

Briefing for negotiators

Ensuring Effective Implementation of a High Seas Biodiversity Treaty

Compliance with the provisions of the future BBNJ treaty will be crucial to its effectiveness, but the focus of the negotiations has primarily been on the “package deal” with limited attention being given to critically important questions regarding implementation. There is already a draft article on compliance in the BBNJ treaty but there is no consensus yet on its inclusion and there are no detailed parameters for the structure and functioning of a potential implementation and compliance committee.

The ambition and effectiveness of the mechanism ultimately adopted will reflect Parties’ collective political will and ambition. Negotiators of the BBNJ treaty have three options at their disposal for developing an effective implementation and compliance committee.

1. Require the CoP to establish a Committee

Why? The current draft article merely empowers the CoP to establish subsidiary bodies, as it deems necessary. Experience with other agreements shows that postponing establishment to a later date can result in long delays or even failure to agree on a mechanism. In the absence of a clear requirement, Parties opposed to the establishment of compliance mechanisms could stall progress indefinitely by impeding consensus.

How? This provision could easily be strengthened by instead requiring the CoP to establish a compliance mechanism:

Article 48 (4): The Conference of the Parties shall [monitor and] keep under review the implementation of this Agreement and, for this purpose, shall: (...)

(d) Establish such subsidiary bodies as deemed necessary for the implementation of this Agreement [, which may include:

[(i) An access and benefit-sharing mechanism;]

[(ii) A capacity-building and transfer of marine technology committee;]

~~[(iii) An implementation and compliance committee;]~~

[(iv) A finance committee];]

(e)(new) Establish an implementation and compliance committee.

2. Establish a Committee directly through a provision in the treaty text

Why? To send a strong signal that compliance is a priority and guarantee that such a mechanism is established from the beginning without undue delays in developing the relevant infrastructure and procedures.

How? By including a new provision establishing a compliance committee directly in the treaty text (e.g. Article 15 of the Minamata Convention on Mercury):

~~Article 53(3): [3. The Conference of the Parties shall adopt consider and adopt cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Agreement and to address cases of non-compliance.]~~

Article 53(4)(new): An implementation and compliance committee is hereby established to promote implementation of, and review compliance with, all provisions of this Convention.

(a) The mechanism, including the Committee, shall be facilitative in nature and shall pay particular attention to the respective national capabilities and circumstances of Parties.

(b) The Committee shall promote implementation of, and review compliance with, all provisions of this Convention. The Committee shall examine both individual and systemic issues of implementation and compliance and make recommendations, as appropriate, to the Conference of the Parties.

3. Prioritise early CoP decisions to set out the foundational elements of an implementation and compliance committee

Why? If Parties are keen to kickstart the development of the Committee, they could prioritise the adoption of decisions during the first CoP that provides further details regarding its form and functions.

How? An initial decision could provide a high-level framework for a Committee that could include:

- **Nature and approach:** non-adversarial, transparent and consultative.
- **Composition:** representatives nominated by Parties and relevant experts as well as modalities for civil society participation.
- **Mandate:** independently from the CoP with a mandate to take its own measures to address cases of non-compliance.
- **Triggers:** a Party should be empowered and encouraged to trigger a procedure in relation to itself where it wishes to return to compliance. Parties could consider empowering a treaty body, such as the CoP, Secretariat or Committee itself to trigger a procedure. Observers could be invited to provide information on cases of suspected non-compliance to Parties or directly to the Committee for its consideration.
- **Consequences of non-compliance:** the Committee could recommend the CoP to issue a caution to a non-complying Party.

For more information, see:

Ensuring effective implementation of a high seas biodiversity treaty: Lessons learned and options for an implementation and compliance committee

<https://www.iddri.org/en/publications-and-events/report/ensuring-effective-implementation-high-seas-biodiversity-treaty>.

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About the STRONG High Seas project

The STRONG High Seas project is a five-year project that aims to strengthen regional ocean governance for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction. Working with the Secretariat of the Comisión Permanente del Pacífico Sur (CPPS; Permanent Commission for the South Pacific) and the Secretariat of the West and Central Africa Regional Seas Programme (Abidjan Convention), the project will develop and propose targeted measures to support the coordinated development of integrated and ecosystem-based management approaches for ocean governance in areas beyond national jurisdiction (ABNJ). In this project, we carry out transdisciplinary scientific assessments to provide decisionmakers, both in the target regions and globally, with improved knowledge and understanding on high seas biodiversity. We engage with stakeholders from governments, private sector, scientists and civil society to support the design of integrated, cross-sectoral approaches for the conservation and sustainable use of biodiversity in the Southeast Atlantic and Southeast Pacific. We then facilitate the timely delivery of these proposed approaches for potential adoption into the relevant regional policy processes. To enable an interregional exchange, we further ensure dialogue with relevant stakeholders in other marine regions. To this end, we set up a regional stakeholder platform to facilitate joint learning and develop a community of practice. Finally, we explore links and opportunities for regional governance in a new international and legally binding instrument on marine biodiversity in the high seas.

Project duration: June 2017 – May 2022

Coordinator: Institute for Advanced Sustainability Studies (IASS)

Implementing partners: BirdLife International, Institute for Sustainable Development and International Relations (IDDRI), International Ocean Institute (IOI), Universidad Católica del Norte, WWF Colombia, WWF Germany

Regional partners: Secretariat of the Comisión Permanente del Pacífico Sur (CPPS), Secretariat of the Abidjan Convention

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