermine’ IFBs [18].

The following subsections highlight opportunities for such enhanced cooperation and mutual supportiveness between the BBNJ Agreement COP and STB and relevant IFBs in the establishment and monitoring of ABMTs, including MPAs.

Identification of Areas

Proposals for ABMTs, including MPAs, must include, among several other elements, the geographic or spatial description of the area by reference to the indicative criteria contained in Annex I of the Agreement [19]. The criteria contained in Annex I reflects existing criteria under other global IFBs (e.g. CBD EBSAs; the International Maritime Organization Particularly Sensitive Sea Areas (PSSAs), the FAO vulnerable marine ecosystems (VMEs) criteria) and additional ones (e.g. explicit reference to cumulative impacts, areas vulnerable to climate change and ocean acidification, areas under existing measures) (see Figure 2).

The BBNJ Agreement does not establish a process to describe areas that meet these criteria. While COP may decide to do that once it is operational after the entry into force of the Agreement, relying on existing processes and scientific descriptions would benefit the Agreement with more efficiency, avoiding duplication with other IFBs, and encouraging coherence. For instance, there are at least 80 CBD EBSAs that fall partially or completely outside national jurisdiction and its scientific descriptions can inform the proponents about the ecological and biological attributes in a given area [20].

The use of EBSAs in this way can already be seen in the practice of IFBs. For example, making use of information contained in EBSA descriptions has served to inform scientific advice to the Northwest Atlantic Fisheries Organization (NAFO) Commission on other effective area-based conservation areas (OECMs) towards the achievement of the Kunming-Montreal Global Biodiversity Framework (GBF) with respect to its Target 3 on 30x30 [21]. However, it does not follow that an ABMT or MPA under the BBNJ Agreement should be established for the entire EBSA area, in particular as the EBSA polygons are in some cases too large and ABMTs may not be the best way to conserve and sustainably manage certain biological and/or ecological features. This is entirely consistent with the CBD EBSA process approach, since the EBSA descriptions are a scientific and technical exercise and do not necessarily have implications for the establishment of ABMTs [22]. Parties and competent organisations exercise their discretion in benefiting from the scientific information contained in these descriptions to decide if and which measures they would believe should be put in place in accordance with their interests, priorities, and mandates.

Therefore, the proponents of an ABMT/MPA under the BBNJ Agreement can benefit from the information contained in the EBSA descriptions in ABNJ, which is consistent with Annex I of the Agreement on the indicative criteria for the identification of areas, to include in their submissions. Other information required under Article 19(4) to be included in the ABMT proposal can help further refine the area that will be ultimately proposed as an ABMT. For instance, in addition to the geographic or spatial description based in Annex I and information on any criteria in Annex I, under Article 19, proposals must also contain, *inter alia*, information about human activities in the area and their possible impacts. Overlaying the EBSA polygons and descriptions with the activities that can pose an impact to the biodiversity features can inform the development of the management plan and the identification of the best conservation and management measures to be included in the proposal to address such threats.

BBNJ Agreement Annex I criteria	CBD EBSA criteria CBD Decision IX/20 (2008), Annex I	CBD MPA ecologically representative networks criteria CBD decision IX/20 (2008), Annex II	IMO PSSA criteria IMO Resolution A 24/Res.982 (2006)	FAO VME criteria FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas (2008)
Uniqueness	✓	✓	✓	✓
Rarity	✓	✓	✓	✓
Special importance for the life history stages of species	✓	✓	✓ Implicit correlation; this PSSA criterion relates to 'spawning or breeding grounds' only	✓
Special importance for the species found therein				✓
The importance for threatened, endangered or declining species or habitats	✓	✓	✓	✓
Vulnerability, including to climate change and ocean acidification	✓ Although climate change and ocean acidification are not explicitly mentioned	✓ Although climate change and ocean acidification are not explicitly mentioned		✓ Although climate change and ocean acidification are not explicitly mentioned
Fragility	✓	✓	✓	✓
Sensitivity	✓	✓		✓
Biological diversity and productivity	✓	✓	✓	✓ Criterion inferred based on the intention of the corresponding UNGA resolutions provisions on VMEs and their importance for marine biodiversity

Figure 2.1: Correlation of BBNJ Agreement Annex I criteria for identification of areas and other existing relevant criteria under complementary instruments. The list of other criteria is not exhaustive.

BBNJ Agreement Annex I criteria	CBD EBSA criteria (CBD decision IX/20 (2008), Annex I)	CBD MPA ecologically representative networks criteria (CBD decision IX/20 (2008), Annex II)	IMO PSSA criteria (IMO Resolution A 24/Res.982 (2006))	FAO VME criteria (FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas (2008))
Representativeness		✓	✓	
Dependency			✓	
Naturalness	✓	✓	✓	
Ecological Connectivity		✓		
Important ecological processes occurring therein			✓	✓
Economic and social factors			✓	
Cultural factors			✓	
Cumulative and transboundary impacts				
Slow recovery and resilience				✓
Adequacy and viability		✓		
Replication		✓		
Sustainability of reproduction				
Existence of conservation and management measures	Potentially by competent bodies (other than the CBD)		Potentially, if associated protective measures have been established for the PSSA	Potentially, if RFMOs/As have put in place measures to protect VMEs

Figure 2.2: Correlation of BBNJ Agreement Annex I criteria for identification of areas and other existing relevant criteria under complementary instruments. The list of other criteria is not exhaustive.

Consultation

A meaningful consultation process is an important ingredient for coherent and equitable implementation of the BBNJ Agreement. As noted above, the proponent(s) of an ABMT/MPA shall consult with relevant stakeholders on the proposal, and the Secretariat will also facilitate consultations on the revised proposal after the STB inputs to the proponent. In the first instance, it would be advisable that the proponent(s) proactively engage with relevant IFBs with competences in the respective area with a view to co-developing a strong and effective proposal that can be jointly supported and help gain buy-in at a later stage. Although not explicit in the text, it seems clear that prior to revising the proposal for the second time - after the public consultation led by the Secretariat - the proponent(s) will then have another chance to engage with IFBs to refine the proposal for submission to STB (who will then provide advice to COP on the matter). These modalities for consultation will still be further elaborated by the STB and COP, but they should ensure equitable and effective participation by all relevant stakeholders [23].

Consultation with relevant IFBs and other relevant stakeholders will also be needed in case of the adoption by COP of emergency measures to respond to a natural phenomenon or human-caused disaster that could cause serious or irreversible harm to marine biodiversity in ABNJ under Article 24 of the Agreement. These consultations will need to be expedited to ensure a prompt response. The STB must advise the COP on procedures and guidance for the establishment of emergency measures, including consultation procedures, at its earliest opportunity [24].

In addition, under Article 22(3), the COP shall make arrangements for regular consultations to enhance cooperation and coordination with and among IFBs on ABMTs, including MPAs, and on related measures adopted under these IFBs. It is not clear from the text of the Agreement what type of arrangements are envisioned for this purpose. The creation of joint working groups, informal advisory bodies, ad hoc technical groups, or even expert workshops around specific issues with balanced regional participation of scientific/technical/legal experts nominated by Parties has been common practice in other fora [25], and can serve as a model for the BBNJ Agreement. Furthermore, arrangements such as those under the UN General Assembly resolution on sustainable fisheries, which periodically decides to convene workshops with regional fisheries management organisations (RFMOs) as part of their review of implementation of bottom fishing recommendations, also serves a model in this case [26].

Not only would such an arrangement be beneficial for monitoring and review of the measures as such, but also with regards to the previous step - which would involve coordination and possibly even the co-development of joint measures to be contained in the ABMT management plan. For this previous step, it would be important to involve the scientists/scientific and technical bodies of the IFBs so that the measures being developed are based on best available science (in accordance with Article 19(3) and 7(i)).

Monitoring and Review

The COP will serve as a platform for parties, individually or collectively, to report on the implementation of ABMTs, including MPAs, which is mandatory under Article 26(1). IFBs shall be invited to provide information to the COP on the implementation of measures that they have adopted to achieve the objectives of a given ABMT/MPA under the Agreement [27]. These reports and information will serve as the basis for periodic monitoring and review by the STB of the effectiveness of the ABMTs/MPAs and related measures [28]. After these reviews, the COP will then make decisions or recommendations on the amendment, extension, or revocation of the ABMT/MPA and related measures as needed [29].

With respect to the measures under the competence of IFBs, the invitation to submit information on implementation measures by IFBs to the COP is an important provision. Although IFBs are not obliged to respond to these invitations, they may want to demonstrate that they are taking steps to implement measures that contribute to the achievement of the objectives of the ABMT/MPA, as is the case with RFMOs reporting to the UNGA on measures they have been undertaking to protect VMEs [30]. Furthermore, it may be good practice, as highlighted above, that the arrangements to be developed by the COP under Article 22(3) coordinate with relevant IFB measures, with a special focus on the recommendations made by COP to the IFBs on measures under their competency. The utilisation of modalities such as workshops and joint meetings could feed into the COP review (in the same fashion as the outcomes of the UNGA workshops on bottom fishing feed into UNGA meetings and resolutions) promoting opportunities for enhanced cooperation, trust, transparency, and mutual supportiveness between international treaties. The BBNJ Agreement can then function as a platform for this enhanced collaboration and better policy and legal coherence to achieve the common goal of conservation and sustainable use of marine biodiversity of ABNJ.

Other Key Priorities to Ensure Effective Operation of Part III

The **Clearing-House Mechanism (CHM)**, established under Article 51(1) of the Agreement will be key for the implementation of all parts of the treaty, including Part III [31]. It is important that lessons be learned with respect to the implementation of other CHMs under other treaties to maximise the potential for the BBNJ Agreement to not simply provide an online platform for information-sharing, but that it is carefully considered and tailored to the diverse needs it will have to respond to regarding the four pillars of the treaty. It will also be important to link the BBNJ Agreement CHM with other existing ones at the global and regional levels to enhance cooperation and synergies across instruments. In terms of Part III, the mechanism can play an important role in the consultation phase of the proposed ABMT(s), including by containing spatial information on the marine biodiversity attributes of the proposed area, the threats the proposed measures aim to avoid or minimise, and to monitor implementation of COP decisions or recommendations. In this sense, it would also be beneficial to add information layers on measures put in place by IFBs in response to COP recommendations, or existing measures that contribute to the achievement of the conservation objectives of the ABMT/MPA. Moreover, the CHM will have to provide a bridge between Part III and Part V on capacity-building and the transfer of marine technology (CBTMT), including by facilitating the matching of CBTMT needs with donors and providers, as per Article 51(3)(b).

In this sense, **the CBTMT provisions** are key to the implementation of Part III. For instance, CBTMT can not only help achieve the objectives contained in Article 17 regarding new measures adopted by the COP, but also help implement the recommendations to IFBs. This would be particularly the case for those IFBs that may not collect sufficient important biodiversity data in the course of their operations due to lack of capacity or resources (e.g. bycatch data).

The **composition of the STB** and its modus operandi will also be crucial for the effective and equitable implementation of Part III of the Agreement. Given the wide range of issues addressed by the BBNJ Agreement, relevant expertise (including traditional knowledge) in all of the four pillars of the Agreement will be of crucial importance for the STB to perform its functions. Experts, serving in their capacity albeit nominated by parties and elected by the COP (as per Article 49(2)) will have to be varied in order to cover all of these topics. Lessons learned from other instruments could be drawn upon to avoid the politicisation of the STB, especially considering that these experts will be serving in the best interest of the Agreement, as per Article 49(2).

References

1. ABMTs are defined under the BBNJ Agreement as ‘...a tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives in accordance with this Agreement’ (Art. 1(1)). MPAs are defined in Art. 1(9) as ‘...a geographically defined marine area that is designated and managed to achieve specific long-term biological diversity conservation objectives and may allow, where appropriate, sustainable use provided it is consistent with the conservation objectives.’
2. BBNJ Agreement, Article 17(a)
3. BBNJ Agreement, Article 17(b)
4. BBNJ Agreement, Article 17(c)-(d)
5. BBNJ Agreement, Article 17(e)
6. As per BBNJ Agreement, Article 5(2)
7. BBNJ Agreement, Article 21(8)
8. BBNJ Agreement, Article 24(5)
9. A more explicit recognition clause is contained in previous drafts of the Agreement. E.g. Art 19 (2) of the Further refreshed 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 (track changes), Doc UNGA A/CONF.232/2022/CRP.13/Add.1 (26 August 2022) states the following: ‘The Conference of the Parties may recognize, in accordance with the objectives, criteria and decision-making process laid down in this Part, area-based management tools, including marine protected areas, established under relevant regional, subregional and sectoral bodies, at the request of that body or of a Party authorized to act on its behalf, or Parties authorized to act on its behalf. The following Articles apply to area-based management tools, including marine protected areas, recognized under this paragraph, as if they were established under this Part. The conference of the Parties shall elaborate the procedures which shall include the provision of adequate information, transparency, notification, consultation with relevant stakeholders and review by the Scientific and Technical body, and the manner in which the provisions of this Part shall apply for recognition of area-based management tool, including marine protected areas.’
10. M Prieur, C Bastin, A Mekouar, Measuring the Effectivity of Environmental Law – Legal Indicators for Sustainable Development. (Brussels: Peter Lang, 2021). <http://www.peterlang.com/document/1114411>

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11. International Law Commission (ILC), Fragmentation of International Law: Difficulties arising from the Diversification and Expansion of International Law, Report of the Study Group of the International Law Commission, finalized by Martti Koskenniemi, UN General Assembly doc A/CN.4/L.682, 13 April 2006
12. See Arbitration regarding the Iron Rhine ('Ijzeren Rijn') Railway (Belgium/Netherlands) of 24 May 2005 (UNRIIA, vol. XXVII), para. 83
13. BBNJ Agreement, Article 7(f)
14. BBNJ Agreement, Article 7(g)
15. D Diz, 'Implementing the ecosystem approach through area-based management' in S Borg, FG Attard, PV de Fremeaux (eds.) Research Handbook on Ocean Governance Law (Cheltenham: Edward Elgar Publishing, 2023)
<https://doi.org/10.4337/9781839107696.00026>
16. BBNJ Agreement, Article 22(1)(a)
17. BBNJ Agreement, Article 22(1)(c)
18. BBNJ Agreement, Article 22(2)
19. BBNJ Agreement, Article 19(4)(a)
20. For the list of EBSAs, see www.cbd.int/ebsa/
21. NAFO, Report of the NAFO Commission and its Subsidiary Bodies (STACTIC and STACFAD), 45th Annual Meeting of NAFO, 18-22 September 2023, Vigo, Spain, NAFO/COM Doc.23-28 (Halifax: NAFO, 2023)
22. CBD decision 15/26 (2022), 7th preambular paragraph
23. CBD decisions V/6 (2000) and VII/11 (2004) on the ecosystem approach. Decision V/6, section B, para 6, refers to Principle 2 of the ecosystem approach on decentralised management to ensure equity. The rationale for this (also stated in para 6) notes that management should involve all stakeholders. Also relevant is principle 11 of the ecosystem approach, which notes that all forms of relevant information, including scientific, indigenous and local knowledge, innovations and practices, should be considered when implementing an ecosystem approach. Therefore, it encourages the sharing by all stakeholders of relevant information including about ecosystem functions and human impacts. For more detail see also CBD decision VII/11, Annex I, which expands further on the ecosystem approach by introducing respective implementation guidelines to all of its principles and annotations to the rationale previously outlined in decision V/6 (2000)
24. BBNJ Agreement, Article 24(5)
25. For instance, under the CBD, in several instances the COP has requested the Executive Secretary to convene expert workshops (e.g. on EBSA modalities – see CBD decision 15/26 (2022), para. 4), or has established ad hoc technical groups (AHTEG) (e.g. AHTEG on the Kunming-Montreal Global Biodiversity Framework monitoring framework (e.g. CBD decision 15/5 (2022), para 8)
26. See UNGA resolutions 61/105 (2006), 64/72 (2009), 66/68 (2011), 71/123 (2016), 77/118 (2022)
27. BBNJ Agreement, Article 26(2)
28. BBNJ Agreement, Article 26(3)-(4)
29. BBNJ Agreement, Article 26(5)
30. See UNGA, Report of the Secretary-General on Actions taken by States and regional fisheries management organizations and arrangements in response to paragraphs 113, 117 and 119 to 124 of General Assembly resolution 64/72, paragraphs 121, 126, 129, 130 and 132 to 134 of General Assembly resolution 66/68 and paragraphs 156, 171, 175, 177 to 188 and 219 of General Assembly resolution 71/123 on sustainable fisheries, addressing the impacts of bottom fishing on vulnerable marine ecosystems and the long-term sustainability of deep-sea fish stocks, UNGA doc. A/75/157 (2020). Online: <https://documents.un.org/doc/undoc/gen/n20/181/74/pdf/n2018174.pdf?token=hxxlwEW9xVlglyMXaa&fe=true>
31. BBNJ Agreement, Article 51(3)(a)(ii)

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This policy brief and the other policy briefs in the series can be found on the project website: <https://www.law.ed.ac.uk/research/research-projects/biodiversity-areas-beyond-national-jurisdiction>.

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