



AN AMBITIOUS NEW OCEAN TREATY

- WHAT NEEDS TO BE DONE NOW AND WHY

A WWF BRIEFING NOTE FOR LEADERS AND NEGOTIATORS

JUNE 2022

Governments are poised to come together in late August at the United Nations in New York for a fifth session of the international conference to negotiate **a new legally binding instrument under UNCLOS on the conservation and sustainable use of biodiversity of areas beyond national jurisdiction** – the BBNJ Ocean Treaty.

It is important that the treaty is ambitious enough to tackle the current and potential future problems facing the ocean, thus helping to ensure ocean health for current and future generations. It is also important that negotiators are given the political signal to finish the job so that the treaty can enter into force and be implemented without delay. The ocean is under pressure, and the BBNJ Ocean Treaty can and must help alleviate that pressure. Only then can we set the ocean on a path to recovery and sustainability.

WWF is working to assist governments in this task, and we have produced this two-part brief as part of this effort.

This document has two parts:

1. *A high-level message for Leaders* on what is still needed to make the BBNJ Ocean Treaty ambitious, change the status quo and fulfil high-level pledges made for our ocean and our planet
2. *A more detailed section for negotiators* identifying the specific areas of the text and other issues that need addressing, and that WWF regards as sufficiently important to warrant bringing to the attention of Ministers and senior officials of key States at this late stage of negotiations.

A HIGH-LEVEL MESSAGE FOR LEADERS

Dear Leaders,

WWF welcomes the many commitments to conserve and sustainably use the ocean over the past decade. High-level political statements such as the Leaders' Pledge for Nature, the Global Ocean Alliance and the High Ambition Coalition for Biodiversity in Areas Beyond National Jurisdiction, as well as global agreement by States at the United Nations General Assembly on the 2030 Agenda for Sustainable Development, including SDG 14 for the Ocean, are important commitments that we urgently need to see implemented.

In these declarations, States continue to state their ambition to establish marine protected areas (MPAs), and the new Global Biodiversity Framework currently under negotiation suggests a global and national target of 30% protected area coverage at sea by 2030 (30 by 30). This ambition will only be achieved with a robust and effective mechanism for the declaration and effective management of marine protected areas and other effective conservation measures in areas beyond national jurisdiction (ABNJ). This is where the BBNJ Ocean Treaty comes in.

Currently, the ocean beyond national jurisdiction of states is managed via a patchwork of international agreements that each cover only a sector or a region, and none that provides a comprehensive system for protecting the marine environment, its species and habitats. Some activities, such as cable laying – so important for our internet-based economies and communications systems of today – are not covered by any agreement or management arrangement at all. In light of increasing activities in these areas, and the impacts of relatively new problems such as plastic pollution, there is an urgent need to ensure all human activities in this area are managed through a holistic approach that has biodiversity (ocean life) and ecosystem functions (and services to humanity) at its heart.

Growing scientific understanding identifies the importance of high levels of ecological connectivity across vast ocean distances, reflecting the large number of marine migratory and widely distributed species, from great whales to tiny microbes. Management of our ocean needs to reflect this interconnectedness.

In 2011, governments recognised the problem of fragmentation and gaps in how ocean space and resource management is done. And in 2018, the UN launched negotiations for a new global and legally binding ocean treaty to take a more holistic approach to the conservation and sustainable use of marine biodiversity in areas beyond the national jurisdiction of coastal states – the BBNJ Ocean Treaty.

The treaty is being negotiated as an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ). In effect, it will complement the Convention of Biological Diversity (CBD) by improving the legal framework applicable to areas beyond national jurisdiction.

After four scheduled sessions of the conference to negotiate this new global legally binding BBNJ Ocean Treaty, there is still much to play for to ensure that the treaty is ambitious, fit for purpose and future proof. The August session must result in a strong text that matches the high-level declarations of leaders and commitments by States.

What needs to be done now?

We are at an important stage of the BBNJ Ocean Treaty negotiations. After a two-year pause in diplomatic negotiations, there is a strong desire to ‘get this done’ with growing confidence that agreed text can be adopted, or at least substantially resolved, at the next meeting of negotiators in August 2022.

Leaders must now ensure that negotiators include what is still needed in the text to make the BBNJ Ocean Treaty ambitious, change the status quo and fulfil high-level pledges for our ocean. Over the past few years, political leaders have said they want a robust and ambitious BBNJ Ocean Treaty, including in the Leaders’ Pledge for Nature, the Global Ocean Alliance and the High Ambition Coalition for BBNJ declarations. **Now it is time for their officials to deliver on this political will by making the right choices and important changes in the current treaty text** - for the sake of that half of the planet that lies beyond national jurisdiction.

This brief sets out the key points WWF believes are needed for the BBNJ Ocean Treaty to be the ambitious, equitable, robust and implementable agreement that is needed and required to meet the challenges of today and tomorrow with regards to the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction.

While the latest revision significantly tidies up and improves the text, treatment of Marine Protected Areas and Environmental Impact Assessment could do with further clarity. Overall, the new Revised Draft Text is comprehensive and has clearly presented options, with alternative articles and bracketed text, making it a good basis for negotiation – but there is still a lot to negotiate.

Consistent with WWF’s established role of facilitating a consensus to adopt, and then universally implement, a global Multilateral Environmental Agreement for the ocean that can promptly enter into force, we have here identified those issues where it really matters how they are finally resolved in any text that might be adopted.

Key issues to be resolved in short:

1. **Enhanced cooperation:** When the 2011 UNGA adopted its ‘package’ of main issues/topics to be addressed by the BBNJ Ocean Treaty, States clearly wanted a robust and ambitious agreement. Their oft-repeated statement that ‘the *status quo* is not an option’ captured the ambition to move past the isolated sectoral ‘silo’ approach in wishing to effectively address shared concerns for both ocean governance and ocean management. WWF believes that this ‘high ambition’ needs an ‘enhanced cooperation’ regime that fills gaps in existing arrangements, elaborates and operationalises the UNCLOS general duty to cooperate, and facilitates cooperation to implement the many obligations and commitments set out in applicable provisions of treaties and relevant decisions of international bodies.
2. **Marine Protected Areas:** The treaty needs to fill the legal gap under UNCLOS to set out a globally recognised mechanism for establishing MPAs in ABNJ that includes a BBNJ Conference of the Parties (COP) in charge of designating MPAs in ABNJ.
3. **Environmental Impact Assessment:** Operationalising the obligation set out in UNCLOS to subject all planned activities in ABNJ to an environmental impact assessment (EIA) process, regardless of their projected environmental impact, as part of States’ duty to protect and preserve the marine environment, was also identified as a key implementation gap.

4. **Marine Genetic Resources:** Additionally, States remain keen to resolve the diplomatic stand-off over choice of regime for handling marine genetic resources issues and this revision of the text should be helpful in framing the decisions that need to be made by negotiators.
5. **Capacity Building and Transfer of Marine Technology:** Lastly, and most importantly, in adopting their Sustainable Development Goals and associated Targets, States have committed to doing more to help and support each other, including through strengthening capacity building and technology transfer arrangements. There is much that can and should be done through implementing an ambitious BBNJ Ocean Treaty – including proper reporting so that progress can be followed.

WWF is pleased to share below more detail aimed at negotiators on these few remaining key issues that we believe need to be resolved at this late stage of negotiations to help make the BBNJ Ocean Treaty fill the governance gaps it was set out to do.

I kindly urge you to bring the **Outstanding Key Issues brief** following on from this introductory note to the attention of your BBNJ negotiators.

Thank you.

Sincerely, for the Ocean,

A handwritten signature in blue ink, appearing to read 'Marco Lambertini', with a stylized flourish at the end.

Marco Lambertini
Director General WWF International

OUTSTANDING KEY ISSUES BRIEF FOR NEGOTIATORS OF THE BBNJ OCEAN TREATY

This brief sets out the remaining key changes that WWF is still calling for, at this late stage of negotiations. Without these key changes, the BBNJ Ocean Treaty will fail to reach the ambition necessary to help ensure conservation and sustainable use of biodiversity in ABNJ and plug the governance gaps that make integrated ecosystem-based management such a challenge.

Over the past five years, WWF has produced a suite of BBNJ briefings that elaborate on these issues and how they might best be resolved. **A selection of these briefings can be accessed [here](#).** WWF is also producing a shadow text with more detailed suggestions throughout the Revised Draft Text, as well as submitting text proposals via the DOALOS process.

Enhanced cooperation objective

Article 2 – Objective needs to explicitly include implementing the provisions of all relevant international agreements and the decisions of all relevant international bodies, not just the provisions of UNCLOS. The key phrase is to **simply say, ‘all applicable international law, including but not limited to UNCLOS’** which would then create the mandate for ‘enhanced cooperation’. We need holistic, ecosystem-based integrated ocean management, leaving behind the days of isolated bodies acting in their uncoordinated, narrow silos. The ecological connectivity of dynamic ocean systems requires an equally connected and dynamic governance and management culture.

Creating and implementing a BBNJ Ocean Treaty gives us an historic opportunity to create a new culture of cooperation and collaboration. The somewhat negatively expressed political commitment to ‘not undermining’ existing arrangements needs to be given positive legal effect through ‘enhanced cooperation’ to accelerate implementation of those arrangements.

Capacity building and transfer of marine technology

WWF welcomes new text providing for a working group or a committee to facilitate and oversee implementation. Clarity is still needed to **ensure the scope of support includes anything relevant to conserving or sustainably using the biodiversity of ABNJ** including relevant actions by coastal States in managing their EEZs and by States in implementing the provisions of all relevant agreements and the relevant decisions of bodies established under those agreements. Further clarity is needed to ensure adequate reporting is mandatory to allow progress to be routinely monitored and reviewed from time to time.

Financial mechanism

Current Article 52: Financial resources and financial mechanism need to be treated in separate articles (currently together in Article 52). This separation is needed to clarify that existing financial arrangements involving myriad relationships across States, corporations and civil society, is where the heavy lifting will – and should - continue to be done. A new financial mechanism can add to and complement existing arrangements.

Regional implementation option

Article 6 – International Cooperation – new Article 6.1(i) is needed to create an option for States wishing to organise at the regional, ocean-basin, scale to request a devolution of powers from the BBNJ Conference of the Parties (COP) to a suitable regional arrangement. **This is the scale at which ecological and political realities best align to allow for ‘regional implementation of global**

standards’. It is important to allow States to choose the scale at which to organise to best reflect their interests in implementing the BBNJ Ocean Treaty.

While reiterating general obligations to cooperate is welcome, as an implementing agreement, it is important that the BBNJ Ocean Treaty provides some substance as to how improved cooperation is to be facilitated in practice. A ‘regional implementation of global standards’ approach offers flexibility to States with an interest in a region to collaborate. For example, many developing coastal and island States are keen to see recognition of their ‘adjacency’ concerns over issues such as traditional knowledge and conservation burden fairness, and this is best done at a regional scale.

Marine protected areas (MPA)

Having a BBNJ COP that can designate MPAs with ‘highly protected’ management sufficient to ensure that conservation purposes are delivered remains a top priority for WWF for an ambitious BBNJ Ocean Treaty.

The current Revised Draft Text option for a MPA definition that makes it clear that MPAs are for ‘conservation’ is welcome (Article 1.3(Opt.B)(a)). **It is critical that this option is agreed.**

The two options for **Article 19** on decision making, however, do not adequately describe the process. **Setting out a clear process for establishing MPAs, including designation by the BBNJ COP, needs to be separated from general cooperation arrangements for dealing with other Area-Based Management Tools designated by other, existing bodies.** WWF strongly suggests that ABMTs other than MPAs are dealt with in a separate track in the treaty text. Negotiations would be significantly assisted if the issue of the establishment of MPAs, including designation by the BBNJ COP and the role of competent sectoral bodies in management, was separated out into a separate Section 1 of Part III.

WWF therefore suggest a **third option for Article 19 that clearly provides for:**

- (i) **the BBNJ COP to ‘designate’ MPAs in ABNJ, and**
- (ii) **the BBNJ COP to adopt Management Plans for these MPAs, while**
- (iii) **providing a role for competent sectoral bodies** willing and able to contribute to regulating activities to implement those plans.

Consideration of **other ABMTs** could then be dealt with as a matter of enhanced cooperation and coordination where, depending on how each kind of ABMT should be dealt with, relevant text could be included in a Section 2 of Part III or included in existing or new Articles in Part I.

(We have explained this in detail in our IGC4 brief Establishing Marine Protected Areas in Areas Beyond National Jurisdiction, which can be accessed [here.](#))

Other ABMTs, mainly designated by sectoral bodies with competencies to regulate fisheries, shipping or mining activities, regardless of the reasons for which they were designated, have good potential to contribute to implementing the conservation and sustainability objectives of the BBNJ Ocean Treaty, including in contributing to the design and development of networks of MPAs.

This is because there is considerable overlap between the criteria used by sectoral competent bodies in identifying ABMTs useful to them and the criteria to be used by the BBNJ COP in identifying candidate areas for designating as MPAs. The CBD has developed a process for identifying such sectoral ABMTs as ‘other effective conservation measures’ (OECMs) capable of making contributions to the development of MPA networks.

Environmental impact assessments (EIA)

Reference to UNCLOS Articles 204-206 (in the section on protecting and preserving the marine environment) as the basis for an EIA regime is most welcome. Importantly, **this part of UNCLOS applies to all planned activities – no exemptions or exceptions – thus including all port-to-port shipping voyages and commercial fishing trips, however small. The EIA process then needs to be guided by a set of thresholds set out in Standards and Guidelines to the agreement.** It is important that all operators know and understand that their activities in ABNJ are covered by the EIA regime. The BBNJ COP should therefore be given the responsibility to adopt comprehensive EIA Standards and Guidelines for the conduct of EIA by States exercising their sovereign rights under UNCLOS, as coastal states within their EEZs and as flag states in ABNJ. The BBNJ Ocean Treaty then needs to set out how EIAs are to be conducted for activities in ABNJ.

Firstly, **Article 23.5**, which currently says, ‘It is not necessary to conduct an [EIA] ...’ if certain conditions are met, needs to be **reworded so that this unilateral judgement by a flag State becomes an initial threshold test as an integral part of an EIA regime for ABNJ** (and thus covered by standards and guidelines). It is important that all operators know and understand that their activities in ABNJ are covered by the EIA regime. While the new Draft Text significantly improves and clarifies the EIA process, there are two outstanding problems that still need addressing:

1. If a planned/proposed activity triggers the initial threshold test, **the responsible State must be required to refer the proposal to the relevant competent sectoral body (ISA, IMO or an RFMO) for further assessment.** This is what it means for the BBNJ Ocean Treaty to be ‘an instrument under UNCLOS’ – in ABNJ, activities are controlled and managed by States cooperating with each other through participation in sectoral arrangements. EIA is no different. Such an approach then readily allows States to address cumulative impacts – by collective assessment of multiple proposed activities of a similar type (types of ships using an international shipping route or types of fishers participating in an international fishery). There are obvious synergies and efficiencies for States in working cooperatively in ABNJ in this way.
2. There needs to be a **second threshold test whereby an appropriate level of assessment can be selected by the relevant competent body, given the nature and severity of the likely impacts involved** (for likely serious, complex, or cross-sectional impacts, the BBNJ COP itself could be asked to conduct or contribute to the assessment). The current Draft Text has an all-or-nothing- approach which creates a huge disincentive to properly assess likely impacts because it will be regarded as too onerous in most instances. Such flexibility of choice in level of assessment is also needed to be able to respond positively to work already done either by sectoral bodies in adopting measures to mitigate impacts or by scientists in conducting baseline studies and strategic environmental assessments (SEA). To this end, selecting Option 1.A in Article 41ter on SEA is critical.
3. Providing a significant role **for Strategic Environmental Assessments (SEA)** is really important not only as part of EIA but also as a **proactive information support tool** for all decision-makers by contributing to operationalising ‘enhanced cooperation’. Proactive SEA thus needs to be a **priority for capacity building and transfer of marine technology, especially in strengthening the science community in developing countries** not only in contributing to baseline studies and basic monitoring of the marine environment but also in providing informed advice to decision-makers and managers responsible for conducting and controlling activities.

WWF is particularly mindful of the importance of providing capacity building and transfer of marine technology support for implementing and maintaining the work of the IOC in recent years in developing a global ocean observation system (GOOS) to monitor a suite of physical, chemical and biological essential ocean variables (EOV). This system tracks changes of characteristics chosen for their importance for ecosystem health and sustainable use. Monitoring EOVs can then be used to prioritise issues and areas where SEA can best contribute to improved decision-making at both short-term and longer-term time-scales. The quality of EIA would thus be much improved in benefitting from customary conduct of SEAs driven by EOV monitoring results, making EIAs better informed and more cost-effective.

Marine genetic resources (MGR)

A *sui generis* regime is needed for MGR, leaving behind the irreconcilable standoff between States wanting existing high seas freedoms or common heritage of mankind regimes to apply. **The new text represents a significant step in this direction and States now need to choose between options that have been well laid out in the new Draft Text to secure a workable way forward.**

For WWF, it is particularly important that States are obliged to require users of MGRs and derived products to document their origin so that any benefit sharing arrangements that might be introduced pursuant to national legislation can be properly implemented. A key consideration for WWF is that the MGR regime in ABNJ is sufficiently robust so as not to create loopholes that undermine coastal state regimes by creating incentives to misreport the location of in situ collections.

Institutional arrangements

A strong BBNJ COP is needed. This requires a dedicated subsidiary body on scientific, technical and technological advice (SBSTTA) with a mandate that includes adequately addressing traditional knowledge issues and the freedom to initiate activities in pursuit of its mission pursuant to its own procedures.

Article 49 thus needs amending to **clarify that the proposed ‘Scientific and Technical Body’ is actually a ‘Subsidiary Body ...’** and consequential changes then made throughout the Draft Text. There is an inescapable conundrum in that the more powerful and influential the advisory body is, the more likely it is to suffer political interference.

WWF is proposing a subsidiary body for two principal reasons:

- (i) in wanting the BBNJ COP to be the international community’s recognised ‘voice for the oceans’, it needs to have its own advisory body in support of that voice; and
- (ii) there are numerous other more independent – and not so independent - processes and bodies generating knowledge, information and understanding of the oceans such that what is needed is not another such body but a body charged with integrating the information from all these sources into timely and effective advice.

For more information, please contact jessica.battle@wwf.se and oceanpolicy@wwfint.org

WWF’s set of key briefings on BBNJ can be accessed [here](#).