

Initial reflections to support rapid, effective and equitable implementation of the BBNJ Agreement

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A new international agreement on the conservation and sustainable use of marine biodiversity beyond national jurisdiction (BBNJ Agreement) is expected to be concluded at the resumed fifth session of the intergovernmental conference (IGC5, February 20-March 3). It is therefore timely to start laying the foundation for successful implementation, key to securing ocean health for the benefit of present and future generations.

This *Policy Brief*¹ provides some initial reflections for supporting rapid, effective, and equitable implementation in three priority areas: (1) bringing the Agreement into force; (2) establishing the institutional framework, including financial mechanisms; and (3) developing capacity, science, and technology.

¹ Based on Gjerde, K. M. *et al.* (2022). Getting beyond yes: fast-tracking implementation of the United Nations agreement for marine biodiversity beyond national jurisdiction, *NPJ Ocean Sustainability* 1:6 <https://doi.org/10.1038/s44183-022-00006-2>.

KEY MESSAGES

As States and stakeholders make the final push to conclude the negotiations, it is time to consider the vital next steps: encouraging ratification, developing institutional structures, and building capacity to ensure wide participation and effective implementation.

Ratifications could be encouraged through targeted outreach activities, a special treaty event, and technical and financial support, including needs assessments and legislative resources to assist States in codifying the Agreement into national law.

A Preparatory Commission (PrepCom) could be established to advance preparations for the first Conference of the Parties (COP) and establish interim working groups to develop the institutional structure and financial mechanisms.

Support should be mobilised to advance a range of scientific, legal, organisational and institutional capacities for effective implementation.

Setting up a High Seas Finance Implementation Mechanism supported by public and private partners would help to start on vital preparatory work even before the treaty enters into force.

1. BRINGING THE AGREEMENT INTO FORCE

The process to bring an Agreement into force can be summarised as follows:

1. Adoption: during the intergovernmental conference (IGC), negotiators agree on the text of the BBNJ Agreement translated in all UN languages.

2. Signature: the State signs the Agreement to signal its intention to participate. The depositary² often organises a special treaty event to promote participation in treaties, which could include this Agreement.

3. National ratification: the State goes through its own legislative and executive processes to ratify the Agreement nationally.

4. Consent to be bound: the State submits its instrument of ratification to the designated depositary³ or expresses its consent to be legally bound by the Agreement by depositing an instrument of approval or acceptance or accession.

5. Provisional application: an Agreement can provide for provisional application pending entry into force. Upon signing, State parties are obliged not to defeat the object and purpose of the Agreement prior to its entry into force.⁴

6. Entry into force: the Agreement is ratified by the specified number of States.⁵

Preparatory work to encourage and support States to ratify the BBNJ Agreement should begin immediately so that it can enter into force in a timely manner.

Examples of supporting actions include:

- Raising awareness at the national, regional, and global levels to ensure understanding, acceptance and ratification of an Agreement.⁶ Outreach activities could include regional workshops, webinars, and high-level events where supporting materials can be showcased.

- Drawing inspiration from other international processes, where the (interim) Secretariat,⁷ civil society and the private sector⁸ play a role in creating political momentum by highlighting benefits and responsibilities arising from joining the Agreement and providing legal, scientific, technical and various kinds of financial assistance. Dedicated financial and technical support, including model laws, legal checklists, or legislative guides⁹ can assist governments with national codification and accelerate ratification and implementation of the Agreement. Innovative funding mechanisms that can support implementation of the BBNJ Agreement prior to its entry into force could further advance global capacity, but this must be tracked and coordinated.¹⁰
- Technical assistance plays an important role in helping States decide whether to become party to the Agreement, as well as support Parties in successfully implementing it. An initial step could be helping States to identify and map rights and obligations arising from the BBNJ Agreement. A preliminary capacity and technology needs assessment can illuminate the legal, administrative, institutional, and technical aspects of implementing substantive obligations—e.g., those related to environmental impact assessments (EIAs), area-based management tools (ABMTs), and marine genetic resources (MGRs).

² In the BBNJ context, this is the Secretary-General of the United Nations according to the most recent BBNJ "further refreshed draft text" (Article 59): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/467/94/PDF/N2246794.pdf?OpenElement>

³ Treaty Section of the Office of Legal Affairs. Treaty Handbook. (United Nations).

⁴ Vienna Convention on the Law of Treaties (1969) Article 18. The most recent BBNJ draft text provides for provisional application in Article 62: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/467/94/PDF/N2246794.pdf?OpenElement>

⁵ UNCLOS set the threshold at 60 and took 12 years to enter into force, while the 30 ratifications required by the UN Fish Stocks Agreement took 6 years. The most recent BBNJ draft text includes 30 or 60 ratifications as options (Article 61): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/467/94/PDF/N2246794.pdf?OpenElement>

⁶ Oberdorster, U. (2008). Why Ratify? Lessons from treaty ratification campaigns, Vanderbilt Law Review 61, 681.

⁷ E.g., the UN FAO conducted extensive outreach activities in support of the Port State Measures Agreement, convening 100 countries and other organisations through regional workshops that focused on presenting the benefits and basics of implementation and understanding the main gaps and constraints in each region. Food and Agriculture Organization of the United Nations. Regional Workshops | Agreement on Port State Measures (PSMA): <https://www.fao.org/port-state-measures/capacity-development/regional-workshops/en/>.

⁸ E.g., the Global Industry Alliance, a public-private partnership including businesses and investors, facilitated entry into force of the International Convention for the Control and Management of Ships' Ballast Water and Sediments through the GloBallast Partnerships Programme: <https://archive.iwlearn.net/globallast.imo.org/index.html>; the Marrakech Partnership for Global Climate Action supports implementation of the Paris Climate Agreement, enabling collaboration between governments and cities, regions, businesses and investors to act on climate change: <https://unfccc.int/climate-action/marrakech-partnership-for-global-climate-action>.

⁹ E.g., the World Bank provided a legislative guide for implementing the 1993 FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement: Edeson, W., Freestone, D. & Gudmundsdottir, E. (2001). Legislating for Sustainable Fisheries A Guide to Implementing the 1993 FAO Compliance Agreement and 1995 UN Fish Stocks Agreement. <https://openknowledge.worldbank.org/handle/10986/14011>.

¹⁰ Friends of Ocean Action (2022). SDG14 Financing Landscape Scan: Tracking Funds to Realize Sustainable Outcomes for the Ocean. https://www3.weforum.org/docs/WEF_Tracking_Investment_in_and_Progress_Toward_SDG14.pdf.

2. BUILDING UP THE INSTITUTIONAL MECHANISMS FOR IMPLEMENTATION

The establishment of institutional mechanisms¹¹ (including financial) for implementation provides the foundation for rapid progress and long-term success. Some actions can start as soon as the treaty text is finalised, such as convening a Preparatory Commission (PrepCom) and interim working groups to lay the foundation for the first COP, consider finance needs, and highlight key elements identified in the Agreement to be developed by the COP or one of its subsidiary bodies.

Following the example of the Third UN Conference on the Law of the Sea, a PrepCom could be established by a resolution of the IGC or a subsequent resolution of the UN General Assembly (UNGA).¹² The PrepCom could prepare the establishment of and make recommendations on the institutional arrangements (e.g., preparing draft terms of reference, guidelines). It could establish subsidiary bodies, such as an interim scientific and technical working group to provide guidance on the functioning of the Scientific and Technical Body, and an interim finance working group to build momentum for the mobilisation of financial resources and improve coherence, coordination and cooperation with existing financial institutions. The PrepCom could also start identifying needs, good practices, and options for structuring, housing, and facilitating the operations of the clearing-house mechanism.

In terms of implementation and compliance, the PrepCom could identify and map key provisions and compile best practices from other multilateral treaties. To facilitate capacity building and technology transfer, the PrepCom could prepare guidance for national and regional needs assessments and identify relevant technologies for implementation. Given the significant scope of work envisaged for the proposed access and benefit-sharing (ABS) mechanism, a dedicated ABS working group could prepare an initial roster of qualified experts, identify good practice for collecting and sharing MGR samples and data, and develop interim guidelines related to benefit-sharing.

3. DEVELOPING CAPACITY, SCIENCE AND TECHNOLOGY

An equitable BBNJ Agreement must help ensure that all Parties have the capacity to contribute to, and benefit from the conservation and sustainable use of BBNJ.¹³ There are several ways to prepare capacity for the implementation of all four package deal elements.

Assessing needs and priorities for capacity building and technology transfer, at the national and regional levels. It is important to secure targeted support, including financial support as early as possible. UN Agencies and intergovernmental bodies, non-governmental organisations (NGOs) and academia can collaborate on a global assessment of the capacity-building landscape to identify and examine infrastructure for BBNJ-related activities, such as research vessels or laboratories for MGR analysis. The interim working group on finance could assist in securing start-up funding and potential donor match-making.

Preparing for marine protected areas (MPAs) and other ABMTs will require global- and regional-scale partnerships, coordination, and outreach.¹⁴ The first MPA proposals can be supported by e.g., compiling information, facilitating data exchange and building support. Other preparatory activities include building on areas with existing management measures by making their protection cross-sectoral, coherent and connected to other measures, and by supporting scientific work on MPA network design.

Preparing for EIAs and strategic environmental assessments (SEA) by identifying and addressing gaps in expertise for conducting EIAs. The building of domestic and regional capacities for EIAs and SEAs can take place through e.g., collaborative marine environmental research projects.

Advancing capacity for using MGR-related tools can help identify and demonstrate key conservation and sustainable use benefits of MGRs. The establishment of sufficiently resourced international scientific partnerships can enhance capacity and access to technology for marine scientific research including for MGRs.

Establishing new and capitalising on existing partnerships amongst States and other stakeholders could help States implement the BBNJ Agreement as a whole. The UN Decade of Ocean Science provides an opportunity to cooperate on ecosystem-based management. The development of a Global Plan of Action could advance BBNJ science capacity and technology needs for implementing the BBNJ Agreement.

An interim working group under the PrepCom could start developing a process for incorporating traditional knowledge into the work of the BBNJ Agreement, based on experiences from other conventions and processes.

Setting up a High Seas Finance Implementation Mechanism supported by public and private partners would help to start on vital preparatory work. The proposed partnership approach would allow for effective implementation from an early stage and would help to transition to a stable BBNJ funding model over time.¹⁵

¹¹ Clark, N. A. (2020). Institutional arrangements for the new BBNJ agreement: Moving beyond global, regional, and hybrid, Marine Policy 104143 <https://doi.org/10.1016/j.marpol.2020.104143>.

¹² Rosenne, S. (1998). International Tribunal for the Law of the Sea: 1996-97 Survey, the International Journal of Marine and Coastal Law 13, 487-514.

¹³ Santos, B. S. et al. (2022). The diverse benefits of biodiversity conservation in global ocean areas beyond national jurisdiction, Front. Mar. Sci. 9, <https://doi.org/10.3389/fmars.2022.1001240>.

¹⁴ Wright, G., Bouvet, M., Cremers, K. & Rochette, J. (2022). Conserving the global ocean: initial indications for effective area-based management tools on the high seas, <https://www.iddri.org/en/publications-and-events/report/conserving-global-ocean-initial-indications-effective-area-based> (IASS, STRONG High Seas Project).

¹⁵ Thiele, T. (2022). Innovative High Seas Finance Mechanisms for the future instrument 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 (BBNJ), <https://www.iucn.org/sites/default/files/2022-08/iucn-bbnj-policy-brief-finance-mechanisms-v03-final-web.pdf> (Gland, Switzerland, IUCN Headquarters: IUCN).

FIGURE 1. Fast-tracking the implementation of the BBNJ Agreement



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