

Written Submission from The Pew Charitable Trusts

Written statement on Item 5: Terms of Reference and modalities for the operation of, and rules of procedure for, the subsidiary bodies (Cluster I: Issue 2) and Selection process for the members of the Scientific and Technical Body and the other subsidiary bodies (Cluster I: Issue 3)

Question 1 from the Guiding questions prepared by the Co-Chairs, part B: For each of the subsidiary bodies, what are the most important elements relating to: nature and scope of work; functions; operational modalities, including interaction with other bodies/committees established under or pursuant to the Agreement (including the COP); and cooperation with relevant instruments, frameworks and bodies (IFBs)?

ABMT-specific STB considerations

Although the BBNJ STB has defined responsibilities under the EIA and ABMT chapters—and the COP may assign it further functions across other chapters—this submission focuses on the key STB elements most relevant to ABMT.

The STB is required to perform four ongoing functions, which could be considered its core responsibilities under ABMT:

- Conduct a preliminary review of an ABMT proposal to confirm it includes all required information, and make the results of that review publicly available through the Secretariat (**Art 20**)
- Assess the final ABMT proposal and make recommendations to the COP (**Art 21.7**)
- Monitor and periodically review implemented ABMTs, MPAs, and related measures (**Art 26.3**)
- Assess the effectiveness of implemented ABMTs, MPAs, and related measures, evaluate progress toward their objectives, and provide advice and recommendations to the COP (**Art 26.4**)

To successfully carry out these core ABMT functions, it will be critical for the STB:

1. to have suitable expertise (discussed in more detail under the question four);
2. to be organized in a manner that facilitates the dedicated review of site-specific proposals;
3. to act swiftly; and
4. to have access to additional data, information, knowledge, and expertise—including via collaboration with other institutions, organizations, and instruments, frameworks, and bodies (IFBs).

To support detailed consideration of ABMT proposals and maintain ABMT-specific expertise, it may be beneficial to establish a dedicated standing ABMT working group within the STB. This working group could consist of a subset of STB members and may also invite additional experts to contribute in an advisory capacity.

Additionally, to ensure that each ABMT/MPA proposal is reviewed by scientists with site-specific expertise, the STB could consider allowing the ABMT working group to establish short-term task teams or ad hoc technical groups dedicated to evaluating individual proposals.

It is common practice for IFBs to allow their STBs to operate through subsidiary structures, such as working groups or subcommittees—either with a permanent or long-term mandate,¹ or established on a

¹ e.g., CBD's SBSTTA, CCAMLR's SC, GFCM's SAC, NAFO's SC

temporary basis to address specific issues or questions,² or both.³ These subsidiary bodies typically operate under the STB's rules of procedure, where applicable,⁴ but are guided by distinct and clearly defined terms of reference.

Some IFBs' STBs use these subsidiary bodies as mechanisms to engage external expertise, drawing on advice from other scientific entities or individual experts.⁵ A recent example of a site-specific, ad hoc technical group involving external experts is SPRFMO's SC's Salas y Gómez and Nazca Ridges Task Team, tasked with compiling and reviewing all relevant scientific data on the area and recommending possible measures to the SPRFMO Commission. Provisions should be developed to allow the BBNJ STB to involve external expertise—whether through its working groups or other mechanisms.

It may be beneficial for the BBNJ STB, as well as its working groups or task teams, to convene intersessionally. For instance, the STB's first core function—reviewing ABMT/MPA proposals to ensure they include all required information—does not require specialized expertise or a detailed substantive assessment. This preliminary review could therefore be conducted intersessionally, potentially via virtual meetings, allowing the Secretariat to promptly initiate the formal consultation process for proposals that meet the necessary criteria. Similarly, it may be advantageous to permit a task team, or another specialized entity operating under the STB, to review final proposals intersessionally so that the STB can draw on their site-specific expertise and analysis when formulating its recommendations to the COP.

Subsidiary bodies of an STB can also serve as mechanisms for collaboration with other IFBs and their respective STBs. While joint subcommittees or working groups are one option, collaboration can also be structured through joint sessions with counterpart bodies, the participation of experts from other IFBs, formal partnership agreements, or a combination of these approaches. The BBNJ STB should be authorized to engage with other IFBs as it deems appropriate, where such collaboration is relevant to its mandate—as is the practice in several other IFBs, including CBD's SBSTTA,⁶ CCAMLR's SC⁷ and NAFO's SC.⁸ Collaboration with other IFBs is particularly important for the ABMT-specific functions of the BBNJ STB—not only in assessing final ABMT proposals and making recommendations to the COP, but also in monitoring and evaluating the effectiveness of implemented ABMTs, MPAs, and related measures. Potential delays in information exchange between the BBNJ STB and other IFBs should be anticipated, and appropriate provisions should be put in place to minimize such constraints.

With respect to ABMT-related functions, clear provisions governing the BBNJ STB's decision-making process will be essential to ensure that appropriate measures are recommended to the COP. Most STBs strive to operate by consensus, with only a few—such as CBD's SBSTTA, CITES' APC, and the CLCS—resorting to voting on substantive matters when consensus cannot be achieved. More commonly, voting is reserved for procedural matters, such as the election of officers.

In addition to the core functions that the STB is obliged to carry out on an ongoing basis, there are an additional three ABMT functions which the STB must carry out *as necessary*: 1) Elaborate further requirements for the content of ABMT proposals (**Art 19.6**), 2) Further elaborate modalities for the ABMT consultation and assessment process, taking into account the special circumstances of SIDS (**Art**

² e.g., CITES' AC and PC, ISA's LTC, SPRFMO's Task Teams

³ The language IFB's Terms of Reference (or similar documents) used to enable the STB to create subsidiary bodies is often as follows: an STB "may establish", with the approval of the main governing body of an IFB or by itself, "such subsidiary bodies as are necessary for the performance of its functions" (e.g., [CITES' AC RoPs, Rule 17.1](#) and [PC RoPs, Rule 17.1](#); [CLCS RoPs, Rule 43](#); [NAFO's SC RoPs, Rule 5.4](#); [SEAFO's SC RoPs, para 41](#)).

⁴ e.g., [CCAMLR SC RoPs, Rule 13](#); [CITES' AC RoPs, Rule 17.4](#) and [PC RoPs, Rule 17.4](#)

⁵ e.g., [CBD's SBSTTA's Modus Operandi, para 18](#); [IOTC's SC ToR and RoPs, para 12](#)

⁶ CBD SBSTTA's Modus Operandi, para 20

⁷ CAMLR Convention, Article XXIII.3

⁸ NAFO Convention, Article VII.9(b)

21.8), and 3) Elaborate procedures and guidance for the establishment of emergency measures (Art 24.5). Given that these functions are to only be undertaken ‘as necessary’, it may be helpful for the COP to provide guidance to the STB with regard to when such actions are ‘necessary’.

Finally, there are two ABMT functions which the STB *may* carry out: 1) further develop and revise indicative criteria for the identification of ABMTs (Art 19.5); and 2) recommend emergency measures (Art 24.3). The proactive nature of these functions suggest that it may be helpful for the BBNJ STB to shape its own provisional agenda and, where appropriate, its work plan. This would ensure it can address issues it identifies as relevant and raise matters on its own initiative.

Cross-cutting STB considerations

To support the overall effectiveness of the BBNJ STB and ensure the integrity of its advice across all functions—including but not limited to ABMT-related responsibilities—it will be essential to establish:

- 1) transparent policies to prevent and manage conflicts of interest. Such procedures should include clear guidance on when members are expected to abstain from decision-making and when full recusal is required. Many STBs under other IFBs have adopted such provisions to safeguard impartiality and objectivity.⁹
- 2) provisions to ensure participation of accredited observers in the meetings of the STB and its subsidiary bodies, consistent with the BBNJ Agreement’s emphasis on transparency. In line with standard practice across IFBs, observers should be permitted to speak, submit relevant documents for circulation as information papers, and receive all meeting-related materials provided to delegates—while not participating in decision-making.
- 3) provisions to facilitate active engagement and effective coordination between the STB and other subsidiary bodies established under the Agreement. Various formats could support this cooperation, including regular consultations, cross-attendance at meetings, or joint working groups or projects.
- 4) provisions that ensure the STB’s work is fully considered in COP’s budget, including the possibility of a dedicated STB budget and/or the ability to submit its own budget estimates. Additional funding should be made available to support member participation and the development and implementation of research projects. It should also be clarified whether the STB will have dedicated staff or rely solely on Secretariat support.

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Question 3 from the Guiding questions prepared by the Co-Chairs, part B: In the Co-Chairs aid to discussions on rules of procedure for the COP, draft rule 26 proposes that the rules of procedure for the COP will apply mutatis mutandis to subsidiary bodies established under the Agreement, unless decided otherwise.

- *Should the rules of procedure for the COP apply to all the subsidiary bodies?*
- *Should certain bodies have their own or additional rules of procedure, where this is not already stipulated in the Agreement (see Art. 55(3) concerning the Implementation and Compliance Committee)? If so, what specific features should they contain?*

Applying the BBNJ CoP’s Rules of Procedure *mutatis mutandis* could serve as a useful initial safeguard, covering matters not explicitly addressed in any supplementary rules developed for the STB, should delegates choose to establish them. However, given the STB’s overarching role and the specific nature of its mandate, tailored provisions may be necessary. These could include, for example, the need to address the STB’s interactions with other IFBs and their scientific bodies, the engagement of external experts, and the STB’s composition and selection process.

⁹ e.g., CITES, CLCS, IATTC, ICES, ISA, and IWC.

Question 4 from the Guiding questions prepared by the Co-Chairs, part B: Having regard to the Agreement, what should be the eligibility criteria, qualifications and expertise of members, number of members, selection process, term of office and renewal modalities for each of the subsidiary bodies? How may the selection process work?

The BBNJ Agreement calls for the STB to reflect diverse expertise and ensure balanced representation across geography, gender, and traditional knowledge, while remaining capable of fulfilling a broad mandate. Experience shows that STBs with open-ended membership can be unwieldy, while overly small bodies may lack capacity. The BBNJ STB should therefore strike a balance—maintaining a manageable size with clear provisions for engaging external expertise.

A regularly updated, non-exhaustive list of relevant expertise should guide the selection of STB members, along with clear criteria for determining suitable qualifications. The STB should also have a mechanism to identify gaps over time and recommend additional areas or profiles needed to fulfill its mandate effectively.

Expert rotation in the STB is important to bring in new voices, including from emerging fields, while continuity is needed to preserve institutional memory and maintain effectiveness. Membership terms should be fixed, not exceeding four years, with the possibility of one re-election. A mechanism should ensure an overlap between outgoing and incoming members to avoid full turnover at once.

The BBNJ Agreement simultaneously strives to ensure geographical balance, gender equity, and the inclusion of traditional knowledge within its STB. Balancing these goals with the need for strong scientific expertise—particularly in fields where such expertise is limited—may pose challenges. Several approaches can help achieve this balance:

- 1) Precedents show that rotating membership based on weighted regional representation, using either IFB-specific or UN regional groupings, can be an effective way to ensure geographical diversity (e.g., CITES' AC and PC¹⁰ and CLCS¹¹).
- 2) Establishing clear provisions for how traditional knowledge is incorporated into the STB's work is also essential. Options include appointing dedicated knowledge holders as members, engaging them as advisors, developing protocols for integrating traditional knowledge, or a combination of these approaches. Where dedicated representation is established, Indigenous Peoples should have the opportunity to rotate representatives and apply self-selection mechanisms.
- 3) It is also important to determine whether gender balance provisions should be part of a broader gender inclusivity strategy across all BBNJ institutions, like in CBD, CITES and ICES or addressed separately for the STB.

¹⁰ CITES Resolution Conf. 18.2, Annex 2, para 5

¹¹ UNCLOS, Annex II, Article 2