



## Notable Changes to BBNJ Convention Document to Date

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Below are the notable changes to the BBNJ document following the November 2019 Session, broke down by section. Some notable issues pertain to the downplaying the importance of best available science in reviewing implementation of area-based management tools (ABMT) and stripping language that may allow the Convention to supersede RFMOs. Furthermore, some terms and instruments in BBNJ are undefined and ambiguous – such as how a Scientific and Technical Body (to review proposals of ABMT) is created or the process to create it.

### PART I GENERAL PROVISIONS

#### Article 1 - Use of terms

Removal of the definition for ‘utilization of resources’ in the BBNJ document: [15. *Alt. 2. “Utilization of resources” means the taking, harvesting, recovery, extraction, collection, analysis, processing or use for commercial purposes, or that results in commercial advantage, of or from resources of actual or potential value located in areas beyond national jurisdiction.*]

#### Article 4 - Relationship between this Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies

The text suggesting that the Convention *promotes coherence and coordination with those instruments, frameworks and bodies* was removed. This is bothersome for obvious reasons and sets the stage for BBNJ to supersede RFMOs

### PART III MEASURES SUCH AS AREA-BASED MANAGEMENT TOOLS, INCLUDING MARINE PROTECTED AREAS

#### Article 14 – Objectives

The text in line c) suggest an objective of this section of BBNJ is to conserve and sustainably use areas requiring protection is through a *comprehensive system of area-based management tools*. A ‘comprehensive system’ is ambiguous, undefined, and can be interpreted that ABMT implementation should be a network with shared objectives.

#### Article 15 - International cooperation and coordination

The most profound modification is the omission of Paragraph 4, crossing out the language protecting BBNJ from superseding RFMOs. Removed text: *In promoting cooperation and coordination under this article, States Parties shall not undermine [existing] relevant legal instruments and frameworks and relevant global, regional and sectoral bodies*. In Paragraph 3, the text was revised to suggest that State Parties should make arrangements for consultation and coordination with ‘relevant legal instruments’

#### Article 16 - Identification of areas [requiring protection]

The language in Paragraph 1 suggests that relevant *traditional knowledge of indigenous peoples and local communities* should be weighed equally to science under what is considered best

available scientific information. Original text says that traditional knowledge be taken into account, rather than suggest it has equal or more merit to factual science.

An improvement to the BBNJ text was in Paragraph 4 of this section which states that proposals for implementation of ABMT be reviewed by a Scientific and Technical Body. This codifies that implementation itself is to be reviewed by this body, rather than have it for simply identifying areas themselves for designation or establishment. Criteria for implementation was added in an annex.

#### Article 17 – Proposals

Language in Paragraph 3 was weakened to be in congruence with the above described text in Article 16, Paragraph 1 that downplays the use of best available science for selecting proposals for ABMT implementation

#### Article 18 - Consultation on and assessment of proposals

Paragraph 2 suggests that proposals be transmitted to Scientific and Technical Body for a ‘preliminary review.’ Why not have them make a more official review and revisions from their input be mandatory, rather than treated as merely suggestions?

#### Article 19 - Decision-making

Paragraph 1 removes the text stating that *relevant legal instruments and frameworks and relevant global, regional and sectoral bodies in the [establishment] [designation] of area-based management tools, including marine protected areas* be instruments in decision making for implementation of ABMT. In other words, it could lead to RFMOs being stripped of having input on making decisions on the matter.

Paragraph 2 was deleted, which stated decision making was by consensus.

Paragraph 3 was deleted, which stated decisions on the matter be transmitted to the public, relevant legal bodies, and adjacent coastal states.

#### Article 20 – Implementation

The deletion of original Paragraph 7 removes text stating that *relevant legal instruments and frameworks and relevant global, regional or sectoral bodies are responsible for the implementation and enforcement* of CMMs and ABMT. So what other instrument will formulate recourse for not complying?

#### Article 21 – Monitoring and Review

Text was removed that holds the onus of monitoring the implementation of ABMT on States that propose their implementation. The omission of this text is worrisome because it can create cadres of States to make proposals for implementing ABMT in other States’ adjacency without having any responsibility themselves.

#### ANNEX I Indicative criteria for identification of areas [for ABMT]

A single criteria for identifying areas for implementation of ABMT combines biological productivity with biological diversity. Rather than separating them, this reduces the importance of productivity relative to diversity. The two are not the same.

The addition of 'cultural factors' as a single criteria as its own without specification opens this criteria up for unnecessary ambiguity.

Please see my notes on these matters. Perhaps outcomes of our *International Workshop on Area-Based Management of Blue Water Ecosystems* can serve as a conduit of information to fill gaps with respect to implementation criteria based on best available science?

- Compiled, Mark Fitchett