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United Nations

**REGIONAL COMMISSION FOR FISHERIES**

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**AGREEMENT ON THE CONSERVATION AND SUSTAINABLE USE OF MARINE  
BIOLOGICAL DIVERSITY OF AREAS BEYOND NATIONAL JURISDICTION (BBNJ)  
AND ITS POTENTIAL IMPLICATIONS FOR THE FISHERIES SECTOR**

**Executive Summary**

This paper provides updates on the outcome of the negotiations for a new international legally binding instrument (ILBI) under the United Nations Convention on the Law of the Sea (UNCLOS) for the conservation and sustainable use of biodiversity beyond national jurisdiction (BBNJ).

**The Commission is requested to:**

The Commission is invited to discuss the potential implications and linkages of the BBNJ Agreement with the fisheries sector and provide any feedback on conservation and sustainable use of marine biological diversity in the RECOFI region and adjacent marine areas beyond national jurisdiction (ABNJ).

**INTRODUCTION**

1. The conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (ABNJ) is increasingly attracting international attention, as scientific information, albeit insufficient, reveals the richness and vulnerability of such biodiversity, particularly around seamounts, hydrothermal vents, sponges, and cold-water corals, while concerns grow about the increasing anthropogenic pressures posed by existing and emerging activities, such as fishing, mining, marine pollution, and bioprospecting in the deep sea.

2. The Ocean, which covers 70% of the planet, supports every facet of life on Earth. Nearly two-thirds of it, along with its unique species and ecosystems, are in areas beyond national jurisdiction. Fragmented legal frameworks have left biodiversity in these areas vulnerable to ever growing threats, including climate change, plastic pollution, oil spills, overfishing, habitat destruction, ocean acidification, and underwater noise.

3. The UN Convention on the Law of the Sea (UNCLOS) sets forth the rights and obligations of states regarding the use of the oceans, their resources, and the protection of the marine and coastal environment. Although UNCLOS does not refer expressly to marine biodiversity, it is commonly regarded as establishing the legal framework for all activities in the ocean. Following more than a decade of discussions convened under the United Nations General Assembly (UNGA), the Assembly, in its resolution 72/249 of 24 December 2017, decided to convene an Intergovernmental Conference to elaborate the text of an internationally legally binding instrument (ILBI) under UNCLOS on the

conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, with a view to developing the instrument as soon as possible.

## THE INTER-GOVERNMENTAL CONFERENCE

4. The intergovernmental conference (IGC) on an ILBI under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction was convened to consider the recommendations of the Preparatory Committee established pursuant to Assembly resolution 69/292<sup>1</sup> on the elements and to elaborate the text of such an instrument, with a view to developing the instrument as soon as possible (resolution 72/249<sup>2</sup>).

5. The work and results of the IGC should be fully consistent with the provisions of UNCLOS, and the process and its result should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies as indicated in the UNGA Resolution (A/RES/72/249).

6. The IGC held five sessions from 2018 to 2023 to discuss and negotiate the main issues which, when resolved, would contribute to ensuring the conservation and sustainable use of biodiversity beyond national jurisdiction (BBNJ). After a 36-hour session of talks, from Friday morning (3 March) to Saturday evening (4 March), the International Conference tasked with the drafting and adoption of a new implementing agreement to UNCLOS relating to the conservation of biodiversity in the high seas, was finally able to reach a compromise on a supposedly final text of a BBNJ Agreement.

7. After almost two decades of discussions and negotiations by UN Member States and observers culminating in a resumed Fifth Session of the IGC, the *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* (hereinafter the BBNJ Agreement or the Agreement) was agreed upon on 4 March 2023 and adopted by consensus at the further resumed Fifth Session of the IGC on 19 June 2023<sup>3</sup>.

## THE BBNJ AGREEMENT

### *Structure of the Agreement*

8. The BBNJ Agreement elaborates a legal framework under UNCLOS<sup>4</sup> for conservation and sustainable use of BBNJ and establishes requirements, measures and institutions to that end, including:

- a regime for the exploitation of marine genetic resources (MGRs) and the sharing of benefits derived therefrom;
- a framework for the establishment of a network of area-based management tools (ABMT) including marine protected areas (MPA) and related measures;
- requirements for the conduct of environmental impact assessments (EIA) on planned activities that may lead to substantial pollution or harmful impacts on the marine environment;
- mechanisms for capacity-building and the transfer of marine technologies (CBTT) from developed to developing States; and,
- an institutional framework for decision making and undertaking implementation initiatives including the establishment of the Conference of the Parties to the Agreement (COP), which will be assisted by a scientific and technical body, an implementation and compliance committee, a capacity-building and transfer of marine technology committee, an access and benefit-sharing committee and a clearing-house mechanism.

<sup>1</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/187/55/PDF/N1518755.pdf?OpenElement>

<sup>2</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/468/77/PDF/N1746877.pdf?OpenElement>

<sup>3</sup> <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N23/177/28/PDF/N2317728.pdf?OpenElement>

<sup>4</sup> The United Nations Convention on the Law of the Sea of 10 December 1982

9. The BBNJ Agreement has a Preamble section, 76 articles in twelve Parts and two Annexes as follows:

- Part I - General Provisions;
- Part II - Marine Genetic Resources Including The Fair And Equitable Sharing of Benefits;
- Part III - Measures Such As Area-Based Management Tools, Including Marine Protected Areas;
- Part IV - Environmental Impact Assessments;
- Part V - Capacity Building and The Transfer of Marine Technology;
- Part VI - Institutional Arrangements;
- Part VII - Financial Resources and Mechanism;
- Part VIII - Implementation and Compliance;
- Part IX - Settlement of Disputes;
- Part X - Non-Parties To This Agreement;
- Part XI - Good Faith and Abuse of Rights;
- Part XII - Final Provisions;
- Annex I - Indicative criteria for identification of areas; and,
- Annex II - Types of Capacity-building and of transfer of marine technology.

#### *Core components of the Agreement*

10. Provisions on marine genetic resources (MGRs), including the fair and equitable sharing of benefits with the aim to equitably share benefits arising from activities with respect to MGRs and digital sequence information for the conservation and sustainable use of BBNJ, building relevant capacities of parties, particularly developing states.

11. Provisions on area-based management tools (ABMTs), including marine protected areas (MPAs), to establish a comprehensive system of ABMTs with ecologically representative and well-connected networks of MPAs, strengthening regional and international cooperation towards preserving and restoring marine biodiversity and fragile ecosystems.

12. Provisions on environmental impact assessments (EIAs) establishing processes, thresholds, and other requirements, ensuring that EIAs are conducted and reported by parties.

13. Provisions on capacity building and the transfer of marine technology to assist parties, in particular developing countries, to develop their scientific and technological capacity towards the conservation and sustainable use of BBNJ, assisting them in implementing the provisions of the new Agreement.

14. In addition, the Agreement contains robust provisions on institutional arrangements (i.e. Conference of Parties, Scientific and Technical Body, stand-alone Secretariat); financial resources and mechanism; implementation and compliance; and settlement of disputes, including envisaged roles for the International Tribunal for the Law of the Sea and the International Court of Justice.

#### **THE WAY FORWARD**

15. The Agreement creates an enabling environment for global ocean governance. There are, however, critical challenges to address for its effective implementation.

16. First, there is an urgent need for governments to sign and ratify the new Agreement. Once the Agreement is open for signature on 20 September 2023, 60 instruments of ratification need to be

deposited for it to enter into force<sup>5</sup>. Depending on political will and national processes, this may take some time. Moreover, if states that are major actors in high seas activities do not join the new Agreement, the Agreement's effectiveness will be severely compromised.

17. Second, the new Agreement will have to place itself in a complex and fragmented policy environment. Cooperation and synergies with bodies and instruments with relevant mandates and initiatives will be central for the Agreement to be successful.

18. In some cases there parallel goals of the BBNJ Agreement and the Kunming-Montreal Global Biodiversity Framework. In particular, the 30x30 target aiming to conserve 30% of the earth's land and sea through the establishment of protected areas and other ABMTs by 2030, and the clear interlinkages with the establishment of MPAs under the new BBNJ Agreement.

19. In other cases ensuring efficient synergies may prove more challenging. The debate over "not undermining" relevant frameworks and bodies was a recurring theme throughout the negotiation process. The provision on "not undermining" is included in Article 5 of the new Agreement, but there is the need for it to be further clarified, and for a common definition to be agreed upon as implementation begins. Cooperation, synergies, common objectives, and a common vision between the new Agreement and regional fisheries management organizations (RFMOs) and other regional and global bodies are essential for effective implementation.

20. Third, implementation will require financial resources. Preliminary estimates would indicate that substantial financial resources will be needed. A significant increase compared to resources currently devoted to ocean governance.

## **FAO PARTICIPATION IN THE BBNJ PROCESS**

21. Given the implications this process might have on the fisheries sector, and as instructed by COFI, FAO attended and contributed to all four IGC sessions to provide fisheries and other pertinent technical information on issues related to FAO's mandate. Regardless how the BBNJ Agreement will be implemented evolve, the instrument will be of relevance for high seas fisheries. For instance, area-based management tools and environmental impact assessments, two main elements of the discussion package, will undoubtedly influence fishing activities in ABNJ. Still, UNGA Resolution 69/292 clearly stipulates that the new agreement should not undermine existing instruments, frameworks and bodies, therefore including Regional Fisheries Management Organizations (RFMOs) and their respective mandates.

22.

23. FAO recognizes sustainable utilization of fisheries resources in areas beyond national jurisdiction cannot be achieved without marine biological diversity conservation. FAO is actively engaged in areas beyond national jurisdiction through projects and initiatives for which it provides assistance to Member Nations and relevant international organizations.

24. Technical assistance and capacity development are key factors to support an international legally binding instrument on BBNJ and FAO Members are invited to consider the multidisciplinary portfolio of capacity development programmes implemented by the Organization.

25. The document *FAO and the marine biological diversity beyond national jurisdiction - Information package for BBNJ delegates* presents information on the work of FAO that is relevant to the BBNJ process, including ongoing processes and initiatives, and lessons learned, which may be informative and useful for BBNJ Delegates and others. This information may also be a useful indication of areas where FAO may assist Member Nations in the implementation of the future international legally binding instrument.

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<sup>5</sup> As of 11 October 2023 eighty-two countries are signatories to the Agreement.

*FAO and the marine biological diversity beyond national jurisdiction - Information package for BBNJ delegates* is available in all UN official languages at:  
<http://www.fao.org/documents/card/en/c/cc1345en>

FAO stands ready to assist and work with Member Nations to provide technical advice and support in the implementation of this long-awaited international instrument.