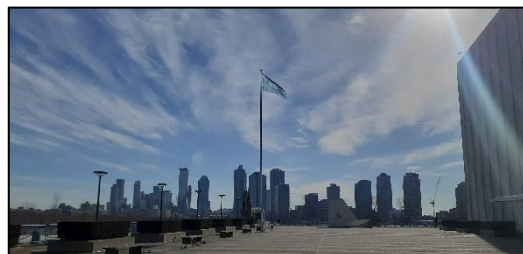


The Deep-Ocean Stewardship Initiative (DOSI) at the Resumed Fifth Session for a new Agreement for the Conservation and Sustainable Use of Marine Biodiversity of Areas beyond National Jurisdiction, 20 February - 4 March 2023

Overview

The resumed fifth negotiating session for a new international legally binding instrument for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ) took place between 20 February and 4 March 2023. After over a decade of discussions and five years of formal negotiations, negotiators came to an agreement on the final text on 4 March 2023, which will be put forward for legal cleaning and subsequent adoption in late June 2023.



United Nations Headquarters in New York City, where the Resumed Fifth Session was convened.

Members of the Deep-Ocean Stewardship Initiative's (DOSI) [BBNJ Working Group](#) and [Marine Genetic Resources Working Group](#) were active in the negotiations. Since the early days of the process, DOSI has been involved in a range of activities aimed at bringing deep-sea science to the forefront of BBNJ discussions. Activities included [giving interventions](#) and [hosting side-events](#) at the negotiations, as well as intersessional work, such as [commenting on draft text](#), producing [policy-briefs](#), creating informational social media posts, and co-hosting [workshops](#) and [webinars](#), amongst others. DOSI researchers were also on-hand at the negotiations themselves, meeting with delegations to discuss the science behind certain draft provisions, answering any questions that delegations had, and connecting delegates with relevant scientists where needed. These efforts played an important role in bridging science and decision-making communities and in supporting use of the best-available scientific knowledge in decision-making related to conservation and sustainable use of the deep sea.

Participants

DOSI's delegation at the resumed session was the largest to date, and consisted of a diverse group of members from across the globe, spanning early-career to senior researchers from various disciplines, including a mix of first-timers and seasoned participants in the negotiating process. In addition to the DOSI delegation, DOSI members participated in the negotiations as part of other delegations, including as part of State delegations and intergovernmental organisation delegations. The following DOSI members attended the negotiations in person:

- Harriet Harden-Davies
- Jeffrey Marlow
- Christine Gaebel
- Lisa Levin
- Marcel Jaspars
- Sheena Talma
- Alumita Sekinairai
- Vanessa Paloma Lopes
- Júlia Schütz Veiga
- Judith Gobin
- Luciana Fernandes Coelho

Apart from the in-person delegates, DOSI members also participated remotely by sharing information and providing comments and advice to the DOSI delegation, as well as other delegations.

DOSI Actions

During the negotiations, DOSI members played an important role in providing expertise and input to delegations. DOSI provided practical examples of how sample identifiers work in practice for digital sequence information (DSI), clarifying the minimal burden associated with unique and standardised identifiers, and discussing the central importance of DSI and derivatives with several delegations. Additionally, DOSI members discussed other provisions related to deep-sea science, such as the qualities of a Scientific and Technical Body and the Clearing House Mechanism with delegates, and provided valuable input on the definition of marine technology, as well as other key elements relating to CBTMT.



The DOSI Delegation at the United Nations Headquarters in New York City for the Resumed Fifth Session for BBNJ.

Moreover, the DOSI delegation successfully pushed for the inclusion of key provisions regarding climate change impacts, such as deoxygenation, as well as the links between BBNJ and climate mitigation. Indeed, DOSI spearheaded the addition of “deoxygenation” to the Preamble and Annex II, alongside text on other impacts of climate change (e.g. warming and ocean acidification). The DOSI delegation highlighted the importance of biodiversity underpinning carbon cycling¹, and through previous interventions and discussions with delegations at the resumed session, promoted the retention of the reference to stewardship², as well as other provisions relating to deep-sea science³ in the final text.

Throughout the two-week negotiations, DOSI members divided efforts to attend the parallel negotiating sessions. Notes were taken by the DOSI delegation to help identify and inform scientific needs within the negotiations, as well as better understand how DOSI could support the future implementation of the BBNJ Agreement.

Highlights from the Negotiations

Marine Genetic Resources (MGR):

Part II of the BBNJ Agreement sets out requirements regarding access to marine genetic resources (MGR) in ABNJ and the fair and equitable sharing of benefits derived from them. Throughout the negotiations, the MGR section proved to be one of the most challenging components, with substantial adjustments being proposed and incorporated over the course of the two weeks. In particular, two main issues which emerged, revolved around the explicit

¹ Article 7(h) now reads, “An approach that builds ecosystem resilience, including to adverse effects of climate change and ocean acidification, and also maintains and restores ecosystem integrity, **including the carbon cycling services that underpin the ocean’s role of the ocean in climate**”

² The Preamble now reads, “**Desiring to act as stewards of the ocean in ABNJ on behalf of present and future generations by protecting, caring for and ensuring responsible use of the marine environment, maintaining the integrity of ocean ecosystems and conserving the inherent value of biodiversity of areas beyond national jurisdiction**”.

³ E.g., Article 5(h) calls for Parties to be guided by, “The use of the best available science and scientific information”.

inclusion of digital sequence information (DSI), and the way in which “access” and “benefit sharing” would be linked. While some argued that DSI was implicitly included based on references to other international agreements (e.g., the Convention on Biological Diversity), others worried that dependence on the CBD would limit the benefits ultimately derived from sequence information. Notably, on the final day of the resumed fifth session, 27 references to DSI were included, giving several regional groups confidence that the true value of marine genetic resources would be captured. Another long-standing debate for the MGR section was around the equitable sharing of benefits derived from MGRs and the so-called “track and trace” possibility. In order to determine if a commercial product actually came from ABNJ, many countries wanted each step along the way from collection to commercialisation to be tracked, and each individual sample to have a unique identifier code. This suggestion felt overly burdensome to other parties, and a compromise was reached through the use of a “batch identifier,” which confers an over-arching number for all samples from a given cruise in ABNJ. Under the BBNJ Agreement, batch identifiers are to be assigned via the Clearing House Mechanism, which will also be used to house the required pre-collection and post-collection reports.

Area-Based Management Tools:

Part III of the BBNJ Agreement focuses on area-based management tools (ABMTs), including marine protected areas (MPAs). The final text sets out specific criteria for the identification and designation of ABMTs. Proposals will be made by States Parties to the Agreement, based on the best available science and scientific information as well as relevant traditional knowledge of Indigenous Peoples and local communities, and should take into account a precautionary and ecosystem approach. Proposals will be submitted to the Secretariat and will be reviewed by the Scientific and Technical Body, with the ultimate decision to adopt an ABMT and relevant associated measures resting with the COP. The final text also includes provisions relating to emergency measures, which will allow the COP to adopt measures if “a natural phenomenon or human-caused disaster has caused, or is likely to cause, serious or irreversible harm”.

A significant area of divergence in the negotiations emerged around decision-making modalities. After intense negotiations, the final text reflects a decision-making process which is carefully designed to strike a balance between consensus and majority voting. Notably, the COP is to make decisions and recommendations regarding ABMTs by consensus, but in the absence of consensus, a 2/3 majority vote is required. A contentious issue during the negotiations was the provision for Parties to make an objection (i.e. opt out) of ABMT decisions and recommendations. This raised concerns about potential loopholes that could undermine the effectiveness of the ABMT framework. Ultimately, negotiators agreed to allow States to opt out, but included criteria that must be met in order to do so, as well as obligations to adopt equivalent alternative measures or approaches, “to the extent practicable”. Moreover, the final text sets out that the objecting Party “shall not adopt measures nor take actions that would undermine the effectiveness of the decision”, with the aim of further closing loopholes. Another key area of divergence in the negotiations was around how ABMT provisions would interact with relevant instruments, frameworks and bodies (IFBs) operating in ABNJ. It was ultimately decided that where measures fall within the competencies of IFBs, BBNJ’s COP may make recommendations to Parties and IFBs to promote the adoption of measures through the IFB in question, but the IFB would make the final decision. To further promote cooperation, the text also calls for the COP to arrange regular consultations with relevant IFBs.

Environmental Impact Assessments (EIA):

Part IV provides details and requirements related to undertaking environmental impact assessments (EIAs) in ABNJ. The final text includes provisions which aim to operationalise the EIA provisions set out in the UN Convention on the Law of the Sea and include details on the EIA process, including screening, scoping, EIA reports, and monitoring, amongst others. It also sets out the threshold which triggers an EIA and subsequent requirements. Notably, one of the objectives of the EIA part is to allow for the consideration of cumulative impacts, which is something that the scientific community, including DOSI, has pushed for throughout the BBNJ process. Moreover, the final text includes provisions relating to Strategic Environmental Assessments (SEA). While the provisions do not create an obligation to undertake SEAs, its inclusion was welcomed by many delegations, as well as civil society and scientists, who highlighted the importance of SEAs for better responding to cumulative, cross-sectoral, and/or new or emerging threats and pressures.

Key issues which emerged during the negotiations were around the threshold to trigger an EIA, decision-making modalities, and the relationship between EIAs under the BBNJ Agreement and those under other IFBs. After intense discussions, States agreed that EIAs are required for activities which “may cause substantial pollution of or significant and harmful changes to the marine environment”. Regarding decision-making, while many States argued for an “internationalised” EIA process under which the COP would be involved in decision-making, the final text leaves this responsibility to the Party with jurisdiction or control over the planned activity. The text further sets out that the Party must upload the EIA reports and relevant information to the Clearing House Mechanism and ensure that an approved activity continues to be monitored. Regarding the relationship between EIA provisions under the BBNJ Agreement and EIA processes under other IFBs, it was ultimately decided that screening or assessment of a planned activity would not be required if that assessment has been conducted under the requirements of an IFB. However, compromise was found by including that the EIA was to be equivalent to the EIAs required under the BBNJ Agreement. The text also calls for the Scientific and Technical Body to collaborate with relevant IFBs in order to develop standards and guidelines relating to best-practice for EIAs.

Capacity Building and Transfer of Marine Technology (CBTMT):

Part V sets out requirements and modalities related to capacity-building and the transfer of marine technology (CBTMT). Under the objectives, the final text highlights the importance of enabling “inclusive, equitable and effective cooperation and participation” in the Agreement through capacity building endeavours, as well as the importance of this part for assisting States, in particular developing States, with the implementation of the provisions set out in the BBNJ Agreement. It also highlights the importance of developing marine scientific and technological capacity of developing States Parties in regards to the conservation and sustainable use of BBNJ through access to and transfer of marine technology, as well as the importance of dissemination of knowledge pertaining to BBNJ. Apart from objectives, the text sets out provisions related to types of CBTMT, modalities for CBTMT, and obligations to monitor and review CBTMT undertaken under the BBNJ Agreement, amongst others. It also establishes a CBTMT Committee to help support the operationalisation of relevant provisions.

Throughout the negotiations, divergence remained regarding CBTMT obligations and modalities. Some States preferred language such as “cooperate to achieve” the transfer of technology, whereas other States preferred language such as “seek to ensure” technology transfer. Compromise was found with including that, “Parties, within their capabilities, shall ensure capacity-building for developing States and shall cooperate to achieve the transfer of

marine technology". The final text also sets out that CBTMT should be a "country-driven, transparent, effective and iterative process" and that it should be based on and responsive to the "needs and priorities of developing States", that it should take into account special circumstances faced by developing and least developed States, and should be identified by needs-based assessments. Another important issue which was discussed was the specific types of CBTMT that would be included. The final text sets out a wide-range of relevant CBTMT, noting that it "may include, and are not limited to, support for the creation or enhancement of the human, financial management, scientific, technological, organizational, institutional and other resource capabilities of Parties". Additionally, an indicative non-exhaustive list of types of CBTMT is also included in Annex II of the Agreement.

Cross-Cutting Issues:

Cross-cutting all four key elements were discussions on cross-cutting issues (CCI), which included issues pertaining to the preambular text, general provisions, institutional arrangements, funding mechanisms, and more. Regarding General Provisions, Article 1 sets out important terms, many of which are inherently scientific in nature, including biotechnology, cumulative impacts, and marine technology, amongst others. Regarding general principles and approaches, the inclusion of the "Common Heritage of Humankind" and/or the "Freedom of the High Seas" resulted in a key area of divergence, resulting in the inclusion of both principles. A similar solution resolved the long-standing divergence around whether to include the precautionary principle or approach, with both ending up in the final text. Other principles include the use of best-available science and scientific information, as well as relevant traditional knowledge of Indigenous Peoples and local communities.

In relation to institutional arrangements, discussions addressed the form and function of the Conference of the Parties (COP), Secretariat, Scientific and Technical Body (STB), and Clearing House Mechanism, amongst others. Divergence emerged around how often the COP should meet and whether decisions and recommendations should be adopted by consensus and/or voting. After intense negotiations, the parties decided that the COP shall first meet no later than one year after entry into force and shall continue to meet at regular intervals decided by the COP, at which time they will adopt rules of procedure and financial rules by consensus. Subsequent COPs will exhaust all efforts to take decisions and recommendations on matters of substance by consensus, resorting to two-thirds majority voting where necessary. Regarding the Secretariat, the final text sets out that UN DOALOS will form interim functions until COP-1 makes arrangements for a new BBNJ-specific Secretariat. The text also establishes a Scientific and Technical Body (STB), consisting of members serving in their expert capacity. The text also calls for members with suitable qualifications and for consideration of multidisciplinary expertise, gender balance, and equitable geographical representation. The final text establishes a mechanism consisting primarily of an open-access platform, which will support the storage and dissemination of information relating to the other parts of the Agreement.

Regarding financial resources and funding mechanisms, delegates discussed funding obligations and modalities. The final text sets out that each Party to the Agreement "shall provide, within its capabilities, resources in respect of those activities that are intended to achieve the objectives of this Agreement, taking into account its national policies, priorities, plans and programmes", with many states conceding to including "shall" with the inclusion of the later half of the paragraph. Moreover, the text in the Agreement establishes a funding mechanism that includes a voluntary trust fund to help facilitate wide-participation in meetings. Contributions and payments from monetary benefit sharing modalities under the MGR section, and a Global Environment Facility trust fund will be funded through a special fund.

Next Steps

States are meeting in New York City at the UN Headquarters on 19 - 20 June 2023 with the aim of adopting the BBNJ Agreement. After adoption, it will need to be ratified by 60 States before it enters into force. After it has entered into force, the COP will meet within the first year, at which time, Rules of Procedure and other important considerations will be addressed. As the BBNJ Agreement moves from adoption to ratification to implementation, scientific information and other knowledge will remain important, whether it be promoting and supporting ratification, or supporting the implementation of specific provisions. As such, the DOSI BBNJ Working Group looks forward to this next chapter in the BBNJ process and will endeavour to continue connecting deep-sea science and researchers with decision-makers and policy processes to help support evidence-based decision-making for the deep sea.