



## Convention on Biological Diversity

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### Subsidiary Body on Scientific, Technical and Technological Advice

#### Twenty-sixth meeting

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Item 8 (b) of the provisional agenda\*

#### **Marine and coastal biodiversity: conservation and sustainable use of marine and coastal biodiversity**

### **Potential options for modalities for collaboration and cooperation with relevant global and regional organizations in the context 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\*\***

Note by the Secretariat

## **I. Introduction**

1. At its fifteenth meeting in December 2022, the Conference of the Parties to the Convention on Biological Diversity (CBD) adopted decision 15/24, which contain a number of references to the issue of marine biodiversity in areas beyond national jurisdiction (ABNJ). The decision contains a preambular paragraph that reads as follows:

(a) “*Recognizing* the need to strengthen cooperation and collaboration with competent intergovernmental organizations, including organizations with competence in areas beyond national jurisdiction, in support of the conservation and sustainable use of marine and coastal biodiversity, applying the ecosystem approach and the precautionary approach,<sup>1</sup> and using the best available science and traditional knowledge of indigenous peoples and local communities, with their free, prior and informed consent,<sup>2</sup> within the jurisdictional scope of the Convention and its Protocols”

2. In addition, the decision includes a paragraph addressing the then-ongoing negotiations under the auspices of the United Nations on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction), as follows:

(a) “*Encourages* Parties and invites other Governments participating in the Intergovernmental Conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine

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\* CBD/SBSTTA/26/1.

\*\* The present document is being issued without formal editing.

<sup>1</sup> Principle 15 of the Rio Declaration on Environment and Development

<sup>2</sup> In this decision, free, prior and informed consent refers to the tripartite terminology of “prior and informed consent” or “free, prior and informed consent” or “approval and involvement”.

biological diversity of areas beyond national jurisdiction, to take into consideration the Kunming-Montreal Global Biodiversity Framework in its negotiations, as appropriate”

3. Finally, the decision contained a specific request to the Executive Secretary as follows:

(a) “*Requests* the Executive Secretary, upon the adoption of an international legally binding instrument under the United Nations Convention on the Law of the Sea<sup>3</sup> on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction, to identify potential options for modalities for collaboration and cooperation with relevant global and regional organizations in the context of this instrument”

4. 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)<sup>4</sup> was adopted by consensus on 19 June 2023. This document was drafted in response to above-noted request and is being made available for the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) at its twenty-sixth meeting. It was prepared with input from the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations (DOALOS) which currently performs the secretariat functions in relation to the BBNJ Agreement until such time as the secretariat to be established under the Agreement commences its functions.

## II. Background and context

### A. Brief background and introduction on the BBNJ Agreement

5. The BBNJ Agreement is the third implementing agreement to the United Nations Convention on the Law of the Sea. Under the overall objective of ensuring the conservation and sustainable use of marine biological diversity of ABNJ for the present and in the long term, through effective implementation of the relevant provisions of the United Nations Convention on the Law of the Sea and further international cooperation and coordination, the BBNJ Agreement addresses four main issues, namely: marine genetic resources, including the fair and equitable sharing of benefits; measures such as area-based management tools, including marine protected areas; environmental impact assessments; and capacity-building and the transfer of marine technology. It sets out specific measures in respect of these issues, modalities to implement and monitor those measures, as well as institutional arrangements to support its implementation.

6. The BBNJ Agreement also addresses several “cross-cutting issues”, such as its relationship with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, institutional arrangements, funding, implementation and compliance, and dispute settlement. It establishes a Conference of the Parties which serves as the governing body of the Agreement, a Scientific and Technical Body and other subsidiary bodies of the Conference of the Parties, a secretariat and a Clearing-House Mechanism.

7. Further information on the provisions of the Agreement concerning international cooperation and coordination and the role of the institutions established thereunder are included in Section III A below.

<sup>3</sup> United Nations, Treaty Series, vol. 1833, No. 31363.

<sup>4</sup> United Nations Treaty Collection, 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, see [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXI-10&chapter=21&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-10&chapter=21&clang=_en)

**B. Work under the Convention that supports the work of the UN General Assembly on the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction**

8. The Conference of the Parties has reiterated the central role of the United Nations General Assembly in addressing issues relating to the conservation and sustainable use of biodiversity in marine areas beyond national jurisdiction (decision X/29, para 21). It furthermore recognized that the Convention on Biological Diversity has a key role in supporting the work of the General Assembly with regard to marine protected areas beyond national jurisdiction, by focusing on provision of scientific and, as appropriate, technical information and advice relating to marine biological diversity, the application of the ecosystem approach and the precautionary approach (decision X/29, para 24).

9. In line with the mandate of the Convention and decisions of the Conference of the Parties, various areas of scientific and technical work have been advanced under the Convention that are highly relevant to supporting the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction by States and competent intergovernmental bodies. This includes areas of work that can directly inform and support the application of the ecosystem approach in areas beyond national jurisdiction, such as:

- (a) Description of ecologically or biologically significant marine areas (EBSAs);
- (b) Area-based management tools, including marine protected areas and other effective area-based conservation measures (OECMs);
- (c) Biodiversity-inclusive environmental impact assessment and strategic environmental assessment;
- (d) Mainstreaming biodiversity into various sectors, in particular into the fisheries sector;
- (e) Guidance on key pressures on marine and coastal biodiversity (e.g., underwater noise, marine debris, ocean acidification);
- (f) Access and benefit-sharing in relation to genetic resources;
- (g) Digital sequence information on genetic resources; and
- (h) Coordination of clearinghouse mechanisms.

10. The above outline previous and current areas of work that supports the relevant work of the United Nations General Assembly and may be relevant to supporting the future implementation of the BBNJ Agreement, but do not consider potential future areas of thematic and substantive work that may be pursued under the CBD and which may contribute to the effective implementation of the Agreement.

**C. Kunming-Montreal Global Biodiversity Framework and the conservation and sustainable use of biodiversity in areas beyond national jurisdiction**

11. In decision 15/24, the Conference of the Parties encouraged Parties and invited other Governments participating in the Intergovernmental Conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, to take into consideration the Kunming-Montreal Global Biodiversity Framework in its negotiations, as appropriate (paragraph 11).

12. Various Parties have stressed the synergies between the Global Biodiversity Framework and the BBNJ Agreement, emphasizing that the timely and effective implementation of the Agreement can contribute to the achievement of the goals and targets of the Framework.

### III. Potential options for modalities for collaboration and cooperation

#### A. Basis

13. Various provisions of the BBNJ Agreement address its relationship with relevant instruments, frameworks and bodies and international cooperation and coordination in relation to the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction. The Agreement provides that it is to be interpreted and applied in a manner that does not undermine and promotes coherence and coordination with relevant instruments, frameworks and bodies (Article 5 of the BBNJ Agreement). Parties to the BBNJ Agreement must cooperate under the Agreement, including through strengthening and enhancing cooperation with and among relevant instruments, frameworks and bodies, and endeavour to promote the objectives of the BBNJ Agreement when participating in decision-making under other relevant instruments, frameworks and bodies (Article 8 of the BBNJ Agreement). The BBNJ Agreement also contains provisions dealing with its relationship with relevant instruments, frameworks and bodies in relation to specific issues.

14. The Conference of the Parties to the BBNJ Agreement is mandated, among others, to promote, including by establishing appropriate processes, cooperation and coordination with and among relevant instruments, frameworks and bodies, with a view to promoting coherence among efforts towards the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (Article 47 of the BBNJ Agreement). Other institutional arrangements established under the BBNJ Agreement will also play a role in promoting international cooperation and coordination. For example, the Scientific and Technical Body and the Implementation and Compliance Committee may draw on appropriate advice or information from relevant instruments, frameworks and bodies, as may be required (Articles 49 and 55 of the BBNJ Agreement). The secretariat is mandated to, among others, facilitate cooperation and coordination, as appropriate, with the secretariats of other relevant international bodies (Article 50 of the BBNJ Agreement). The Clearing-House Mechanism will, among others, facilitate international cooperation and collaboration, including scientific and technical cooperation and collaboration (Article 51 of the BBNJ Agreement).

15. Furthermore, the BBNJ Agreement contains provisions aimed at promoting cooperation and coordination with and among relevant instruments, frameworks and bodies in relation to specific issues. For example, the access and benefit-sharing committee established under the Agreement may consult and facilitate exchange of information with relevant instruments, frameworks and bodies on activities within its mandate, including benefit-sharing, the use of digital sequence information on marine genetic resources, best practices, tools and methodologies, data governance and lessons learned (Article 15 of the BBNJ Agreement). The Conference of the Parties to the BBNJ Agreement will make arrangements for regular consultations to enhance cooperation and coordination with and among relevant instruments, frameworks and bodies with regard to area-based management tools, including marine protected areas, as well as coordination with regard to related measures adopted under such instruments and frameworks and by such bodies (Article 22 of the BBNJ Agreement). The Conference of the Parties to the BBNJ Agreement will also develop mechanisms for the Scientific and Technical Body to collaborate with relevant instruments, frameworks and bodies on environmental impact assessments (Article 29 of the BBNJ Agreement). Parties to the BBNJ Agreement are to cooperate at all levels and in all forms in providing capacity-building and the transfer of marine technology, including through, among others, strengthening cooperation and coordination between relevant instruments, frameworks and bodies (Article 41 of the BBNJ Agreement).

16. Likewise, the Convention on Biological Diversity addresses similar considerations. This includes Article 5 (“Cooperation”), which notes that “Each Contracting Party shall, as far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity. In

addition, Article 22 (“Relationship with other international conventions”) contains the following relevant provisions:

(a) The provisions of this Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity (para. 1);

(b) Contracting Parties shall implement this Convention with respect to the marine environment consistently with the rights and obligations of States under the law of the sea (para. 2).

17. The above provide the basis for synergies and complementarities across work in the context of the BBNJ Agreement and work in the context of the CBD, enabling the uptake and use of various types of information, guidance and experiences that can support the effective implementation of the Agreement and of the Convention on Biological Diversity.

## **B. Objectives**

18. In line with the recognition by the Conference of the Parties to the CBD of the role of the work under the Convention in providing scientific and, as appropriate, technical information and advice relating to marine biological diversity, the application of the ecosystem approach and the precautionary approach in ABNJ, there are numerous benefits to be gained by ensuring strong collaboration and cooperation with relevant global and regional organizations in the context of the BBNJ Agreement.

19. As the global framework instrument and process dealing specifically with the issue of biodiversity in all of its forms, the Convention can provide important scientific and technical information and expertise to support both the deliberations of the future Conference of the Parties to the BBNJ Agreement and its subsidiary bodies, and the effective implementation of the Agreement, including through cooperation and coordination with other instruments, frameworks and bodies through the processes foreseen under the Agreement.

20. Experiences gained through years of Party-led implementation of the CBD may prove instructive to support the effective implementation of the BBNJ Agreement. This includes both implementation of the responsibilities of CBD Parties with respect to their activities in ABNJ, as well as relevant efforts to implement the CBD within national jurisdiction, including with respect to certain types of biomes, species and ecosystems that may also be found in ABNJ.

21. As well, the Conference of the Parties to the CBD has previously discussed various issues of significant relevance to marine biodiversity of ABNJ (e.g., ecologically or biologically significant marine areas, specific pressures on marine biodiversity, biodiversity mainstreaming), leading to various decisions on these issues, in addition to increased political awareness and understanding of key biodiversity topics.

22. Additionally, numerous efforts and initiatives led by the CBD Secretariat provide valuable opportunities to directly address issues related to biodiversity in ABNJ that have not yet been discussed in work under the CBD.

23. Through these experiences, a strong ‘community of practice’ has emerged under the CBD, comprised of expert scientists, managers, and policymakers. It is likely that some of these practitioners may also eventually be engaged in some form in the implementation of the BBNJ Agreement.

24. Finally, it may be useful for the Conference of the Parties to the CBD to explore new areas of work that may complement discussions in the Conference of the Parties to the BBNJ Agreement and support implementation of the Agreement.

## **C. Potential focal areas for collaboration and cooperation**

25. As noted earlier in this document, there are areas of work under the CBD that can directly inform and support the application of the ecosystem approach in areas beyond national jurisdiction

as well as experiences that, while not being directly applicable to ABNJ, may be instructive to the implementation of the BBNJ Agreement, as outlined in the below table:

Relevant work under the CBD	Relevance for implementation of the BBNJ Agreement
<p><u>Description of ecologically or biologically significant marine areas (EBSAs)</u></p> <ul style="list-style-type: none"> <li>○ 15 regional workshops to facilitate the description EBSAs</li> <li>○ Described using the CBD scientific criteria for EBSAs (adopted in decision XI/20)</li> <li>○ 338 EBSAs described on the basis of outcomes of CBD regional workshops (organized based on decisions X/20 and XI/17)</li> <li>○ EBSAs included in the EBSA repository (<a href="https://www.cbd.int/ebsa/ebsas">https://www.cbd.int/ebsa/ebsas</a>) and formally transmitted to the UN General Assembly at the request of the CBD COP</li> </ul>	<p><u>Area-based management tools (ABMTs), including marine protected areas</u></p> <ul style="list-style-type: none"> <li>○ Scientific information on areas described as meeting the scientific criteria for ecologically or biologically significant marine areas (EBSAs) could inform the development of proposals for the establishment of area-based management tools, including marine protected areas.</li> <li>○ Experiences in applying the EBSA criteria through the CBD EBSA process, including for certain types of features in the deep-sea and open ocean, could be used in the development of proposals for the establishment of area-based management tools, including marine protected areas</li> </ul> <p><u>Environmental impact assessment</u></p> <ul style="list-style-type: none"> <li>○ Scientific information on areas described as meeting the scientific criteria for ecologically or biologically significant marine areas (EBSAs) could inform the conduct of environmental impact assessment and relevant decision-making</li> </ul>
<p><u>Area-based management tools, including marine protected areas and other effective area-based conservation measures (OECMs)</u></p> <ul style="list-style-type: none"> <li>○ Target 3 of the Kunming-Montreal Global Biodiversity Framework, which includes both quantitative and qualitative elements</li> <li>○ Various types of guidance produced under the CBD on designation and management of area-based conservation measures, including on issues such to governance, stakeholder engagement, and ecological representativity, among others</li> <li>○ Criteria and guidance on the identification and management of other effective area-based conservation measures adopted by CBD COP</li> </ul>	<p><u>Area-based management tools (ABMTs), including marine protected areas:</u></p> <ul style="list-style-type: none"> <li>○ Various forms of guidance produced under the CBD could be used to inform work under the Scientific and Technical Body with respect to area-based management tools, including marine protected areas, including with respect to effectiveness, equitability, representativity and connectivity.</li> </ul>
<p><u>Biodiversity-inclusive environmental impact assessment</u></p> <ul style="list-style-type: none"> <li>○ Voluntary guidelines on biodiversity-inclusive environmental impact assessment endorsed by CBD COP (decision VIII/28)</li> <li>○ Voluntary guidelines were subsequently annotated specifically for biodiversity in marine</li> </ul>	<p><u>Environmental impact assessment</u></p> <ul style="list-style-type: none"> <li>○ The CBD voluntary guidelines could inform the development of standards and guidelines by the Scientific and Technical Body established under the BBNJ Agreement (as referred to in Article 38 of the BBNJ Agreement).</li> </ul>

and coastal areas, including in areas beyond national jurisdiction (UNEP/CBD/COP/11/23)	
<u>Mainstreaming biodiversity into various sectors, in particular into the fisheries sector</u> <ul style="list-style-type: none"> <li>○ Cancun Declaration on Mainstreaming the Conservation and Sustainable Use of Biodiversity for Well-Being adopted at the high-level segment of CBD COP 13</li> <li>○ Significant technical work and collaboration with FAO, regional fishery bodies and other organizations on mainstreaming biodiversity into sustainable fisheries management</li> <li>○ CBD COP decisions addressing mainstreaming of biodiversity into relevant sectors, including into fisheries, aquaculture and tourism (decision XIII/3), as well as in energy, mining and infrastructure (decision 14/3), among others</li> </ul>	<u>Environmental impact assessment</u> <ul style="list-style-type: none"> <li>○ Guidance produced under the CBD on mainstreaming biodiversity into various sectors (e.g., fisheries, transport) could inform measures to minimize or mitigate impacts on biodiversity in the context of EIAs.</li> </ul> <u>Area-based management tools (ABMTs), including marine protected areas:</u> <ul style="list-style-type: none"> <li>○ Various forms of guidance produced under the CBD could inform the development of proposals for the establishment and implementation of area-based management tools, including marine protected areas, including with respect to effectiveness, equitability, representativity and connectivity.</li> </ul>
<u>Guidance on key pressures on marine and coastal biodiversity</u> <ul style="list-style-type: none"> <li>○ Guidance produced and relevant experience synthesized on various pressures, such as anthropogenic underwater noise, marine debris, and ocean acidification</li> </ul>	<u>Environmental impact assessment</u> <ul style="list-style-type: none"> <li>○ Guidance produced under the CBD on various pressures (e.g., underwater noise, marine debris, ocean acidification) could inform measures to minimize or mitigate impacts on biodiversity in the context of EIAs.</li> </ul>
<u>Access and benefit-sharing for marine genetic resources; and digital sequence information (DSI) on genetic resources</u> <ul style="list-style-type: none"> <li>○ Experiences in the implementation of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization</li> <li>○ Ongoing discussions regarding the fair and equitable sharing of benefits arising from the use of DSI on genetic resources (decision 15/9)</li> <li>○ Decision by CBD COP to establish a multilateral mechanism for benefit-sharing from the use of DSI, including a global fund (decision 15/9)</li> </ul>	<u>Marine genetic resources, including the fair and equitable sharing of benefits</u> <ul style="list-style-type: none"> <li>○ Experiences on access and benefit-sharing under the Nagoya Protocol could inform approaches taken under the BBNJ Agreement;</li> <li>○ Further development of modalities for sharing monetary benefits from the use of digital sequence information (DSI) on marine genetic resources of areas beyond national jurisdiction could take into account the multilateral mechanism under the CBD for sharing benefits from the use of DSI on genetic resources, including ongoing work to further develop and operationalize the mechanism.</li> </ul>
<u>Capacity-building and development, and technical and scientific cooperation</u> <ul style="list-style-type: none"> <li>○ Long-Term Strategic Framework for Capacity-Building and Development adopted by CBD COP (decision 15/8)</li> <li>○ Sustainable Ocean Initiative capacity-building activities (<a href="https://www.cbd.int/soi">https://www.cbd.int/soi</a>)</li> <li>○ Sustainable Ocean Initiative Global Dialogue with Regional Seas Organizations and Regional</li> </ul>	<u>Capacity building and the transfer of marine technology</u> <ul style="list-style-type: none"> <li>○ Capacity building efforts under the Sustainable Ocean Initiative (coordinated by the CBD Secretariat) could be more directly oriented to issues relevant to the implementation of the BBNJ Agreement.</li> <li>○ Efforts to implement the Long-Term Strategic Framework for Capacity-Building and Development (adopted by the CBD</li> </ul>

Fishery Bodies, coordinated together with UNEP and FAO	COP in decision 15/8) could seek synergies to address capacity needs that will also support effective implementation of the BBNJ Agreement.
<u>Coordination of clearinghouse mechanisms</u> <ul style="list-style-type: none"> <li>○ CBD Clearing-House Mechanism (CHM)</li> <li>○ Support for coordination of national clearing-house mechanisms</li> <li>○ Access and Benefit-Sharing Clearing-House</li> <li>○ Biosafety Clearing-House (BCH)</li> </ul>	<u>Capacity building and the transfer of marine technology</u> <ul style="list-style-type: none"> <li>○ Experience of the CBD Secretariat in running three clearinghouse mechanisms could be instructive to the development and operationalization of the Clearing-House Mechanism under the BBNJ Agreement.</li> </ul>

26. As previously noted, there are additional areas of thematic and substantive work that may potentially be pursued, under the guidance of the Conference of the Parties to the CBD, which may contribute to the effective implementation of the Agreement.

#### **D. Potential mechanisms and modalities for collaboration and cooperation**

27. There are numerous means to operationalize cooperation and coordination with relevant global and regional organizations in the context of the Agreement, including:

(a) In cooperation with the secretariat established under the Agreement and, until it commences its functions, with DOALOS, co-organizing joint expert workshops, including participation from relevant global and regional organizations, on issues relevant to the Agreement;

(b) Including specific issues relevant to the Agreement on the agenda of the Sustainable Ocean Initiative Global Dialogue with Regional Seas Organizations and Regional Fishery Bodies;

(c) Exploring possible areas of collaboration among the CBD Secretariat, the secretariat established under the Agreement and, until it commences its functions, DOALOS, and the secretariats of other biodiversity-related conventions on thematic issues relevant to the Agreement, including, as appropriate, at meetings of the *Liaison Group of Biodiversity-related Conventions* and the in the Bern Process (a process to facilitate cooperation among Parties to the relevant biodiversity-related conventions);

(d) Including matters relevant to both the Convention and the Agreement as a standing agenda item to be considered at each meeting of the Subsidiary Body on Scientific, Technical and Technological Advice and the Conference of the Parties to the Convention where there is an item on marine and coastal biodiversity;

(e) Collaborating and coordinating with relevant global and regional organizations in contributing to the scientific work under the Agreement and relevant work under the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects;

(f) Contributing to increasing coordination and cooperation with relevant global and regional organizations on activities linked to issues relevant to the Agreement by regularly sharing information, including through UN-Oceans;

(g) Contributing to the work undertaken under the Agreement, including by providing information and sharing expertise, in accordance with the procedures established thereunder, as well as any processes on cooperation and coordination with and among relevant instruments, frameworks and bodies that may be established by the Conference of the Parties to the Agreement;

(h) Delivering joint capacity-building activities with the secretariat established under the Agreement and, until it commences its functions, with DOALOS, as well as with relevant global and



regional organizations, in the context of the long-term strategic framework for capacity-building and development, to promote the implementation of the Agreement and of the Framework.

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