

**Convention on
Biological Diversity**Distr.: General
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**Legal expert workshop to review
modalities for modifying the descriptions
of ecologically or biologically significant
marine areas and describing new areas**
Oslo, 23–27 November 2023**Report of the legal expert workshop to review modalities for
modifying the descriptions of ecologically or biologically
significant marine areas and describing new areas^{*}****Note by the Secretariat****Introduction**

1. At its tenth meeting, in 2010, the Conference of the Parties to the Convention on Biological Diversity requested the Executive Secretary to work with Parties and other Governments as well as competent organizations and regional initiatives, such as the Food and Agriculture Organization of the United Nations (FAO), regional seas conventions and action plans, and, where appropriate, regional fisheries management organizations (RFMOs) to organize a series of regional workshops to facilitate the description of ecologically or biologically significant marine areas (EBSAs) through the application of the scientific criteria given in decision IX/20, annex I.
2. Between 2011 and 2019, the Secretariat convened 15 regional workshops to facilitate the description of EBSAs. Organized in collaboration with Parties, other Governments and international organizations and with significant scientific input from scientific experts from around the world, these workshops have facilitated the description of 338 areas meeting the criteria.¹
3. The Conference of the Parties has been discussing ways to improve the since 2014, by developing practical options to further enhance scientific methodologies and approaches to describe areas meeting the scientific criteria (decisions 12/22; 13/12; 14/9). Discussions on that issue, most recently held at the fifteenth meeting of the Conference of the Parties, have brought forth valuable insights, but the Conference of the Parties has unfortunately not yet been able to agree on modalities for modifying the descriptions of ecologically or biologically significant marine areas and for describing new areas through means other than regional workshops organized by the Secretariat.
4. With a view to advancing discussions on those issues, the Conference of the Parties, in its decision 15/26, requested the Executive Secretary to convene two expert workshops to, respectively:
 - (i) Review the technical aspects of the modalities under consideration; and

^{*} The present document is being issued without formal editing.

¹ See www.cbd.int/ebsa/.

- (ii) Review the legal issues pertaining to those modalities, on the basis of the outcomes of the technical workshop.
5. Pursuant to those requests, with financial support from the Governments of Belgium, Canada, Germany, Norway and Sweden, the Executive Secretary convened the legal expert workshop to review modalities for modifying the descriptions of ecologically or biologically significant marine areas and describing new areas from 23 to 27 November 2023. The workshop was preceded by the technical expert workshop to review modalities for modifying the descriptions of ecologically or biologically significant marine areas and describing new areas² from 20 to 24 November 2023, also in Oslo, with two overlapping days of joint sessions on 23 and 24 November 2023, to give participants in both workshops the opportunity to share views that relate to both technical and legal matters, and to ensure a common understanding between participants.
6. The workshop was conducted entirely in plenary sessions, which included thematic presentations with question-and-answer sessions, and moderated discussions. Mr. Gunnstein Bakke (Norway) and Ms. Daniela Diz (Heriot-Watt University and IUCN World Commission on Environmental Law) and were selected as co-chairs of the workshop, on the basis of their experience and expertise.
7. The workshop was attended by experts from Albania, Antigua and Barbuda, Argentina, Bosnia and Herzegovina, Brazil, Canada, Chile, China, Dominican Republic, Greece, Madagascar, Malaysia, Morocco, Mozambique, Norway, Romania, Russian Federation, South Africa, Sri Lanka, Togo, Türkiye, United Kingdom of Great Britain and Northern Ireland, Division for Ocean Affairs and the Law of the Sea of the United Nations, International Seabed Authority, IUCN, Heriot-Watt University/IUCN-WCEL.
8. The organization of work is contained in annex I.
9. A list of documents for the workshop is available on the workshop webpage, www.cbd.int/meetings/EBSA-EM-2023-02.
10. The workshop was conducted in English.

Item 1

Opening of the workshop

11. A representative of the Government of Norway, H.E. Cecilie Myrseth, Minister of Fisheries and Ocean Policy, delivered a special address to open the preceding technical workshop on 20 November (see report of the technical workshop).
12. The participants of the legal expert workshop were welcomed by Mr. Gaute Voigt-Hanssen, Policy Director, Department of Sustainability and Transition of the Ministry of Climate and Environment of the Government of Norway. Mr. Voigt-Hanssen acknowledged the financial contributions of Belgium, Canada, Germany and Sweden to these workshops, which Norway was pleased to host. He briefly outlined the role of the participants in the legal workshop, who were asked to help to translate the issues from technical to legal language, and provide clarity, legally sound and pragmatic advice to help to advance this important issue to ensure a successful outcome at the sixteenth meeting of the Conference of the Parties to the CBD in 2024.
13. A representative of Mr. David Cooper, Acting Executive Secretary of the Convention on Biological Diversity, delivered opening remarks. Mr. Cooper welcomed the participants to the workshop and thanked the Government of Norway for hosting it, providing the venue and arranging onsite support. He also thanked the Governments of Belgium, Canada, Germany and Sweden for providing the financial support that made these workshops possible. Mr. Cooper highlighted the importance of these workshops to advance discussions on the future of the EBSA process, an issue on which the Conference of the Parties has thus far been unable to agree. He reminded participants

² Documents for the technical expert workshop are available at www.cbd.int/meetings/EBSA-EM-2023-01.

that this process was launched more than a decade ago, at the tenth meeting of the Conference of the Parties to the CBD in Japan (2010). Shortly thereafter, the CBD community embarked on an epic journey around the world to map and describe areas that are the most important to the healthy functioning of the global marine ecosystem – known as “ecologically or biologically significant marine areas”. This journey has included more than 500 experts from more than 150 countries and described more than 338 EBSAs around the world; it has gained widespread global recognition and enhanced the conservation and sustainable of marine biodiversity. With the support of generous donors like the Japan Biodiversity Fund and the European Union, the many Governments that have kindly hosted and supported regional EBSA workshops, and valuable scientific partners, the EBSA process has now covered nearly every part of the of the global ocean and shown us where our conservation and management activities need to focus. He pointed out that, along the way, the EBSA process has also facilitated regional-scale collaboration, partnerships and information-sharing, helped to elevate attention and catalyse action for improved management, and identified knowledge gaps and areas in need of further research. He noted that the success of the Kunming-Montreal Global Biodiversity Framework, as well as other important instruments, such as the BBNJ Agreement, will depend not only on robust scientific information on marine biodiversity, but also on the scientific collaboration and synergies that the EBSA process has helped to build. He noted that different views have emerged on what the future of the EBSA process should look like, and that insufficient time and attention was available for the in-depth discussions needed to resolve these different views at recent meetings of the SBSTTA and COP, due to the focus on the development of the Framework. Nevertheless, it has been clear that that Parties see the outcomes of the EBSA process as one of the most valuable achievements of work under the Convention, and that EBSAs will be a critically important resource to support enhanced implementation of the goals and targets of the Framework. In closing, Mr. Cooper wished participants a fruitful meeting and stressed that this was an important opportunity to improve this process, in which so many governments, experts and organizations have invested so much.

14. A representative of the Secretariat introduced the workshop co-chairs, as well as the aims and approach of the workshop.

15. Following brief words of introduction from the co-chairs, participants provided brief self-introductions, which were followed by a synopsis of the discussion in the technical workshop thus far, provided by the co-chairs.

Item 2

Workshop background, objectives, scope and expected outcomes

16. Under this agenda item, a representative of the CBD Secretariat delivered a presentation on the background, objectives and purpose of the workshop, and an overview of the meeting documents.

17. Summaries of the above presentation and a summary of the discussion period that followed, are provided in annex III.

Item 3

Understanding the process under the Convention to facilitate the description of ecologically or biologically significant marine areas

18. In view of the many issues required for discussion, including those that arose during the preceding technical workshop, this item did not take place. Instead, recordings of relevant presentations delivered during the technical workshop were made available to the workshop participants.

Item 4

Ecologically or biologically significant marine areas in the context of the international ocean framework

19. Under this item, a representative of the Secretariat delivered a presentation on the role of ecologically or biologically significant marine areas in supporting the implementation and monitoring of the Kunming-Montreal Global Biodiversity Framework.
20. A representative of the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations Secretariat delivered a presentation on 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 and the potential role of ecologically or biologically significant marine areas.
21. A representative of the International Seabed Authority delivered a jointly prepared presentation on regional environmental management plans in the Area.
22. Summaries of the above presentations, and a summary of the question-and-answer and discussion period that followed, are provided in annex III.

Item 5

Experiences from other processes

23. In view of the many issues required for discussion, including those that arose during the preceding technical workshop, this item did not take place.

Item 6

Modification of descriptions of ecologically or biologically significant marine areas and description of new areas

24. A representative of the Secretariat provided an overview and explanation of the draft modalities, a review of areas of agreement and disagreement and how those are reflected in the draft modalities.
25. Participants were then introduced to the draft modalities in detail and invited to review and discuss them under each of the following subitems:
 - (a) General considerations in the modification of descriptions of ecologically or biologically significant marine areas and the description of new areas;
 - (b) Repository and information-sharing mechanism;
 - (c) Reasons for the modification of descriptions of ecologically or biologically significant marine areas;
 - (d) Proponents for the description and modification of ecologically or biologically significant marine areas;
 - (e) Modalities for modification and description.
26. Also under this agenda item, a representative of the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations Secretariat delivered a presentation on relevant experiences from procedures under the United Nations Convention on the Law of the Sea.
27. A summary of the presentations and ensuing discussions is provided in annex IV.

Item 7**Other documents related to the modalities for modification and description**

28. Under this item, it was expected that a representative of the Secretariat would deliver a presentation on guidance documents related to the modalities, namely, the draft terms of reference for the relevant expert advisory body, and the draft voluntary guidance for peer-review processes, followed by a review and discussion by participants. However, in light of the main focus of the workshop (reviewing and discussing the modalities) and the large number of issues within the modalities that still required discussions, there was not sufficient time to discuss this agenda item.

29. Furthermore, a number of participants noted that, overall, the role envisaged for a relevant expert advisory body in the context of the modalities as discussed at the workshop is already contained within the mandate of the Informal Advisory Group on EBSAs. It was also stressed that significant amount of discussion is still needed on the modalities themselves, and that the limited time available at the twenty-sixth meeting of the Subsidiary Body should be dedicated to arriving at consensus on the modalities. In this regard, it was recommended that deliberations on these two documents be deferred until significant progress in the deliberations on the modalities can be made by the Subsidiary Body and the Conference of the Parties.

Item 8**Next steps**

30. The co-chairs provided an overview of the workshop outcomes, which participants were invited to review and discuss

31. To conclude the meeting, a representative of the Secretariat explained the approach to the preparation of the report of the meeting, as well as the preparations for discussions on this topic at the twenty-sixth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice on the basis of the outcomes of the technical and legal expert workshops. He noted that the technical and legal expert workshops would have their own respective reports, and that, due to the limited time available to prepare documents for the twenty-sixth meeting of the Subsidiary Body, it would not be possible to solicit views and comments from participants on the workshop report. He also noted that the draft modalities to be provided to the twenty-sixth meeting of the Subsidiary Body will be a combination of the outcomes of the technical and legal workshops. Thus, they may not be identical to the outcomes of each workshop.

32. He also noted additional planned steps prior to the twenty-sixth meeting of the Subsidiary Body that are intended to facilitate improved understanding of the issues addressed in the modalities and to support productive discussions on this issue by the Subsidiary Body, namely:

- (a) Development of an information document to provide further explanation and clarification of the modalities will be made available for the Subsidiary Body;
- (b) Convening of a webinar to provide explanation and clarification of the modalities;
- (c) Soliciting of views (via notification) on the modalities to be provided to the Subsidiary Body prior to its twenty-sixth meeting.

Item 9. Closure of the workshop

33. The meeting closed at 4 p.m. on 23 November 2023.

Annex I

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Annex II

Summaries of presentations and plenary discussion under items 2-4

Item 2. Workshop background, objectives, scope and expected outcomes

Workshop background, objectives and purpose, and meeting documents

Mr. Joseph Appiott, CBD Secretariat

Mr. Appiott delivered a presentation outlining the background, objectives and purpose of the workshop, and introducing the meeting documents. During his presentation, he introduced the set of seven scientific criteria for EBSAs and provided a brief background and history on the EBSA process and a review of its progress. He also provided background and an overview of the issues to be discussed at the workshop and how these discussions have evolved over time. He noted that these discussions have taken different forms, with elements of the issues emerging in discussions during the thirteenth meeting of the Conference of the Parties in the context of means to incorporate best available scientific information and knowledge from various sources into the EBSA process. Emphasizing that EBSAs are a scientific and technical description of ecological and biological features of an area, he highlighted that different scientific, technical and political views have been put forward throughout these discussions and that progress has been made, albeit slowly, in arriving at a common understanding and a potential resolution. He noted that a more detailed review of the background and history of these discussions is provided in CBD/EBSA/EM/2023/1/INF/1, which was provided as information for the workshop. Noting that the technical workshop was to review the modalities from a technical perspective, this workshop was mandated to work on the basis of the outcomes of the technical workshop, reviewing the modalities from a legal perspective. Finally, he explained how the outcomes of this workshop, together with the outcomes of the technical workshop, will provide the basis for the discussions on this issue at the forthcoming twenty-sixth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice.

Summary of the question-and-answer session and plenary discussion

General reflections:

- Overall, the setup of two back-to-back workshops was found to be very useful. Participants of the legal workshop stressed the need to understand the EBSA process and discuss with the participants of the technical workshop to comprehend the flowcharts, in order to answer specific questions of a legal nature. While the participants of the technical workshop focused their discussions primarily on the mechanics of the modalities using the flowcharts, it was noted that the flowcharts will have to be translated into legal language and aligned with the text. The need to discuss the core areas of disagreement was emphasized.
- It was clarified that there will be specific questions of a legal nature to be dealt with that the technical workshop did not address.
- Participants of the legal workshop expressed the preference to discuss the draft text of the modalities as much as possible, rather than the flowcharts. It was explained that it would be possible to look at a specific text in the draft modalities when needed, but that due to time constraints, working on the full text would not be feasible. The importance of discussing what elements needed to be included in the text, without necessarily looking at the text directly, was emphasized.
- Situations where EBSAs cross multiple national jurisdictions were mentioned very briefly during this initial discussion. It was noted that it is up to the Parties within whose jurisdictions the EBSA lies to decide whether to proceed with the EBSA description in question.
- It was further emphasized this is a scientific and technical exercise, and, although it is embedded in a political process, jurisdictional issues should not be dealt with. It was acknowledged that such concerns exist and should be considered to some extent, their consideration should not compromise the work of the EBSA process and what it is trying to achieve. The need to balance these issues was noted.

- Participants noted that the adoption of the BBNJ Agreement is an important development that should be considered in the context of the EBSA process as the indicative criteria for identification of areas, contained in annex I of the agreement, are similar to the EBSA criteria. It was noted that the EBSA process will be very useful in facilitating the implementation of the BBNJ Agreement, particularly the area-based management tools, as the BBNJ Agreement currently lacks a process for applying the criteria in annex I. Again, however, it was stressed that the EBSA process is a scientific and technical exercise, EBSAs are not marine protected areas, and that the selection of tools is a matter for States to decide upon.
- There was a discussion on the CBD's mandate and scope in areas beyond national jurisdiction. It was explained that, as per Article 4 of the Convention, on Jurisdictional Scope, the Convention has a clear mandate in areas both within and beyond national jurisdiction in the case of processes and activities (e.g., the process of describing EBSAs). The Convention does not have a mandate with respect to management, thus the BBNJ Agreement would be the mechanism to address management measures in areas beyond national jurisdiction. Article 5 of the Convention, on Cooperation, was also pointed out in the context of the legal mandate of the Convention beyond national jurisdiction.

Item 4. EBSAs in the context of the international ocean framework

EBSAs and the Kunming-Montreal Global Biodiversity Framework

Mr. Joseph Appiott, CBD Secretariat

Mr. Appiott provided a brief overview of the Kunming-Montreal Global Biodiversity Framework, explaining that the Framework is part of a package of decisions on (i) resource mobilization, (ii) capacity-building and development, and technical and scientific cooperation, (iii) monitoring framework, and (iv) digital sequence information on genetic resources. Outlining the 4 outcome-oriented global goals to be achieved by 2050, and 23 action-oriented global targets to be achieved by 2030, Mr. Appiott emphasized, in particular, those targets for which EBSAs and EBSA information can support implementation and monitoring. These include targets 1-8 focused on reducing threats to biodiversity, targets 10-12 aiming toward meeting people's needs through sustainable use, and targets 14, 20, and 21, outlining tools and solutions for implementation and mainstreaming.

Mr. Appiott noted that key opportunities for EBSAs lie in identifying areas for spatial planning (target 1), restoration (target 2), protected areas and other effective area-based conservation measures (target 3), conservation of threatened species (target 4), and addressing the impacts of invasive alien species (target 6), pollution (target 7), and climate change and ocean acidification (target 8). EBSA information can also play a crucial role in informing sectors in support of sustainable use (targets 5 and 10). Furthermore, of relevance is how EBSAs contribute to ecosystem functions and services (target 11) and the creation of blue spaces (target 12). Lastly, Mr. Appiott highlighted the linkages between EBSAs and biodiversity mainstreaming (target 14), capacity-building and development (target 20), and best available data, knowledge and information (target 21). He concluded by stressing the importance of integrating EBSAs into the planning process for implementing the Framework, and the relevance of EBSAs for a variety of approaches and tools, which are up to the state and competent intergovernmental organization to apply in its competence.

BBNJ Agreement and the potential role of EBSAs

Mr. Bingzhuo Li, Division for Ocean Affairs and the Law of the Sea (DOALOS)

Mr. Bingzhuo Li provided an overview of 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 (the BBNJ Agreement) and drew attention to the potential role of the scientific and technical information from the EBSA process in supporting the future implementation of the BBNJ Agreement, including in relation to its provisions on area-based management tools, including marine protected areas, environmental impact assessments, as well as capacity-building

and transfer of marine technology. Furthermore, he noted that the scientific and technical information from the EBSA process could continue to inform other ocean-related processes of the United Nations General Assembly, including, the United Nations Informal Consultative Process on Oceans and the Law of the Sea, the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects, which produces the world ocean assessments, and the United Nations Ocean Conference. As to next steps, he noted that in resolution 77/321, the United Nations General Assembly approved the assumption by the United Nations Secretary-General of the functions assigned to him under the Agreement, including the performance, through the Division for Ocean Affairs and the Law of the Sea, of the secretariat functions under the Agreement until such time as the secretariat to be established under the Agreement commences its functions. He further noted that, in line with the specific requests in that resolution, the Division had developed a programme of activities to promote a better understanding of the Agreement and prepare for its entry into force and would welcome further opportunities to work with all stakeholders to deliver these activities.

Regional environmental management plans in the Area

Ms. Wanfei Qiu and Ms. Lea Kolmos Weis, Secretariat of International Seabed Authority

This presentation covered both legal and scientific aspects of regional environmental management plans (REMPs) in the Area and highlighted the specific and exclusive mandate of the International Seabed Authority (ISA) to act as the competent organization through which States Parties to UNCLOS shall organize, regulate and control activities in the Area. The REMPs are instruments of environmental policy, adopted by a decision of the Council of the International Seabed Authority in 2012. REMPs are not directly mentioned in UNCLOS nor in the 1994 Agreement, but the legal basis can be derived from articles 145, 162(1) and 209(1) of UNCLOS. Currently, one REMP has been approved and implemented in the Clarion-Clipperton Zone, under which a total of 2 million square kilometres of seafloor are protected from future mining activities. Additional REMPs are also being developed in other priority regions, through an inclusive expert process led by the Legal and Technical Commission of the ISA, and a standardized procedure is furthermore being developed. The development of REMPs highlighted the need to consider regional environmental characteristics, build on existing experiences such as those from the EBSA process, and to have a regular review process based on newly available knowledge.

Summary of the question-and-answer session and plenary discussion

General reflections:

- EBSA information is important for various international processes, including in areas beyond national jurisdiction
- Appreciation was expressed for the collaboration on EBSAs among the CBD Secretariat, DOALOS, the ISA Secretariat and other international organizations. However, it was stressed that it is up to the Parties to move this issue forward, as well as to ensure increased coherence in the discussions conducted under the respective bodies, avoiding discrepancies and conflicting approaches undertaken by the Parties
- It was suggested to consider EBSAs in the context of policies, regulations and processes, and to reinforce EBSAs so that others take the EBSA modalities into consideration
- Regarding the United Nations Convention on the Law of the Sea (UNCLOS) and 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 (BBNJ Agreement):
 - It was noted that not all States and Parties to UNCLOS, but that UNCLOS reflects customary international law
 - BBNJ Agreement has filled an important gap in UNCLOS with respect to biodiversity
 - BBNJ Agreement has the potential to achieve a more integrated and holistic approach for cross-sectoral management in areas beyond national jurisdiction
- Regarding the process under the International Seabed Authority:

- The ISA process for integrating new scientific information into the governance system and the role of EBSA information were explained. Scientific information and data are compiled through technical teams (similar to those involved in the EBSA process), prior to an expert workshop. Data is also obtained from contractors. This information is then compiled as background and information documents to inform the discussions of the expert workshop, which discusses specific scientific and management proposals. Building on the workshop results, the Legal and Technical Commission then develops the REMPs, which is where the science feeds into policy. Subsequent reviews take place every five years, repeating the process of scientific data compilation, expert workshops, and consideration by the Legal and Technical Commission. The Commission formulates its recommendations on the review of the REMPs and submits them to the Council. The important scientific and technical information emanating from the EBSA process is provided to the workshop participants and the Commission as part of the background documents and workshop reports, in order to develop the REMPs.
- The need to consider all scientific information, including with respect to EBSAs and areas of particular environmental interest (APEIs), in the context of activities on the seabed was emphasized
- It was further explained that REMPs are developed based on the best available scientific information, which includes EBSA information
- The contractors, the ISA Council, and the Legal and Technical Commission must consider the tools that ISA has developed, including the APEIs, as they are adopted through the ISA legal and policy framework. While these bodies and the contractors are not required to consider the EBSA information, the contractors are required to include relevant and applicable international policy, tools, and measures from other organizations, which may include EBSAs, VMEs, and PSSAs, in their environmental impact assessment reports. These are available for consideration in the decision-making process.

Annex III³

Summary of discussion under item 6⁴

In the interest of time and clarity, only some of the discussions under this item focused on text. For many issues, visual flowcharts were displayed in the room for reference and used as the basis for discussion. These flowcharts were being revised (as much as possible) to reflect the discussions as they progressed. The flowcharts and accompanying explanations that emerged from the workshop are provided in annex IV.

Review of the draft outcomes of the technical workshop and discussion *(refer to annex IV of the report of the technical workshop)*

While the technical expert workshop and the legal expert workshop were two separate meetings, and thus have two separate outcomes, as per decision 15/26, the legal expert workshop was mandated to conduct its discussions on the basis of the outcomes of the technical expert workshop. In this regard, a session was convened during the overlapping joint days of the two workshops in order to benefit of the presence of participants from the technical workshop. During this session, a discussion was held on all of the flowcharts emerging from the technical workshop (for more details regarding the outcomes of the technical workshop, please consult the report of the technical workshop. During this session, participants of the legal workshop raised initial reflections on the key elements of the modalities that emerged from the technical workshop. These observations are summarized below.

Reflections on the modification or description of areas within national jurisdiction: information-sharing mechanism (ISM) path

Participants noted:

- The term “mandatory”, as opposed to “optional” or “voluntary” with respect to particular steps shown in the flowcharts, has a legal connotation, which may not always be the intention, and suggested that a better alternative might be “necessary” or “essential” vs “desirable”. It was clarified that “mandatory” was meant in a procedural sense, rather than a legal one—to maintain the integrity of the process.
- Regarding the notification to inform of a proponent’s intent to develop submission, it was noted that in some regions, it would be an act of courtesy to notify neighbouring countries beforehand. Some felt that it would be helpful to inform the scientific community so that they would know that their data could be needed. Others felt that it would be useful for Parties that have jurisdictional concerns. Others felt that this notification could be made optional, as it places undue burden on the proponent and the Secretariat.
- The difference between an EBSA that has gone through a CBD process (CBD EBSA) and an EBSA emerging from a national process (national EBSA) needs to be made clear.
- Inviting comments is an important and useful step to maintain transparency and enhance the integrity of the data. There were divergent views on whether it should be mandatory to receive comments; these submissions will not be reviewed by global processes, so this is a matter of maintaining transparency. It is also a matter of enhancing the integrity of the data.
- Clarification is needed as to whether, in the case of a submission being withdrawn from the information-sharing mechanism, any comments received are also withdrawn.
- Clarification is needed as to whether, in the case of an EBSA straddling two jurisdictions, there is a requirement that the submission be made by both jurisdictions or whether one state can proceed with only the description/modification to the area within its own jurisdiction.

³ The points in the summary of discussion provided in this annex are grouped according to the topic they address and may not necessarily reflect the chronological order in which points were raised in the workshop.

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- Use of the template developed for CBD EBSA workshops to standardize descriptions of areas meeting the EBSA criteria should be optional on the ISM path. There should be a requirement to provide key information, but it does not have to be provided on the template.
- Parties using the ISM path would benefit from guidance on how to provide information on their national EBSAs, such as providing links to their descriptions or adding the actual EBSA itself.

Reflections on the modification or description of areas within national jurisdiction: repository path
Participants noted:

- There was a lack of clarity regarding the trigger for holding a CBD EBSA workshop, and it was suggested that it become a periodic regional workshop (e.g., every 10 years for each region). In response, it was suggested that the periodicity could be flexible and instead they could be organized on an as-needed basis. It was noted that it is not feasible for the Secretariat to organize a workshop for each proposal, and therefore it should compile multiple submissions for an eventual workshop to be held when it is feasible, when all Parties would benefit from it, and/or when SBSTTA recommends one be held. Another suggestion was to have expert workshops for a given region every 10 years (with one participant noting that workshops could deal with areas within and areas beyond national jurisdiction separately)
- It was noted that if a proponent chooses the repository path, then it must address comments.
- Regarding language, participants were reminded that neither the term “endorse” nor “approve” is used, but rather, areas going to the repository are considered to meet the EBSA criteria; those going to the ISM would be known as “areas considered by country X to meet the EBSA criteria”.

Reflections on the modification or description of areas beyond national jurisdiction

Participants noted:

- There is only one pathway for areas beyond national jurisdiction: to the repository
- Proponent must address comments (entailing a revision in response to a comment or, if no revisions are required, an explanation of why a revision was not implemented in response to the comment)
- The length of time provided for addressing comments should be considered, so that it can account for the meeting cycles of intergovernmental organizations.

General discussion

Following the discussion on the draft outcomes of the technical workshop, a non-exhaustive list of questions for discussion was distributed to the participants of the legal workshop. This included the following topics:

- Any critical legal considerations/issues/challenges with the modalities that emerged from the technical expert workshop, and if so, how the modalities should be modified to address these
- Concerns regarding jurisdictional issues and disputed areas (annex I, paragraph 2 and 3 of CBD/EBSA/EM/2023/1/2)
- Where EBSA descriptions should be kept when they are modified/deleted (repository or information-sharing mechanism)
- Whether a State can modify/delete an EBSA within its national jurisdiction without providing a reason (annex II, paragraph 2(f), and annex III, of CBD/EBSA/EM/2023/1/2)
- Which actors can submit new EBSA descriptions or modifications, in particular in areas beyond national jurisdiction
- Consideration of any legal issues related to the use of traditional knowledge
- EBSA process and its relationship with the BBNJ Agreement

Participants noted that there is limited time at the workshop to discuss these issues and very limited time to discuss them at SBSTTA 26, highlighting the need to find a clear, pragmatic and workable solution and focus on priority issues that need to be resolved. These draft modalities have been developed over time, and complex legal and political issues remain, with core areas of disagreement. It was stressed that participants do not need to reach a consensus at the workshop, as it is not a negotiation. Rather, the focus should be on providing flexibility and options for Parties, especially for areas within national jurisdiction. While no consensus is needed during the workshop discussions, it was explained that the rationale for different options and differing views expressed should be expressed so that these can be included in the report.

Participants also noted the need to clarify the terms “mandatory” and “voluntary” used by the technical workshop participants when referring to different actions in the modalities, as these are not legally binding modalities. Some suggested use different wording, such as “default” (instead of “mandatory”), and in some specific cases, it would be possible to opt out (to indicate the “voluntary” aspect).

Cross-cutting issues

There were a number of issues discussed that are relevant across the respective modalities. Although they may have been raised during a discussion on a specific modality, it was recognized that they are applicable across the topic. Thus, discussions on these key issues are separately summarized here and additional discussions specific to the modality in question are summarized in subsequent sections.

Preambular paragraph on the United Nations Convention on the Law of the Sea (UNCLOS)

Participants recalled that references to UNCLOS in the COP decision on EBSAs has previously proven to be an area of disagreement, particularly with respect States that are not Party to UNCLOS. It was also noted that the approach to this reference used in COP decisions 15/26 and 14/9 (which makes reference to the most recent United Nations General Assembly resolution on oceans and the law of the sea and provides for footnotes from those Parties wishing to indicate opposition or special concerns on this) would be a sound approach to use again at the next meeting of the COP.

Concerns related to claims or disputes relating to sovereignty, sovereign rights or jurisdiction

Participants discussed how to address the concerns of some countries regarding disputed areas and claims for extended continental shelf, as addressed in paragraph 3 of annex I of document CBD/EBSA/EM/2023/2/2. It was noted this issue has been difficult to solve, therefore Parties discussed draft text to address this issues.

- Participants generally agreed that text addressing general considerations for those providing submissions, could include the addition of text specifying that States should take into careful consideration any potential concerns relating to sovereignty, sovereign rights or jurisdiction in developing their submissions. It was suggested that the language could be stronger than the current wording (“...are encouraged to consider”), in order to stress the importance of avoiding submissions that could pose jurisdictional issues. It was suggested to replace this wording with “shall”, “should” or “are encouraged to”. It was also proposed that the wording in sub-items a, b and c be more assertive, by adding verbs: a) to collaborate, b) to include, c) to describe.
- Parties generally agreed that a State can only submit a proposal for description or modification of an area that is within its own jurisdiction and not that of another State, and that if this occurs, the Secretariat could inform the proponent, to avoid a diplomatic incident. If the proponent wishes to proceed, then the provision of paragraph 3 could be triggered. It was further explained that paragraph 3 would apply to both the information-sharing mechanism and the repository path, and therefore if the provisions of paragraph 3 are triggered, the area would not proceed to either the information-sharing mechanism or the repository.

- Parties did not agree on what would happen to a submission in the information-sharing mechanism that is the subject of a dispute regarding jurisdiction. Some felt the original submission and the objection to it should be contained in the information-sharing mechanism for transparency, following the approach of the CLCS. Others disagreed and felt that if paragraph 3 is triggered, the submission should be deleted in its entirety.
- There was a suggestion to replace paragraphs 2 and 3 with three separate paragraphs, beginning with and expanding the content regarding the “scientific and technical exercise” so that it becomes one sentence on its own, followed by two paragraphs regarding objections to a proposal. This suggestion was also to include language from BBNJ, but it was noted that this might not be appropriate, given it is not yet in force. Others preferred to keep the paragraph, as previously used, as it is but to move it to the operative paragraphs of the decision. There was also discussion around the terms “shall be”, as currently appears in paragraph 2, with some wishing to retain it and some suggesting to replace it with “is to be” or “will”.
- Regarding paragraph 3, there was general agreement that its current wording provided a good start for discussion, and general agreement that the substance of this paragraph was needed to provide comfort to Parties.

There was a discussion about the formal communication that is provided by the State that has a concern. It was suggested that this be expressed through a notification from the Secretariat to all Parties and that the submission be placed in the information-sharing mechanism. Participants raised the following questions:

- How much time States would have to communicate concerns, as it was noted that three months might not be sufficient for some governments and intergovernmental organizations. It was suggested that the length of time be left general, such as “as early as possible” to avoid spending resources on a process that would be stopped later, and to avoid having to further discuss how to treat comments that are submitted beyond that period. It was suggested that “without prejudice to presenting comments at a later stage” be added so that Parties can stop the process at any time. It was later discussed that the wording “at any time” could capture these concerns.
- It was noted that this paragraph can apply within national jurisdiction, even in the absence of any pre-existing dispute regarding jurisdiction.
- Whether the comment/concern that triggers paragraph 3 would be made public.
- Whether all comments should be treated the same way, or those that are scientific should be differentiated from those dealing with disputed areas. It was suggested that scientific comments should be referred to in a separate paragraph somewhere in the document. It was noted that comments addressing jurisdictional concerns would be fully captured by the provisions of paragraph 3, whereas other types of comments would be addressed in other parts of the modalities.
- What “no further action” being taken on the submission would actually mean. It was suggested that everything would stop when the comment is received. The following explanation was offered: if at the notification stage, the submission is not advanced further to the workshop stage; if the objection comes up at a workshop, discussions stop. Participants agreed that the phrase needs further explanation, though some suggested that the more we try to explain, the more confusion might be added.

In revising paragraph 3, participants suggested:

- Ending the paragraph after “no further action shall be taken” rather than including “until the withdrawal of the objection is communicated”, but others noted that it would mean no further evolution on the matter and wanted to provide an opportunity for States to resolve the issue.
- Using the term “State” as the legally appropriate terminology to use in this case.
- In addition to the movement of the paragraphs, participants also discussed the language of the text to be moved. Participants suggested referring to text of the BBNJ agreement, specifically article 6 on international cooperation, and article 19 on area-based management tools, as well as to text from

the Commission on the Limits of the Continental Shelf, for useful language, though some felt that it may be premature to refer to text from the BBNJ agreement, as the agreement had not yet entered into force.

Participants worked with text on-screen during these discussions, with the following text being the outcome of these discussions:

“Decides that, with respect to a submission for the modification of an existing description of an ecologically or biologically significant marine area or the description of a new area, any Party or other Government may formally communicate to the Executive Secretary, at any time, an objection to further action being taken due to the existence of any claim or dispute relating to sovereignty, sovereign rights or jurisdiction involving an area included in the submission and, in this case, no further action shall be taken on that submission until a withdrawal of the objection is communicated to the Executive Secretary by the Parties or other Governments concerned.”

There were several participants that expressed concern overall about addressing issues related to sovereignty, sovereign rights or jurisdiction in the context of these discussions and in the modalities. They noted that these discussions raise sensitive political issues and are not consistent with the scientific and technical nature of EBSAs, and felt that the workshop was not an appropriate forum for discussions on these issues.

Relevant advisory body

The potential role of the relevant advisory body was discussed extensively in the technical expert workshop, where it was proposed that its establishment be postponed. It was also noted that the roles being discussed for a relevant expert advisory body are generally already within the terms of reference of the Informal Advisory Group on EBSAs, that it would be confusing and perhaps unnecessary to have another body with the same mandate. It was noted other tasks may be covered by expert consultants hired by the Secretariat. Furthermore, it was stressed that if this body is retained in the pre-session document, it would require extensive and time-consuming discussion. Participants agreed that there is no need to include the relevant advisory body in the modalities at this time.

Location of modified/deleted EBSAs previously held in the repository

It was recalled that participants in the technical workshop agreed that previous versions of an EBSA, including textual descriptions, polygons, maps and coordinates, contained in the repository and later modified/deleted must not be lost—there is a need to keep track of the history of each EBSA area and to keep this information publicly available for transparency. However, the technical workshop participants did not agree where previous versions should be held.

Participants in the legal workshop agreed that it was important to ensure that the scientific information (including textual descriptions, polygons, maps and coordinates) that led to the description of an area as an EBSA remains available. However, there were divergent views here again. When asked what should happen to an EBSA in the repository if a Party wishes to modify/delete it, many participants suggested that the best option would be to move outdated versions of descriptions of EBSAs that are held in the repository to the information-sharing mechanism, as indicated in paragraph 2f) of document CBD/EBSA/EM/2023/2/2. There was also a suggestion to create a special area in the information-sharing mechanism for previous versions of EBSA descriptions. There was some concern, however, that having an area in two places could cause confusion. Further, some noted that the nature of a repository means that all records of the EBSA should be kept in the repository, and older versions would simply be annotated, labelled or watermarked and left in the repository, possibly in a separate platform, indicating that a more recent version exists.

There was also discussion on the value of treating previous versions of EBSA descriptions within and beyond national jurisdiction separately, with respect to the placement of previous versions of modified descriptions, and having previous versions of EBSA descriptions in areas beyond national jurisdiction in the repository, while previous versions of EBSA descriptions within national jurisdiction be placed in the information-sharing mechanism.

Discussion on the existing modalities (*refer to flowchart #1 in annex IV*)

Participants discussed the existing modalities, i.e. describing new areas through CBD regional workshops. Flowcharts showcasing the existing modalities, further reflecting the discussions of the technical workshop on this topic, were displayed in the room for reference.

This discussion focused on ensuring a common understanding of the current modality to describe EBSAs under the CBD (i.e., describing EBSAs through regional workshops). Participants agreed that the existing modality, would remain available for both areas within and beyond national jurisdiction. It was explained that this modality can be initiated by various means, in particular through a request by the Conference of the Parties or an informal expression of interest and/or support from Parties and/or intergovernmental organizations in a region, depending on funding availability, to conduct such a workshop. The outcome of the workshop is then considered by SBSTTA and COP, which decides whether the areas described through the regional workshop are to be included in the repository and thus gain the status as a CBD EBSA. It was noted, however, that further discussion is needed as to whether future workshops would remain regional, encompass multiple regions, or be thematically focused.

Participants discussed how the scopes of regional workshops were defined in past CBD regional EBSA workshops. It was explained that the standard practice for these workshops is that a rough regional scope was decided early in the planning stage, and the exact scope of the workshop (including which national waters were included) was decided at the workshop. In some workshops, Parties clearly indicated whether they wanted their waters considered at the workshop. Moreover, if a Party did not have an expert present at the workshop, the workshop would not consider the national waters of that Party. Based on this discussion, it was suggested that, in the future, there be a clear means for Parties to indicate (prior to any workshops) if they wish to have their waters considered in the scope of the workshop.

Participants further discussed the role of intergovernmental organizations and their participation at the regional workshops. It was explained that relevant regional organizations often helped to organize the regional workshops in the past, and that sometimes the geographical scope would be aligned with the area of competence of the intergovernmental organization. But, this would have no bearing on whether a country wished to include its national waters.

It was also noted that there are standard CBD procedures with respect to selecting participants for the regional workshops. As per such procedures, Parties, Other Governments with coastlines in the region and relevant organizations in the region are invited to nominate experts. CBD Secretariat then selects nominated experts based on their expertise, although the Secretariat does not generally question nominations by Parties and Other Governments. All efforts are made to ensure participation from all coastal States in the region. Some participants raised an issue with the current practice of inviting only coastal States from the region to nominate experts, highlighting that landlocked States and States from other parts of the world often have an interest in, and expertise and data for, areas outside of their region, especially with respect to areas beyond national jurisdiction.

Some participants expressed a desire to see that the flowchart fully reflect the existing modalities, which includes a means (as per decision XIII/12) by which Parties can share information on their national exercises to describe areas meeting the EBSA criteria or other relevant compatible and

complementary nationally or intergovernmentally agreed scientific criteria (although the decision does not give guidance with respect to individual areas emerging from these national processes). With respect to the existing workshop approach, it was pointed out that the current modality is based on regional workshops only, and not global or thematic workshops, which are also being discussed as possibilities in the workshop.

Overall, participants generally agreed that the existing modality should continue, though it should be further refined and improved by the new modalities, given different contexts and circumstances nowadays.

Discussion on the draft modalities for description or modification in areas beyond national jurisdiction (*Refer to flowchart #2 in annex IV*)

Proponents

It was agreed that submissions for areas within national jurisdiction could only be submitted by the State(s) within whose jurisdiction the submission is addressing. Participants discussed whether only States should be allowed to submit new descriptions and modifications in areas beyond national jurisdiction, or whether relevant intergovernmental organizations should also be able to do so, as they often have relevant scientific information. It was discussed that intergovernmental organizations are a collection of States and would generally not provide any submission without the consent of their Parties. Participants were comfortable to use the term “State(s), individually or collectively” with the understanding that intergovernmental organizations are a collection of States and that this term would allow for such organizations to submit proposals. It was pointed out that similar wording has also been used in the BBNJ Agreement.

There was also discussion regarding the appropriate term to use to refer to governments in the context of this process and the implications of these terms. Some preferred the term “State” as an accepted and common legal term used in the context of multilateral relations. Others preferred to use terms “Parties and Other Governments” as this was the standard approach in the CBD. This also spawned a discussion about whether Other Governments should be permitted to be identified as proponents, with some participants preferring to include States that are not Parties to the CBD and others wanting to exclude them.

Nonetheless, it was stressed that proponents can collaborate with any entities, including States or civil society organizations, in the development of their submissions. Further, it was stressed that such collaboration should be encouraged in order to strengthen the quality of the submissions and avoid potential political issues that may emerge later in the process.

Submissions

It was noted that submissions in areas beyond national jurisdiction should use a standard template, which is already used in CBD regional EBSA and can be further revised if needed, to provide the scientific information and location of the feature(s). It was agreed that it should be a requirement for all submissions to provide a map/shapefile and GIS coordinates of the submission area.

It was explained that if a submission includes a feature that is located beyond national jurisdiction but extends into the national jurisdiction of a State, that State must be engaged and become a co-proponent in order for the feature to be included. If the State in question does not wish for its waters to be included in the submission, then the submission would only describe the portion of the area located beyond national jurisdiction. Concern was expressed that if the portion of the area located within national jurisdiction is not included in the submission, and the scientific information on the ecological feature within national jurisdiction is not included either, it would compromise the scientific accuracy and credibility of the feature in question as a whole. It was suggested that, depending on the preference of the State in question, the EBSA description and polygon could either

indicate one EBSA located both within and beyond national jurisdiction, or an EBSA only beyond national jurisdiction with an indication that its feature(s) extend further into the national jurisdiction and with an inclusion of the supporting scientific data, or an EBSA only beyond national jurisdiction without including the scientific information on the feature in the national jurisdiction. It was also suggested that, in the COP decision on this issue, State should be urged, encouraged, or invited to cooperate when preparing submissions (in accordance with Article 5 of the Convention).

Notifications

- *Notification of intent*: Participants discussed whether a notification of intent, indicating the intent to develop a submission and disseminated by the CBD Secretariat, is necessary to be included in the modalities, with some arguing for the notification to be an option, rather than a requirement, for States who wish to notify others of their intention to develop a submission and gather relevant scientific information. Others noted that if this notification is not included as an option in the modalities, nothing prevents States from reaching out to others for relevant information and collaborating. While contact information of the CBD National Focal Points is available on the CBD website, it was also pointed out that since this notification would be posted on the CBD website and disseminated to States and relevant stakeholders, it would make the process easier for the proponent as they might not know of everyone who would be able to respond with relevant information. It was also noted that this notification would reduce the likelihood that several different Parties would independently start developing a submission to develop or modify the same EBSA description. There were differing views as to whether this notification should be optional or required, as some felt that it places undue burden on the proponent and the Secretariat. Some suggested that it should be encouraged.
- *Notification to inform of submission and invite comments*: As the technical workshop agreed that this notification would be required for areas beyond national jurisdiction, and that it would invite comments that would have to be addressed by the proponents(s), participants in the legal workshop proceeded to discuss who can provide comments. Participants agreed that the invitation for comments should be open to all relevant stakeholders (including academia), not only States and intergovernmental organizations, in order to receive as much scientific input as possible and strengthen the scientific process. Some noted the challenge of deciding which stakeholders are relevant was also noted, however. The Secretariat explained that the term “relevant organization” is used as a general term and that there is practice under the CBD for the Secretariat to screen input to ensure that it is of a scientific and technical nature. With respect to the comments, it was further explained that the notification would include information on what kind of information and comments would be requested. The CBD Secretariat would then post all comments received in the information-sharing mechanism. Some noted that the guidance in the notification should not be too prescriptive to ensure a wide range of scientific information is received.
- The timeframe for providing comments was discussed, and it was suggested that intergovernmental organizations may need more time than governments to allow for their respective processes to review relevant submissions and synthesize input (noting that some scientific and technical bodies of such organizations only meet periodically).
- Participants also briefly discussed whether Parties could reply to these notifications only with scientific content, or whether they could also contest an area in cases of a concern or dispute. It was suggested that Parties could have the option at this point in the process to formally reply to the CBD Secretariat regarding jurisdictional issues and potentially exclude that portion of the area in question from being considered. This is further discussed and summarized below with respect to paragraph 3 of annex I of CBD/EBSA/EM/2023/1/2.

Expert workshops

- *Mandatory expert workshop*: There was general agreement that submissions in areas beyond national jurisdiction would need to be discussed in an expert workshop as part of the process before being considered by SBSTTA and COP. It was noted that with time, COP may decide to change this modality. There was one participant objecting to this workshop being mandatory, arguing for

flexibility. The mandatory expert workshop would be held to review proposals and collect any additional relevant scientific information.

- *Scheduling of the workshop:* The submission would be discussed at a workshop after a submission after comments have been received, with the revised submission being reviewed at the workshop. Further to that, participants discussed the frequency of this workshop and what the trigger would be. There was a suggestion to have this workshop once every four years, with the outcome being considered at every second COP. This could ensure that the workshop would have enough submissions to look at (regardless of the ocean basin) and allow for other relevant intergovernmental organizations to go through their respective processes. It was noted that an online workshop, in this case, might not be appropriate. It was further pointed out that these workshops would be subject to available resources.
- *Mandate of the workshop:* The mandate and/or activity of the workshop was discussed. The workshop would be able to modify the scientific description and the boundaries, if the science merits, but could only extend into national jurisdiction if the Party in question were present at the workshop and consented (see below section on “Proponents and submissions”). The workshop remains a scientific and technical exercise. Further, there was a suggestion for two possible mandates of this workshop: (i) full mandate for the workshop to review the revised submission based on the comments received and make revisions to the description and the boundaries, if scientifically and technically sound, or (ii) workshop would simply peer-review the submission, and the workshop report would include the peer-review comments on how well the revised submission addressed the comments received on the original submission, and any further revisions to the description or boundaries would be under the purview of SBSTTA.
- *Workshop participants:* It was noted that these workshops should be global and open for any Parties to attend. The workshop may deal with submissions from different ocean regions and needs to ensure that all relevant experts are present. Scientific data and expertise are often also found beyond the coastal states of a given region, and as such, future expert workshops should bring together all the best available experts, not only those from the coastal states in question. It is also important to ensure that, for EBSAs located both within and beyond national jurisdiction, Parties within whose jurisdictions the EBSA lies are represented at the workshop. It was further discussed whether the proponent must be present at the workshop in order for the submission to be discussed, in line with previous practice.
- It was also noted that the process should address the rights of the coastal state, where there is an extended continental shelf (beyond 200 nautical miles) and the area being described is located in the water column.
- Concern was expressed, however, that a global workshop might have too many participants and too many issues to discuss. Participants suggested that the CBD Secretariat provide clarification in on whether there are any requirements and/or limitations with respect to convening global workshops and inviting all 196 Parties, for areas beyond national jurisdiction. The CBD Secretariat should also investigate the feasibility of a periodic workshop, as it is a scientifically and financially demanding exercise (see “scheduling of the workshop”, below).
- The value of this expert workshop for capacity-building, technology transfer, and information-sharing for biodiversity beyond national jurisdiction was emphasized.

Discussion on national jurisdiction, information-sharing mechanism path (Refer to flowchart #3 in annex IV)

Proponents and Submissions

Participants noted that only the State that has jurisdiction over the area in question can be the proponent in this case. It was suggested that the Secretariat screen such submissions before they are entered in the information-sharing mechanism regarding maritime boundaries. However, it was also suggested that the Secretariat should not interpret borders or determine whether there is a dispute, which should be left to the Parties to decide. All jurisdictional issues should be addressed in the context of the previously-noted paragraph dealing with disputed waters rather than bringing them

into other parts of the text. Further, it was suggested that if there is an error in the drawing of a polygon so that it crosses a boundary, the Secretariat should ask the Party to confirm that their information is correct and if they wish to proceed.

In the ensuing discussion, three approaches were discussed: 1) the template containing the submission would require a detailed exercise by the submitting state as to maps and boundaries, would invite caution and would be made mandatory (although it was noted that the template is not mandatory for those choosing the information-sharing path); 2) the Secretariat screens the submission and invites the submitting Party to confirm or correct their information; or 3) the issue is addressed through the process dealing with disputes.

Notifications

- *Notification of intent*: In the technical workshop, participants discussed a “notification of intent” through which the Secretariat would inform others that a State or States intends to submit a modification or new description. It was argued that making this information public at an early stage would allow countries that had concerns over jurisdiction to raise any issues in a timely manner and would also assist States to gather relevant scientific information prior to a submission, if they wish. There were differing views as to whether this notification should be optional or required, and these views were repeated and expanded upon in the present workshop. One such view was that it would avoid a scenario where the Secretariat would receive multiple revisions, by multiple different groups who were unaware of parallel efforts and embarked upon similar work, unbeknownst to each other (see above, under “reflections”). Some argued, however, that this notification should not be part of the process, for the sake of simplicity, because there are other ways for States to inform other States and stakeholders and to gather information, if they wish, while others argued for it to be mandatory, again, to simplify the dissemination of information for the proponent. This workshop agreed that it could be useful to have this notification be an option for States to use if they wish.
- *Notification to inform of the receipt of a submission*: The technical workshop had agreed that under this scenario, there should be a mandatory notification to inform of new submissions, but there were differing views on whether it should also invite comments or not, with a preference for making this invitation optional. In the legal workshop, it was agreed that the Secretariat would issue a notification to inform of a submission, and, although an argument was made for it to be mandatory for the notification to request comments (to maintain transparency and enhance data integrity), participants agreed that this should be optional and left to the proponent, as should the decision about whether to address any comments received and revise their submission.

Discussion on national jurisdiction, repository path(Refer to flowchart #4 in annex IV)

Comments on submissions

Participants agreed that if a State wishes for their submission to be included in the repository, a more comprehensive process would be required than if they had chosen the information-sharing path—the bar is set higher for their submission. For this reason, it should be mandatory for them to invite and respond to comments on their submission. A question was raised as to the capacity of all States to respond to the comments, and a request was voiced for the modalities to clarify of the type of comments and responses that would be expected and whether the proponent is free to respond to a comment but decline to act on it.

Expert workshop

Participants discussed whether a CBD EBSA expert workshop should be a mandatory step in this process; much of the ensuing discussion was closely related to the process for inviting and responding to comments in the section above. It was noted that national processes may employ robust scientific

expert workshops in their national jurisdiction, which already invite a wide range of experts to develop a submission. It was suggested that SBSTTA could determine whether the robustness of the national process is sufficient and would therefore not require a further expert workshop to review/develop the submission. The importance of a sound peer-review step was also stressed, noting that if comments and responses are optional, then the expert workshop should be mandatory; if the comments and responses are mandatory, the workshop can be optional. In other words, it should be mandatory to have at least one of these steps for sound peer-review, because in the absence of an official, global process, it may not be clear that a national process has been sufficient. A preference for the latter option (making the comments and responses mandatory and the workshop optional) was expressed by some, with the workshop being triggered by SBSTTA or COP if additional assessment is needed. There was an objection voiced to the idea of making it mandatory to respond to comments, while there was another suggestion to give Parties the option to go either with the comments/responses or the workshop.

Participants proposed three steps: 1) comments are invited, as a mandatory step; 2) the proponent addresses those comments. If the proponent fails to address those comments adequately SBSTTA may correct it and refer the submission to a 3) workshop before the submission can proceed, after which SBSTTA and COP assess whether the necessary criteria are met and the description can be entered into the repository. However, with respect to #3), it was also noted that SBSTTA and COP may decide on other alternative actions as well if more work is required, not only referring to a workshop.

Reasons for modification

The participants discussed the reasons for modification of an EBSA description. They began, however, with a discussion of the meaning of the term “modification”.

Modification vs deletion

As noted earlier, there was a concern expressed that it might not be clear that the word “modification” is intended to include “deletion”. One participant pointed out that modification would not include deletion in legal language.

Parties agreed that this should be clearly explained in the workshop report/pre-session document, with options including: openly referring to modification and deletion, “modification, including withdrawal”, or “modification, which may include deletion”. It was also noted that “deletion” is a complex term that Parties tend to reject, and therefore the term “withdraw” could be considered.

It was also suggested that modification and deletion could become two different categories, with different responsibilities on the part of the Party involved.

Areas within national jurisdiction

It was suggested that a State should be permitted to modify/delete EBSAs in its jurisdiction for any reason. Others felt that these reasons should only be scientific, to avoid undermining the scientific integrity of the EBSA process. Some of those participants supporting the right of States to have any reason to modify in their national jurisdiction maintained that reasons should be explained by the State, while others felt that this should only be required in the case of modification, not for deletion. Another suggestion here to avoid undermining the scientific content was to add the phrase “...modifications that are consistent with the scientific content” to allow for reasons that might not be strictly scientific, but are not contradictory to the integrity of the scientific process. The need to retain the transparency, as well as the scientific integrity of the EBSA process was also noted.

Another suggestion was to retain a paragraph that refers to “other reasons deemed necessary by Parties in relation to areas within their national jurisdiction”, a formulation that would be able to cover EBSAs that straddle national jurisdiction and areas beyond it.

A suggestion was made to retain annex III but substitute “may include” for “are” before the reasons listed, as a way to simplify for cases within national jurisdiction.

It was also suggested that the reasons be the same for areas within and areas beyond national jurisdiction in the interest of consistency and so as not to undermine the scientific integrity of the process.

Areas beyond national jurisdiction

After discussion, it was agreed that the modality should be different for areas beyond national jurisdiction and should be based on the modalities presented in annex III of document CBD/EBSA/EM/2023/2/2, without current sub-paragraph f) on editorial errors.

Editorial reasons

The issue of editorial reasons was discussed during the technical workshop, where it was agreed that the Secretariat would issue a notification indicating that there is an error (or errors) and that, unless they are otherwise informed within a certain period of time (e.g., three weeks), the editorial error (s) would be fixed and made available online. This modality would be included in an operative paragraph, rather than in an annex.

Therefore, there could be one paragraph for areas within national jurisdiction, indicating that this can be done for any reason, in addition to reasons in paragraph 1 (though there were divergent views, as per the account above); a second one for areas beyond national jurisdiction, based on the current annex III without any reference to political reasons, and a third for editorial errors. The reasons would apply both to the repository and the information-sharing mechanism, and this would be made clear.

Traditional knowledge

Participants discussed the importance of traditional knowledge in the draft modalities. As per paragraph 3 in annex V of CBD/EBSA/EM/2023/1/2, a submission is to include any information on consultations with indigenous peoples and local communities (in cases where information based on traditional knowledge is included), in accordance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Mo’otz Kuxtal voluntary guidelines. Some argued that given that not all CBD Parties have adopted UNDRIP and given that the Mo’otz Kuxtal guidelines are voluntary, it should not be mandatory to develop a submission in accordance with this guidance. Others noted that it is important to use a widely accepted language that is usually used in the context of using and integrating traditional knowledge.

It was also noted that paragraph 1(b) of annex I of CBD/EBSA/EM/2023/1/2, encouraging those who develop and submit proposals to consider a strong scientific basis with sufficient information as well as the importance of transparency in developing a submission, could include a reference to traditional knowledge and could be an operative paragraph instead of part of an annex.

The importance of traditional knowledge, women’s knowledge and gender responsiveness being better represented in the modalities was further discussed. Participants noted that traditional knowledge can be relevant at different stages of the modalities, including when developing a submission and inviting comments (recipients of the notification, as per standard CBD procedures, would include indigenous peoples and local communities), suggesting the need for an operative paragraph that could cover this. Others pointed out that while it is important to include language on

traditional knowledge in the modalities, it should not be placed everywhere without including phrasing such as “as appropriate” or “as applicable”.

Linkages between the EBSA process and the BBNJ Agreement

Participants discussed the linkages between the EBSA process and the BBNJ Agreement. Several participants noted that, in the future, the process under the BBNJ Agreement could potentially take over the EBSA process in areas beyond national jurisdiction, given that some of the criteria for identifying area-based management tools in the BBNJ Agreement are similar to the EBSA criteria. However, some noted that EBSAs are not specifically area-based management tools and, thus, relegating them to such an approach would limit their intended scope and applicability. Some noted that the Agreement is not yet in force and it has not set up a process to apply those criteria. Concern was expressed regarding potential overlapping work under the CBD and the BBNJ Agreement with respect to identifying areas of interest in marine areas beyond national jurisdiction. Furthermore, the Agreement has provisions for not undermining other processes and relevant frameworks. However, the need to develop new modalities was stressed, as many existing EBSAs are due for updating, which would improve scientific information in areas beyond national jurisdiction as well. It was emphasized that the Agreement has a mandate for management in areas beyond national jurisdiction, unlike the CBD EBSA process, but that the scientific and technical exercise to identify EBSAs under the CBD plays a key role in informing work under the BBNJ Agreement and its future processes, providing relevant and best available scientific information. Participants also noted the relevance of Article 5 of the BBNJ Agreement on the relationship between the Agreement and the Convention and relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, and of Article 5 of the CBD on Cooperation.

Annex IV

Flowcharts illustrating modalities by the end of the workshop

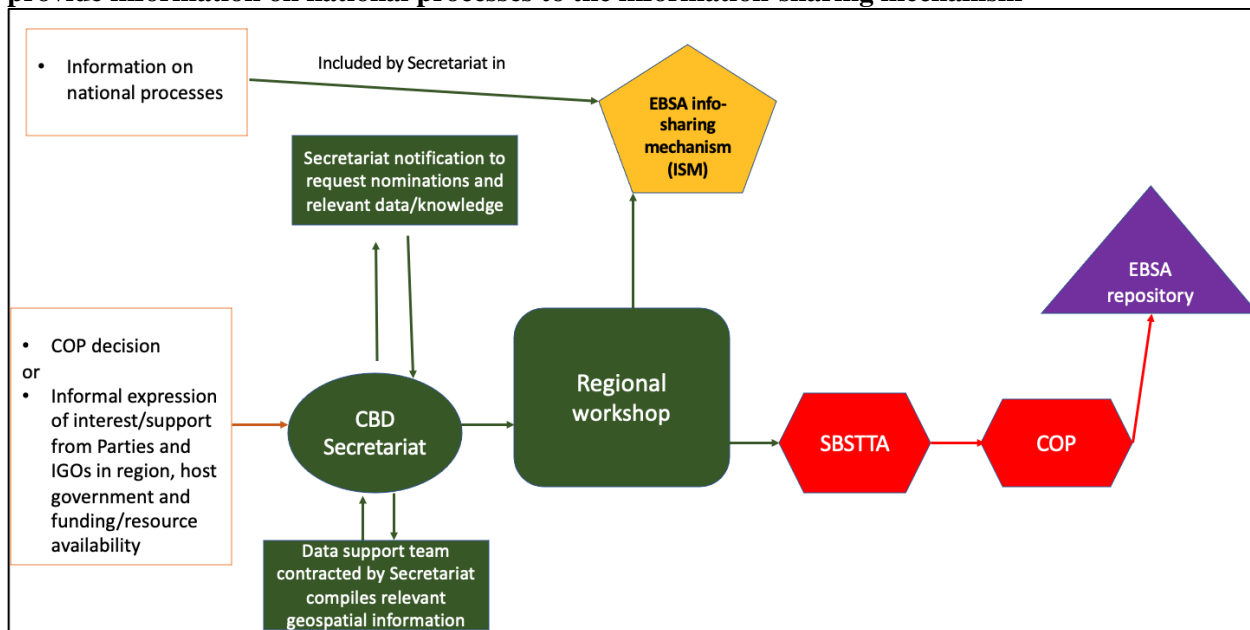
As noted in annex III, discussions on processes for the modification of EBSA descriptions and the description of new EBSA item did not focus on text. Rather, in the interest of time and clarity, visual flowcharts were displayed in the room for reference and used as the basis for discussion. These flowcharts were being revised (as much as possible) to reflect the discussions as they progressed.

This annex contains flowcharts, and brief explanations of the steps illustrated in the flowcharts, as they were by the end of the workshop. All steps of the flowcharts were discussed by the workshop participants and areas of disagreement were captured in the flowcharts to the greatest extent possible.

It’s important to note that these flowcharts and explanations focus only on the steps in the process to modify EBSA descriptions and describe new EBSAs, and do not illustrate other issues discussed (e.g., reasons for modification, proponents, information contained in the repository and information-sharing mechanism).

It should also be noted that these flowcharts and explanations are simplistic representations of the steps of the modalities. The version of the draft modalities to be made available for the Subsidiary Body at its twenty-sixth meeting will contain textual explanations written in the style and format typical of documents considered by the Subsidiary Body. Flowcharts will not be provided in the version submitted to Subsidiary Body. However, as noted earlier, an information document containing detailed explanations, clarifications and flowcharts will be made available to the Subsidiary Body to inform its deliberations on this topic at its twenty-sixth meeting.

Flowchart #1—Existing modalities to describe EBSAs through CBD regional workshops and to provide information on national processes to the information-sharing mechanism



With respect to areas intended to be included in the CBD EBSA repository

1. The convening of a CBD EBSA workshop is initiated by:
 - (a) Decision of the CBD COP, or

(b) Informal expression of interest/support from Parties and IGOs in region, host government and funding/resource availability

2. The CBD Secretariat convenes a CBD regional EBSA workshop, which entails (i) notification to request nomination of expert participants, (ii) notification to request submission of relevant data/knowledge and (iii) contracting of data support team to support workshop preparation and data compilation and mapping during workshop

(a) Information provided in response to notification is made available for the workshop and posted on the information-sharing mechanism;

(b) Workshop may develop new submissions and also review/discuss submissions developed prior to workshop;

(c) Workshop discusses areas beyond national jurisdiction and also areas within national jurisdiction when requested by the State;

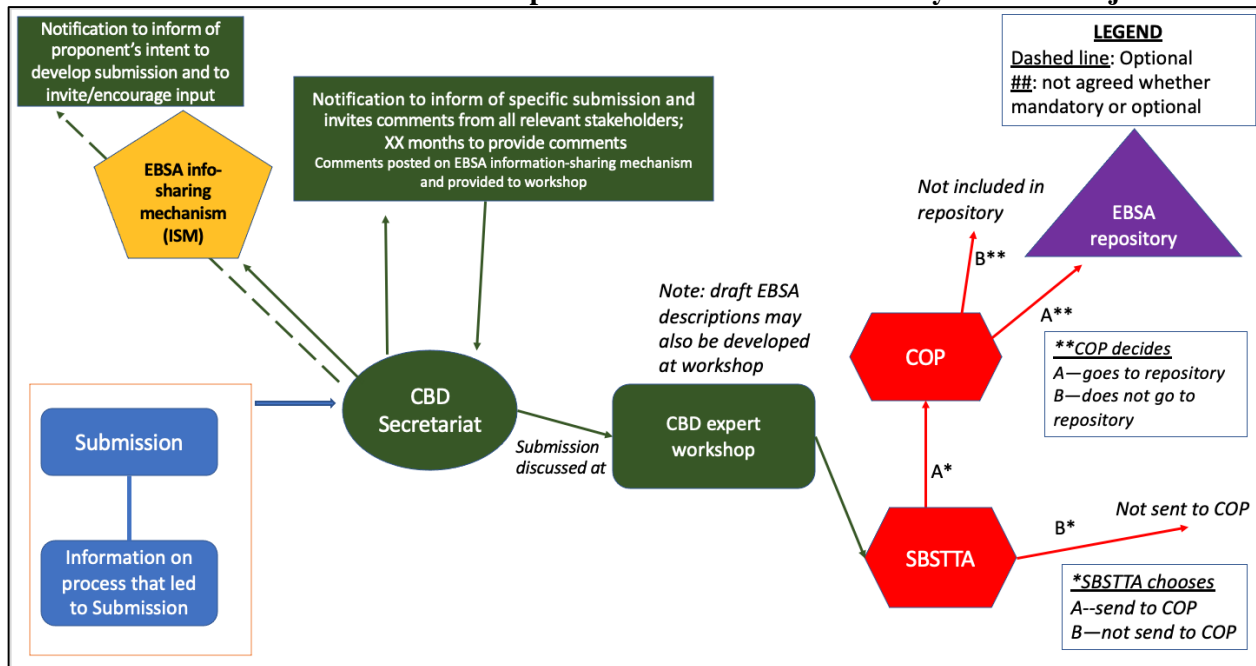
(d) Areas intended to go to the EBSA repository must be adopted by the workshop as a whole; workshop does not need to agree on areas going to the information-sharing mechanism

3. Workshop outcomes are provided to CBD SBSTTA for consideration, which decides whether to recommend to the COP that it includes the areas in the EBSA repository;

4. COP decides whether or not to include the areas into the repository, at which point they become CBD EBSAs.

There is also a modality by which countries can share information on their national exercises to describe areas meeting the EBSA criteria or other relevant compatible and complementary nationally or intergovernmentally agreed scientific criteria, which was set out by the COP in decision XIII/12.

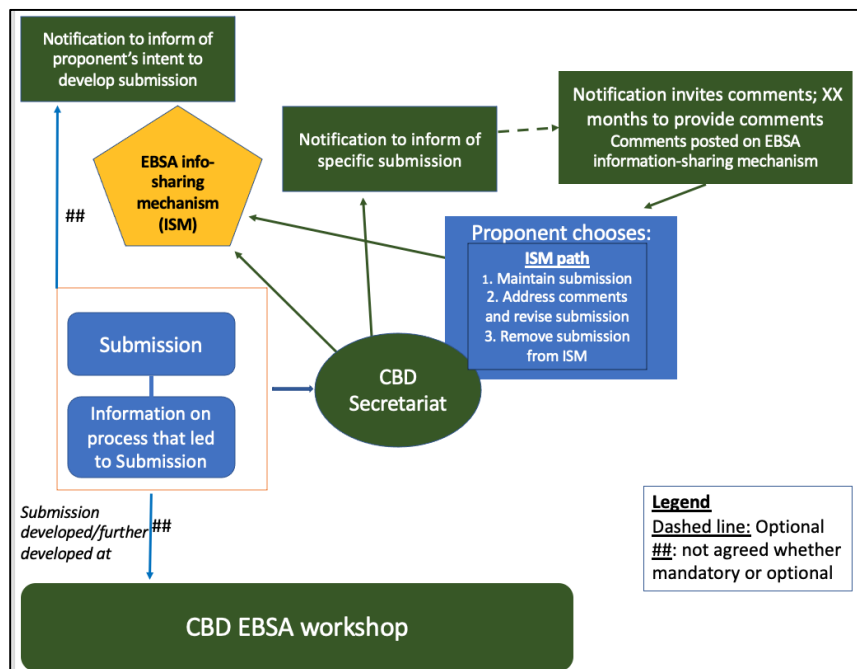
Flowchart #2—Draft modalities for description or modification in areas beyond national jurisdiction



1. If the proponent wishes, it may inform the Secretariat of intent to develop submission and Secretariat issues notification;

2. Secretariat add a record of the submission as it is received to the information-sharing mechanism;
3. Secretariat issues notification and keeps open for comment;
 - (a) Secretariat posts comments on the information-sharing mechanism and transmits comments to proponent,
 - (b) Submission, and the comments received, are reviewed at a CBD EBSA workshop, the outputs of which provided to SBSTTA for consideration
4. SBSTTA chooses one of the following:
 - (a) Recommend to the COP that it include the draft description in the repository;
 - (b) Do not recommend that the submission be considered by COP;
5. On the basis of a recommendation from SBSTTA, the COP chooses one of the following:
 - (a) Request the Secretariat to include the submission in the repository (thus giving it the status of a CBD EBSA);
 - (b) Do not request inclusion of the submission in the repository

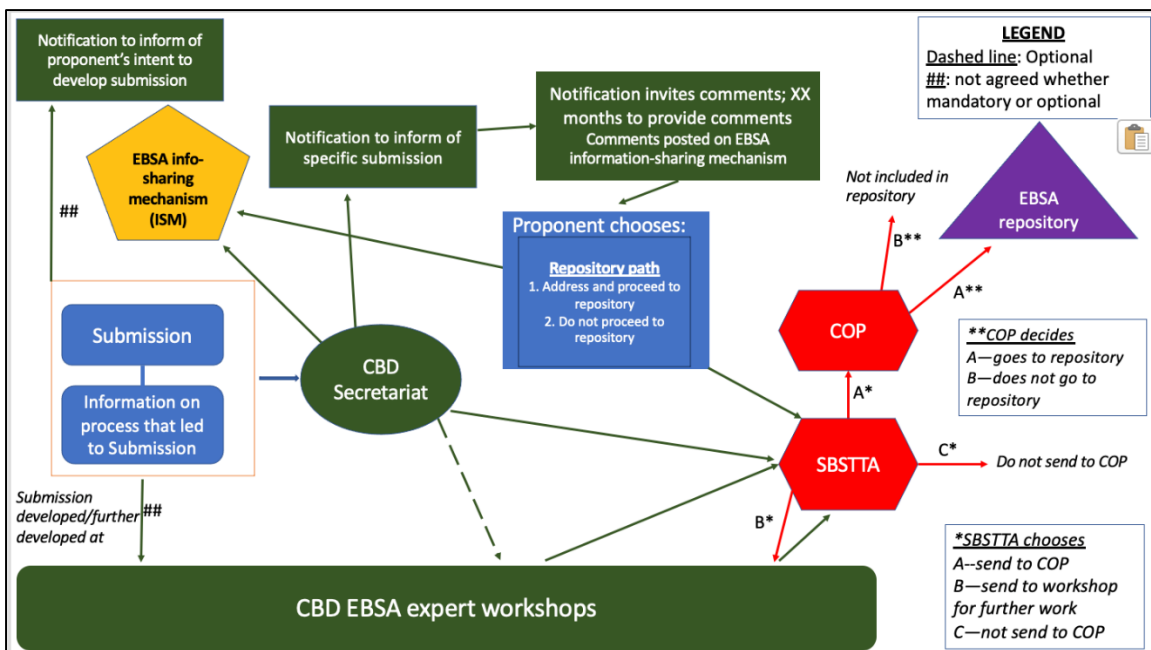
Flowchart #3—Draft modalities for modifying areas or describing new areas within national jurisdiction, to be posted in the information-sharing mechanism



1. Proponent informs Secretariat of intent to develop submission and Secretariat issues notification (*Differing views on whether mandatory or voluntary*);
2. Submission is developed/further developed at CBD EBSA expert workshop (*Differing views on whether mandatory or voluntary*);
3. Secretariat add a record of the submission as it is received to the information-sharing mechanism;
4. Secretariat issues notification and keeps open for comment (*Differing views on whether mandatory or voluntary*);

- (a) Secretariat posts comments on the information-sharing mechanism and transmits comments to proponent, who then chooses either to:
- (i) Maintain submission as it is in the information-sharing mechanism
 - (ii) Address comments (if comments had been received), and revise the submission in the information-sharing mechanism
 - (iii) Request the Secretariat to remove the submission from the information-sharing mechanism

Flowchart #4—Draft modalities for modifying areas or describing new areas within national jurisdiction, to be included in the repository



1. Proponent informs Secretariat of intent to develop submission and Secretariat issues notification (*Differing views on whether mandatory or voluntary*);
2. Submission is developed/further developed at CBD EBSA expert workshop (*Differing views on whether mandatory or voluntary*);
3. Secretariat add a record of the submission as it is received to the information-sharing mechanism;
4. Secretariat issues notification and keeps open for comment;
 - (a) Secretariat posts comments on the information-sharing mechanism and transmits comments to proponent, who then chooses either to:
 - (i) Maintain submission and proceed with the submission as is;
 - (ii) Address comments (if comments had been received), and revise the submission;
 - (iii) Do not proceed further;
5. Submission is provided to SBSTTA, which chooses one of the following:
 - (a) Recommend to the COP that it include the draft description in the repository (thus giving it the status of a CBD EBSA);

(b) Request that submission be further revised at CBD EBSA workshop, the outputs of which are sent back to SBSTTA for consideration; or

(c) Do not recommend that the submission be considered by COP;

6. On the basis of a recommendation from SBSTTA, the COP chooses one of the following:

(a) Request the Secretariat to include the submission in the repository (thus giving it the status of a CBD EBSA);

(b) Do not request inclusion of the submission in the repository
