



Area-Based Management
Tools in Marine Areas Beyond
National Jurisdiction:

Building ambition, broadening participation and planning ahead

Summary Report of the IUCN
Workshop entitled “Area-Based
Management Tools in Marine Areas
Beyond National Jurisdiction”
(ABMTs in ABNJ) from 8-10 October,
2019 in Gland, Switzerland



Government Offices of Sweden
Ministry of the Environment and Energy

TEN ENABLING CONDITIONS TO FUTURE-PROOF THE BBNJ AGREEMENT

1. Recognize that the Global Ocean is a “commons” whose health is a common interest of all humanity.

Given the double crisis of climate change and biodiversity loss, the BBNJ agreement should require and enable all States to act individually and collectively to safeguard marine biodiversity and enhance ocean resilience on behalf of present and future generations. Such provisions are essential to build resilience and strengthen our ability to cope with cumulative impacts despite a lack of information. The BBNJ agreement should also require the application of principles of precaution, stewardship, transparency and accountability in all aspects of management and decision-making, especially in the face of changing climatic conditions.

2. Accelerate progress in the BBNJ negotiations through greater engagement of politicians from capitals empowered to negotiate an ambitious and pragmatic agenda.

It may help to focus on the many ways the BBNJ agreement could benefit the global community. For example, the BBNJ agreement could improve capacity for ecosystem-based conservation and sustainable use of BBNJ by facilitating access to science, resources and technologies, as well as providing a platform to collaborate to achieve common goals and address shared concerns.

3. Enable nimble measures to respond to a changing ocean.

We will need dynamic, adaptive and creative thinking to be able to respond to threats, activities and technologies we are not yet aware of and to maintain the ability to adopt and apply measures in a timely and effective manner. Future proofing the agreement means establishing sound principles and objectives; not foreclosing future evolution of the agreement; and avoiding inflexible processes that may inhibit innovative and precautionary responses to these threats or shifts in the composition and distribution of marine biodiversity.

4. Ensure access to data, monitoring and information, and other products of enhanced ocean sciences.

The ocean is a dynamic system that is undergoing many changes due to increasing atmospheric CO₂ levels/concentrations. These changes and their implications are difficult to predict but are likely to intensify. Hence, continuous monitoring, data sharing, and assessment are essential to enable managers to incorporate and adapt to evolving human use patterns, biodiversity impacts, rates of change, and other emerging issues. Access to information about human activities at sea also needs to be facilitated to allow managers and scientists to factor in past, current and future patterns and pressures.

5. Provide necessary institutional elements that include a conference of the parties (COP), an independent scientific and technical advisory committee (STAC), and an implementation committee.

A COP should be able to take decisions on the establishment and

management of ABMTs and “consider and undertake any other actions that may be required to achieve the purposes of this Convention”. A STAC comprising scientific, technical, and policy expert representatives from all States Parties and observers could build a shared knowledge base across all States Parties. This advisory body could be supplemented by expert working groups to focus on more specific issues as needed. STAC functions could include reviewing proposals for possible ABMTs, responding to requests for information, as well as developing a proactive program of work. An implementation committee could be empowered to regularly review progress and challenges of implementation, compliance and effectiveness and to recommend improvements.

6. Include dedicated measures to conserve marine biodiversity.

The BBNJ agreement should include specific obligations for States Parties to: 1) establish a well-connected network of ecologically representative MPAs dedicated to conservation of marine biodiversity; and 2) conserve ecosystem structure, function and processes and protect species and habitats across space and time using MPAs and other ABMTs. These should be accompanied by the general objective of taking measures necessary to promote a healthy, productive and resilient ocean and marine ecosystems based on an ecosystem-based approach, precautionary decision-making and adaptive management.

7. Recognize interconnectivities through ecosystem-based management.

These include vertical and horizontal connectivity in the water column, seafloor as well as air space above. Air space provides an important habitat for many marine species, from seabirds to microbes, as well as a locus for potentially harmful activities such as geoengineering and long-range air pollution. There is a need to ensure that ABMTs and other measures under the BBNJ instrument include air space as part of the marine ecosystem, as well as to account for the transboundary connectivity of species and anthropogenic impacts when managing human activities within and beyond the national jurisdiction of States.

8. Establish clear requirements for implementing the precautionary principle.

As provided in the UN Fish Stocks Agreement (UNFSA) Article 6 (but not yet uniformly implemented or enforced), requirements for what to do when information is uncertain, unreliable or inadequate could include, for example: 1) being more cautious; 2) not using absence of adequate scientific information as a reason for postponing or failing to take conservation and management measures; 3) requiring the development of data collection and research programmes to narrow information gaps and assess impacts; 4) reviewing the ongoing efficacy of conservation and management measures; and 5) acknowledging that significant knowledge gaps exist regarding the distribution and composition of biodiversity in ABNJ.

9. Incorporate existing definitions, standards and criteria to ensure their consistent application across jurisdictions and institutions. Key examples include: 1) use of internationally agreed definitions for MPAs and “other effective conservation measures” (OECMs) that are used to track global and national progress on MPAs (and soon also OECMs) in the World Database on Protected Areas, and 2) inclusion of the criteria to describe ecologically or biologically significant areas (EBSAs), as these criteria have already been widely applied to identify areas in need of protection, and many of these areas overlap waters under national jurisdiction and ABNJ. These definitions, standards and criteria have been developed to ensure that MPAs and OECMs actually fulfill their stated objectives, and do not become another exercise in “paper parks” that are designated but not effectively managed.

10. Strengthen existing bodies using the BBNJ agreement. Limited mandates, expertise and resources make it challenging for existing relevant bodies to adopt precautionary measures to conserve biodiversity or address cumulative stressors within or across sectors and regions. Hence, the COP needs a strong role both in promoting implementation through other bodies and instruments and in exercising its own powers to act directly. As with the UNFSA, the BBNJ agreement could further oblige States Parties to strengthen existing institutions, including through responsive decision-making processes (UNFSA Articles 13, 14 and 28).

EIGHT CONSIDERATIONS FOR THE NEXT ROUND OF NEGOTIATIONS

Participants also crafted some recommendations on the draft text for consideration during the next round of negotiation. These considerations are based on review of the draft President’s text (May 2019 version) as applied to the two case studies for the Sargasso Sea and Costa Rica Dome. To enable the BBNJ agreement to produce enhanced conservation benefits, it should:

1. Establish a process that delivers effectively protected MPAs in ABNJ; provides for consistency with conservation measures within national jurisdiction, and adopts a flexible approach for the development and adoption of other ABMTs at the global, regional and sectoral levels. Examples include dynamic ABMTs including mobile MPAs that can follow species and features across temporal and spatial scales and adapt to changing conditions.

2. Recognize that States Parties possess inherent powers to regulate their own nationals and vessels as well as their own ports and access to markets. The Conference of the Parties should be specifically empowered to require States Parties to apply these inherent powers as necessary.

3. Enable the Conference of Parties to adopt a management plan and specific conservation measures for MPAs, provided that such measures take into account existing frameworks and bodies and do not undermine their effectiveness.

4. Specifically spell out how States can implement their duty to cooperate. Under the UN Fish Stocks Agreement this includes obligations to agree and comply with measures to ensure conservation, to agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner, to adopt precautionary measures

when information is uncertain, inadequate or unreliable, to strengthen existing organizations, to share processed data collected by national scientists or national research programs in an effective way e.g. through storing in international databases., to ensure the full cooperation of relevant national agencies and industries, and to ensure compliance by vessels flying its flag.

5. Replace the term “relevant instruments and bodies” with “competent international organizations” in most places (other than consultation requirements) as only these bodies are capable of adopting relevant management measures.

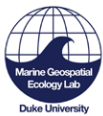
6. Invite competent international organizations to adopt measures within a time-bound period to achieve the specific objectives of the MPA’s management plan. In this context, the BBNJ agreement should specifically empower the COP to e.g. adopt interim measures or provisional measures that would apply until the competent organization adopts the necessary measures. An emergency power vested in the COP might also be appropriate for adopting ABMTs in cases where BBNJ is under urgent threat.

7. Create a separate provision for the COP to establish other types of ABMTs in addition to MPAs, and to provide for global recognition of other global, sectoral, or regional ABMTs where requested.

8. Encourage existing organizations to define explicitly their mandates, including their taxonomic mandates with the objective of more clearly defining the specific species and activities over which existing organizations have legal competence and responsibility. Such clarity would thus allow for the new implementing agreement to advance research and monitoring efforts for unmonitored or unmanaged BBNJ.



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