

**AREA-BASED MANAGEMENT TOOLS IN 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**

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ABSTRACT

The 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 (hereinafter “BBNJ agreement” or “draft agreement”), currently under negotiation, is the first agreement dedicated to maintaining and managing marine biological diversity beyond national authority. Part III of the draft agreement contains area-based management tools (ABMTs), which are one of the most efficient BBNJ tools. In the latest draft text of the BBNJ agreement article 1/3, ABMT is defined as “A tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives [and affording higher protection than that provided in the surrounding areas].” Some ABMT models, such as Ecologically or Biologically Significant Marine Areas (EBSAs), are already globally recognised, but any of them have authority in areas beyond national jurisdiction (ABNJ). According to the last draft text of the agreement, BBNJ ABMT system aims to create a new globally binding and effective instrument. However, the BBNJ ABMT system is still unclear and contains controversial topics. This study aims to analyze the BBNJ ABMT system. First, BBNJ and its negotiation history will be enlightened, followed by an examination of the ABMT process, mention of some ABMT models, and consideration of some important questions, including what powers a new body should have and The implementation of the decisions made by the COP established by the agreement.

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List of Acronyms

ABMT: Area-based management tools

ABNJ: Areas beyond national jurisdiction

APEI: Areas of Particular Environmental Interest

BBNJ: 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

CBD: Convention on Biological Diversity

CCZ: Clarion-Clipperton Zone

COP: Conference of the parties

DOSI: Deep-Ocean Stewardship Initiative

EBSA: Ecologically or biologically significant areas

ECA: Emission control areas

FAO: Food and Agriculture Organization

IMO: International Maritime Organization

ISA: International Seabed Authority

IUCN: International Union for Conservation of Nature

JPOI: Johannesburg Plan of Implementation

LC: London Convention

LP: London Protocol

LTC: Legal and technical commission

MAP: Mediterranean Action Plan

MARPOL: The International Convention for the Prevention of Pollution from Ships

MPA: Marine protected areas

NEAFC: North- Atlantic Fisheries Commission

OECD: Other effective conservation measures

OSPAR: The Commission for the Protection of the Marine Environment of the North-East Atlantic

POWPA: Programme of work on protected areas

RFMO: Regional Fisheries Management Organization

RSB: Regional Seas Bodies

SPA: Specially Protected Areas

SPAMI: Specially Protected Areas of Mediterranean Importance

SPAW: Specially Protected Areas and Wildlife Protocol

SOLAS: International Convention for the Safety of Life at Sea

TAC: Total allowable catch

UN: United Nations

UNEP: United Nations Environmental Plan

UNFSA: United Nations Fish Stock Agreement

UNCLOS: United Nations Convention on Law of the Sea

US: United States

VME: Vulnerable marine ecosystem

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1. INTRODUCTION

1.1. Biodiversity in areas beyond national jurisdiction

Oceans cover nearly 71% of the earth's surface and 97% world's available water stocks.¹ Marine areas beyond national jurisdiction (ABNJ) cover a big amount of the oceans and include significant marine biological diversity. Seabed and water column of the ABNJ have been host to many different marine creatures like marine mammals, planktons and various geographical features like sea mounts, thermal vents and so forth. There is limitless biological diversity in the sea and seabed but also there are number of threats the majority of the marine creatures and marine ecosystem share. For example, deep-sea fishing, hydrocarbon exploration and extraction, pipeline-laying, deep-sea mining, waste disposal and litter and so forth.² Moreover, oceans have a significant importance for human life. Marine biological resources like fishes are used for ensuring human life in a healthy way. Additionally, oceans protect humanity from the worst effects of the climate change by absorbing carbon dioxide and heat. As a consequence, oceans are acidifying and warming increasingly.³

Despite all their contributions to humanity, the oceans are damaged by humanity through fishing, navigation, exploitation, deep-sea mining and land-based human activities. For the reason that overfishing and destructive fishing methods many fish species like sharks and highly migratory fish stocks face to the risk of depletion. Also, navigation can have side effects on marine biodiversity. For example, the noise pollution occurs from the ships can be destructive for many species living in the ocean. Exploitation can easily harm rare and fragile ecosystems. Another example is pollution from ships. Another activity affected oceans is deep sea mining. Deep sea mining is carried out on hydrothermal vents, seamounts, manganese nodules which has rich biodiversity.⁴ International Seabed Authority (ISA) pointed out an issue

¹ Introduction to the Oceans, <http://www.physicalgeography.net/fundamentals/8o.html> Access Date: 04.04.2022

² Deep-sea biodiversity and ecosystems, <https://wedocs.unep.org/bitstream/handle/20.500.11822/8156/-Deep-sea%20biodiversity%20and%20ecosystems-2007rsrs184%281%29.pdf?sequence=3&isAllowed=y> 23.04.2022

³ Rochette, J., Gjerde, K., Druel, E., Ardron, J. A., Craw, A., Halpin, P., ... Cleary, J. (2014). Delivering the Aichi target 11: challenges and opportunities for marine areas beyond national jurisdiction. *Aquatic Conservation: Marine and Freshwater Ecosystems*, 24(S2), 31–43. <https://doi.org/10.1002/AQC.2507>, p. 33

⁴ Rochette, J., Gjerde, K., Druel, E., Ardron, J. A., Craw, A., Halpin, P., ... Cleary, J. (2014). Delivering the Aichi target 11: challenges and opportunities for marine areas beyond national jurisdiction. *Aquatic Conservation: Marine and Freshwater Ecosystems*, 24(S2), 31–43. <https://doi.org/10.1002/AQC.2507>, p. 34

in a technical study that deep sea mining can be harmful for marine environment.⁵ The most observable land-based activity harmed oceans and its ecosystems in terms of land-based activity is ocean garbage patches. Plastic pollution can alter habitats and natural processes, reducing ecosystems ability to adapt to climate change, directly affecting millions of people's livelihoods, food production capabilities and social well-being.⁶ All these activities cause irreversible damage to the oceans, which are important for the survival of humanity. Actually, all activities have been mentioned are regulated separately however, for the effective ocean protection, an integrated system is needed.

1.2. Areas beyond national jurisdiction

ABNJ covers two main maritime zones. Firstly, it includes the high seas, which is the water column beyond national jurisdiction (either the territorial sea or the exclusive economic zone). The United Nations Convention on the Law of the Sea (UNCLOS), adopted in 1982, included the principle of freedom of the high seas in article 87 as: "The high seas are open to all States, whether coastal or land-locked.... It comprises, inter alia, both for coastal and land-locked States:

- (a) freedom of navigation;
- (b) freedom of overflight;
- (c) freedom to lay submarine cables and pipelines, subject to Part VI;
- (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
- (e) freedom of fishing, subject to the conditions laid down in section 2;
- (f) freedom of scientific research, subject to Parts VI and XIII."

According to the article 87, every state has many rights on high seas. On the other hand, the freedom of the high seas is not a limitless concept. UNCLOS has many provisions about the limits of the freedom of high seas. Part XII of the UNCLOS which provides provisions about protecting marine environment is a good example of it. Especially, article 192 mentions

⁵ Towards the Development of a Regulatory Framework for Polymetallic Nodule Exploitation in the Area, ISA technical study: No. 11, <https://isa.org.jm/files/files/documents/tstudy11.pdf> Access Date: 03.04.2022

⁶ Plastic Pollution, <https://www.unep.org/plastic-pollution> Access Date:04.04.2022

that States have obligation to protect and preserve marine environment. Moreover, article 194(3) stated that States shall be responsible to activities under their jurisdiction or under their control. In addition, article 194(5) mentions “States shall take measures to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.”

Another designation of the UNCLOS about ABNJ is the term of "the Area" which mentioned on UNCLOS article 136-140. The area is defined as "the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction."⁷ The Area is accepted as a part of the ABNJ and it is designated as the common heritage of humankind.⁸ As such, activities in the Area are regulated on behalf of the international community by the International Seabed Authority, established under Part XI of UNCLOS.

1.3 The regulatory framework and challenges for managing BBNJ

UNCLOS is not the only instrument that it relevant to ABNJ, however. As awareness of the importance and protection of the oceans increases, different regional, global instruments, legal frameworks, bodies have got involved to the issue. The most important development on global scale is that Convention on Biological Diversity (CBD) was adopted in 1992 and as a part of the biological diversity, marine biodiversity was covered by the Convention. Furthermore, in regional scale some legal instruments, frameworks and bodies have emerged like the Barcelona Convention to protect marine environment including marine biological diversity. Mediterranean Action Plan (MAP) was adopted in 1975 by sixteen Mediterranean countries and the European Community as the first-ever Regional Seas Programme. The Action Plan for the Protection of the Marine Environment and the Sustainable Development of the Coastal Areas of the Mediterranean (MAP Phase II) which is the renewed version of the Mediterranean Action Plan (MAP) was adopted in 1995. Barcelona Convention includes seven protocols and one of them is directly interested in biological diversity. Other regional instrument is "The Convention for the Protection of the Marine Environment of the North-East Atlantic (The OSPAR Convention)". OSPAR Convention includes five annex and one of these

⁷ UNCLOS, article 1

⁸ UNCLOS, article 87, 136

annex is “On the protection and conservation of the ecosystems and biological diversity of the maritime area”.⁹

Another contribution about the conservation and protection of marine environment and biological diversity comes from sectoral organizations like International Maritime Organization (IMO) and International Seabed Authority (ISA). IMO is an agency of United Nations (UN) specialized on safety and security of shipping and the prevention of marine and atmospheric pollution by ships¹⁰ ISA is an international organization under UNCLOS relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea.¹¹ Lastly, regional fisheries management organizations are one of the other instruments that protect marine biological diversity.

One of the most effective tools for conserving and protecting marine biological diversity is protected areas accepted as area-based management tool. Area based management tools is an umbrella definition and it includes many protecting measures like protected areas, other effective protection measures and so forth. Global instruments like CBD, regional bodies like OSPAR, sectoral organizations like IMO designed different protected area models to conserve marine biological diversity. Some of them is designed for areas in national jurisdiction and some of them is designed for areas beyond national jurisdiction (ABNJ). However, none of these protected area concepts have been accepted globally for the reason that any organization has mandate on biological diversity on ABNJ.

On the other hand, "Ecologically or Biologically Significant Marine Areas (EBSAs)" identified under the mandate of CBD gains widespread acceptance as criterias to identify areas in need of protection. However, the CBD's decision-making body, the Conference of the Parties (the COP), does not have the authority to take measures on the ABNJ. Only relevant instruments, legal frameworks and organizations can take measures on EBSAs on ABNJ and CBD State Parties have an obligation to cooperation on ABNJ about conserving marine environment according to the CBD article 5. Therefore, EBSAs are accepted as recommended areas for protection. Regional, sub-regional, sectoral bodies identified different ABMT concepts too like “Specially Protected Areas of Mediterranean (SPAMIs)”, “Areas of Particular

⁹ Ibid.

¹⁰ Top Story, <https://www.imo.org/> Access Date: 04.04.2022

¹¹ About ISA, <https://www.isa.org.jm/about-isa> Access Date: 04.04.2022

Environmental Interest (APEIs)” and so forth. The measures taken in these concepts are limited to the geographical scope or the types of measures.

Upon understanding the necessity of establishing an instrument with mandate over the ABNJ, according to the United Nations General Assembly Resolution 59/24,¹² Ad Hoc Open-ended Informal Working Group (BBNJ Working Group) was established to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction in 2005. BBNJ Working Group has held meeting seven times since 2006.¹³ Thereafter, the UN General Assembly decided to convene a preparatory committee to develop an internationally legally binding instrument under the UNCLOS on conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction with resolution A/69/292 in 2015.¹⁴ UN General Assembly decided to convene a diplomatic conference for at least four sessions by resolution A/ 72/ 249.¹⁵ The substantive sessions were held as listed: The first substantive session on 4– 17 September 2018, The second substantive session on 25 March– April 2019, The third substantive session 19– 30 August 2019, fourth substantive session on 7–18 March 2022.¹⁶ The introduction of the Revised draft text of BBNJ (A/CONF.232/2020/3) some important issues were pointed out by the President as: “The results of the conference should be fully consistent with the provisions of the UNCLOS (para. 3), the process and its result should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies (para. 3), this agreement will be a package agreement.”¹⁷ These issues pointed out shows that BBNJ will be comprehensive, respectful of other relevant instruments existence and harmonized with the UNCLOS.

¹² The United Nations General Assembly resolution 59/24, p. 13, https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_59_24.pdf Access Date: 04.04.2022

¹³ Rochette, J., Gjerde, K., Druel, E., Ardron, J. A., Craw, A., Halpin, P., ... Cleary, J. (2014). Delivering the Aichi target 11: challenges and opportunities for marine areas beyond national jurisdiction. *Aquatic Conservation: Marine and Freshwater Ecosystems*, 24(S2), 31–43. <https://doi.org/10.1002/AQC.2507>, p. 39

¹⁴ Long, R., & Nordquist, M. (2021). *Marine biodiversity of areas beyond national jurisdiction* (Center for oceans law and policy). p. 26

¹⁵ Ibid., 27

¹⁶ Ibid. p. 27

¹⁷ The United Nations General Assembly, A/CONF.232/2020/3 <https://digitallibrary.un.org/record/3847798> Access Date: 05.04.2022

The latest draft text of the BBNJ¹⁸ consists of twelve parts as listed: “Part I: General Provisions, Part II: Marine Genetic Resources, Including Questions on The Sharing of Benefits, Part III: Measures Such as Area-Based Management Tools, Including Marine Protected Areas, Part IV: Environmental Impact Assessments, Part V: Capacity-Building and Transfer of Marine Technology, Part VI: Institutional Arrangements, Part VII: Financial Resources [and Mechanism], Part VIII: Implementation [and Compliance], Part IX: Settlement of Disputes, Part X: Non-Parties to This Agreement, Part XI: Good Faith and Abuse of Rights, Part XII: Final Provisions.”

The Part VI of the draft text of the agreement, institutional arrangements regulates three organ which will carry out the conventions provisions. These organs are, the Conference of the Parties (the COP), the Scientific and Technical Body (the STB) and the Secretariat. The Conference of the Parties shall adopt rules and regulations of procedure for itself or for new bodies will be established by it.¹⁹ Furthermore, the COP can adopt decisions and recommendations related to the implementation of BBNJ, promote cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, establish subsidiary bodies, adopt budgets for a financial period.²⁰ Therefore, it is understood that the COP is decision-making and execution mechanism of the Convention. Another organ will be established by adoption of the Convention is the Scientific and Technical Body. The Scientific and Technical Body consists of composed of experts, taking into account the need for multidisciplinary expertise. The STBs duties are as follows: Providing scientific and technical advice to the COP, monitoring utilization of marine genetic resources on ABNJ, giving recommendations about various subjects including ABMTs, elaborating guidelines and so forth.²¹

One of the most important parts of the BBNJ is “Part III: Measures Such as Area-Based Management Tools, Including Marine Protected Areas” for the reason that this part regulates measures that will actively protect marine biodiversity. Area-based management tool (ABMT) is defined on the last draft text of the BBNJ article 1 as "a tool, including a marine protected

¹⁸ The last draft text of the BBNJ, https://www.un.org/bbnj/sites/www.un.org.bbnj/files/a_conf232_2022_inf1_textualproposalscompilation_article_byarticle15april2020_rev.pdf Access Date: 02.02.2022

¹⁹ BBNJ, article 48/3

²⁰ BBNJ article 48

²¹ BBNJ, article 49

area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives [and affording higher protection than that provided in the surrounding areas]."²²

1.4 Research questions and methodology of this study

With the BBNJ coming to the order of the day, some questions have been arisen regarding ABMTs, which is a part of the agreement. My main research questions are what the concept of ABMT means in the context of BBNJ and how a system of ABMTs should be developed for ABNJ. In order to address these overarching questions, it is also necessary to ask:

- ❖ What powers should a new body have to designate and manage ABMTs in BBNJ?
- ❖ The implementation of the decisions made by the COP?

The study will answer these questions by looking at both existing treaties, instruments and practice, as well as proposals for a new BBNJ agreement that is being negotiated at the United Nations. The phrase "A compilation of textual proposals for consideration at the fourth session dated 15 April 2020" refers to the most recent draft text of the BBNJ in this study. The study will also take into account relevant literature and scientific studies.

1.5 Outline of the Study

Protecting biological diversity beyond national jurisdiction is an essential issue to sustainable use of marine biological resources. This issue has affected all of the members of humanity living now or will live. Therefore, as a major measure ABMT system on ABNJ will be analyze deeply.

The first part of the study examines the concept of the ABMT. As known, ABMT did not defined in any international convention until BBNJ however, many kind of measures are generally accepted as under the ABMT umbrella like "marine protected areas (MPAs) and

²² The last draft text of the BBNJ,
https://www.un.org/bbnj/sites/www.un.org.bbnj/files/a_conf232_2022_inf1_textualproposalscompilation_articlebyarticle15april2020_rev.pdf Access Date: 02.02.2022

"other effective conservation measures (OECMs). Another distinguishing example is EBSAs, which are recommended for protection and conservation. Therefore, the second part of the study, heading 2.1. definition of the ABMT according to the BBNJ, comparison of the MPAs and ABMTs is analyzed, examples of the MPAs and ABMTs beyond national jurisdiction is mentioned.

ABMT system on ABNJ will bring various effects to all relevant organizations, State Parties, legal frameworks, instruments, global, regional, sub-regional actors. Second part, 2.2. dealt with the how will affect the BBNJ ABMT system to global, regional, subregional actors. Global organizations have mandate on ABNJ is IMO and ISA and as regional actors regional fisheries management organizations (RFMOs) and regional seas bodies (RSBs) are examined in this section. With all of holistic data ABMT concept according to the BBNJ is examined.

The third part is analyzing the BBNJ ABMT process with assessment of the last draft text of the BBNJ. This process is analyzed as parts identification of areas, submission of proposal, consultation and assessment of proposals and decision-making process, implementation and monitoring. While conducting this review, the views of the States Parties and non-governmental organizations were also benefited from.

The fourth part includes measures currently taken on ABNJ as ABMT. Some ABMTs currently exist in ABNJ although these ABMTs generally limited with geographical/sectoral scope or accepted by limited States or they recommended for protection. As an example of these the MPA system on ABNJ which was established by the cooperation of OSPAR and NEAFC and the EBSAs system were examined.

The last part of the study, the fifth Part is dedicated understanding the "What can be done in the BBNJ Treaty?". The first issue of this chapter is which powers should be given to the new instrument. The second issue is the implementation of the decisions made by the COP.

2. THE CONCEPT OF THE ABMT

2.1. What is an ABMT?

2.1.1. ABMT as an ocean management model

2.1.1.1. Definition of the ABMT according to the BBNJ

In most recent draft text of the BBNJ, Area-based management tool (ABMT) is defined as *“A tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives.”*²³ Another proposal about ABMT is to add on the end of the definition of ABMT and affording higher protection than that provided in the surrounding areas statement to gain higher protection.²⁴

There are several elements to this definition: a geographically defined area; applicable to sectors or activities; aim of the measures.

“A geographically defined area” is the first element of the definition. Article 16 of the draft text calls for the identification of ‘areas requiring protection’ which will be subject to AMBTs. In the ANNEX I of last draft text of the BBNJ, indicative criteria for identification of areas are explained. These criteria are generally related to the conservation status and uniqueness of the ecosystem. For example, uniqueness, rarity, fragility, biological diversity and so forth. However, there is no criteria regarding the size of the geographically defined area have been determined. Secondly, AMBTs are to be addressed at sectors or activities. “Sector” generally means one part of the country's economy.²⁵ According to the BBNJ Article 1 “Activities” means that an activity over which a State has effective control or exercises jurisdiction.²⁶ While the activity refers to the work done, the sector refers to that line of business. In other words, the activity can be carried out other than economic reasons.

ABMT is a measure that provides an ocean management device for a specific area and it is used for particular conservation and sustainable use objectives. This area should be a kind of area in need protection. Furthermore, with this system some activities can be prohibited in this area to protection and some sectors cannot have role on this area. The most important key point is that

²³ Revised draft text of an 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, article 1, <https://undocs.org/en/a/conf.232/2020/3> Access Date: 10.01.2022

²⁴ Ibid., article 1

²⁵ Sector definition, <https://dictionary.cambridge.org/dictionary/english-turkish/sector> Access Date: 12.12.2021

²⁶ Ibid., article 1

all limitations are realize one aim: Conservation and sustainable use of marine biologic diversity. On the other hand, the concept of conservation and sustainable use focuses on the fact that uses are to be supported, as long as they are sustainable.

ABMT is a measure that is dedicated protection of marine environment and conservation of marine biologic diversity. ABMT in BBNJ can apply ABNJ and it is not a new concept but also it is effective and wide concept to protect marine environment

2.1.1.2. Comparison of the MPAs and ABMTs

Another aspect about ABMT is that it includes marine protected areas (MPAs). ABMT is broader concept than MPA. However, MPA as a concept to conserve and protect marine environment is more established than ABMT. In last revised text of the BBNJ, it was proposed that MPA may be defined as “MPA” means a geographically defined marine area that is designated and managed to achieve specific [long-term biodiversity] conservation and sustainable use objectives [and that affords higher protection than the surrounding areas]”.²⁷

Some understanding of the distinction between ABMTs and MPAs can be gleaned from the Convention on Biological Diversity (CBD). The CBD describes an MPA as “Marine and Coastal Protected Area’ means any confined area within or adjacent to the marine environment, together with its overlying waters and associated flora, fauna, and historical and cultural features, which has been reserved by legislation or other effective means, including custom, with the effect that its marine and/or coastal biodiversity enjoys a higher level of protection than its surroundings.”²⁸ Also UNEP has defined MPA as “any defined area within or adjacent to the marine environment, together with its overlying waters and associated flora, fauna and historical and cultural features, which has been reserved by legislation or other effective means, including custom, with the effect that its marine and/or coastal biodiversity enjoys a higher level of protection than its surroundings”²⁹ It is obviously seen that both of them focus on the

²⁷ BBNJ, article 1

²⁸ CBD, COP 7, Decision VII/5 (note 11), <https://www.cbd.int/doc/decisions/cop-07/cop-07-dec-05-en.pdf>
Access Date: 10.02.2022

²⁹ Working towards a High Seas Marine Protected Areas Network:

area in need protection and the objective of the measure is same: conservation and sustainable use of marine . On the other hand, there are some differences between these two definitions. It can be listed as:

- ❖ The CBD explained the concept of area more broadly.
- ❖ Both mentioned the objective of protecting the area.

The definitions of the MPAs can be helped to improve an understanding about ABMT in BBNJ. Firstly, MPA is generally focus on an area that in need protection and many activities can be managed due to the conservation and protection of this area. However, ABMT can be established for only one activity, or it can be used for multiple activities. Some examples of MPAs are established on ABNJ and used for protecting marine environment. These examples can enlighten the concept of the ABMT in BBNJ.

2.1.1.3. Examples of the MPAs and ABMTs beyond national jurisdiction

One of these examples are MPAs established under the auspices of the Convention on Biological Diversity (CBD). CBD is the first global convention that is dedicated to conservation and protection of biological diversity.³⁰ The CBD was adopted in 1992 at Rio by 150 government leaders.³¹ The CBD brought a new perspective to the definition of biodiversity and made a human-centered definition. Accordingly, biodiversity includes not only plants, animals, humans, but also microorganisms, genetic differences between them, and ecosystems. In addition, this definition of biodiversity is a definition made by considering not only the people living today, but also the generations that will live in the future.³² The CBD Parties made the

Development of an Interactive Map (IMap) and review of spatial databases containing information on marine areas beyond the limits of national jurisdiction, September 2007, UNEP WCMC, <https://www.cbd.int/doc/meetings/mar/ewsebm-01/other/ewsebm-01-unesp-wcmc-en.doc#:~:text=The%20CBD%20describes%20an%20MPA,that%20its%20marine%20and%20For> Access Date: 20.01.2022

³⁰ Ibid. p. 45

³¹ Terms of Reference

Production of a Web-TV broadcast for the launch of Global Biodiversity Outlook 3

<https://www.cbd.int/doc/vacancies/2009/scbd/scbd-2009-webtv-gbo3-en.pdf> Access Date:01.07.2022

³² Biodiversity, <https://www.cbd.int/convention/guide/> Access Date: 16.12.2021

protected area commitments by adopting the “Programme of Work on Protected Areas (PoWPA)” in February 2004.³³ Another topic about this issue is “Aichi Targets” that have been announced in the framework of the CBD for the conservation of biodiversity on earth. Aichi Target 11 mentioned that *“By 2020, at least 17 per cent of terrestrial and inland water, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures and integrated into the wider landscapes and seascapes.”* However, by then the global MPA coverage was just over 1 percent.³⁴ On the other hand, Aichi Target 11 shows that there is a tendency in the world to integrate area-based management tools that protect biodiversity.³⁵ Another issue about that, this target includes not only MPAs but also other effective area-based conservation measures (OECM). In November 2018, CBD Parties adopted a definition of an “other effective area-based conservation measure” (OECM) at the 14th the Conference of the Parties (the COP). According to this definition, *“A geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in situ conservation of biodiversity with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values.”*³⁶ MPAs are specifically designed to protect a subject, while OECMs are designed to provide protection in an area.³⁷ While the primary purpose of protected areas is to protect nature, the purpose of OECMs may or may not be to protect nature.³⁸ The fact that an area is an OECM and not a protected area depends on the fulfillment of a number of conditions. In the “Recognizing and Reporting Other Effective Area-Based Conservation Measures”³⁹ guideline, some approaches have been declared about identifying or establishing other effective area-based conservation measures. Firstly, “primary conservation” term is

³³ Protected Areas, <https://www.cbd.int/protected/overview/> Access Date: 16.12.2021

³⁴ Penelope Nevill, Area-Based Management Tools, Including Marine Protected Areas, Proceedings of the Annual Meeting (American Society of International Law), April 12–15, 2017, Vol. 111 (April 12–15, 2017), pp. 247-251 <https://www.jstor.org/stable/10.2307/26628043> Access Date: 27.12.2021

³⁵ Aichi Targets, <https://www.cbd.int/sp/targets/> Access Date: 29.12.2021

³⁶ IUCN-WCPA Task Force on OECMs, (2019). Recognising and reporting other effective area-based conservation measures. Gland, Switzerland: IUCN, <https://portals.iucn.org/library/node/48773> Access Date: 29.12.2021

³⁷ Ibid. p. V

³⁸ Ibid. p 3

³⁹ Ibid.

referring areas that can be protected areas but governance authority does not want the area to be recognized as a protected area.⁴⁰ Secondly, “secondary conservation” term is referring areas that in need protection for many objectives but main objective is not conservation of biodiversity.⁴¹ Finally, “ancillary conservation” term is referring that areas are protected for any other reason than protecting biological diversity.⁴² For instance, an area may be protected for the reason that historical shipwreck is being in this area like that area in Antalya, Kaş. OECMs, like MPAs, are set up for a specific geographic area. However, for an area to be an OECM, it must not be an MPA.⁴³ The governing procedures of OECMs and MPAs are similar. Governance may be provided by governments, private individuals, organizations, companies, indigenous peoples and local communities or governance could be shared by many entities.⁴⁴ Another distinguishing element of OECMs is "management". Management is not only for the measures to be taken regarding biological diversity, but also for other elements that need to be protected like historical remains. OECMs can be set areas within or beyond national jurisdiction.⁴⁵ As a matter of fact, not only MPAs are important to conserving biodiversity but also OECMs are important too. Both of them are necessary to achieve Aichi Target 11. On the other hand, OECMs can be accepted as type of the ABMT; furthermore, ABMT in BBNJ is more effective and self-powered concept.

Article 4 of the CBD sets the jurisdictional scope of the provisions of the Convention. Accordingly, the CBD applies within the limits of national jurisdiction in the case of components of biological diversity; or regarding processes and activities carried out under the jurisdiction or control of the Party. The CBD applies beyond the limits of national jurisdiction only to the extent that such processes and activities are carried out under the jurisdiction and control of the Contracting Party, and subject to the rights of other States. With regard of article 4 it is obviously seen that Parties have limited mandate on areas beyond national jurisdiction. For this reason, CBD article 5 mentioned that cooperation between states. According to the article 5, Parties shall, as far as possible and as appropriate, cooperate with other Contracting

⁴⁰ Ibid. p.3

⁴¹ Ibid. p.3

⁴² Ibid., p. 3

⁴³ Ibid., p. 4

⁴⁴ Ibid., p. 5

⁴⁵ Ibid., p. 7

Parties, in respect of areas beyond national jurisdiction for the conservation and sustainable use of biological diversity.

As a matter of fact, development of the MPA has begun with regional treaties on protection of marine environment. The first examples of the regional treaties on protection of marine environment were about pollution.⁴⁶ The first regional treaty on marine environment that includes MPAs is Specially Protected Areas and Wildlife (SPAW) Protocol Wider Caribbean Region. SPAW Protocol signed in 1990 and came into force in 2000. SPAW Protocol has two main objectives that; the protection, preservation and sustainable management of the zones that present particular ecological value and the protection, preservation and sustainable management of threatened or endangered wild species as well as their habitats.

Another important treaty on protection of marine environment was dedicated protecting Mediterranean region and it recognized as Barcelona Convention.⁴⁷ The Convention for the Protection of the Mediterranean Sea Against Pollution (Barcelona Convention) was adopted on 16 February 1976 in Barcelona and entered into force in 1978. The Barcelona Convention was amended in 1995 and renamed as the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean. The amendments to the Barcelona Convention entered into force in 2004. Under the Barcelona Convention, seven different protocols have been adopted. One of them is named “Specially Protected Areas and Biological Diversity Protocol”. This protocol entered into force in 1986. Under the Protocol, Parties can protect areas of significant natural or cultural value, through the establishment of “Specially Protected Areas (SPAs)” or “Specially Protected Areas of Mediterranean Importance (SPAMIs)”.⁴⁸ In “Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA/BD)” article 5 mentions that “Establishment of Specially Protected Areas (SPA)”. According to the article 5, SPAs are established just in national jurisdiction areas of states and there is no provision about establishing SPAs in areas beyond national jurisdiction.⁴⁹ Another

⁴⁶ Harrison James, *Saving the Oceans Through Law: The International Legal Framework for the Protection of the Marine Environment*, Oxford Scholarly Authorities on International Law [OSAIL], 2017, p. 53

⁴⁷ Ibid.

⁴⁸ Barcelona Convention and Protocols, <https://www.unep.org/unepmap/who-we-are/barcelona-convention-and-protocols> Access Date: 15.12.2021

⁴⁹ Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean, https://wedocs.unep.org/bitstream/handle/20.500.11822/7096/ProtocolSPABD_Consolidated_eng.pdf Access Date: 15.12.2021

issue about SPA/BD is that the convention encourage States to endeavor cooperation about SPAs. Because, states have limits, but marine biological resources generally have not. Furthermore, article 9 provides for the is establishment of “Specially Protected Areas of Mediterranean Importance (SPAMIs)”. Areas are contained ecosystems specific to the Mediterranean area or the habitats of endangered species are recognized as candidate SPAMIs according to the article 8.

Another effective example is “The Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention)” which was adopted in 1992 and was entered into force 1998. OSPAR Convention has five annexes and Annex V addresses “the protection and conservation of the ecosystems and biological diversity of the maritime area. “ It was adopted by parties on first Ministerial Meeting of the OSPAR Commission in 1998.⁵⁰ According to the OSPAR Convention MPAs can establish in both national jurisdiction areas and ABNJ. MPAs established in areas beyond national jurisdiction can prohibited many activities for OSPAR parties. This prohibitions cannot be applied to third parties.⁵¹ It is the key difference of OSPAR Convention between other regional treaties.⁵² MPAs in terms of OSPAR Convention are defined as “an area within the maritime area for which protective, conservation, restorative or precautionary measures, consistent with international law have been instituted for the purpose of protecting and conserving species, habitats, ecosystems or ecological processes of the marine environment” in Recommendation 2003/3 implementing Annex V of OSPAR.⁵³ As stated in OSPAR Convention Recommendation 2003/3, MPAs within and beyond the national jurisdiction are considered part of a system in the OSPAR MPA system⁵⁴. OSPAR Convention MPAs network can expand with nominations of the parties and decision of the

⁵⁰ OSPAR Convention, <https://www.ospar.org/convention> Access Date: 16.12.2021

⁵¹ Regional Seas Application of Area-based Management Tools, including Marine Protected Areas – Case Studies, UN Environment Regional Seas Reports and Studies No. 214, p. 5
https://wedocs.unep.org/bitstream/handle/20.500.11822/28392/Ocean_SDG1.pdf?sequence=1&isAllowed=y
Access Date: 01.02.2022

⁵² Ibid. p. 61

⁵³ Regional Seas Application of Area-based Management Tools, including Marine Protected Areas – Case Studies, UN Environment Regional Seas Reports and Studies No. 214, p. 3
https://wedocs.unep.org/bitstream/handle/20.500.11822/28392/Ocean_SDG1.pdf?sequence=1&isAllowed=y
Access Date: 01.02.2022

⁵⁴ Ibid., p. 3

OSPAR Commission.⁵⁵ New MPAs can establish with OSPAR decisions in areas nominated. MPA nomination criteria are stated in a OSPAR Agreement 2003-17 as listed below:

- 1) threatened of declining species and habitats/biotopes,
 - 2) Important species and habitats/biotopes,
 - 3) ecological significance,
 - 4) high natural biological diversity,
 - 5) representativity,
 - 6) sensitivity,
 - 7) naturalness (Appendix 1)
- and practical considerations;
- 1) size,
 - 2) potential for restoration,
 - 3) degree of acceptance,
 - 4) potential for success of management measures,
 - 5) potential damage to the area by human activities,
 - 6) scientific value (Appendix 2).⁵⁶

Whether a nominated area meets the criteria or not is decided according to the scientific data collected. In addition, OSPAR parties can share their scientific data with each other according to the rules of sharing scientific data rules.⁵⁷

2.1.1.4. Conclusion

In conclusion, some points are arisen as listed:

- ❖ ABMTs including MPAs can be established before both within and beyond limits of the areas national jurisdiction. OSPAR Convention established many area-based management measures and CBD provides a criteria to identify ecologically or biologically significant areas (EBSAs).

⁵⁵ Ibid., p. 3

⁵⁶ Ibid., p. 4

⁵⁷ Ibid., p. 4

- ❖ There are specific similarities and differences between MPAs, area-based conservation measures and ABMTs.
- ❖ As a matter of fact, it can be said that MPAs have a system to protect and preserve marine ecosystem in a specific area. Area choosing criteria are not the same with ABMT but have a similar framework. All selected areas are areas that are in need of ecological protection, host endangered species, and contain special marine biological assets.
- ❖ Another issue about that is MPAs generally focus on an area but ABMTs can focus on an area, a conservation objective or activities.
- ❖ Another distinctive aspect of the ABMT in BBNJ is it will take legal power from itself. Other examples of ABMTs take their power from cooperation and coordination of parties of conventions like EBSAs. However, according to the last revised text of the BBNJ, ABMT in BBNJ shall not need that because BBNJ agreement has a part about how will the ABMT implement.
- ❖ Reasons like the climate change and the danger of resource depletion may lead humanity to be stricter about protecting the environment. Therefore, measures like MPAs, OECMs, ABMTs may be established more. Establishing an ABMT in the BBNJ proves a tendency in that direction.
- ❖ Another key point about these measures is creating coordination between these measures. For the effective implementation of these measures, it is important to establish a system in which they are interconnected. If a biodiversity conservation perspective is produced in which MPAs and ABMTs are integrated, these tools will serve the purposes for which they were established.

2.1.2. Objectives of ABMT in terms of ABMT System

Firstly, it should be noted that there may be an objective or objectives to be achieved in order to conclude an international convention. Objective generally means a goal that is desired to be achieved. Many conventions mention about their objectives in an article or many articles. Objectives have importance in terms of interpretation and implementation of conventions and so forth. In the last revised text of the BBNJ, objectives of measures such as area-based

management tools, including marine protected areas have been mentioned in article 14. Some of these are enhanced cooperation and coordination, effectively implementing obligations, rehabilitate and restore biodiversity and ecosystems, support food security and other socioeconomic objectives, safeguard aesthetic, natural or wilderness values. Consequently, some questions have been raised about these objectives. It becomes evident from the text that some of these are written only for MPAs, while others are written for both ABMTs and MPAs. Are the objectives separated as for ABMTs and for MPAs? Are there any common objectives in the draft article 14? These objectives can affect the concept of the ABMTs and MPAs?

Treaties can be defined as the creation of written agreements whereby the states participating bind themselves legally to act in a particular way or to set up particular relations between themselves.⁵⁸ International conventions are treaties signed between two or more nations that act as an international agreement.⁵⁹ Many international convention have objectives that mentioned in several articles. For instance, CBD article 1 mentions that conventions objectives.

In the same way BBNJ draft text have mentioned objectives. Firstly, general objectives of the agreement have mentioned in article 2. According to article 2, “The objective of this Agreement is to ensure the [long-term] conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination.” ((Some proposals are shown in brackets in the draft text.) Furthermore, in Part III article 14, it is mentioned objectives of measures such as area-based management tools, including marine protected areas. In addition, as a matter of fact, there is nine objectives have been mentioned in the draft text of BBNJ. One of them is just dedicated MPAs (14/1/d), two of them (14/1/a, 14/1/c) is mentioned ABMTs and MPAs and other six subparagraphs have not been mentioned ABMTs or MPAs. Although, the convention sees MPAs as a sub-type of ABMT, it has separated the objectives according to these two concepts.

The first objective is “Enhance cooperation and coordination in the use of area-based management tools, including marine protected areas, among States, relevant legal instruments

⁵⁸ Malcolm N. Shaw, *International Law*, Cambridge University Press, Sixth Edition, 2008, p. 93

⁵⁹ International Conventions, <https://guides.loc.gov/public-international-law/international-conventions> Access Date: 20.02.2022

and frameworks and relevant global, regional, subregional and sectoral bodies, which will also promote a holistic and cross-sectoral approach to [ocean management] [the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.” Enhancing cooperation and coordination is essential element for implementation of provisions. Also, many conventions mention cooperation and coordination as objective. CBD mentioned that cooperation in article 5 but it is not an objective but an obligation for Each Contracting Party. This provision has an importance in terms of implementation of MPAs in areas beyond national jurisdiction. Another issue about article 14 is that it mentions enhancing cooperation and coordination between not only states but also relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies. Enhancing cooperation and coordination is dedicated both ABMTs and MPAs.

The second objective in article 14 is that “Implement effectively obligations under the Convention and other relevant international obligations and commitments.” This objective is not specified for ABMTs or MPAs in that case it can be accepted for both of them. Many international conventions established MPAs and ABMTs and some of them established ABMTs and MPAs in beyond national jurisdiction like CBD and OSPAR Convention. In regard this objective it is understood that convention not only create new provisions but also seek a harmony with other international instruments and commitments.

The third objective in article 14 is that “Conserve and sustainably use areas requiring protection, including by establishing a comprehensive system of area-based management tools, including marine protected areas.” This provision mentions that both ABMTs and MPAs. It is also intent to conserve and sustainable use of areas in need protection by building a system that included ABMTs and MPAs. It was stated that the second objective was to ensure the effective implementation of other international instruments and commitments. However, this objective, mentions establishing a system that will cover all ABMTs and MPAs.

The fourth objective in article 14 is that "Establish a system of ecologically representative marine protected areas that are connected [and effectively and equitably managed]". This objective only dedicated to MPAs and it mentions building a system to link MPAs. There are two separate systems planned to be built according to the third and fourth objectives. The first is the system in which ABMTs and MPAs are interconnected, and the second is the system in which MPAs are interconnected.

All other objectives are for both ABMTs and MPAs and there is no direct mention of ABMTs and MPAs in the other subparagraphs. These subparagraphs generally refer to: Rehabilitate and restore biodiversity and ecosystems, support food security and other socioeconomic objectives, protection of cultural values, create scientific reference areas, safeguard aesthetic, natural or wilderness values, promote coherence and complementarity. These objectives are established for both ABMTs and MPAs in order to be realized with these instruments. When these purposes are examined, it is understood that ABMT in BBNJ was designed to protect a particular value, biodiversity, marine resources or geographical beauty in a particular area. Furthermore, the fifth objective targets rehabilitate and restore ecosystems harmed by climate change, ocean acidification and marine pollution.

Another distinctive point is ninth objective that aims to encourage coherence and complementarity. Promoting coherence and complementarity is not clear in article 14 although in article 15 it is mentioned explicitly. This provision gives an important key point about ABMT system of BBNJ. According to the article 15 State Parties shall provide cooperation and coordination to realize coherence and complementarity in the establishment of area-based management tools, including marine protected areas. To obtain this aim State parties shall establish new ABMTs and MPAs and if there is an established system State Parties shall adopt complementary measures without harm their obtained legal status.

All things considered, there are three main key point can be understood as listed below:

- ❖ Some objectives mentioned on article 14 distinguish between ABMTs and MPAs. Others include both.
- ❖ There are two different system planning to be established. One of them is for linking MPAs and the other one is for linking MPAs to ABMTs and ABMTs to ABMTs.
- ❖ The objective promoting coherence and complementarity have an importance to build systems that linked ABMTs and MPAs because with this objective all bodies can protect their mandate and can participate establishing new ABMTs and MPAs.

2.2.Global, regional, subregional effects of the ABMT model

2.2.1. Global organizations: International Seabed Authority (ISA) and International Maritime Organization (IMO)

The last revised draft text of the BBNJ has adopted a measure ABMT to protect and conserve marine biodiversity in areas beyond national jurisdiction. Areas beyond national jurisdiction means the high seas and the Area.⁶⁰ Furthermore, ABMT as a measure is highly efficient tool to protect and conserve marine biodiversity but also some side effects can influence some global actors. Consequently, some important questions have been raised, like the International Seabed Authority (ISA) and International Maritime Organization (IMO) will be affected by these measures? As a matter of fact, ISA and IMO have authority on ABNJ in terms of regulating activities in ABNJ. Therefore, they have their own mechanisms to create new regulations and to implement them. Do they have to change their politics and decision-making and implementation mechanisms? What kind of practices will be adopted in areas where the ISA and IMO overlap?

ISA, established under the UNCLOS and the 1994 Agreement relating to the Implementation of Part XI of the UNCLOS.⁶¹ Part XI mentions provisions about the Area and activities in the Area shall be governed by the provisions of Part XI according to the UNCLOS article 134. UNCLOS article 1 defines the area as the Area means the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction. Another provision about the Area is article 136 mentions that the Area and its resources are the common heritage of mankind and its resources is governed by the Authority.⁶² International Seabed Authority was established UNCLOS article 157. Main bodies of the ISA are the Assembly, the Council, the Secretariat.⁶³ The Assembly shall have the power to establish general policies, to elect the members of the Council, to elect the Secretary-General, to elect the members of the Governing Board of the Enterprise and the Director-General of the Enterprise, to establish such subsidiary organs, to assess the contributions of members to the administrative budget of the Authority, to decide

⁶⁰ BBNJ Last Revised Draft Text, article 1/4

⁶¹ About ISA, <https://www.isa.org.jm/index.php/about-isa> Access Date:24.02.2022

⁶² UNCLOS, article 137

⁶³ Organs of the International Seabed Authority, <https://www.isa.org.jm/organs> Access Date:24.02.2022

upon the equitable sharing of financial and other economic benefits derived from activities in the Area and so forth.⁶⁴ The Council shall consist of 36 members of the Authority elected by the Assembly.⁶⁵ The Council is the executive organ of the Authority and the Council shall have the power to establish the specific policies to be pursued by the Authority, supervise and coordinate the implementation of the provisions about the Area, enter into agreements with the United Nations or other international organizations on behalf of the Authority and within its competence, consider the reports of the Enterprise, present to the Assembly annual reports and so forth.⁶⁶

Moreover, ISA has its own commercial arm that named the Enterprise to conduct its own mining.⁶⁷ Enterprise established with article 158 of UNCLOS shall carry out the functions of the Authority referred to in article 170, paragraph 1.⁶⁸ According to the article 170/1 the Enterprise shall carry out activities like transporting, processing and marketing of minerals recovered from the Area in the Area. The resources in the Area are not subject to alienation however, the resources in the area may only be alienated in accordance with Part XI and the rules, regulations and procedures of the Authority.⁶⁹

Another key point about the issue, ISA established a concept that a kind of the MPAs named "Areas of Particular Environmental Interest". The first REMP for the Clarion-Clipperton Zone (CCZ) was adopted by the ISA Council in 2012 (ISBA/18/C/22), on the basis of the recommendation of the Legal and Technical Commission (LTC) (ISBA/17/LTC/7). This included the designation of a network of nine "Areas of Particular Environmental Interest" (APEIs). Such APEIs are protected from future exploitation of mineral resources in the Area.⁷⁰ On the other hand, APEIs are just protected from deep-sea mining. If the Authority wants to take complementary measures, the Authority should cooperate with other international organizations.⁷¹

⁶⁴ UNCLOS, article 160

⁶⁵ UNCLOS, article 161

⁶⁶ UNCLOS, article 162

⁶⁷ Nautilus Minerals Propose Joint Venture with the Enterprise, <https://www.isa.org.jm/news/nautilus-minerals-propose-joint-venture-enterprise> Access Date:24.02.2022

⁶⁸ UNCLOS, article 158

⁶⁹ Ibid.

⁷⁰ Environmental Management Plan, <https://www.isa.org.jm/minerals/environmental-management-plan-clarion-clipperton-zone> Access Date: 03.03.2022

⁷¹ Harrison, p. 239

In addition, the jurisdictions areas of ISA and IMO may also overlap, so they signed an agreement between them. Because of both regulate activities in ABNJ and for coherence and compatibility, this agreement has importance. The agreement that was signed ISA and IMO on matters of common interest of them intends to provide harmony.⁷² The agreement aims to achieve coordination and cooperation between ISA and IMO.

Another important international organization is IMO that has authorities in ABNJ. IMO formally was established in 1948 by an international convention and the IMO Convention entered into force 1958. The purpose of the IMO is "to provide machinery for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade; to encourage and facilitate the general adoption of the highest practicable standards in matters concerning maritime safety, efficiency of navigation and prevention and control of marine pollution from ships".⁷³ IMO adopts international conventions valid in ABNJ and other maritime areas. IMO's structure is a little different from ISA's structure. IMO consist of an Assembly, a Council, five main Committees and several Sub-Committees support the work of the main technical committees.⁷⁴ The Assembly is responsible for approving the work programme, voting the budget, determining the financial arrangements of the Organization and elect the members of the Council.⁷⁵ The Council is the Executive Organ of IMO and it supervises coordinate the activities of the organs of the Organization, consider the draft work programme and budget estimates of the Organization and submit them to the Assembly, receive reports and proposals of the Committees and other organs and submit them to the Assembly and Member States, with comments and recommendations as appropriate, enter into agreements or arrangements concerning the relationship of the Organization with other organizations, subject to approval by the Assembly. Also, IMO has technical committees and sub technical committees and sub technical committees.⁷⁶

⁷² Agreement of Cooperation between ISA and IMO, <https://www.isa.org.jm/files/documents/EN/Regs/IMO.pdf> Access Date:24.02.2022

⁷³ Brief History of IMO, <https://www.imo.org/en/About/HistoryOfIMO/Pages/Default.aspx> Access Date:24.02.2022

⁷⁴ Structure of IMO, <https://www.imo.org/en/About/Pages/Structure.aspx> Access Date:24.02.2022

⁷⁵ Ibid.

⁷⁶ Ibid.

IMO regulate many various subjects about shipping and comprehensive agreements emerged from those regulations like SOLAS and MARPOL. Furthermore, IMO accepted tacit amendment method and with this method IMO regulate many subjects at the same time by using Committees rapidly. The MARPOL Convention is the main treaty to regulate pollution from ships.⁷⁷ According to the MARPOL Annex 1 Regulation 1(10) special areas can be established. These areas are defined as "a sea area where for recognized technical reasons in relation to its oceanographical and ecological condition and to the particular characteristics of its traffic, the adoption of special mandatory measures is required" can be established.⁷⁸ MARPOL Annex VI Regulates another special area that named Emission Control Areas (ECA).⁷⁹ Special areas established according to the MARPOL are listed as: Mediterranean Sea, Baltic Sea, Black Sea, Red Sea, "Gulfs" area, Gulf of Aden, Antarctic area, North West European Waters, Oman area of the Arabian Sea, Southern South African waters, Antarctic area, North Sea, Wider Caribbean region including the Gulf of Mexico and the Caribbean Sea, North American ECA, United States Caribbean Sea ECA.⁸⁰ Another key instrument of the IMO is SOLAS the convention dedicated to ensure safety on shipping. SOLAS has developed General Provisions on Ships and many technical provisions to provide good practice at shipping. These provisions are generally mentions that traffic separation schemes, two-way routes, recommended tracks, precautionary areas, deep water routes, areas to be avoided, no-anchoring areas, ship reporting systems and vessel traffic systems.⁸¹ Moreover, a type of the MPA that named Particularly Sensitive Sea Areas can be established according to the SOLAS Convention. IMO Resolution A. 982 (24) is guideline for the identification and designation of Particularly Sensitive Sea Areas (PSSAs).⁸² PSSAs are defined as "a PSSA is an area that needs special protection through action by IMO because of its significance for recognized ecological, socio-economic, or scientific attributes where such attributes may be vulnerable to damage by international shipping activities." in Resolution A. 982 (24) paragraph 1.2.

⁷⁷ Harrison, p. 120

⁷⁸ Ibid. p. 125

⁷⁹ Special Areas under MARPOL, <https://www.imo.org/en/OurWork/Environment/Pages/Special-Areas-Marpol.aspx> Access Date: 03.03.2022

⁸⁰ Ibid.

⁸¹ Harrison, p. 127-128

⁸² Particularly Sensitive Sea Areas, <https://www.imo.org/en/OurWork/Environment/Pages/PSSAs.aspx#:~:text=These%20guidelines%20include%20criteria%20to,cultural%20and%20economic%20criteria%2C%20such> Access Date: 03.03.2022

ABMT in BBNJ is defined objectives in article 14 and one of them is enhance cooperation and coordination between states and another important provision is promote coherence and complementarity. These objectives examined in detail in Section A/2 in this study. Another important provision to get real these objectives is article 15 that mentions international cooperation and coordination. According to Article 15, if there are measures already adopted, States parties may introduce additional complementary provisions to them. Moreover, if a new measure needs to be created like new ABMT included MPA, State parties can do it together. Although there is an alternative paragraph in Article 15, the main idea is the same in both. For this reason, the alternative paragraph has not been examined.

Another issue that needs to be addressed while examining this issue is what can be the model of the cooperation and coordination. The Agreement signed between ISA and IMO may be considered as a model of the cooperation and coordination between related subjects specially Parties.⁸³ This agreement started with the provision of promise to ensure maximum coordination. The article 3 of the Agreement mentions that IMO Secretary-General will send invitation to the representative of the ISA to observe meetings or conferences convened by or under the auspices of IMO to consider matters in which ISA has interest. Likely, secretary general of the ISA will send invitations to IMO representative to observe meetings or conferences convened by or under the auspices of ISA to consider matters in which IMO has interest. The article 4 of the Agreement mentions that IMO Secretary-General and Secretary-General of the ISA consult on matters personal, materials, facilities and so forth. According to the article 5, IMO and ISA will render assistance to each other in term of their common interest. These provisions are capable to develop coordination and cooperation between ISA and IMO. ISA and IMO are both international organizations and they can be a part of an agreement.

Last revised text of the BBNJ article 50 has established a Secretariat. The secretariat has missions as listed: Provide administrative and logistical support, convene and service the meetings of the Conference of the Parties and of any other bodies as may be established by the Conference, circulate information relating to the implementation of BBNJ, facilitate coordination with the secretariats of other relevant international bodies, provide assistance with the implementation of BBNJ, prepare reports on the execution of its functions under BBNJ and

⁸³ Agreement of Cooperation Between The International Maritime Organization and The International Seabed Authority, <https://www.isa.org.jm/files/documents/EN/Regs/IMO.pdf> Access Date:24.02.2022

submit them to the Conference of the Parties, perform such other functions as may be determined by the Conference of the Parties or assigned to it under BBNJ. The Secretariat is not an executive organ but also it has executive missions like preparing reports and submitting them to the Conference of the Parties and facilitate coordination with the secretariats of other relevant international bodies. Another organ that is established with BBN article 48 is "The Conference of the Parties". The Conference of the Parties shall adopt new regulations. Furthermore, The Conference of the Parties can establish new organs.

Therefore, a new organ can be established by a decision of the Conference of the Parties or the Secretariat can arrange cooperation and coordination between international, regional and subregional bodies by using the mission of facilitate coordination. Furthermore, cooperation and coordination agreement can include ABMTs and MPAs coordination system and complementary measures.

International conventions are legal texts that the parties are given to consent and then bind to due to the general principles of law (*pacta sunt servanda*).⁸⁴ Many important writers accept that treaties are the most important source of international law because treaties are accepted by consent of the parties.⁸⁵ On the other hand parties that not sign or ratify the treaty are not bound with it for the reason that absence of the consent.⁸⁶ A convention made does not affect the validity of previously concluded conventions. Therefore, a system or complementary provisions are needed to ensure cooperation and coordination.

In conclusion, some key points have arisen as listed below:

- ❖ ABMT in BBNJ will bring some changes about ABMTs and MPAs. Furthermore, BBNJ aims to establish a system that ABMTs and MPAs integrated. To realize this aim BBNJ has another provision that mentions ensuring international coordination and cooperation.
- ❖ This study examines two important global actors that have authority on ABNJ that ISA and IMO. IMO and ISA are global actors with mandates in the same field. For this reason, they signed a cooperation and coordination Mou among themselves and this agreement can be accepted as a model of international coordination and cooperation.

⁸⁴ Malcolm SHAW, *International Law*, Sixth edition, Cambridge University Press, 2008, p. 94

⁸⁵ Ibid. p. 94

⁸⁶ Ibid. p.95

- ❖ Being a party of an international convention the one must have international personality. BBNJ has established some organs like the Secretariat and the Conference of the Parties. If the organs that established by BBNJ has mission and competence to sign an agreement, the authorized organ can sign international agreements on cooperation and coordination.
- ❖ The framework of agreements on cooperation and coordination will affect ABMTs and MPAs and rules applicable on ABMTs and MPAs. For this reason, it is possible that The Conference of the Parties can establish another organ that will provide coordination and cooperation on ABMTs and MPAs regions.
- ❖ APEIs established by the ISA can be included the BBNJ ABMTs and MPAs system.
- ❖ MPAs under SOLAS and MARPOL can be included in the BBNJ ABMTs and MPAs system if the executive organ of the BBNJ and IMO signs an agreement. Furthermore, BBNJ executive organ may demand new regulations about navigation on BBNJ ABMTs.

2.2.2. Regional Organizations: Regional fisheries management organizations (RFMOs) and Regional seas bodies (RSBs)

The last draft text of BBNJ plan to establish a new integrated ABMTs system for conserve and protect marine biological diversity. This system will affect not just global actors but also regional and subregional bodies that work on ABNJ. Regional fisheries management organizations (RFMOs) were established to promote sustainable use of fisheries by using legally binding instruments. Another regional actor that will be affect by BBNJ ABMTs system is regional seas bodies (RSB). Regional Seas Bodies has many authorities in ABNJ but limited geographical scopes. Last draft text of BBNJ article 14 declared objectives of ABMT in BBNJ and many objectives aim to enhance cooperation and coordination between global regional subregional actors in terms of ABMTs and MPAs. However, some question emerges from these provisions like how will BBNJ ensure that coordination and cooperation? How will be regional actors affected by BBNJ?

Firstly, a RFMO is an intergovernmental organization, established by international agreement, with the competence to adopt conservation and management measures. A RFMO is any form of

arrangement through which States adopt conservation and management measures that does not provide for the establishment of an organization.⁸⁷ Many provisions are point out RFMOs in UNCLOS moreover, UNFSA has provisions about RFMOs. UNCLOS article 61 that has heading as "Conservation of the living resources" is giving mandate that " ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation to coastal state". Furthermore, article 61 mentions that "As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall cooperate to this end." Another provision about the cooperation and coordination of states in conservation and management of living resources is article 118 mentions that "States shall cooperate with each other in the conservation and management of living resources in the areas of the high seas. ... They shall, as appropriate, cooperate to establish subregional or regional fisheries organizations to this end." It is obviously understood that UNCLOS was pointed out RFMOs to conserve fish stocks and sustainable use of fisheries. Another important agreement that mentioned about RFMOs is United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA). UNFSA article 8 stated that " Coastal States and States fishing on the high seas shall pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks either directly or through appropriate subregional or regional fisheries management organizations or arrangements, to ensure effective conservation and management of such stocks."⁸⁸ Considering this provision it can be said RFMOs are important to ensure conserving and managing marine biodiversity and RFMOs are important actors to realize this aim. One of the quite effective missions of RFMOs is the power to adopt legally binding measures. The types of measures that may be taken by RFMOs when exercising their regulatory powers include the regulation of fishing gear, limits on catch sizes and total allowable catch (TACs), the establishment of closed seasons and protected areas, and the regulation of overall fishing effort.⁸⁹ It should be pointed out, RFMOs are important devices to coordinate and cooperate fisheries in ABNJ. UNFSA article 10 stated that "States shall: ... establish

⁸⁷ Key Concepts, <https://www.fao.org/in-action/vulnerable-marine-ecosystems/key-concepts/en/> Access Date: 04.03.2022

⁸⁸ UNFSA, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/274/67/PDF/N9527467.pdf?OpenElement> Access Date: 04.03.2022

⁸⁹ Harrison, p. 183

appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement.”⁹⁰

The RFMOs are one of the most important bodies for fisheries management in the high seas. There are at least 16 RFMOs in the world and these RFMOs contribute to the sustainable use of marine biodiversity by taking various measures related to fisheries.⁹¹ The last draft text of the BBNJ article 1 defined marine genetic resources as "Means any material of marine plant, animal, microbial or other origin, [found in or] originating from areas beyond national jurisdiction and containing functional units of heredity with actual or potential value of their genetic and biochemical properties." or "Marine genetic material of actual or potential value." Also, article 1 defined marine genetic material as "Any material of marine plant, animal, microbial or other origin containing functional units of heredity." Therefore, it is understood that these definitions cover fishes in ABNJ. RFMOs set rules on the sharing and sustainable use of fish in a particular area. If there is an ABMT to be established with the BBNJ in this particular area, would there be a conflict between the RFMOs and the BBNJ mechanism? BBNJ article 15 subparagraph 1/a mentions that as "Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, without prejudice to their respective mandates, in accordance with this Part...". With this article, BBNJ has pointed out as objective that coordination and cooperation not only with global actors but also with regional and subregional actors among its objectives. BBNJ article 48 that mentions Conference of the Parties and its missions stated that one of these missions is "Promote cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies,..." Article 48 also mentions harmonization of relevant policies and measures for, the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction by promoting coherence. On the other hand, there are two alternative sentences on how to improve coherence. One of them is "including by establishing processes for cooperation and coordination with and among relevant global, regional, subregional and sectoral bodies" and the other one is "including by inviting other global, regional, subregional and sectoral bodies to establish processes for cooperation". In the

⁹⁰ Harrison, p. 191

⁹¹ Stefán Ásmundsson, Regional Fisheries Management Organisations (RFMOs): Who are they, what is their geographic coverage on the high seas and which ones should be considered as General RFMOs, Tuna RFMOs and Specialised RFMOs? <https://www.cbd.int/doc/meetings/mar/soiom-2016-01/other/soiom-2016-01-fao-19-en.pdf> Access Date: 04.03.2022

first sentence, BBNJ instruments creates the system of cooperation and coordination processes, while in the second sentence, global, regional and sub-regional actors are invited to create the processes.

Secondly, regional seas bodies (RSBs) are regional actors like RFMOs and they have mandates on ABNJ on special issues or widely regulated issues. For instance, OSPAR Commission is a regional seas body and OSPAR has many mandates on ABNJ. OSPAR Commission was established by OSPAR Convention that adopted in 1992 by Belgium, Denmark, the European Union, Finland, France, Germany, Iceland, Ireland, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland, Luxembourg, and Switzerland.⁹² With the regional seas bodies treaties many issues can be regulated like preventing pollution, conserving, improving marine environment, offshore activities and so forth. The OSPAR Convention has four annexes and every annex regulates different issue. Annex I regulates prevention and elimination of pollution from land-based sources, Annex II regulates prevention and elimination of pollution by dumping or incineration, Annex III regulates prevention and elimination of pollution from offshore sources, assessment of the quality of the marine environment, Annex IV regulates assessment of the quality of the marine environment, Annex V regulates on the protection and conservation of the ecosystems and biological diversity of the maritime area. Moreover, Annex V extends the cooperation of the Contracting Parties to cover all human activities that might adversely affect the marine environment of the North-East Atlantic. Therefore, it is seen that regional seas bodies interest in many issues about seas.

BBNJ did not regulate any difference between RFMOs and RGBs in terms of cooperation and coordination. For this reason, the information given about RFMOs in terms of cooperation and coordination in the study is also valid for RSBs.

In conclusion, some key points about the issue are listed below:

- ❖ The new ABMT system that BBNJ will bring may affect regional and sub-regional organizations that have authorization on the ABNJ.
- ❖ These regional and subregional actors are RFMOs and RSBs that are working on marine environment, marine biologic diversity and sustainable use of marine resources.

⁹² OSPAR Convention, <https://www.ospar.org/convention> Access Date: 04.03.2022

- ❖ RFMOs are mentioned by UNCLOS and UNFSA and state parties are encouraged for cooperation and coordination with RFMOs for sustainable use of fish stocks. Furthermore, RFMOs can take many various measures to ensure sustainable use of fish stocks like total allowable catch quotas, no hunting areas, no hunting seasons and so forth.
- ❖ RSBs are regulate many issues about marine environment with a geographical scope like OSPAR Commission. Furthermore, they have many authorizations to regulate ABNJ in terms of many activities. Thus, RSBs are important regional actors to ensure and protect marine biodiversity.
- ❖ BBNJ article 48 that mentions that one of the missions of the Conference of the Parties is promoting cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies. In this way it is understood that the Conference of the Parties may ensure cooperation and coordination with all actors by creating processes with actors or by itself.
- ❖ ABMT system will be established by BBNJ can use RFMOs and RSBs systems to regulate areas with harmonization.

3. ABMT PROCESSES

3.1. How will ABMT work?

The draft text of part III of the BBNJ Treaty is dedicated to area-based management tools for the reason that one of the most effective instruments of BBNJ is ABMT. Part III does not just mention general provisions about ABMT but also mentions how is an ABMT should be established. The process of establishing an ABMT starts with identification of areas and submission of proposal. The second step of ABMT process is consultation on and assessment of proposals and after that the decision-making process starts. Another important point about ABMT is implementation and monitoring. The identification of areas, submission of proposal and consultation and assessment of proposals and decision-making process will be examined clearly under this topic.

3.1.1. Identification of areas, submission of proposal

The identification procedure for areas in need of protection is stated in article 16 of the latest draft text of the BBNJ Treaty.

The first element of identifying of areas according to this article is that areas in need of protection shall be identified on the basis of the best available science or best available scientific information and relevant traditional knowledge of indigenous peoples and local communities. In other words, while identifying the areas, only science will be used according to the first proposal, while relevant traditional knowledge and experiences of the local people and scientific knowledge will be considered according to the second proposal. According to the Parks and Schröder, “The CBD identifies indigenous peoples and local communities as stakeholders with particular interests or capabilities that grant them special status.”⁹³ It is seen that the second proposal give an importance to the local actors. The second element of the sentences is best available science or best available scientific information. The International Union for Conservation of Nature (IUCN) gave its comments about BBNJ article by article and according to this text and its comment about the issue is “‘best available science’ could be defined somewhere in the text. The role, credibility and authority of science for the identification of areas requiring protection should be further explored.”⁹⁴

Another important key point is included in the article 16 is the precautionary principle. The precautionary principle in terms of environmental law requires that, if there is a strong suspicion that a certain activity may have environmentally harmful consequences, it is better to control that activity now rather than to wait for incontrovertible scientific evidence.⁹⁵ The precautionary principle in terms of identifying areas for protection can be defined as the precautionary principle is that an area should be protected even if there are reasonable indications that the relevant features are present in the area, but their precise location has not been scientifically proven or there may be other gaps or uncertainties in the evidence.

⁹³ Parks, Louisa, Schröder, Mika, hat We Talk About When We Talk About ‘Local’ Participation: Indigenous Peoples and Local Communities’ Participation Under the Convention on Biological Diversity, *Partecipazione e conflitto*, 11(3) 2018: 743-785, DOI: 10.1285/i20356609v11i3p743 ,15.10.2018,

⁹⁴United Nations General Assembly, A/CONF.232/2022/INF.1
https://www.un.org/bbnj/sites/www.un.org.bbnj/files/a_conf232_2022_inf1_textualproposalscompilation_article_byarticle15april2020_rev.pdf p. 144 Access Date: 09.03.2022

⁹⁵ Principles of environmental law, <https://www.britannica.com/topic/environmental-law/Principles-of-environmental-law> Access Date: 08.03.2022

According to the article 16/2 and Annex I, indicative criteria of selection of areas in need protection are listed as:⁹⁶

- ❖ [Uniqueness],
- ❖ Rarity
- ❖ Special importance for the life history stages of species
- ❖ Special importance of the species found therein,
- ❖ The importance for threatened, endangered or declining species or habitats,
- ❖ Vulnerability, including to climate change and ocean acidification,
- ❖ Fragility,
- ❖ Sensitivity,
- ❖ Biological diversity [and productivity],
- ❖ [Representativeness,]
- ❖ Dependency,
- ❖ [Exceptional naturalness,]
- ❖ Ecological connectivity [and/or coherence],
- ❖ Important ecological processes occurring therein,
- ❖ [Economic and social factors]
- ❖ [Cultural factors]
- ❖ [Cumulative and transboundary impacts]
- ❖ Slow recovery and resilience,
- ❖ Adequacy and viability,
- ❖ Replication,
- ❖ Feasibility.⁹⁷

If the indicative criterias is examined it is understood that general frame of the criterias is about ecosystems, species and habitats. Furthermore, additional criterias about cultural, social economic factors have been added. Cumulative and transboundary impacts are another important criteria different from single cause criterias. Actually, it is more like the cross-cutting criteria. In other words, cross-cutting criterias are the criterias that are created more than one

⁹⁶ Brackets are used with their meaning in the draft text.

⁹⁷ Brackets are used with their meaning in the draft text.

incident. Furthermore, representativeness is a different criteria that is captured in a network when it consists of areas representing the different biogeographical subdivisions of the global oceans and regional seas that reasonably reflect the full range of ecosystems, including the biotic and habitat diversity of those marine ecosystems.⁹⁸ IUCN gave its opinions about BBNJ article by article and according to this text in terms of Annex I “The list of indicative criteria is good but should be amended slightly to be consistent with the criteria used in CBD COP Decision IX/20 (annex 1 of CBD) to describe ecologically or biologically significant areas (EBSAs). If one compare EBSAs criterias and ABMT criterias, it can be seen BBNJ refers to “exceptional naturalness” but CBD only refers “naturalness” and “productivity” is not stated in BBNJ finally, BBNJ refers to "feasibility" but "feasibility" is not relevant with marine biologic diversity.”⁹⁹ It is understood that IUCN suggested that CBD and other relevant instruments will be taken into account to determine areas in need.

According to the article 16/3, the indicative criterias specified in Annex I can be developed and revised by the Scientific and Technical Body for consideration and adoption by the Conference of the Parties. The Scientific and Technical Body is established by article 49 and it will be composed of experts from different regions of the world on the basis of equitable geographical distribution and they will be chosen with gender balance in mind. The Scientific and Technical Body has many various missions given by the Conference of the Parties (COP). IUCN criticized this provision because of the processes are not clear.¹⁰⁰

Secondly, article 17 mentions how proposals in relation to the establishment of area-based management tools can be suggested. According to the article 17, a state party can propose to establish new ABMTs by itself or collectively. The proposal is to be submitted to the secretariat. Proposals have to include some minimum information that mentioned in the article as listed below:

- ❖ A geographical scope,
- ❖ Information on any of the indicative criteria specified in annex I,
- ❖ Specific human activities in the area,

⁹⁸ Azores Scientific Criteria and Guidance, p. 10 <https://www.cbd.int/marine/doc/azores-brochure-en.pdf> Access Date: 09.03.2022

⁹⁹ BBNJ IUCN Comments, p. 23 https://www.iucn.org/sites/dev/files/iucn_comments_on_bbnj_draft_text_-_august_2019.pdf Access Date: 09.03.2022

¹⁰⁰ BBNJ IUCN Comments, p. 23

- ❖ A description of the state of the marine environment and biodiversity in the identified area,
- ❖ A description of the specific conservation and sustainable use objectives that are to be applied to the area,
- ❖ A description of the proposed measures or priority elements for a management plan,
- ❖ A duration for the proposed area and measures
- ❖ A monitoring, research and review plan, including priority elements,
- ❖ Information on any consultations undertaken with adjacent coastal States and/or relevant global, regional, subregional and sectoral bodies.

In conclusion, some of the prominent issues related to the subject are listed below:

- ❖ Identification of areas in need of protection shall be chosen according to best available scientific information and relevant traditional knowledge of indigenous peoples and local communities.
- ❖ Indicative criterias are stated in Annex I are generally overlap with CBD criterias for chosen EBSAs.
- ❖ IUCN criticized article 16 in terms of best available scientific information is unclear definition. The Scientific and Technical Body can develop or revise indicative criterias that stated in Annex I.
- ❖ The Conference of the Parties has an important role to establish new ABMTs that is accepting new proposals. Article 17 is mentioning what should proposals have in terms of elements. These elements are listed in article 17 clearly. On the other hand, article 17 does not mentions about existing measures and if existing measures are mentioned, identifying what measures are needed would be easier.

3.1.2. Consultation and assessment of proposals and decision-making process

The last draft text of the BBNJ article 18 examines the consultation on and assessment of proposals. First of all, three main principles about the consultation and assessment are being inclusive, transparent and open to all relevant stakeholders according to the article 18/1. Another point about the issue, the Secretariat, the Technical and Scientific Body and the

Conference of the Parties have different roles for to realize the process as participants of the process.

Consultation and assessment of proposal consist of many different steps and participants. Firstly, the proposal shall be submitted by parties and it shall be transmitted for the review to the STB by the Secretariat. After that, if is it necessary the proposal shall be updated and returned to the Secretariat. The proposal will be made publicly by the Secretariat and States shall be invited to submit their opinions. Bodies of relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, indigenous peoples and local communities with relevant traditional knowledge, the scientific community, civil society and other relevant stakeholders shall be invited to submit their opinions. In the second place, the proposal shall be made publicly with contributions and proposal will be renewed or continue the consultation process in regard of stakeholders attitude. The proposal shall be submitted to the STB and STB shall be examined the proposal to make recommendations to the COP. To clearly show all steps of consultation and assessment of proposal charts have been prepared. Consultation and assesment process are shown below:¹⁰¹

Consultation and Assessment Process 1

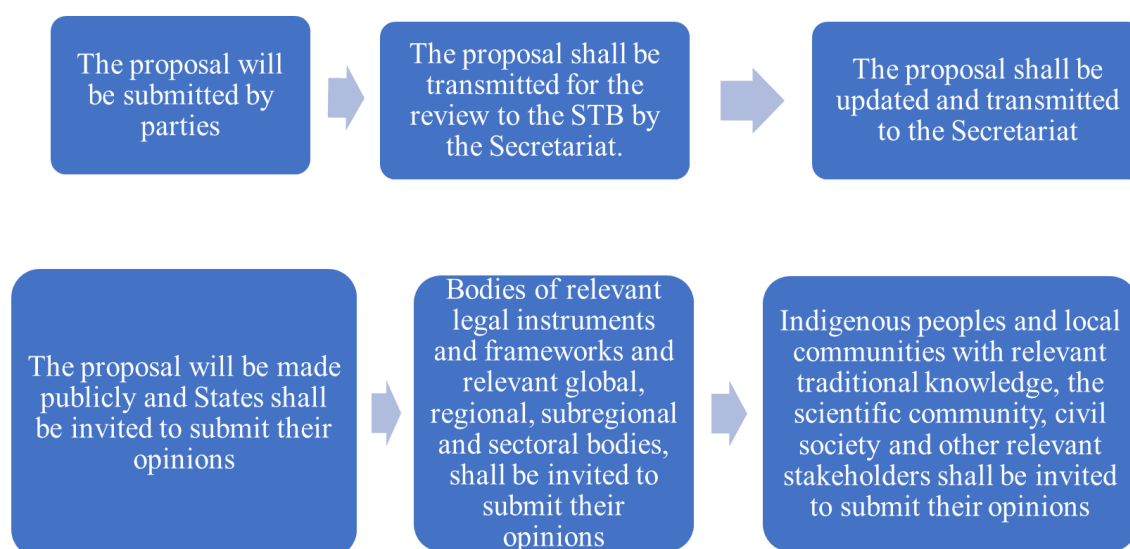


Chart 3.1.1. Consultation and Assessment Process 1

Further actions are shown below:

¹⁰¹ Prepared by the author.

Consultation and Assessment Process 2

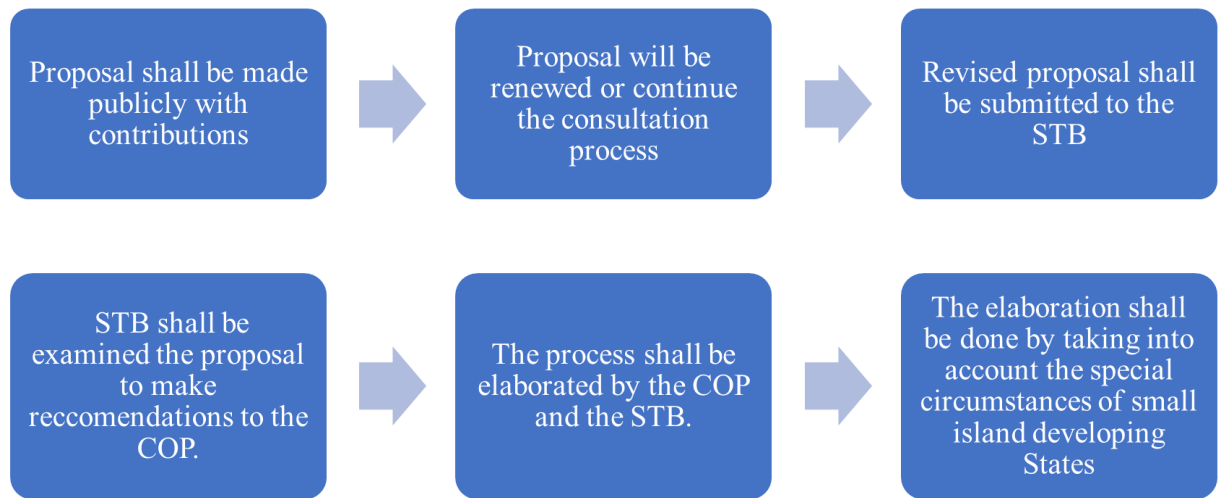


Chart 3.1.2. Consultation and Assessment Process 2

A lot of states and organizations have submitted proposals for consultation of the draft text in fourth session of the Intergovernmental conference of BBNJ. Article 18 have been criticized by many states and organizations in terms of various ways. Firstly, according to the article 18/5 “The consultation period shall be time-bound.” Israel have commented that the term of time-bound is not clear and IUCN has suggested that will be established a expedited procedure.¹⁰² Another distinctive suggestion has been given by Philippines is that "In cases where the proposal affects areas of highs seas that are surrounded by the exclusive economic zones of adjacent coastal states, the views and comments of such states shall be given particular regard."¹⁰³ South Africa has commented about 18/2/b/iii that mentioned about the bodies of relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and their existing measures that "This seems to clearly imply that areas already under sectoral management shall still be eligible for consideration for management under this treaty."¹⁰⁴ International Chamber of Shipping said that "Article 18 could be supported as it mandates that the input of relevant bodies, such as IMO, be sought for each proposal for a new

¹⁰² United Nations General Assembly, A/CONF.232/2022/INF.1, p. 165, 173

¹⁰³ Ibid. p. 169

¹⁰⁴ Ibid. p. 171

ABMT."¹⁰⁵ Article 18/2/b is mentioned bodies of relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies can provide coordination and coherent system by using informations stated in article 18/2/b like the views on the proposal, relevant scientific inputs, existing measures, views regarding any relevant additional measures and so forth.

Furthermore, IUCN has given many comments about the consultation and assessment process. Firstly, IUCN suggested that it would be helpful to explicitly include civil society and scientific and technical experts in consultations on proposals.¹⁰⁶ IUCN has pointed out the preliminary review that "what would the preliminary review entail? What criteria would be applied? It will be a simple analysis?" Moreover, what is the definition of "assessment?"¹⁰⁷ IUCN suggested a revisitation for 18/4 that is proponent will be taken into account will not be considered. Because the verb "take into account" clearer than the verb "consider."¹⁰⁸

The last draft text of the BBNJ article 19 mentions that decision making process about identification of areas in need of protection. According to this article the COP will take decisions about the identifying areas for ABMTs. The COP will take decisions with relation to some principles that explained in article 19. On the other hand, some alternative sub paragraphs are considered and discussed. Firstly, the COP will take decisions in relation with objectives, criterias, modalities and requirements that mentioned in BBNJ. Alternative I have been described explicitly that has all steps and factors are relevant with the decision-making process and many States have supported that alternative. Furthermore, according to the alternative I the COP can take decisions in respect to whether to adopt conservation and [management] [sustainable use] measures complementary to those adopted under such instruments, frameworks and bodies. If the terms of the complementary measures is considered, it is seen that an unclear situation can be occurred from this article. The limits of the complementary measures ambiguous.

Alternative II have mentioned briefly decision-making process related elements but a key point has mentioned on that alternative sub paragraph that is the term of "primary authority." South Africa has considered this term and comment about that "In this the phrase

¹⁰⁵ Ibid. p. 173

¹⁰⁶ BBNJ IUCN Comments, p. 25

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

the primary implies giving priority to maintaining the status quo in terms managing an area for an already established objective, which (for example) may not include conservation." ¹⁰⁹ United States has a comment about the term "the primary authority" too and that is deletion of this term from the text.¹¹⁰

Overall, some particular points could be understood as listed below:

- ❖ Article 18 includes some unclear sentences that can be interpreted differently. For example, "time-bound" that is not defined in the article 18 and actors could be understood different time frames from this expression.
- ❖ In addition to the coastal states, it has been suggested to include the states whose exclusive economic zone is adjacent to the relevant area in the process. It could be increased cooperation and coordination.
- ❖ The participation of global, regional and sub-regional actors mentioned in paragraph 18/b/iii and the consideration of regionally implemented measures will promote compliance and coherence. At the same time, 18/b/iii will provide the participation of relevant bodies like IMO and ISA.
- ❖ Generally, process of consultation and assessment of proposals need to be clarified and unclear expressions may be changed.
- ❖ Article 19 may provide coherence with identifying areas in need of protection by using same structure on decision making process. According to the article 19/a "Objectives, criteria, modalities and requirements, as provided for under articles 14, 16, 17 and 18 are taken into account."
- ❖ The term "primary authority." has a great importance because if this term will be accepted BBNJ ABMT system have to take into account adopted measures.
- ❖ Article 19 alternative I mentions that the COP can adopt conservation and [management] [sustainable use] measures complementary to those adopted under such instruments, frameworks and bodies. The limits of the complementary measures are important to understand the role of the BBNJ system on other relevant instruments, frameworks and bodies.

¹⁰⁹ United Nations General Assembly, A/CONF.232/2022/INF.1, p. 183

¹¹⁰ Ibid. p. 185

3.2.Implementation and monitoring

3.2.1. Implementation

When an ABMT established, there is another problem arising that how will measures implement well. In a multilateral agreement, implementation process has great important because every party has their own authority to implement measures accepted. To ensure implementation in coordination, BBNJ has an article that regulate implementation. The last draft text of the BBNJ article 20 has heading as "Implementation" and many regulations declared with this article.

Firstly, according to the article 20/1. "States Parties shall ensure that activities under their jurisdiction or control that take place in areas beyond national jurisdiction are conducted consistently." This is obviously seen that State Parties are given many obligation in terms of activities they have mandate on it in ABNJ. IUCN have commented about the term "activities" that "Activities under a State's jurisdiction or control should be read to include activities carried out by a country's flag vessels, nationals, state enterprises and corporations registered in or with significant linkages to the State or using its ports."¹¹¹ According to the article 20 the implementation of measures has been planned to realize with flag state mandates. Flag state mandate is stated in UNCLOS article 92 and another detail about the flag state mandates is to exist a genuine link between the State and the ship.¹¹² Genuine link is a connection between a ship and the flag state, which, according to international law, must exist for the ship to acquire nationality.¹¹³ The term of activities can be interpreted broadly however, if the activities was interpreted like this comment, it will be very inclusive.

Article 20/2 gives a huge area that BBNJ subjects can be regulated by State Parties with national law however these regulations should be harmonious with the BBNJ and international law.

Article 20/3 mentions about the small islands developing State Parties and protect them in terms of burdens about the ABMTs. On the other hand, Republic of Korea has suggested that this sub paragraph shall be erased. but Republic of Korea has not submitted any reason or

¹¹¹ Ibid., 25

¹¹² UNCLOS, article 91 and 94

¹¹³ Alperen Furkan TAŞ, The Registration of Ships: An Evaluation in the Context of Genuine Link and Flag of Convenience Practices, <https://yayin.taa.gov.tr/yuklenenler/dosyalar/dergiler/law/law-22/law-22-3.pdf> Access Date:13.03.2022

commentary about it.¹¹⁴ Small island developing States are generally low-income and technology-deprived countries. Therefore, their contribution to the conserving and managing marine biological diversity in terms of ABMT will be lower than in other States. The inclusion of this provision in the BBNJ supports the joining of the small island developing States to the convention, while putting more financial burden on other State Parties.

Indonesia has suggested that archipelagic States shall be added in this article.¹¹⁵ According to the UNCLOS article 46 "archipelagic State means a State constituted wholly by one or more archipelagos and may include other islands." Archipelagic States may be more closely related to the ABNJ due to their location.

International Chamber of Shipping has given a significant comment about the article that is "Consideration of the potential application of clause 5 demonstrates the difficulties that may be encountered in enforcing ABMTs across the activities of all States equally in high seas areas under the Agreement. For shipping, this is addressed at IMO through the principle of no more favorable treatment." "No more favorable treatment" principle means that some rules that applied to non States Parties.¹¹⁶ The practical consequence comes out clearly in the port State control provisions, under which ships of all countries (irrespective of ratification) will be subject to inspection in any country that has ratified the Convention, and to possible detention if they do not meet the minimum standards of the new Convention.¹¹⁷ However, it is not known how this proposal can be realized, since the principle of territoriality, which ensures the implementation of this principle, will not be in question for ABNJ.

Article 20/5 is giving an obligation to State Parties as encouraging those States that are entitled to become Parties to this Agreement, in particular those whose activities, vessels, or nationals operate in the area that is the subject of an established area-based management tools. Moreover, article 20/6 mentions another obligation of State Parties that is if a State Party is not participant of relevant legal instrument or framework, or a member of a relevant global, regional, subregional or sectoral body, it cannot escape its obligation to cooperate.

¹¹⁴ Ibid. p. 196

¹¹⁵ United Nations General Assembly, A/CONF.232/2022/INF.1, p. 191

¹¹⁶ Port State Control, <https://www.imo.org/en/OurWork/IIIS/Pages/Port%20State%20Control.aspx> Access Date:13.03.2022

¹¹⁷ Frequently Asked Questions about the ILO's Maritime Labour Convention, 2006, https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_CON_TXT_ILS_MAR_FAQ_EN/lang--en/index.htm#P89_23248 Access Date:13.03.2022

Another issue about the implementation is established relevant instruments for example IMO has many measure for protecting marine environment. According to the article 20/4 State Parties have an obligation that “to promote the adoption of measures within relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members to support the implementation of the conservation and management objectives of the measures.” According to this subparagraph a question has been occurred that is State Parties have an obligation to vote measures in the frame of BBNJ? International organizations can help facilitate compliance¹¹⁸ but in which way? Some existing examples can be enlightening like ISA and OSPAR collaboration in seabed or cooperation between NEAFC and OSPAR already exists in the water column.¹¹⁹ If a State party is a member of the OSPAR at the same, shall it be supported the decisions about the BBNJ taken by OSPAR? For the support can the COP take decisions.

Given these points, some key points considered as listed below:

- ❖ The term of "activities" can be defined broadly or narrowly and some international rules would be affected this definition for example flag state and genuine link.
- ❖ It is clearly seen that flag state authorities are used in the implementation of the measures.
- ❖ State Parties can regulate issues about BBNJ on the condition that will be in harmony with BBNJ and international law.
- ❖ Some suggestion about archipelagic States have been arisen on the other hand, any specific reason have been presented to consider archipelagic States as special.
- ❖ International Chamber of Shipping has given a significant proposal that a rule shall be regulated like “No more favorable treatment” principle. However, no more favorable treatment principle is about flag state mandate and flag state mandate only valid for ships who flies its flag in ABNJ.
- ❖ Article 20/5 gives the State Parties the task of encouraging the states that want to become party.

¹¹⁸ Elizabeth M. De Santo, Implementation challenges of area-based management tools (ABMTs) for biodiversity beyond national jurisdiction (BBNJ), *Marine Policy*, Volume 97, 2018, Pages 34-43, ISSN 0308-597X, p. 39 <https://www.sciencedirect.com/science/article/pii/S0308597X18303166>

¹¹⁹ De Santo, p. 40

- ❖ According to 20/6 if a State Party is not participant of relevant legal instrument or framework even so has an obligation to cooperate.
- ❖ Article 20/4 gives an obligation to promote the adoption of measures within relevant legal instruments and frameworks to the State Parties. However, this obligation frames were not drawn clearly.

3.2.2. Monitoring and Review

Monitoring is the one of the most important steps of the ABMT process. Under favor of monitoring, it can be understood whether the targeted goal is achieved or not, whether everything works in accordance with the rules. Monitoring and review is contained in the last draft of the BBNJ, article 21. With regard to monitoring and review, the convention assigns various tasks to the State Parties, the COP and the STB, the Secretariat.

The first paragraph of the article 21 is regulating the responsibility of reporting. According to this subparagraph, State Parties shall report their activities to the COP. This reports are made publicly available by the Secretariat. US has commented about this reporting responsibility and US has suggested that "using may instead of shall in the first sentence". It can be understood that US is not keen on reporting responsibility.

The second paragraph of the article 21 is defined a mission that monitoring and reviewing for the STB. The key point of the subparagraph is that this mission is not just for the area-based management tools but also related conservation and [management] [sustainable use] measures. Another important point is reviewing will be held periodically.

The third paragraph of the article 21 mentions the review that shall be shown progress made in achieving their objectives. Furthermore, recommendations and advices will be made by the STB to the COP in regard of measures.

According to the fourth paragraph of the article 21 the COP shall decide whether measures will be executed or not. For taking this decision, the COP shall consider the measure is necessary or not and will make a decision about it. The COP shall consider when making decision about measures: On the basis of an adaptive management approach and taking into account the best available [science] [scientific information and knowledge, including relevant traditional knowledge of indigenous peoples and local communities], the precautionary [approach] [principle] and an ecosystem approach. In addition, this article proposes a provision

in brackets that time bound ABMTs will expire automatically.¹²⁰ Monaco has commented that fourth paragraph of the article 21 and Monaco has suggested to erase the expression that "[as well as the extension of time-bound area-based management tools, including marine protected areas, that would otherwise automatically expire,]".¹²¹

According to the last paragraph of the article 21, "The relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies [shall] [may] be invited to report to the COP on the implementation of measures that they have established."

IUCN has given a general comment about the article, according to this comment having a reporting and review mechanism is good for conserving marine biodiversity but also it is needed that a daily control system to ensure monitoring and review activities. Deep-Ocean Stewardship Initiative (DOSI) has given comments about article 21 and firstly according to the DOSI there should be a monitoring plan and it is essential to determine objectives are achieved or not. Deep-Ocean Stewardship Initiative (DOSI) has given comments about article 21 and firstly according to the DOSI there should be a monitoring plan and it is essential to determine objectives are achieved or not by using this review plan.

FAO had been published a technical paper addressing the issues they confront in managing and developing fisheries that named as "FAO Fisheries Technical Paper, No. 338, entitled an introduction to monitoring, control and surveillance for capture fisheries".¹²² According to the FAO Fisheries Technical Paper, No. 338, monitoring is "the continuous requirement for the measurement of fishing effort characteristics and resource yields."¹²³ This paper was mentioned monitoring, control and surveillance and these terms features. On the other hand, monitoring and review activities about the ABMT is stated on article 23 and this article does not mention about control and surveillance activities. Furthermore, term of monitoring in terms of BBNJ ABMT System is different from FAO monitoring, control and surveillance system however, one feature is similar with BBNJ ABMT monitoring that is measuring requirement.

In conclusion, some outputs have been understood as listed:

¹²⁰ Brackets are using for to show suggestions.

¹²¹ A/CONF.232/2022/INF.1, p. 201

¹²²FAO Fisheries Technical Paper, No. 338, <https://www.fao.org/3/V4250E/V4250E03.htm#ch3.1> Access Date: 23.03.2022

¹²³ Ibid., p.

- ❖ A monitoring and reviewing system has been established and the COP and the STB has been commissioned as decision maker and examiner.
- ❖ The STB shall make examinations on taken measures and shall prepare a report about it after that the report will be analyzed by the COP and the COP will decide about the measures.
- ❖ Monitoring and reviewing mission is not only designated for ABMTs but also related conservation measures.
- ❖ Relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies can be summoned for to give reports.
- ❖ DOSI has suggested that a monitoring plan should be made and it is essential.
- ❖ IUCN has suggested to add a daily monitoring system besides monitoring and reviewing system.

4. WHAT MEASURES ARE CURRENTLY TAKEN TO PROMOTE ABMT IN ABNJ?

4.1. Convention on Biological Diversity and Ecologically or Biologically Significant Marine Areas (EBSAs)

The main international convention dedicated to the conservation of biological diversity is the Convention on Biological Diversity (CBD). The CBD is leading global treaty for conservation of biological diversity and the sustainable use of its components.¹²⁴ The definition of the biological diversity stated at the CBD article 2 mentions "the variability among living organisms from all sources including inter alia terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are part." Thereof, it is understood that marine biodiversity is in the scope of the convention.¹²⁵ The CBD encourages states to adopt measures to conserve and protect biological diversity furthermore, the COP can define areas to protect by State Parties. According to the article 8, State Parties shall establish a system of protected areas to conserve biological diversity and they shall cooperate for realizing this objective on ABNJ. According to the article 8, State Parties shall establish a system of protected areas to conserve biological diversity and they shall cooperate for realizing this objective on ABNJ. The COP defines areas in need protection on ABNJ or national jurisdiction named as Ecologically or Biologically Significant Areas (EBSAs). EBSAs are candidates for being ABMTs or other area-based conservation measures. EBSAs can serve as a model for the development of a new BBNJ ABMT system. In addition, some similarities or differences between them can help understanding BBNJ ABMTs system. Therefore, EBSAs will be discussed in this section.

After the understanding of the importance of biological resources for humanity, movements to protect biological diversity started around the world. One of these movements was the Ad Hoc Working Group of Experts on the conservation of biological diversity organized by UN Environmental Programme (UNEP) in 1988. By February 1991, the Ad Hoc Working Group had become known as the Intergovernmental Negotiating Committee, which developed a draft text of a new treaty. This draft text was negotiated in Nairobi. The CBD was

¹²⁴ The CBD, article 1

¹²⁵ Huang, H., Tang, D., Chen, B., Li, W., Ou, D., Wang, L., & An, L. (2019). Short Comments on the Application of Criteria for Identifying Ecologically or Biologically Significant Marine Areas (EBSAs). Sustainability (Basel, Switzerland), 12(1), 130., p. 12

opened for signature on 5 June 1992, it closed for signature on 4 June 1993 and 168 States signed the CBD in the meantime.¹²⁶ As stated in Article 1 of the CBD, the purpose of the Convention is the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. To further this objective, states must inter alia designate systems of protected areas and other areas where special measures need to be taken.¹²⁷ A protected area is defined in article 2 as "a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives."¹²⁸

In situ conservation is regulated on the CBD article 8 and article 8 defines some duties for the State Parties about the protected areas mentioned below:

- ❖ “Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;
- ❖ Develop, where necessary, guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;
- ❖ Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use;
- ❖ Promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas.”

Article 8 not just regulated the in-situ conservation but also mentioned establishing a system of protected areas and promote conservation in areas adjacent to protected areas.

However, the obligation under Article 8 only extends to areas within national jurisdiction. In areas beyond national jurisdiction, parties to the CBD are required to cooperate for the conservation and sustainable use of biological diversity. This is in part because no single state is competent to designate a protected area in ABNJ. On the other hand, every state has a responsibility to conserve and protect the environment within their jurisdiction or of areas

¹²⁶ History of the Convention, <https://www.cbd.int/history/> Access Date:28.03.2022

¹²⁷ Article 8.

¹²⁸ The Convention on Biological Diversity, <https://www.cbd.int/convention/articles/?a=cbd-02> Access Date: 20.03.2022

beyond national jurisdiction. The CBD article 4 has heading “Jurisdictional Scope” mentions that the activities of State Parties in ABNJ is in the jurisdictional scope of the convention. Thus, the CBD can be read as requiring the development of a network of ABMTs in ABNJ because, article 5 can ensure cooperation and coordination for taking joint measures on protected areas.

The idea of designing new protected areas in ABNJ has come from "the Johannesburg Plan of Implementation (JPOI)" in 2006.¹²⁹ After that the CBD has started to plan workshops and conferences for developing broad criteria for identifying areas which require protection. These areas are called as EBSAs. A general definition of an EBSA is any “Special areas in the ocean that have heightened importance in supporting the healthy functioning of oceans and the many services that they provide.”¹³⁰ EBSAs can be identified for areas within national jurisdiction or in ABNJ. However, the EBSA process only leads to a description of the area and there is no precise decision about whether an EBSAs should be protected or what type of management measures should be taken, for the reason that there are no powers given to the CBD to manage ABNJ.¹³¹

To give effect to the EBSA system, there have been many workshops and meetings held as seen on the chart below:

¹²⁹ The Johannesburg Plan of Implementation (JPOI), p. 18

http://library.arcticportal.org/1679/1/Johannesburg_Plan_of_Implementation.pdf Access Date: 02.03.2022

¹³⁰ Johnson, D., & Kenchington, E. (2019). Should potential for climate change refugia be mainstreamed into the criteria for describing EBSAs? *Conservation Letters*, 12(4), E12634-N/a., p. 3

¹³¹ Dunn DC, et al. The Convention on Biological Diversity's Ecologically or Biologically Significant Areas: Origins, development, and current status. *Mar. Policy* (2014), p.2
<http://dx.doi.org/10.1016/j.marpol.2013.12.002i>

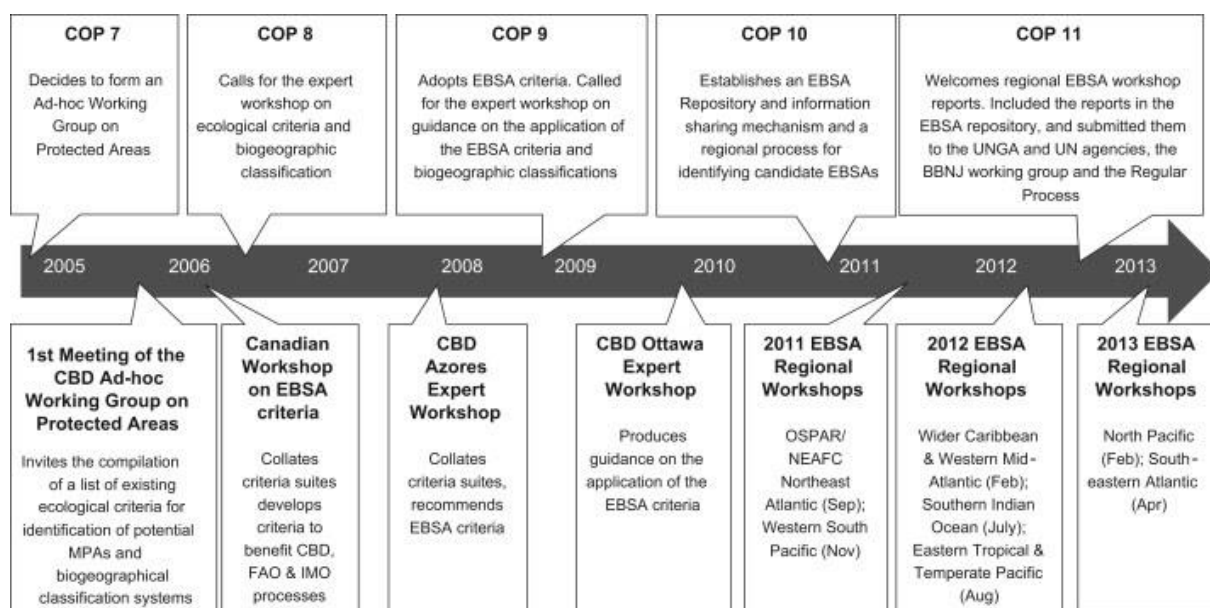


Chart 4.1.1: Development process of EBSAs¹³²

In 2006, the status and powers of the CBD in relation to ABNJ were discussed at the COP 8, which made a decision that "the CBD would focus on provision of scientific and as appropriate, technical information and advice relating to marine biological diversity."¹³³ The COP established a subcommittee for the consideration of protected areas, called the "Working Group on Protected Areas".¹³⁴ The COP had addressed article 5 and gave a mandate to the Ad Hoc Working Group on Protected Areas to explore options for cooperation for the establishment of MPAs in marine areas beyond the limits of national jurisdiction, consistent with international law, including UNCLOS.¹³⁵ It can be accepted that this ad hoc working group had an impact on the shaping of EBSAs system. In 2007, the CBD Experts Workshop was held in Azores/Portugal and the EBSAs criteria were refined and criticized. Ultimately, seven EBSA criterias were accepted.¹³⁶

¹³² Ibid., p. 2

¹³³ Ibid., p. 3

¹³⁴ Handbook of the Convention on Biological Diversity Including Its Cartagena Protocol on Biosafety, 3rd edition, Secretariat of the Convention on Biological Diversity, 2005, p. 28
<https://www.cbd.int/doc/handbook/cbd-hb-all-en.pdf> Access Date: 27.03.2022

¹³⁵ Handbook of the Convention on Biological Diversity Including Its Cartagena Protocol on Biosafety, p. 94

¹³⁶ Ibid., p 3

Regional workshop on EBSAs:	Date:	Host country:
OSPAR/NEAFC Northeast Atlantic	Sep-11	France
Western South Pacific	Nov-11	Fiji
Wider Caribbean and Western Mid-Atlantic	Feb-12	Brazil
Southern Indian Ocean	Jul-12	Mauritius
Eastern Tropical and Temperate Pacific	Aug-12	Ecuador
North Pacific	Feb-13	Russia
South-Eastern Atlantic	Apr-13	Namibia

Table 4.1.1. CBD Regional EBSA workshops and other relevant meetings.¹³⁷

In 2008, the COP adopted the criteria for identifying EBSAs and the COP defined EBSAs by using criterias. (COP decision IX/20, (CBD, 2008)¹³⁸ Scientific criterias for ecologically or biologically significant areas (EBSAs) are accepted by the COP 9 and it is situated in CBD annex I, decision IX/20. The EBSAs criteria are:

- ❖ **“Uniqueness or Rarity:** Area contains: (i) unique, rare or endemic species, populations or communities and/or (ii) unique, rare or distinct habitats or ecosystems and/or (iii) unique or unusual geomorphological or oceanographic features.
- ❖ **Special importance for life history stages of species:** Area that is required for a population to survive and thrive.
- ❖ **Importance for threatened, endangered or declining species and/or habitats:** Area containing habitat for the survival and recovery of endangered, threatened, declining species, or areas with significant assemblages of such species.
- ❖ **Vulnerability, Fragility, Sensitivity, or Slow recovery:** Area that contains a relatively high proportion of sensitive habitats, biotopes or species that are functionally fragile (i.e., highly susceptible to degradation or depletion by human activity or by natural events) or with slow recovery.

¹³⁷ D.C. DUNN, p. 5

¹³⁸ Malcolm R. Clark, Ashley A. Rowden, Thomas A. Schlacher, John Guinotte, Piers K. Dunstan, Alan Williams, Timothy D. O'Hara, Les Watling, Edwin Niklitschek, Shinji Tsuchida, Identifying Ecologically or Biologically Significant Areas (EBSA): A systematic method and its application to seamounts in the South Pacific Ocean, Ocean & Coastal Management, Volume 91, 2014, Pages 65-79, p. 68

- ❖ **Biological Productivity:** Area containing species, populations, or communities with comparatively higher natural biological productivity.
- ❖ **Biological Diversity:** Area contains comparatively higher diversity of ecosystems, habitats, communities, or species, or has higher genetic diversity.
- ❖ **Naturalness:** Area with a comparatively higher degree of naturalness as a result of the lack of or low level of human-induced disturbance or degradation”¹³⁹

For an area to be designated as an EBSA, it must meet at least one of these criteria.¹⁴⁰ After the COP 9 another the CBD experts workshop had held in Ottawa in order to discuss how the EBSAs in ABNJ should be identified.¹⁴¹

Another distinctive point about the issue is every area accepted as an EBSA is not an MPA. According to Harrison, “EBSA criteria are only intended to describe marine areas worthy to protection, and they do not prejudice whether such an area would be established as an MPA or what sort of measures may be adopted therein.”¹⁴²

The EBSA process is begins with regional workshops that identify areas which fit in the EBSA criterias. EBSAs are identified regionally as Arctic, Black and Caspian Seas, East Asian Seas, Eastern Tropical and Temperate Pacific, Mediterranean, North Pacific, North-East Indian Ocean, North-west Atlantic, North-West Indian Ocean and Adjacent Gulf Areas, South-Eastern Atlantic, Southern Indian Ocean, Western South Pacific, Wider Caribbean and Western Mid-Atlantic up to now. These workshops shall deliver recommendations to the COP and the COP shall decide whether to accept the area as an EBSA. After that, the COP invites States and intergovernmental organizations to take measures conservation and sustainable use of marine biological diversity.¹⁴³

In conclusion, some issues are needed to point out as listed;

- ❖ Many regional, sub-regional workshops have been conducted for the wide acceptance of EBSAs.

¹³⁹ EBSA Criteria, <https://www.cbd.int/ebsa/resources> Access Date:29.03.2022 and Dunn, D. C., ... Dunstan, P. K. (2018b). Reviewing the EBSA process: Improving on success. *Marine Policy*, 88, 75–85., p.76 <https://doi.org/10.1016/j.marpol.2017.11.014>

¹⁴⁰ Ibid. , p. 75

¹⁴¹ D.C. DUNN ..., p. 3

¹⁴² Harrison J. , p. 50

¹⁴³ Harrison J., p. 51

- ❖ With the CBD experts workshops held, criteria related to EBSAs were determined and solutions were sought for problems related to the implementation of EBSAs.
- ❖ The information obtained during the determination of EBSAs is shared with the relevant parties.
- ❖ The CBD has no powers for the implementation of measures in EBSAs. On the other hand, according to the CBD article 5, State Parties are free to cooperate measures on ABNJ.
- ❖ The description of EBSAs to protect biodiversity in the ABNJ, with a global acceptance, which started with the CBD, may have inspired the BBNJ in this regard.
- ❖ Several EBSA criteria has suggested in the last draft text of the BBNJ as candidate ABMT criteria.
- ❖ The fact that an area is considered an EBSA does not mean that it is considered an MPA. The CBD decisions about EBSAs are accepted as recommendations.

4.2. Regional cooperation and coordination: OSPAR/NEAFC and the Collective Arrangement

Before the start of the BBNJ negotiations, regional cooperation were arranged to conserve and protecting marine biodiversity in the ABNJ. In some regions, regional seas bodies (RSBs) and regional fisheries management organizations (RFMOs) have taken the main role of conserving marine biological diversity beyond national jurisdiction. Furthermore, some RSBs and RFMOs have established cooperation and coordination structure between them and they have laid the foundation for an integrated ocean management.

The most developed example of a coordination and cooperation structure is the cooperation and coordination agreements between the Commission for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Commission) and other relevant legal frameworks and instruments. In this chapter OSPAR's cooperation and coordination structure specially with North- Atlantic Fisheries Commission (NEAFC) will be examined as an advanced example. In addition, the findings on the functions and elements of regional cooperation will also be mentioned.

As a matter of fact, cooperation and coordination between relevant instruments organizations and frameworks has many benefits to build an understanding of integrated ocean

management. The first benefit of the international cooperation and coordination provides a platform for exchanging experiences and informations between different institutions and organizations. For example, thanks to "The Collective arrangement between competent international organizations on cooperation and coordination regarding selected areas in areas beyond national jurisdiction in the North-East Atlantic", the OSPAR Commission and NEAFC have studied specific issues together and exchanged their data and experiences on various subjects.¹⁴⁴ Considering on an MPA on ABNJ which various measures are needed, it is obviously seen that taking multiple measures can be carried on by international organizations who has power on. As an example, IMO has powers and duties on navigation on ABNJ so, if there is a need to a navigation restricted area about an MPA, IMO can decide on it. Therefore, cooperation agreements can provide such a cooperation and coordination that taking joint measures. Through joint activities, the objectives of organizations can be known and supported by a wider audience. In addition, organizations can develop trust and respect in each other regarding their protected values. For example, a sectoral organization like ISA initially thinks issues about its duty like deep-sea mining and so forth. However, with a cooperation agreement it can put on the agenda other issues than its duty like conservation of fisheries.

The best examples of regional cooperation and coordination are collaborations for to protect marine environment of Antarctic, the North-East Atlantic, the Mediterranean Sea, and Sargasso Sea.

First of all, OSPAR is the mechanism by which 15 Governments & the EU cooperate to protect the marine environment of the North-East Atlantic.¹⁴⁵ OSPAR has agreements with global sectoral organizations such as IMO and ISA, as well as cooperation agreements with regional organizations such as NEAFC.¹⁴⁶ Cooperation agreements made by OSPAR on the cooperation and coordination on conserving marine environment as shown in the table below:

¹⁴⁴ Collective arrangement between competent international organizations on cooperation and coordination regarding selected areas in areas beyond national jurisdiction in the North-East Atlantic, 6/e, <https://www.ospar.org/documents?v=33030> Access Date:08.04.2022

¹⁴⁵ About OSPAR, <https://www.ospar.org/about>, 15.04.2022

¹⁴⁶ Harrison J., p. 283-285

OSPAR Memoranda of Understanding & Cooperation Arrangements		
Organisation	Type	Signed
Bonn Agreement	Memorandum of Understanding (OSPAR Agreement 2021-04)	2021
Cartagena Convention	Memorandum of Understanding (OSPAR Agreement 2021-03)	2021
International Maritime Organization	Memorandum of Understanding on the Promotion of the London Convention and London Protocol (OSPAR Agreement 2018-10)	2018
The Convention for Cooperation in the Protection, Management and Development of the Marine and Coastal Environment of the Atlantic Coast of the West, Central and Southern Africa Region (Abidjan Convention)	Memorandum of Understanding (OSPAR Agreement 2013-12)	2013
North Atlantic Salmon Conservation Organization	Memorandum of Understanding (OSPAR Agreement 2013-01)	2013
Sargasso Sea Alliance	Collaboration Arrangement (OSPAR Agreement 12-10)	2012
International Seabed Authority (ISA)	Memorandum of Understanding (OSPAR Agreement 2010-09)	2010
International Atomic Energy Association (IAEA)	Practical Arrangement (OSPAR Agreement 2009-06)	2009
North East Atlantic Fisheries Commission (NEAFC)	Memorandum of Understanding (OSPAR Agreement 2008-04)	2008
International Council for the Exploration of the Sea (ICES)	Memorandum of Understanding (OSPAR Agreement 2006-08)	2006

International Maritime Organization (IMO)	Agreement of Cooperation (OSPAR Agreement 1999-15)	1999
European Environment Agency (EEA)	Memorandum of Understanding (OSPAR Agreement 1998-22)	1998
United Nations Economic Commission for Europe (ECE)	Memorandum of Understanding (OSPAR Agreement 1991-02)	1991
North East Atlantic Fisheries Commission (NEAFC)	Collective arrangement between competent international organizations on cooperation and coordination regarding selected areas in areas beyond national jurisdiction in the North-East Atlantic ((OSPAR Agreement 2014-09 (Update 2018))	2014

Table 4.2.1. OSPAR Memoranda of Understanding & Cooperation Arrangements¹⁴⁷

In the first place, MOU that was signed between OSPAR and IMO is not legally binding but also it was decided that some cooperation and coordination elements were decided with it.¹⁴⁸ According to this MOU article 2 areas of cooperations are "promoting, reporting, compliance under London Convention (LC) and London Protocol (LP), ensuring data sharing with respect to LC and LP, implementing joint workshops and capacity building activities, sharing experiences, implementing technical cooperation." Another MOU was signed between OSPAR and ISA is also including important articles. This MOU includes that "consultation on common interest, to encourage the conduct of marine scientific research for distribution, abundance and condition of vulnerable deep-sea habitats, the status of populations of marine habitats and so forth, to exchange and standardization of appropriate data, developing mutual confidence and good faith and so forth."¹⁴⁹

¹⁴⁷ Memoranda of Understanding & Cooperation Arrangements, <https://www.ospar.org/about/international-cooperation/memoranda-of-understanding> Access Date: 08.04.2022

¹⁴⁸ MOU between IMO and OSPAR, <https://www.ospar.org/documents?v=39043> Access Date: 15.04.2022

¹⁴⁹ MOU between ISA and OSPAR, <https://www.ospar.org/documents?d=32870> Access Date: 15.04.2022

Memorandum of Understandings are generally on exchanging data and experiences and joint works on some issues and organizing some joint events like workshops. Among the OSPAR Memoranda of Understanding & Cooperation Arrangements, one of the most important is “Collective arrangement between competent international organizations on cooperation and coordination regarding selected areas in areas beyond national jurisdiction in the North-East Atlantic”¹⁵⁰ with NEAFC. The key difference between the MOUs and Collective Arrangements is that the purpose of the collective arrangement is providing a regular and focused dialog between competent international organizations.¹⁵¹

The first article of the collective arrangement defines the scope of the arrangement that is selected areas in areas beyond national jurisdiction in the North-East Atlantic as specified in Annex 1 of the arrangement.

According to the Collective arrangement article 4, the cooperation and coordination shall be based on some elements as listed:

- ❖ “Applicable internationally agreed principles, standards and norms;
- ❖ Memoranda of Understanding and other bilateral cooperation arrangements between competent international organizations,
- ❖ Scientific evidence
- ❖ Relevant binding and non-binding international instruments.”

Legal framework of the cooperation and coordination structure have been declared with article 4. While creating the legal framework, international law and scientific knowledge initially were used.

Equally important, according to the article 5, parties of the collective arrangement shall inform each other and cooperate by ensuring coordination on defined areas. In article 6 the duties of the parties on international cooperation and coordination is mentioned as listed:

- ❖ “Inform each other, as appropriate, of any relevant updated scientific information and environmental assessment and monitoring data,

¹⁵⁰ Collective arrangement between competent international organizations on cooperation and coordination regarding selected areas in areas beyond national jurisdiction in the North-East Atlantic ((OSPAR Agreement 2014-09 (Update 2018)), <https://www.ospar.org/documents?v=33030> Access Date: 08.04.2022

¹⁵¹ Harrison J., p. 285

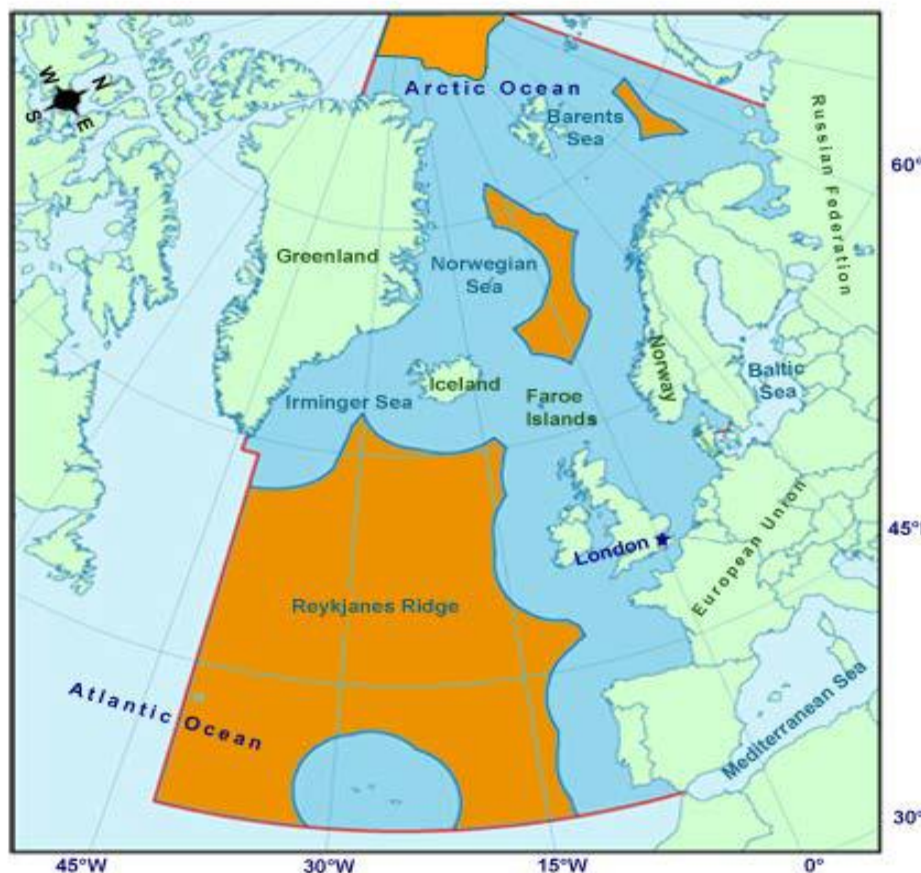
- ❖ Notify and inform each other of existing and proposed human uses relating to any area identified,
- ❖ Cooperate, where appropriate, on environmental impact assessments, strategic environmental assessments and equivalent instruments;
- ❖ Consult annually to review their respective objectives in relation to the areas defined, the status of the areas concerned and existing measures;
- ❖ Cooperate to obtain a better knowledge of the areas concerned through, where appropriate, developing exchange of data, sharing of databases and collecting data in standardized formats;
- ❖ Consult the coastal State in those cases where the areas defined are superjacent to areas under national jurisdiction, as appropriate.”

It is clearly understood that many various tasks and obligations were given to parties like exchanging data, cooperate on environmental impact assessments, strategic environmental assessments, identification of areas etc., annually consultation, data standardization, activity notification. These kind of obligations listed are beneficial for regional cooperation and coordination in terms of creating a frame of obligations.

The role of the NEAFC as an RFMO on collective arrangement has been mentioned on ANNEX 1A as Notification by NEAFC. First of all, the role of NEAFC as an RFMO is managing and regulating fisheries in the North East Atlantic according to the international law. Although the work of NEAFC is generally related to the high seas, the rules created by NEAFC are also used within national jurisdictions.¹⁵² The Contracting Parties to NEAFC are Denmark, the European Union, Iceland, Norway and the Russian Federation and cooperating non-contracting parties are Bahamas, Canada and Panama.¹⁵³ NEAFCs geographical scope is broad and it can be seen on the map below.

¹⁵² Stefán Ásmundsson, Emily Corcoran, NEAFC and OSPAR (2015) The Process of Forming a Cooperative Mechanism Between NEAFC and OSPAR, <https://www.ospar.org/documents?v=35111> Access Date: 13.04.2022

¹⁵³ Map of the NEAFC Regulatory Areas, https://www.neafc.org/managing_fisheries/measures/ra_map, Access Date: 14.04.2022



Map 4.2.1. NEAFC geographical scope (Yellow areas)¹⁵⁴

As known, freedom of the fishing in high seas is not limitless, it has been limited by some obligations like complying with conservation and management measures and cooperating with other relevant States and organizations.¹⁵⁵ Based on this idea, measures taken by NEAFC like data gathering, control and enforcement, and minimizing negative effects of fisheries on the other parts of the marine ecosystem and on biodiversity is legally binding for State Parties. NEAFC's role is not limited conservation and protection of fisheries but also by considering the effects of fisheries on the other parts of the marine ecosystem and on biodiversity, conserving of marine biological diversity.¹⁵⁶ The Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries (NEAFC Convention) article 1 defined “Living marine resources” as

¹⁵⁴ Ibid., p.3

¹⁵⁵ Freedom of Fishing on the High Seas, and the Relevance of Regional Fisheries Management Organisations (RFMOs), <https://www.neafc.org/system/files/limitations-on-the-freedom-of-the-high-seas-SA-March-2014.pdf>, Access Date: 14.04.2022

¹⁵⁶ Ibid., p. 4

"all living components of marine ecosystems" and "Marine biological diversity" as "the variability among marine living organisms and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems."¹⁵⁷ Although there is no reference to the protection of biological diversity in article 2, which mentions the objectives of the Convention, the protection of biological diversity is also included among the issues that the commission will take into account in its decisions in article 4.¹⁵⁸

Moreover, it has been mentioned that NEAFC has its own area closure system settled out in Recommendation 19:2014¹⁵⁹ NEAFC protected areas named as "vulnerable marine ecosystems (VME)" and it refers to paragraphs 42 and 43 of the FAO International Guidelines for the Management of Deep-Sea Fisheries in the High Seas.¹⁶⁰ The first proposal to protect VMEs was given by Norway in 2004 and it was agreed.¹⁶¹ Nowadays, many area are closed to bottom fishing to conserve vulnerable marine ecosystem in there by decisions of NEAFC.

Other main party of the Collective Arrangement is OSPAR. Declared by the Corcoran, "OSPAR is the regional mechanism for cooperation to protect the marine environment of the North-East Atlantic." The Contracting Parties of OSPAR are Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and United Kingdom as well as the European Union and the geographic scope of OSPAR is the same as for NEAFC.¹⁶² OSPARs decisions are legally binding too and it focuses on:

- ❖ "Protection and conservation of ecosystems and biological diversity;
- ❖ Hazardous substances;
- ❖ Radioactive substances;
- ❖ Eutrophication;

¹⁵⁷ The Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries, article 1, <https://www.neafc.org/system/files/Text-of-NEAFC-Convention-04.pdf> Access Date: 15.04.2022

¹⁵⁸ Ibid., article 2 and article 4

¹⁵⁹ Recommendation 19 2014: Protection of VMEs in NEAFC Regulatory Areas as Amended by Recommendation 09:2015, http://neafc.org/system/files/Rec_19-2014_as_amended_by_09_2015_fulltext_0.pdf Access Date: 10.04.2022

¹⁶⁰ Ibid., article 2

¹⁶¹ Ibid., p. 5

¹⁶² Stefán Ásmundsson, Emily Corcoran, NEAFC and OSPAR (2015) The Process of Forming a Cooperative Mechanism Between NEAFC and OSPAR, p. 5

- ❖ Environmental goals and management mechanisms for offshore activities.”¹⁶³

With regard to Collective Arrangement, it is known that OSPARs Annex V was adopted in 1998 and NEAFC given its interest on widely at the effects of fisheries on the marine ecosystem in the late 1990s.¹⁶⁴ After that, there was a clear overlap between OSPARs and NEAFCs interests and it has been the start point of the Collective Arrangement. Firstly, Heads of Delegations of the two organization had been met in 2005 after that, Memorandum of Understanding has been created in 2008. The next step of cooperation and coordination between two organizations was attending some specific parts of the meetings of each other.¹⁶⁵ Another important activity strengthened cooperation and coordination is joint projects like Ecologically and Biologically Significant Marine Areas (EBSAs) project. The representatives of OSPAR, NEAFC, CBD contact points and observers from CBD were attended to the EBSA workshop that tried to facilitate description of EBSA. This workshop had been held under the auspices of CBD and it was successfully identifying 17 EBSA candidate.¹⁶⁶

In conclusion, some important points have been arisen as listed;

- ❖ Regional cooperation and coordination is crucial matter for conserving and protecting biological diversity on areas beyond national jurisdiction.
- ❖ Regional cooperation and coordination provides many benefits. For example, it provides a platform to exchange experiences, data and methods furthermore, this regional cooperation and coordination exercises ensure a common point of view that will make these points global.
- ❖ OSPARs memorandum of understanding and cooperation arrangements is a good example of regional cooperation and coordination. OSPAR has signed 15 different memorandum of understanding and cooperation arrangements.
- ❖ With the emergence of common interests of OSPAR and NEAFC, both organizations sought space to collaborate. Moreover, OSPAR and NEAFC has the same geographical scope and some common objectives.

¹⁶³ Ibid., p.5

¹⁶⁴ Ibid., p.9

¹⁶⁵ Ibid. p. 10

¹⁶⁶ Ecologically or biologically significant marine areas workshop, <https://www.ospar.org/news/ecologically-or-biologically-significant-marine-areas-workshop> Access Date: 15.04.2022

- ❖ First they signed memorandum of understanding after that they signed Collective Arrangement to cooperation and coordination on common issues on their geographical scope.
- ❖ The Collective Arrangement is based on some elements like international law, scientific knowledge and so forth.
- ❖ Under auspices of the Collective Arrangement many improvements has been achieved that common project like EBSA workshops, joint meetings and so forth.
- ❖ Regional cooperation and coordination between the OSPAR and the NEAFC exposed that there is need for an instrument or framework to protect marine biological diversity beyond national jurisdiction. Because any relevant instrument, organization or framework had not got obligation or duty to protect marine biological diversity on ABNJ.
- ❖ In spite of OSPARs and NEAFC are regional organization that protect and conserve marine environment, they tried to create a forum for protecting marine environment at least in North East Atlantic. This endeavor has raised awareness globally about the conservation of marine biodiversity in ABNJ.

5. WHAT CAN BE DONE IN THE BBNJ TREATY?

5.1.Values and Perspectives

As a matter of fact, when examining the different examples of cooperation and coordination between relevant bodies, organizations and frameworks, it is seen that the initial element tried to achieve is uniting in common values and point of view. For instance, OSPAR and NEAFC have tried to understand issues in same way by using data standardization, joint projects and meetings. Only if the organizations that will cooperate have common values and perspectives, this cooperation can be successful and efficient. Even if the scope of obligations and authorities of organizations and overlap, it is difficult for organizations to act together unless they speak the same language. This values and perspectives inspired by past examples will be mentioned under this heading.

The first value of cooperation and coordination between relevant subjects is reciprocal trust. Every instrument has its own duties and authorizations, some of them has a narrow geographical scope and some of them has broad geographical scope especially sectoral ones. Any case about international cooperation they will consider what will be their status on the cooperation issue. For this reason, when a cooperation and coordination agreement prepare, some explanatory articles can be added for clarification status of the parties.

The second value of the international cooperation and coordination is to have common definitions and standards. One of the important challenge of international cooperation is using different definitions and standards. Obviously, different terms can be used by different international organization because, some of them is regional organizations, some of them is sectoral organizations and they all have attendees from different states and regions. On the other hand, if a cooperation is needed, these differences can be unbeneficial. Thus, creating common definitions and standards is one of the vital elements of the international cooperation.

The third value of the international cooperation is sharing data. International organizations, legal frameworks, instruments generally have their own data collecting systems. Each of them carry out scientific research on their field. Data collected are generally shared on only their data sharing platforms. On the other hand, this situation prevents the information from being

obtained and interpreted in a holistic way by those concerned. Therefore, data sharing is an important value to create a common perspective. When all data is taken by all relevant institutions, they can generate new point of view and they can act in same way.

The fourth element of the international cooperation and coordination is holding joint events and meetings for the reason that this events can be beneficial for attendees to get a collaborative spirit. In order for the relevant organizations, institutions and instruments to meet on a common ground and take common measures, they must first meet on a platform and share their ideas. The more frequently these joint participation events are held, the more it will contribute to the increase of cooperation between relevant organizations, instruments and institutions.

Another important issue is the perspective needed for international cooperation and coordination. The perspective needed is actually about talking same language and having the same values. Objectives can be different; methods can be different too. However, only if relevant organizations, institutions and instruments discuss on some decisions and they understand each other, international cooperation can be successful. They may prefer different methods and they may apply on different areas however; with the same perspectives and values they will serve the same purpose.

Many of the above-mentioned principles are included in the memorandum of understandings for international coordination and cooperation, and especially in the “Collective Arrangement” between OSPAR and NEAFC. In the Part 2/Chapter 1/Section B part of this study, the concept of memorandum of understanding and the Collective Arrangement between OSPAR and NEAFC are included. These regional studies on international coordination and cooperation can be an example of a global cooperation.

In conclusion, new values can be accepted and a new perspective can be gained with adopting BBNJ. Considering that the provisions of law are actually rules that regulate some values, the importance of these values may be understood. If BBNJ provisions and negotiations give attention on this values, it can establish totally new understanding on conserving and managing biological diversity on ABNJ.

5.2. What powers should a new body have?

Although the BBNJ negotiations have not been concluded yet, some possibilities have been identified regarding the system that BBNJ will bring. In particular, the ABMT system, which is the subject of research, and the possibilities for international cooperation and coordination are examined under Part 1/ Chapter 2/Section A-B. Furthermore, ABMT process has been elaborated as identification of areas, submission of proposal, consultation and assessment of proposals, decision-making process, implementation and monitoring on the same chapter too. However, some provisions are being argued by the conference attendees and under this chapter how should carry out the ABMT system will be mentioned.

First element will be mentioned under this heading is international cooperation and coordination. International cooperation and coordination on ABMT in BBNJ is defined as an objective in article 14 as enhance cooperation and coordination between states and another important objective on the issue is promote coherence and complementarity. Another important provision to get real these objectives is article 15 that mentions international cooperation and coordination. Article 15/1/a is stated that the powers of existing relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies will be respected. This provision shows that existing relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies shall not lose their authority with this global convention. Article 15/b is regulating international cooperation and coordination on ABMT process and it is stated that complementary measures can be taken by BBNJ.¹⁶⁷ Furthermore, BBNJ can adopt new measures if there is no relevant legal instrument or framework or relevant global, regional, subregional or sectoral body.¹⁶⁸ One of the most important issue on article 15/b is interpretation of complementary measures. Another important question on article 15/b is "will the COP necessarily adopt the measures itself or could it defer to existing organizations?" There is no answer in the draft text for these question. Complementary means that completing something else or making it better.¹⁶⁹ According to the draft text complementary measures will

¹⁶⁷ BBNJ, article 15/b/i

¹⁶⁸ BBNJ, article 15/b/ii

¹⁶⁹ The Britannica Dictionary, complementary definition, <https://www.britannica.com/dictionary/complementary>
Access Date: 19.04.2022

complete the main measures that taken by relevant legal instrument or framework or relevant global, regional, subregional or sectoral bodies. If there are many gap on measures on conserving and managing biological diversity on ABNJ, these complementary measures can spread on many areas and many activities it may decrease the power of the regional, sub-regional, sectoral bodies. If the complementary measures interpreted in broad view, some extra details are needed to clarification of the convention. Another important question is the BBNJ's authority to take measures in areas where there is no measure, and by whom these measures will be taken. About these questions firstly, BBNJs authority on taking measures where there is no measure is a definite authorization according to the draft text. On the other hand, the question of whom these measures will be taken is still unclear. Therefore, the COP can take the measures or the COP can decide that relevant bodies shall take the measures. According to the first alternative the COP decides the new measures however what if relevant bodies have authorization on the area that measures will be applied. According to the second alternative relevant bodies will take the new measures. In that case another question will be arisen: The COPs decisions will be legally binding or just recommendation? If the COPs decisions will be accepted as recommendation, the new measures cannot be accepted and this situation may obstruct the effective protection of biological diversity on ABNJ.

Last revised text of the BBNJ article 50 has established a secretariat. The secretariat has missions as listed: Provide administrative and logistical support, convene and service the meetings of the Conference of the Parties and of any other bodies as may be established by the Conference, circulate information relating to the implementation of BBNJ, facilitate coordination with the secretariats of other relevant international bodies, provide assistance with the implementation of BBNJ, prepare reports on the execution of its functions under BBNJ and submit them to the Conference of the Parties, perform such other functions as may be determined by the Conference of the Parties or assigned to it under BBNJ. The Secretariat is not an executive organ but also it has executive missions like preparing reports and submitting them to the Conference of the Parties and facilitate coordination with the secretariats of other relevant international bodies. Another organ that is established with BBNJ article 48 is "The Conference of the Parties". The Conference of the Parties shall adopt new regulations. Furthermore, The Conference of the Parties can establish new organs. Therefore, a new organ can be established by a decision of the Conference of the Parties or the Secretariat can arrange

cooperation and coordination between international, regional and subregional bodies by using the mission of facilitate coordination. Furthermore, cooperation and coordination agreement can include ABMTs and MPAs coordination system and complementary measures. The Scientific and Technical Body (The STB) has been established by the article 49. The STB has duties as listed: Providing scientific and technical advice to the COP, monitor the utilization of marine genetic resources of ABNJ, possessing recommendatory functions with respect to measures such as area-based management tools and so forth. Subjects and their roles on international coordination and cooperation an ABMT is shown on the table below.

International Cooperation and Coordination:	
Duties:	Bodies:
Convene and service the meetings	The Secretariat
Circulate information relating to the implementation of BBNJ	The Secretariat
Facilitate coordination with the secretariats of other relevant international bodies	The Secretariat
Provide reports to the relevant international bodies	The Secretariat
Provide assistance with the implementation of BBNJ	The Secretariat
Adopt new regulations	The COP
Establish new organs	The COP
Adopt new measures	The COP
Adopt complementary measures	The COP
Provide scientific and technical support	The Scientific and Technical Body
Standard setting and review to ABMTs	The Scientific and Technical Body

The assessment of ABMT proposals	The Scientific and Technical Body
Monitor and review ABMT measures	The Scientific and Technical Body
Establish subsidiary bodies	The Scientific and Technical Body

Table 5.2.1. Subjects and their roles on international coordination and cooperation an ABMT

The steps of the establishing ABMT is elaborated on Part 1/Chapter 2 under the heading of the ABMT processes. However, some unclear situations can be created by using this draft text of the convention on ABMT. About these unclear situations some examples have been listed:

- ❖ The article 18 is explaining consultation on and assessment of proposals on ABMTs and the role of the relevant international bodies are not definite. According to the article 18/b relevant international bodies are invited to submit their view on the proposals, scientific inputs, information regarding existing measures adopted by that instrument. However, any provision about their submissions is not exist. Therefore, there is an uncertainty in here about the if the submissions will be legally binding or they are just recommendations. It may be more useful to state this situation clearly.
- ❖ The alternative subparagraph of the article 19/c stated that the term of "the primary authority". The primary authority is an unclear term. It has not been clarified what characteristics an international body should have to be a primary authority.
- ❖ The article 21 that stated monitoring provisions did not include a monitoring plan. However, if there is no monitoring plan, systematic activities on monitoring cannot be applied smoothly. Therefore, there is a gap on monitoring plan that should be filled. A monitoring plan may be accepted by the COP as a decision.

In conclusion, some important points seen is listed:

- ❖ International cooperation and coordination between relevant organizations, institutions, instruments, legal frameworks is a key point for conserving and protecting biological diversity on ABNJ. Because, they have been carry out many duties on this issue in terms of global, regional, subregional and sectoral. They have experiences and implementations on this issue. Cooperation with them will be effect adoption and implementation of the BBNJ.
- ❖ It is seen that there are some legal gaps in the convention. However, the BBNJ can be accepted as a legal framework and these gaps can be filled with the COPs decisions.
- ❖ Every organ of the BBNJ has own duties on the implementation of ABMT provisions. These duties are generally flexible duties. Therefore, the unclarity on the organs missions can be affected the process.

5.3.The implementation of the decisions made by the COP

The BBNJ under negotiation will be a legally binding instrument under UNCLOS on conserving and managing biological diversity on ABNJ. To understand the aims of the BBNJ, it is necessary to read the Resolution passed by the General Assembly on December 24, 2017 (A/RES/72/249).¹⁷⁰ This Resolution addresses the "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 in areas beyond national jurisdiction." Certain principles enumerated in the Resolution demonstrate the BBNJ's viewpoint on international collaboration and coordination, as well as its conception of the BBNJ as a legally binding instrument.

These principles have been enumerated:

- "This process and its result should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies,

- The conference shall be open to all States Members of the United Nations, members of the specialized agencies and parties to the Convention,

¹⁷⁰ A/RES/72/249, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/468/77/PDF/N1746877.pdf?OpenElement> , p. 2 Access Date: 05.10.2022

- The need to ensure the widest possible and effective participation in the conference
- Recognizes that neither participation in the negotiations nor their outcome may affect the legal status of non-parties to the Convention or any other related agreements with regard to those instruments."

One of the most important issue is how will be applied the decisions made by the COP The answer is State parties of the BBNJ and according to the article 20 "Parties shall promote, as appropriate, the adoption of measures within relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies of which they are members, to support the implementation of the decisions and recommendations made by the Conference of the Parties" Nobody haven't seen any example related to this issue on the other hand, it can be stated that every State Part has the right to declare their views as they see fit on other international organizations if they are a party.

Another question is arisen from this issue that how international subjects will cooperate according to the international law by using memorandum of understanding (Mou).

According to Resolution A/RES/72/249, all current applicable legislative instruments and frameworks, as well as relevant global, regional, and sectoral organisations, must be considered.¹⁷¹ It is essential to keep in consideration that one of the central concepts in this subject is to not undermine existing instruments. Mou's can be used for an effective cooperation tool.

Globally adaptation of BBNJ, not only states participants are needed but also, global, regional, sub regional, sectoral bodies solid cooperation are needed too. For example, if the IMO can be a part of this solid cooperation with a Mou. Thus, if the IMO will decide to cooperate with BBNJ instruments, some measures like area closed to navigation can be taken by IMO easily. Currently, IMO has many authorizations on navigation and international sea transportation routes so, the IMO can arrange such a measure.

Memorandum of understanding with the relevant international bodies can be arrange with States Parties support to the measures on different global, sectoral, local instruments or it can be arrange with use Mou's or cooperation and coordination legal frameworks with these bodies. Then, which legal concepts can be taken as a model in this regard? The Mou signed

¹⁷¹ Ibid. p.2

between ISA and IMO¹⁷² may be considered as a model of the Mou's between related subjects specially Parties. This Mou started with the provision of promise to ensure maximum coordination. The article 3 mentions that IMO Secretary General will send invitation to the representative of the ISA to observe meetings or conferences convened by or under the auspices of IMO to consider matters in which ISA has interest. Likely, secretary general of the ISA will send invitations to IMO representative to observe meetings or conferences convened by or under the auspices of ISA to consider matters in which IMO has interest. The article 4 mentions that IMO secretary general and secretary general of the ISA consult on matters personal, materials, facilities and so forth. According to the article 5, IMO and ISA will render assistance to each other in term of their common interest. These provisions are capable to develop coordination and cooperation between ISA and IMO. ISA and IMO are both international organizations and they can be a part of an agreement. In addition, this Agreement is not a legally binding agreement and IMOs and ISAs decisions is not binding each other. Another possibility is the political support of the States Parties for the BBNJ-adopted measures. If States Parties provide their consent to the BBNJ, its provisions and actions are considered to be approved. Consequently, they will be required to implement these measures.

Efficient application of the BBNJ, it is clearly seen that, international coordination and cooperation is needed with relevant international organizations, institutions, legal instruments, frameworks. The international bodies can be cooperated is listed on the table below:

¹⁷² Agreement of Cooperation Between IMO and ISA,
<https://www.isa.org.jm/files/documents/EN/Regs/IMO.pdf> Access Date: 20.04.2022

BBNJ International Cooperation Matrix				
Kind of the Subjects	Subjects	Geographical Area	General Objectives	Important Application of ABMTs on ABNJ
Global Actors	The CBD	Global	Conserving biological diversity	Ecologically or Biologically Significant Marine Areas (EBSAs)
Sectoral Actors	IMO	Global	Promote safe and secure and environmentally sound navigation	Emission Control Areas (ECAs), Particularly Sensitive Sea Areas (PSSAs)
	ISA	Global	Protecting the seabed, ocean floor and subsoil	Areas of Particular Environmental Interest (APEIs)
Regional Seas Bodies	OSPAR Convention	North-East Atlantic Region	Preventing pollution and to protect the maritime area against the adverse effects of human activities	OSPARs Marine Protected Areas (OSPARs MPAs)
	Barcelona Convention	Mediterranean Region	Preventing and eliminating pollution	Specially Protected Areas of Mediterranean Importance (SPAMIs), Specially Protected Areas (SPAs)

	Cartagena Convention	Wider Caribbean Region	To ensure the safe handling, transport and use of living modified organisms	Cartagena Convention Marine Protected Areas (Cartagena MPAs)
	Helsinki Convention	Baltic Region	Protecting marine life from the pollution	Baltic Sea Protected Areas (BSPAs)
RFMOs	NEAFC	North-East Atlantic Region	To ensure the long-term conservation and optimum utilisation of the fish stocks	Area Closures, MPAs
	NAFO	The Northwest Atlantic Region	To ensure the long term conservation and sustainable use of the fishery resources	MPAs
	NASCO	North Atlantic Region	To conserve, restore, enhance and rationally manage Atlantic salmon	
	SEAFO	South East Atlantic Region	To ensure the long-term conservation and sustainable use of all living marine resources	MPAs, Area Closures
	SIOFA	Southern Indian Ocean Region	To ensure the long-term conservation and sustainable use of the fishery resources	
	SPRFMO	South Pacific Ocean Region	To ensure the long-term conservation and sustainable use of fishery resources and to safeguard the marine ecosystems in which these resources occur	
	CCAMLR	Antarctic Region	Conserving marine life	MPAs
	GFCM	Mediterranean Region	Fisheries conservation and management and ensuring aquaculture development.	MPAs
	CCBSP	Central Bering Sea Region	Conservation and management of pollock resources	

	AIDCP-IATTC	Eastern Pacific Ocean Region	Conservation and management of tuna and other marine resources	
	NPFC	North Pacific Ocean Region	Conservation and management of high seas fisheries resources	
RFMOs working on highly-migratory species	ICCAT	Atlantic Ocean and adjacent seas	Conservation of tunas and tuna-like species	
	IOTC	Indian Ocean Region	Management of tuna and tuna-like species	
	WCPFC	Western and Central Pacific Ocean Region	Conservation and Management of Highly Migratory Fish Stocks	
	IATTC	Eastern Pacific Ocean Region	Conservation and management of tuna and other marine resources	
	CCSBT	All national waters and the high seas, where southern bluefin tuna are found.	Management of southern bluefin tuna	

Table 5.3.1. BBNJ Cooperation Matrix¹⁷³

In conclusion, some important issues can be pointed out as listed:

- ❖ Mou's between relevant international, sectoral or regional bodies is vital for excellent implementation of the BBNJ. In addition, if relevant international bodies do not sign the Mou's BBNJ State Parties can provide political support for the COP's decisions on various platforms.
- ❖ Many international bodies are working on the conservation and sustainable use of biodiversity in the ABNJ. Relevant international bodies with potential for cooperation and coordination are shown in the BBNJ Cooperation Matrix with their geographical scope, general objectives and important applications of ABMTs on ABNJ.

¹⁷³ Marine protected areas in the high seas, <https://www.fao.org/fishery/en/topic/16204> Access Date: 20.04.2022

6. CONCLUSION

Many reasons like climate change, ocean acidification, depletion of resources that is needed for human life raise the issue of taking more strict measures to protect the biological diversity in the oceans especially ABNJ that is covered most of the oceans. Especially ABNJ is tried to conserve because oceans are integrated and every incident occurs in ABNJ is affecting everywhere. Integrated marine biological diversity conservation is needed for conserving linked oceans.

There are many global, regional, sub regional agreements for conserving marine biological diversity or some parts of the marine biological diversity. On the other hand, there is no agreement that dedicated conserving and managing marine biological diversity beyond national jurisdiction until the BBNJ that is still negotiating. So far, there are four substantive sessions have been held at the United Nations to discuss the BBNJ and its provisions. The BBNJ is a comprehensive agreement that includes of twelve parts as listed: “Part I: General Provisions, Part II: Marine Genetic Resources, Including Questions on The Sharing of Benefits, Part III: Measures Such as Area-Based Management Tools, Including Marine Protected Areas, Part IV: Environmental Impact Assessments, Part V: Capacity-Building and Transfer of Marine Technology, Part VI: Institutional Arrangements, Part VII: Financial Resources [and Mechanism], Part VIII: Implementation [and Compliance], Part IX: Settlement of Disputes, Part X: Non-Parties to This Agreement, Part XI: Good Faith and Abuse of Rights, Part XII: Final Provisions.” Furthermore, the BBNJ is a legally binding instrument under the auspices of the UNCLOS.

One of the most effective tools of the BBNJ is area-based management tools that have been held in the Part III of the Convention. ABMT is defined as “A tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives [and affording higher protection than that provided in the surrounding areas].” in the BBNJ article 1/3. In this definition, the elements that are useful and important to understand ABMT are the geographically defined areas and activities. Evaluations about these definitions are included in section 2.1.1.1. of the study. Another distinctive point about the ABMT is differences between ABMT and MPA. Every MPA is an ABMT but not every ABMT is an

MPA. MPAs generally focus on a defined area and they generally prohibit every activity on there but ABMTs can prohibit one or more activity in specific areas. Furthermore, area choosing criteria of MPAs are not the same with ABMTs but have a similar framework. Additionally, MPAs generally focus on an area but ABMTs can focus on an area or a conservation objective or activities. MPAs are specifically designed to protect a subject, while OECMs are designed to provide protection in an area. There are many examples of the ABMTs and MPAs but some of them established on the ABNJ. For the reason that one understand BBNJs ABMT system some of MPAs and ABMTs have been examined in the section 2.1.1.3. of the study.

Part III of the draft agreement article 14 is mentioned about objectives of the BBNJs ABMT system. According to the article 14 two different cooperation and coordination systems of ABMTs and MPAs can be established. One of them is for linking MPAs and the other one is for linking MPAs to ABMTs and ABMTs to ABMTs. By the means of these systems every relevant international body can be a part of the BBNJs ABMT system. For the reason that these objectives will be realized some provisions are mentioned in Part III on the draft agreement. In addition, promoting coherence and complementarity is the one of the objective is mentioned too.

Article 15 that has heading “International cooperation and coordination” is mentions that ensuring international cooperation and coordination between relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies. In this study two different global actor have been examined that are the ISA and the IMO. The ISA and the IMO are having mandates in areas of interface where both have indicated that their competencies can complement each other's and they had signed an agreement on cooperation and coordination. This Mou can be accepted as a good model of cooperation and coordination method.

Another issue needs to be concern on is ABMT process. ABMT process is consist of 4 different steps that are identification of areas and submission of proposal, consultation and assessments of proposals and decision-making process, implementation, monitoring and review. Firstly, about the identification of areas some basic elements are mentioned that are scientific knowledge, traditional knowledge and knowledge of local people and indigenous people and precautionary principle. Giving an importance to the traditional knowledge and knowledge of local people and indigenous people is shown that the Convention is giving a

special importance to the local actors. Furthermore, some indicative criterias are mentioned in the ANNEX I of the Convention for identification of areas that are uniqueness, rarity, fragility, sensitivity and so forth. It is understood that some indicative criterias are being inspired from the EBSA criterias. Another point about identification of areas is proposals. Proposals have to include some minimum information like a geographical scope, human activities in the area, description of proposed measures, duration of the measures and so forth.

The second step of the ABMT process is consultation and assessment process. These processes are elaborated under the section 3.1.2. of the study. Furthermore, some charts added to the section to be seen clearly the process. According to these charts, not only the COP, the Secretariat and the STB have some duties on the process but also, relevant legal instruments and frameworks, relevant global, regional, sub-regional and sectoral bodies have duties. Moreover, non-governmental organizations like IUCN gave many important comments. In addition, according to the article 18/b “Bodies of relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies shall be invited to submit: Views on the merits of the proposal, any relevant [additional] scientific inputs, information regarding any existing measures adopted by that instrument, framework or body for the relevant area or for adjacent areas, views regarding any aspects of the [conservation and [management] [sustainable use] measures] [priority elements for a management plan] identified in the proposal that fall within the competence of that body, views regarding any relevant additional measures that fall within the competence of that instrument, framework or body, any other relevant information.” Therefore, the participation of global, regional, subregional actors and the consideration of regionally implemented measures may promote compliance and coherence. An important question on the issue is complementary measures and the interpretation of the complementary measures. If the BBNJ organs will interpret broadly the term of the complementary measures, other relevant international bodies mandates can be overlapped. The implementation of the agreement will show the scope of the complementary measures. The third step of the ABMT process is implementation. The most vital issue on implementation of the ABMTs is the provision of cooperation in article 20. Every steps of the ABMT process include international coordination. The last step of the ABMT process is monitoring and review. According to the agreement a monitoring and reviewing system has been established and the COP and the STB has been commissioned as decision maker and examiner. Furthermore,

relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies can be summoned for to give reports about their implemented measures.

Equally important question for the study is what measures are currently taken to promote ABMT in ABNJ and this question has been elaborated in the section 4. About the issue two different example have been examined: One of the example is a global application and the second example is a regional application on conserving and protecting marine biological diversity by using MPAs and ABMTs. The first example is EBSAs established under the auspices of the CBD. EBSA concept is not an MPA but it is generally accepted as an ABMT. Furthermore, the EBSA is a widely accepted concept for the reason that the CBD has been created a common sense by using experts workshops. The dilemma of the EBSA concept itself is that there is no legal binding for the implementation of EBSA. EBSAs in the ABNJ are implemented with the cooperation of states parties to the CBD. On the other hand, the BBNJs ABMT concept is a good example and it can be accepted that EBSA concept is inspired to the CBDs EBSA concept. As a matter of fact, an area is considered an EBSA does not mean that it is considered an MPA. The CBD decisions about EBSAs are accepted as recommendations.

The second example is a regional cooperation and coordination example that is the the OSPAR and the NEAFC and their collective arrangement. The OSPAR and the NEAFC collaboration is an important regional cooperation example and it has shown that regional cooperation and coordination is a crucial matter for conserving and protecting biological diversity on areas beyond national jurisdiction. Firstly, regional cooperation and coordination has many vital benefits. For instance, it provides a platform to exchange experiences, data and methods and it ensures a common point of view that will make common points global. The OSPAR has been signed many memorandum of understandings with relevant stakeholders like ISA, the IMO and the NEAFC. On the other hand, cooperation with NEAFC is improved and they signed the Collective Arrangement. The OSPAR and the NEAFC has almost the same geographical scope and common goals. Therefore, they found a broad vision and platform for collaboration. The Collective Arrangement is based on some basis like international law, scientific knowledge and so forth and these basis are facilitated the collaboration. One of the most important event that realized under the auspices of the Collective Arrangement is common projects and common events like EBSA workshops. Another different perspective on the

regional cooperation and coordination example. The Collective Arrangement was exposed the need of a legally binding instrument for the conserving marine biological diversity beyond national jurisdiction. The OSPAR and the NEAFC has been tried to create a forum for protecting marine environment and this caused an improvement of awareness on the protecting marine biological diversity.

The fifth section of the study has been looked into what can be done in the BBNJ. Firstly, it has focused on values and perspectives for the reason that examples are shown that having a same perspective is important for achieving international cooperation and coordination. Important values for gaining the common perspective is listed below:

- ❖ **Reciprocal trust:** If some extra explanatory articles added to the agreements about roles of the cooperation parties, international coordination and cooperation can be easier for the reason that its improves the reciprocal trust.
- ❖ **Having common definitions and standards:** Every party of the cooperation and coordination agreements can have different standards and definitions and this situation can be unbeneficial for achieving coordination and cooperation. Therefore, having common definitions and standards is a vital issue.
- ❖ **Sharing data:** As known, science only can improve with using holistic data. Therefore, data sharing is another vital value for gaining an effective international cooperation and coordination.
- ❖ **Joint Events:** Joint events can be improve collaborative spirit.

Another issue is what is the common perspective? It is actually talking the same language. If the parties of the BBNJ will gain these values and common perspective, achieving common objectives can be easier.

Another distinctive question about the BBNJ that is elaborated under the section 5.2 is “What powers should new body have?”. There is an important gap on who will take measures and complementary measures. According to the draft text of the BBNJ, if there is a measure applied on a specific area, complementary measures can be taken. But by whom? It is not answered on the draft text. In addition, what is the complementary measures. The term of complementary can be interpreted broadly or narrowly. Furthermore, if there is no measure

applied, measures can be taken. Who will take these measures is also not answered here. The BBNJs organs or some other relevant international bodies with jurisdiction over the issue?

According to the last draft text of the BBNJ some organs has been established that are the Conference of the Bodies, The Scientific and Technical Body and the Secretariat. Every organ of the BBNJ have different missions about the ABMT process and international cooperation and coordination on ABMTs. Table 5.2.1 was prepared for explain subjects and their roles.

The last question of the study is “The implementation of the decisions made by the COP”. The implementation of the decisions made by the COP is another issue has not been answered on the draft text of the BBNJ. Considering on BBNJs objective and other provisions systematically is giving some clues about the issue. Specifically, in the A/RES/272/49 highlighted the relevant legal instruments and frameworks and relevant global, regional and sectoral bodies should not undermine in BBNJ.

ABMT measures can be taken by the BBNJs organs and it may be taken by other relevant international bodies. Therefore, other relevant international bodies is the vital subject for the issue. States Parties of BBNJ can give political support to acceptance of the measures that accepted with BBNJ on global, sectoral, regional and subregional bodies. Furthermore, they may prefer signing a cooperation and coordination agreement. If they will choose this alternative, coordination and cooperation agreement should include a provision about the decisions of the COP in order to ensure clarity between parties. A tale prepared for the gaining a holistic knowledge under the section 5.3. and it named as BBNJ Cooperation Matrix. BBNJ Cooperation Matrix covers relevant international subjects, geographical area, general objectives of subjects and their important application of ABMTs on ABNJ.

In conclusion, some important points arisen from the issue as listed:

- ❖ BBNJs ABMT system will bring a new consideration on conserving and managing marine biological diversity beyond national jurisdiction.
- ❖ Achieving more integrated oceans is a vital issue for the BBNJs ABMT system.
- ❖ ABMTs and the concept of the ABMT will be discussed more because it may be affect many human based activities in the oceans and it may be bring new restrictions.

- ❖ Some examples of the ABMTs and MPAs are applied on the ABNJ already but they are not concepts that global and legally binding. Therefore, there is a concept needed more efficient and BBNJs ABMT is a candidate for that.
- ❖ One of the vital matter about the issue is international coordination and cooperation on ABMTs and it can be ensured with cooperation agreements or BBNJ participations of the relevant international bodies.
- ❖ Another issue about that is BBNJ should not undermine existing bodies.
- ❖ BBNJs ABMT process has born some gaps and these gaps can be filled by using the COPs decisions.

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