

May 2023

## **Summary of BBNJ IGC5 Relevant to Fisheries**

### **Introduction**

An intergovernmental conference (IGC) at the United Nations successfully concluded negotiations on a new agreement on the conservation and sustainable use of “marine biodiversity beyond national jurisdiction” (BBNJ) on March 4, 2023. The Agreement is designed as an implementing agreement under the Law of the Sea Convention (the Convention) and covers four main topics: area-based management tools, including marine protected areas; marine genetic resources, including sharing of benefits; environmental impact assessments; and capacity building and the transfer of marine technology. The IGC will reconvene in June to formally adopt the text in all six official UN languages.

The United States supports the BBNJ Agreement’s objectives to achieve science-based conservation and sustainable use of BBNJ while protecting high seas freedoms and promoting marine scientific research. In particular, this is a once-in-a generation opportunity to coordinate the conservation and sustainable use of high seas biodiversity across management regimes, including establishment of high seas MPAs. The Agreement promotes and enhances cooperation among relevant instruments and frameworks, and relevant global, regional, subregional, and sectoral bodies, while not undermining those instruments, frameworks, and bodies.

The BBNJ Agreement has implications for vital long-term interests of the United States and its stakeholders, including sustainable management of fisheries. The United States understands that conservation and sustainable use need to support healthy marine ecosystems, livelihoods and economic security, as well as food and nutritional security. This paper summarizes the finalized text at the close of the resumed fifth IGC, specifically relevant to fisheries.

## **Area-based Management Tools, Including Marine Protected Areas**

Area-based management tools (ABMTs), including marine protected areas (MPAs), are important for the sustainable management and conservation of marine ecosystems and their resources. The establishment of ABMTs, including MPAs, under the BBNJ Agreement should be a collaborative process that builds and relies on global, regional, subregional, and sectoral bodies that have jurisdiction over activities in these areas. Where bodies exist with the competence to manage a particular activity in a geographic area, the BBNJ COP has the ability to recommend actions to those bodies. The BBNJ COP has the ability to fill gaps by adopting management measures where instruments or frameworks or global, regional, subregional, or sectoral bodies do not have the competence to do so or do not exist.

### **Area of Application**

ABMTs shall not include any areas within national jurisdiction.

### **Proposals**

Proposals for ABMTs, including MPAs, shall be submitted by BBNJ Parties to the BBNJ Secretariat. Proposals shall include:

- a description and geographic coordinates of the area;
- information on the science-based criteria – contained in Annex I of the Agreement – applied in identifying the area;
- any activities taking place in the area that may threaten or impact biodiversity in the area;
- a draft management plan, including any proposed management measures for activities in the area; and
- a recommended monitoring, research, and review plan.

Parties shall consult, as appropriate, with relevant global, regional, subregional, and sectoral bodies and other stakeholders in the development of proposals.

## **Assessment, Consultation & Establishment of ABMTs**

The BBNJ Scientific and Technical Body (STB) will review proposals for ABMTs, including MPAs, using the criteria established in the Agreement, and provide advice to the COP.

The Secretariat shall facilitate consultations on proposals with all relevant stakeholders, including interested States; relevant legal instruments and frameworks and relevant global, regional, subregional, and sectoral bodies; Indigenous Peoples and local communities with relevant traditional knowledge; the scientific community; the private sector; and civil society. Consultations shall be inclusive and transparent.

Based on advice from the STB and on consultations with all relevant stakeholders, the COP will take decisions on establishing ABMTs, including MPAs, and the proposed management plan, including related measures. Where proposed measures are within the competence of other instruments, frameworks, and bodies, the COP may make recommendations to those instruments, framework, and bodies. BBNJ Parties shall promote, as appropriate, the adoption of these recommendations in those instruments, framework, and bodies to which they are also a party.

The COP shall respect the competences of, and not undermine, relevant legal instruments and frameworks and relevant global, regional, subregional, and sectoral bodies.

The COP may consider and decide, as appropriate, to develop a mechanism to recognize ABMTs, including MPAs, adopted by other instruments, frameworks, and bodies.

In the cases where the COP establishes an ABMT, including an MPA, that subsequently falls partly or wholly within a newly established or amended competence of a relevant legal instrument or framework or relevant global, regional, subregional or sectoral body, the ABMT or MPA would remain in force until the COP reviews the ABMT or MPA, in close cooperation and

coordination with such instrument, framework, or body, and decides to either maintain, amend, or revoke the ABMT or MPA.

## **Decision-Making**

As a general rule, COP decisions on ABMTs shall be taken by consensus. If two-thirds of the Parties agree that all efforts to reach consensus are exhausted, the COP can take decisions by a three-fourths majority vote.

A Party can object/opt-out of a decision of the COP regarding an ABMT or MPA management measure on a limited number of bases for 3 years, with the ability to renew the objection. Parties that object to a decision shall, to the extent practicable, adopt alternative measures or approaches that are equivalent in effect to the decision and shall not adopt measures nor take actions that undermine the effectiveness of the decision unless such measures or actions are essential for the exercise of rights and duties of the objecting Party in accordance with the Convention. Decisions by the COP and objections shall be made publicly available.

## **Emergency Measures**

The COP can, when necessary and when an IFB with competence cannot take timely action to do so, adopt temporary emergency measures (for at most 2 years) in the event of a natural phenomenon or human-caused disaster that causes or is likely to cause serious or irreversible harm.

“Serious or irreversible harm” is not defined in the Agreement, but is understood to be a higher bar than “significant adverse impact” as used in the EIA part of the Agreement.

## **Monitoring and Reviewing ABMTs, including MPAs**

The COP will adopt, implement, monitor, and review ABMTs and MPAs it establishes and any management measures it adopts in relation to ABMTs and MPAs it establishes. The COP may also monitor and review management measures recommended to relevant legal instruments and

frameworks and relevant global, regional, subregional, or sectoral bodies in relation to ABMTs and MPAs established by the COP.

Relevant legal instruments and frameworks and relevant global, regional, subregional, or sectoral bodies remain responsible for monitoring and reviewing any management measures adopted by those bodies in relation to ABMTs and MPAs established by the COP. These bodies may be invited to report on such matters to the COP.

### **Environmental Impact Assessments**

The Agreement uses a tiered threshold system for environmental impact assessments. Parties shall undertake screening for any activity under their jurisdiction or control that may have more than a minor or transitory effect, and a full EIA for any such activity that triggers the threshold in Article 206 of the Law of the Sea Convention. Article 206 of the Convention provides that when States have reasonable grounds for believing that planned activities under their jurisdiction or control may cause substantial pollution of or significant and harmful changes to the marine environment, they shall, as far as practicable, assess the potential effects of such activities on the marine environment. EIAs shall also include assessment of cumulative impacts.

EIAs under the BBNJ Agreement are required only for activities that occur in areas beyond national jurisdiction; however, for activities that take place within national jurisdiction that have impacts in ABNJ, Parties shall conduct EIAs under existing national processes (or in accordance with the BBNJ Agreement) and ensure the activity is monitored and certain information is made available through the clearinghouse mechanism.

An EIA for an activity in areas beyond national jurisdiction is not required pursuant to the BBNJ Agreement if the State with jurisdiction or control over the activity determines that an assessment has been carried out under another instrument, framework, or body, such as an RFMO, and that a) the assessment is equivalent to the BBNJ EIA process, or b) regulations or

standards set by the other instrument, framework, or body arising from the assessment were designed to prevent, mitigate, or manage potential impacts of an activity below the threshold for environmental impact assessments and have been complied with. This BBNJ Agreement, or any bodies set up under it, cannot mandate requirements for EIAs conducted under other instruments, frameworks, or bodies, but BBNJ Parties are required to promote the use of BBNJ guidelines and standards for EIAs in those contexts.

### **Marine Genetic Resources**

The Marine Genetic Resources (MGR) part of the Agreement does not apply to fish taken as a commodity or to fishing or fishing related activities.

### **Capacity Building and Transfer of Marine Technology**

The Capacity Building and Transfer of Marine Technology part of the Agreement would not apply to fisheries directly.

### **Cross Cutting Issues**

The Agreement should promote coordination with and not undermine relevant legal instruments and frameworks and relevant global, regional subregional and sectoral bodies.

The COP shall make every effort to adopt decisions by consensus; however, if consensus has been exhausted without agreement, decisions shall be taken by a vote.

The STB will be composed of members working in their expert capacity, and who have been nominated by Parties, and elected by the COP. The STB can draw on the expertise of relevant legal instruments and frameworks and relevant global, regional, subregional, and sectoral bodies, as appropriate.

A clearinghouse mechanism will serve as a centralized platform to enable Parties to have access to and share information relating to this Agreement. It should build upon and connect with existing mechanisms to improve coordination and efficiency.

The dispute settlement provisions are similar to those in the UN Fish Stocks Agreement.

The Implementation and Compliance Committee will be facilitative and non-punitive in nature.