

BBNJ Resumed IGC-5
Area-based management tools, including marine protected areas
Oral report of the Facilitator
27 February 2023

1. During the informal informals on area-based management tools (ABMTs), including marine protected areas (MPAs), held on Friday, 24 February 2023, we heard briefings from the delegations leading the work of the small groups and updates from other informal discussions held in the margins. The focus was on four main areas, as noted previously, related to: (i) Decision-making, in paragraphs 1, 4 and 5 of Article 19, (ii) Recognition, in paragraphs 2 and 3 of Article 19, (iii) the Objection process, in paragraphs 4 to 9 of Article 19 bis, and (iv) Emergency measures in Article 20 ante. Following an exchange of views on those paragraphs, we worked through the remaining parts of Part III with brackets, in an effort to clear text.
2. With regard to **Article 19, paragraphs 1, 4 and 5**, (now paras 1-3 in the Updated text) on Decision-making, intensive discussions in the small group resulted in revised text that was supported by many delegations. The point of departure is on the scope of the power of the Conference of the Parties (COP) to establish ABMTs in the case of measures that would be compatible with measures adopted by relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies (IFBs). Delegations seem comfortable with stating that such decisions could be made by the COP in cooperation and coordination with IFBs. One delegation has indicated that such a decision by the COP should only be possible when the measures are not within the competence of the IFB. This will require further discussion.
3. On **Article 19, paragraphs 2 and 3** (now paras 4 and 5 or 4 alt in the Updated text) on recognition of measures taken by IFBs, there has been some movement towards an enabling clause. While some conceptual issues remain, and some delegations are still opposed to the idea of recognition, there have been some expression of flexibility and these discussions are continuing. One of the concerns is over the possibility of recognition of measures leading to an expansion of rights and obligations beyond the IFB.
4. On **Article 19bis, paragraphs 4 to 9** (now paras 4-10 in the Updated text) concerning an objection procedure, there has been increased comfort in the small group on the process of objection, but we have not yet reached agreement. I invited delegations to continue these consultations on the weekend in the context of the Updated draft text and in light of a new proposal that has been circulated by some of the regional groups. I would note in particular the CARICOM proposal made on the weekend, which is on the website.
5. Regarding **Article 20 ante**, on Emergency measures, constructive progress was made in informal consultations, with a general level of comfort with the text with the notable exception

of the issue of thresholds. Further textual proposals were also made on the weekend for delegations to consider for our discussions this week. I would highlight CLAM's proposal made on the weekend related to this.

6. Finally, we considered the remaining bracketed text in Articles 17, 17bis, 18 and 20, as well as Annex I, and we were able to open some brackets. On some issues, delegations continue to hold differing views and new proposals were circulated on these paragraphs to be discussed this week. In this regard, I would note China's proposal made on the weekend related to disputed areas with suggestions for multiple insertions in the text, which we will be taking up in the informal informals.

7. Overall, good progress was made last week in developing text that is moving towards consensus and lessening the number of choices to be made on the substantive issues. But late additions on Friday will mean an increased pressure to make more progress early this week.

8. For this morning's small group there will be a deliberation of Emergency Measures (Art. 20 ante), and consideration of Article 19, paragraphs 8 and 9, in particular, that focus on the scenario of the creation of new IFB, or the expansion of an IFB mandate. In the Informal informals tomorrow, we will brief out from these informal discussions and work through proposals made on the weekend by regional groups and China.