

Governing Marine Biodiversity Beyond National Jurisdiction: Roles and Opportunities for the Private Sector

WHITE PAPER

SEPTEMBER 2024



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Foreword



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After almost 20 years of work, the adoption of the 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 (BBNJ Agreement) marked a historical achievement for the protection and conservation of the ocean outside national boundaries.

Areas beyond national jurisdiction (ABNJ) are one of the great remaining commons of the planet and critical to sustaining life on Earth. Representing two-thirds of the world's ocean and over 90%¹ of the habitable space on Earth,² they are home to millions of unidentified species.³ As they absorb heat and store excess carbon dioxide from the atmosphere, they are essential to regulate climate and slow the impacts of climate change, as well as to connect ecosystems that are vital to ocean health.

Additionally, these areas are crossed by 90% of global trade. They host critical infrastructure that carries over 95% of transoceanic data communications.⁴ They also contribute to global food security with analyses reporting that they account for between 4.2% and 12% of global fisheries.⁵

Given that several industries depend either directly or indirectly on ABNJ and its resources, they will be affected by the implementation and monitoring of many of the Agreement's provisions and must therefore play a key role in its execution.

Until the BBNJ Agreement enters into force, these areas will continue to be regulated not by a comprehensive legal framework, but by a fragmented and complex system of different legal instruments, frameworks and relevant global, regional, subregional and sectoral bodies. The BBNJ Agreement aims to improve these

inefficiencies and play a central role in promoting international cooperation and coordination. The Agreement's implementation offers opportunities for innovation. Early involvement of the private sector has the potential to promote public-private partnerships that will be essential to accelerate positive impacts by protecting and sustainably managing the ABNJ.

This white paper presents the perceptions – collected through consultative conversations – of selected large industry and corporate actors, members of relevant governance bodies and subject-matter experts. By outlining industry needs, challenges and opportunities, this report presents high-level recommendations to engage industry from the early stages of the Agreement's implementation and to open a dialogue that reflects on what is at stake for the private sector.

The [Ocean Action Agenda at the World Economic Forum](#) focuses on engaging key ocean-based industry sectors and innovations to protect, conserve and restore ocean health and some of its most important ecosystems. Meanwhile, the Ocean Stewardship Coalition of the UN Global Compact⁶ focuses on engaging the private sector in policy processes, developing guidance for principles-based ocean business and helping create an enabling environment to scale-up blue finance and investment.

Together, as two of the largest international organizations for public-private collaboration, the World Economic Forum and the UN Global Compact are well placed to support the private sector's engagement in the implementation of the Agreement. We are ready to do so by opening a dialogue for relevant industries to address the recommendations outlined in this white paper.

Executive summary

Context

The BBNJ Agreement is the third implementing agreement of the UN Convention on the Law of the Sea (UNCLOS). UNCLOS recognizes the interrelated nature of ocean issues and the need to address them holistically, setting out the legal framework within which all activities in the ocean and seas must be carried out. Currently, 168 nations and the European Union are Parties to UNCLOS, which entered into force in 1994.

The BBNJ Agreement itself was adopted by consensus on 19 June 2023, after almost two decades of effort. As of July 2024, 90 states and the European Union had signed the Agreement, with eight signatories also ratifying it. The Agreement addresses four key topics:

1. Marine genetic resources and the equitable sharing of benefits.
2. Area-based management tools, including marine protected areas.
3. Environmental impact assessments.
4. Capacity-building and the transfer of marine technology.

Consultations with private sector

The BBNJ Agreement is a binding international treaty between governments. However, industry actors are among the primary users and key stakeholders in areas beyond national jurisdiction (ABNJ). Consequently, the private sector is likely to be both directly and indirectly affected by the Agreement's implementation.

This white paper presents the results of 14 interviews conducted with large industry and corporate actors with a stake in ABNJ (representing fisheries and fisheries value chains, international shipping and subsea cables), members of relevant governance bodies and Agreement experts from across sectors. The interviews sought respondents' views on the BBNJ Agreement and the role of the private sector in its implementation. This white paper reports the collated results of those conversations and an initial overview of the challenges and opportunities that participants see arising from the Agreement and its implementation.

Awareness of and engagement with the BBNJ Agreement varied widely between industry participants; many reported a wait-and-see attitude

predicated on their perceptions of likely national government actions regarding ratification.

Private sector's primary concerns and needs

Private sector respondents' primary concerns centred on the Agreement's provisions on two key topics: area-based management tools (ABMT), including marine protected areas (MPAs), and environmental impact assessments (EIAs).

Respondents identified various baseline needs for affected industries, which include regulatory consistency and clarity on how the Agreement and associated institutions will interact with existing governance arrangements (e.g. relevant legal instruments, frameworks and global, regional, subregional and sectoral bodies).

Participant-identified needs in relation to the Agreement's implementation include the following:

- Immediate pre-ratification efforts to lay the foundation for implementation.
- Diverse scientific expertise and data.
- Strong leadership, norm-building and cooperation.
- Monitoring and enforcement capacity.
- Early and sustainable financing.

Participant-identified implementation challenges to the Agreement's implementation include the following:

- Need for the Conference of Parties (COP) to rapidly build expertise in the complexity of pre-existing legal frameworks.
- Scale mismatches between management, ecosystem and socio-economic scales; between decision-making and enforcement jurisdictions; and between scales of governance.
- Industry's lack of awareness and/or reluctance to engage.
- Industry's preconceptions about politicization of management processes.
- Unclear pathways through which industry can get involved.

Participant-identified opportunities include the following:

- Improved operational environments and more harmonized regulation.
- Opportunities for innovation, data collection and new markets.
- Environmental, social and governance benefits (e.g. addressing pollution, overfishing, social equity).
- Greater international salience of ABNJ issues.

Four high-level recommendations

Based on these findings, the report presents four high-level recommendations for the implementation of the Agreement:

- The Secretariat and subsidiary bodies should engage industry early and keep them engaged throughout implementation processes.

- The Secretariat, the Parties to the Agreement, existing government bodies, civil society and industry should cooperatively build a foundation for implementation.
- The Secretariat and Parties to the Agreement should explore creative ways to encourage implementation and compliance, through incentivizing shared responsibility and co-ownership of strategies, as well as economic incentives.
- Parties, civil society and industry should strive for universal ratification.

The BBNJ Agreement provides great opportunities for technological innovation and enhanced international cooperation and coordination, including through private and public partnerships. Early engagement of all relevant stakeholders can contribute to the effective implementation of the Agreement and support the achievement of its overarching objective to ensure the conservation and sustainable use of marine biological diversity of ABNJ.



1

Introduction

As primary users of ocean areas beyond national jurisdiction, industry actors will be affected in many ways by the UN’s new agreement on marine biodiversity. This report explores these challenges and opportunities from a private sector perspective.

1.1 The Agreement on Marine Biodiversity of Areas beyond National Jurisdiction

The 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 – which can be abbreviated to either Agreement on Marine Biodiversity of Areas beyond National Jurisdiction or simply the BBNJ Agreement – applies to the high seas and the international seabed area as defined by the United Nations Convention on the Law of the Sea (UNCLOS).

The high seas include “all areas of the ocean excepting internal waters, the territorial seas or Exclusive Economic Zone (EEZ) of coastal states and the archipelagic waters of archipelagic states” (UNCLOS Art. 86(1)).⁷ The international seabed area refers to “the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction”.⁸ Over two-thirds of the global ocean is classified as areas beyond national jurisdiction (ABNJ).⁹ ABNJ also include living and non-living resources, in particular biodiversity beyond national jurisdiction (BBNJ).



Over two-thirds of the global ocean is classified as areas beyond national jurisdiction.

Despite piecemeal management of these resources under existing international agreements, the coordinated and integrated management of ABNJ has proved elusive.¹⁰ The result has been inconsistent or ineffective regulatory oversight of some private sector ABNJ activities, leading to ecosystem impacts that UNCLOS explicitly sought to avoid. Furthermore, there is concern that these gaps have disproportionately affected ecosystems on which less-developed nations and small island developing states (SIDS) in particular depend,

despite the recognized need for internationally equitable sharing of benefits from ABNJ.

The BBNJ Agreement is the first comprehensive cross-sectoral implementing agreement under UNCLOS in decades. The Agreement aims to enable more integrated, holistic approaches to the management of ocean activities by enhancing and promoting international cooperation and coordination. It covers four key topics and cross-cutting issues (see Box 1).¹¹

The BBNJ Agreement addresses a package of four key topics under the overall objective of ensuring the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction for the present and in the long term, through effective implementation of the relevant provisions of UNCLOS and further international cooperation and coordination.

The four key topics are:

1. **Marine genetic resources**, including the fair and equitable sharing of benefits.
2. **Area-based management tools**, including marine protected areas and similar measures.

3. **Environmental impact assessments.**

4. **Capacity-building** and the transfer of marine technology.

It also addresses a number of cross-cutting issues, which are relevant for the implementation of the Agreement as a whole. These include the establishment of a Conference of the Parties (COP) as the governing body of the Agreement, several subsidiary bodies and a financial mechanism to assist developing state Parties in implementing the Agreement, which consists of various funds.

Source: United Nations.¹²

As of July 2024, 90 states and the European Union have signed the Agreement and eight signatories have ratified it. The Agreement will

enter into force “120 days after the date of deposit of the 60th instrument of ratification, approval, acceptance, or accession”.¹³

1.2 Existing governance of areas beyond national jurisdiction

ABNJ activities are currently governed by several global and regional instruments applying to particular sectors or activities, with limited coordination in implementation. The two in-force implementing agreements under UNCLOS, both dating from 1982, are as follows:

- Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea – which focuses on the international seabed area and the resources therein.¹⁴
- United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks – known as the UN Fish Stocks Agreement.¹⁵

In addition to UNCLOS and its implementing agreements, several specialized agreements supplement and elaborate on UNCLOS’ general principles.

Relevant international organizations, as well as regional management bodies that focus on specific resources or geographies, include the following:

- International Maritime Organization (IMO), the UN specialized agency with responsibility for the safety and security of shipping and the prevention of marine and atmospheric pollution by ships.

- International Seabed Authority (ISA), which organizes and controls the exploration and exploitation of international seabed area resources.¹⁶
- Food and Agriculture Organization of the United Nations (FAO), which includes a fisheries and aquaculture division.
- Regional fisheries management organizations (RFMOs), which manage transboundary fish stocks.¹⁷
- Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), which governs the Antarctic and its resources.¹⁸

It is important to understand this existing governance context, given that the BBNJ Agreement itself requires that it “shall be interpreted and applied in a manner that does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies and that promotes coherence and coordination with those instruments, frameworks and bodies” (Art. 5(2)).¹⁹

1.3 | Uncertainty around impact of Agreement on private sector

The BBNJ Agreement may have profound effects on industries with an operational presence in ABNJ, including shipping, fisheries, tourism, communications, biomedicine and others. However, many of the details around the Agreement's implementation will be decided by the Agreement's

Conference of Parties (COP) after entrance into force and with input from the COP's subsidiary bodies (e.g. the Scientific and Technical Body or STB). Thus, the specifics of the Agreement's implementation and the implications of its provisions, especially for industry actors and their operations, remain uncertain.²⁰



The Agreement may have profound effects on industries with an operational presence in ABNJ, including shipping, fisheries, tourism, communications, biomedicine and others.

The World Economic Forum seeks to support effective global public-private cooperation and to enable respectful dialogue across sectors. This white paper aims to complement that mission and shed some light on the uncertainties mentioned above. The stakes are high, given the importance of ABNJ to the global economy, the vital ecological role of the ocean, the magnitude and acceleration of pressures on the marine environment, and the urgency of tackling the triple planetary crisis of climate change, biodiversity loss and pollution. In light of these challenges, restoring the health and resilience of the ocean must remain a top priority.

As a first step to addressing these issues, this white paper reports anonymized input collated from one-on-one consultations with 14 representatives from large industry and corporate actors with a stake in ABNJ (including interests in fisheries and fisheries value chains, international shipping and subsea cables), as well as relevant global, regional, subregional and sectoral bodies and Agreement experts from across sectors. The report focuses on well-established uses of ABNJ and does not address the exploitation of the seabed or marine genetic resources, which at the time of writing are only just starting to happen in areas beyond national jurisdiction.²¹

2 Findings

Private sector actors are concerned about Agreement provisions on area-based management tools and environmental impact assessment, and Agreement impacts on regulatory consistency. This chapter highlights insights on implementation needs, challenges and opportunities.



2.1 Current views from industry actors

Among the industry participants interviewed for this report, awareness of and engagement with the BBNJ Agreement varies widely. Some are well-informed about the Agreement and see it as potentially transformative to their operations, although they expect the impacts to be medium- to long-term rather than immediate.

Some industry organizations are committed to long-term engagement with Agreement institutions and processes, for example as observers in the meetings of the COP. The motivation of these respondents to engage stems in part from the perception that national governments are slow to act and national-level consultations with industry are lacking. Given the many uncertainties around the Agreement, these participants hope to contribute to the interpretation and implementation of the Agreement by maintaining a seat at the table and

providing scientific and operational input (e.g. on environmental impacts) and other relevant information.

Other interviewees are less directly engaged but are aware of the Agreement and its contents. These participants are taking a wait-and-see approach, often in the context of uncertainty about national government actions and the details of implementation.

Several industry participants and others, who received invitations to be interviewed but declined to participate, expressed limited familiarity with the Agreement or maintained it would have negligible operational impacts. Clearly, the Agreement is not high on the agenda for some stakeholders, many of whom flagged doubts about whether the country hosting their headquarters would even ratify the Agreement and, if so, whether its provisions would apply to their business.

2.2 Provisions of primary concern to industry

Industry participants identified the provisions of the BBNJ Agreement on the establishment and implementation of area-based management tools (ABMTs), including marine protected areas (MPAs), as well as the provisions on environmental impact assessments (EIAs), as areas of primary concern. These concerns are explored in more detail below.

Area-based management tools, including MPAs

Interviewees across all sectors identify the Agreement's ABMT provisions and especially the

possible establishment of MPAs as a primary concern. According to the Agreement, an ABMT is “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” (Art. 1(1)).²² Meanwhile, an MPA refers to “a geographically defined marine area that is designated and managed to achieve specific long-term biological diversity conservation objectives and may allow, where appropriate, sustainable use provided it is consistent with the conservation objectives” (Art. 1(9)).²³



Interviewees identified the Agreement's area-based management provisions and the possible establishment of marine protected areas as a primary concern.

Although the exact implications of the Agreement's ABMT provisions will depend on the details of implementation, participants broadly view geographic restrictions on sectors or activities as likely to increase their operating costs. Some respondents note that, in the worst-case scenario, such restrictions could undermine sectoral sustainability or other broad goals, especially in relation to shipping, subsea cables and fisheries. Some examples include:

- International shipping restrictions that slow down transit or force vessels to take alternative routes, such as no-go zones or reduced speed zones, could require ships to bunker and burn additional fuel, thereby increasing greenhouse gas emissions.

- Restrictions like no-go zones could complicate access to existing deep-sea cables for maintenance, while new cables could be required to follow alternative routes that potentially conflict with operational realities or affect the resilience of the international networks that enable global communications and commerce.
- Fisheries value chain representatives see potential wins and losses, depending on the criteria used to identify areas for protection and the extent of any spillover effects. Fisheries participants note that many working in the fishing industry feel over-regulated and “under attack” – so any additional ABMT measures carried out under the Agreement, particularly MPAs, are likely to reinforce these perceptions.

Participants across industries emphasize that as stakeholders who rely on ABNJ, they support the adoption of management measures such as zoning and closures, provided they are based on the best available science and scientific information.

Environmental impact assessments (EIAs)

Participants identify the Agreement's EIA provisions as a second area of potential concern. Respondents report even greater uncertainty around EIA implementation than they do around ABMT. Again, industry concerns centre around revenue loss, in this case due to added layers of process.

Although obligations to conduct EIAs already exist under UNCLOS,²⁴ the BBNJ Agreement establishes detailed processes, thresholds and other requirements for conducting and reporting assessments in ABNJ.²⁵ As a first step, the Party with jurisdiction screens the activity to determine if a full EIA is necessary: "When a planned activity may have more than a minor or transitory effect on the marine environment, or the effects of the activity are unknown or poorly understood, the Party with jurisdiction or control of the activity shall conduct a screening of the activity" (Art. 30(1)).²⁶



Interviewees express concern that the adoption of new fishing gear or the development of new shipping routes could trigger burdensome requirements.

Lastly, despite efforts to establish jurisdictional clarity, respondents identify cases in which jurisdiction over the planned activity could be unclear. In the case of submarine cables, companies that own cables are subject to one jurisdiction, while the ships that lay the cables may be subject to another. Cables originate in one state's territory, land in another and may pass through additional jurisdictions along their route. Similarly, if new fisheries activities are to be screened, it is unclear whether that screening should be undertaken by fishing vessel flag states or by landing states.

Despite these uncertainties, some participants see the Agreement's EIA provisions as an opportunity to identify and resolve use conflicts, increase industry engagement and strengthen consultation.

Based on the screening results, a full EIA may or may not be required: "If it is determined on the basis of the screening that the Party has reasonable grounds for believing that the activity may cause substantial pollution of or significant and harmful changes to the marine environment, an environmental impact assessment shall be conducted" (Art. 30(1)).²⁷ Following the EIA, the state with jurisdiction over the area has the final decision-making responsibility on whether to allow the planned activity to proceed. Consistent with the "does not undermine" provision (Art. 5(2)) discussed above, an EIA is not necessary under the Agreement if the state with jurisdiction determines that an equivalent assessment has already been conducted under another relevant instrument or body (Art. 29(4)).²⁸

Industry concerns about EIAs centre around interpretation of terms such as "minor and transitory" or "poorly understood". Given Article 29(4) on equivalent assessments, many participants share the view that existing ABNJ activities are likely to be exempt from additional assessment. Nevertheless, they express concern that future alterations to existing operations, such as the adoption of new fishing gear or the development of new shipping routes, could trigger burdensome requirements.

Governance interactions

Finally, respondents note that additional complexities may arise from interactions with existing legal instruments, frameworks and relevant bodies. For example, a given instance of ABMT may restrict the activities of some or all sectors and may apply to the water column, the seabed, or both. In this instance, the current legal regime splits jurisdiction over the affected activities and areas between multiple bodies and instruments, such as the IMO, ISA, RFMOs and CCAMLR. Questions about how jurisdictional claims will be resolved by the COP or other relevant bodies in such cases remain unanswered, further contributing to uncertainty for industry.

2.3 Industry needs

Participants consistently identify two primary industry needs relative to the Agreement: regulatory consistency; and clarity on interactions between the Agreement and existing governance instruments, frameworks and bodies. These needs are explored in more detail below.

Regulatory consistency

Industry participants universally call for the interpretation and implementation of the Agreement to result in regulatory consistency and certainty, expressing aversion to uncoordinated, unclear and conflicting regulations. Many respondents see the coordination and streamlining of regulations across jurisdictions and instruments as a potential benefit of

the Agreement's implementation. For some, the best-case scenario is (as phrased by one respondent) that the Agreement "aligns and renders compatible and mutual all existing instruments and bodies" regulating their sector. However, participants realize that achieving alignment will necessitate clarifying the responsibilities of non-Parties to the Agreement, as well as the application of clauses that allow ratifiers to opt-out of certain provisions.

Clarity on interactions between the Agreement and existing governance instruments

Participants particularly note that the effects of the Agreement hinge on how the COP interprets the "does not undermine" clause (Art. 5(2)) and "equivalent measures" clause (to Agreement-mandated EIAs; Art. 29(4)).²⁹ Participants agree that clear relationships and coordination must be established between the Agreement and existing regulatory bodies including IMO, RFMOs and the ISA.

In the simplest case, some industries may be able to work through existing bodies and processes to meet the Agreement's requirements. Those industries may then have an easier time adapting to

new mandates. For example, participants broadly perceive IMO to be an effective governance body; additionally, IMO has established criteria and processes for the identification, designation and protection of areas of special concern.

Industries that are currently subject to less oversight, or to more fragmented and less coordinated regulation, may face greater challenges in adapting, as new mandates will likely tighten regulations and challenge business-as-usual operations. Some participants, however, report that even where the scope of existing bodies is geographically or materially limited, current efforts may still be effective. These respondents express concern that Agreement implementation should not supersede, complicate, or undermine those bodies' work. In fisheries – where RFMOs, advisory bodies and others have competence over specific maritime areas, but may manage a limited number of species – some participants fear that the additional layers of governance could undermine existing efforts that are seeing success. These participants express a strong preference for the Agreement to be implemented through RFMOs and their existing measures, rather than supplanting them.



In fisheries, some participants fear that the additional layers of governance could undermine existing efforts that are seeing success.

2.4 Implementation needs

Participants identify a number of needs in relation to the Agreement's implementation, including: pre-ratification momentum; expertise and data; global leadership, norm building and cooperation; monitoring and enforcement capacity; and financing. These needs are explored in more detail below.

Pre-ratification momentum

In alignment with the work of the UN-established BBNJ Preparatory Commission and in agreement with prior work exploring the Agreement,³⁰ participants note that rapid and successful implementation can best be supported by laying a solid foundation prior to entry into force. Many interviewees suggest that the private sector – which operates in these areas, has specialist knowledge not shared by others and is likely to be greatly affected by the Agreement's implementation – should be consulted during pre-implementation planning.

Expertise and data

Participants note that the Agreement's implementation will require diverse expertise and data, and reliable technical and scientific

expertise should be built into the processes and institutions established under the Agreement, including the Scientific and Technical Body. In the context of the provisions on EIA, industry respondents are particularly concerned that the STB and other relevant bodies should include specific empirical expertise in the impacts of various human uses of ABNJ.

Data needs are many and include FAIR (findable, accessible, interoperable and reusable) data on ocean conditions, geographies, uses, ecosystems and ecosystem relationships, among others. Collecting and applying this data will require additional expertise, such as in intellectual property rights, data management and storage, and law and governance. Furthermore, some participants note that to be of the greatest utility, this data will need to be real-time and cover the entirety of the water column, not just the sea surface. It is worth noting that open access to FAIR scientific data, in accordance with current practice and open and responsible data governance, is one of the forms of non-monetary benefit-sharing under Part II of the Agreement relating to marine genetic resources (Art. 14(2)).³¹



Data will need to be findable, accessible, interoperable and reusable (FAIR) and cover the entirety of the water column, not just the sea surface.

Global leadership, norm building and cooperation

Participants emphasize that, for the Agreement to be successfully implemented, strong leadership, including from the private sector, will be needed to build momentum for cooperative action between sectors and across scales. This will require a shared recognition that the issues addressed by the Agreement will not be successfully resolved by national-level action alone. As a first step, relevant UN bodies (e.g. IMO, ISA, FAO) have previously established pathways for coordination where organizational mandates intersect or overlap. Respondents suggest that additional capacity be allocated to build on these pathways, supporting increased cooperation and coordination between relevant bodies and with other relevant stakeholders, including the private sector.

Monitoring and enforcement capacity

While Parties (member states participating in the agreement) must take the necessary legislative, administrative or policy measures to implement the Agreement (Art. 53),³² many participants

express concerns about monitoring, compliance and enforcement. Compliance with Agreement requirements is central to successful implementation and disclosure of violations will help create accountability, but detecting and reporting violations will require significant monitoring and enforcement capacity. In some cases, existing systems and institutions can support monitoring efforts (e.g. port-state measures), but these are implemented at the national level and are therefore subject to national-level capacity restrictions. For example, many African coastal nations have economies that rely on shipping, yet they lack the capacity to monitor and enforce compliance with current IMO requirements.

In other cases, identifying non-compliance will require more monitoring capacity, new technology, input and participation from users of ABNJ. Pre-emptive and ongoing efforts to improve monitoring science and technology will help ensure that technologies are fit for purpose whenever the Agreement enters into force. Intermediate efforts to increase the uptake of monitoring technologies such as AIS vessel-tracking can also help monitoring efforts and support existing tools (e.g. [Vessel Viewer Tool](#)).



Many African coastal nations have economies that rely on shipping, yet they lack the capacity to monitor and enforce compliance with current IMO requirements.

Financing

Although the provisions of the Agreement include funding mechanisms (e.g. assessed Party contributions, voluntary contributions, establishment of funds to support implementation),³³ some participants view the Agreement as underfunded. Interviewees note that national obligations may not be sufficient to cover capacity-building and other

funding needs, and that payments of monetary benefits from the utilization of marine genetic resources (MGR) would be unavailable in the near term.³⁴ Furthermore, respondents express doubt that voluntary contributions will be sufficient to fill funding gaps. Ocean health levies on shipping activities, with revenues paid into a special fund, are suggested as one way to meet funding shortfalls.

2.5 Challenges

Participants identify several implementation challenges, including: complexity of the existing legal regime; mismatches of scale between ecosystem and socio-economic processes; a general lack of awareness and engagement among industry stakeholders; negative perceptions among some stakeholders of management and management processes, including the BBNJ process; and uncertain pathways to industry participation. These challenges are explored in more detail below.

Complexity of existing legal regime

One early challenge that the COP is likely to face is understanding the many relevant, pre-existing legal instruments and frameworks and global, regional, subregional and sectoral bodies that constitute current ABNJ governance and the resulting fragmentation of topic area expertise. Parties' COP representatives are unlikely to be experts across all relevant subject areas and progress will require both a deep understanding and a common language. Consequently, bringing representatives up to speed may prove difficult.

Scale mismatches

Mismatches of scale are a common concern regarding implementation. Management scales do not match ecosystem scales or even socio-economic scales. This is particularly true in the face of climate change, for example when fisheries that are historically based in territorial waters move to areas beyond national jurisdictions in response to a changing ocean. Similarly, ABMT applied to specific geographic areas and/or seasons may prove ineffective in the face of climate-related shifts in species distribution and phenology.³⁵ Such shifts are also likely to necessitate shifts in industry structure and practice, with unknown ramifications for management.

Mismatch of decision-making scale and monitoring and enforcement jurisdiction is another challenge identified by participants. The Agreement is global and will be legally binding when it enters into force, with the COP as the governing body. Yet although the Agreement establishes an Implementation and

Compliance Committee to address monitoring and enforcement issues and advise the COP, there is no global authority for monitoring and enforcement. Instead, state Parties will be responsible for implementation and enforcement of national-level measures. Variation in state Parties' relevant capacity, however, may result in insufficient monitoring and enforcement and undetected or unsanctioned non-compliance. Participants also express concern that an over-reliance on industry actors' voluntary compliance with BBNJ Agreement measures could undermine effective implementation.

Interviewees further note that, if ratification is not universal, mismatched governance scales could challenge the achievement of the Agreement's objectives. The minimum number of ratifications required for the Agreement to enter into force is significantly smaller than the membership of other relevant bodies. If ratification is limited, the COP could potentially fail to fully reflect the global diversity of states, resulting in tension and stalemate with other existing frameworks and bodies.



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Lack of awareness and engagement among industry actors

Some participants note that their industry peers are generally unaware or unengaged with the Agreement. They attribute this, in some cases, to a lack of attention to the Agreement, its possible effects and the potential contributions by industries to its implementation. In other cases, the lack of engagement is attributed to a reluctance to publicly discuss an Agreement that might not enter into force and which, if it did, would likely increase the regulatory burden on industries and could have other uncertain effects.

Preconceptions about management and management processes

Some participants share a general lack of optimism about the Agreement and its implementation, while

others who do not personally profess pessimism identify similar feelings among industry peers. These preconceptions arise for a number of reasons, including: the history of failures to protect the global commons; the perception that global governance and management discussions tend to be politicized and characterized by a lack of honest brokers; and the perception that management actions are too often decoupled from rigorous scientific justification.

Some participants believe the BBNJ process suffers from similar flaws, particularly regarding politicization and capture by environmental interests. These respondents note that the full title of the Agreement includes “the protection and sustainable use” of marine biological diversity of ABNJ; they maintain that these two goals should be given equal weight and express the fear that COP processes and bodies could be unbalanced.



Some participants believe the BBNJ process suffers from politicization and capture by environmental interests.

Many participants are frank about fears of additional regulation or changes in regulatory processes. As noted above, interviewees report that discussion of ABMTs and MPAs in particular trigger negative reactions among fisheries stakeholders. Similarly, some participants report the concern of fisheries' stakeholders that electronic surveillance in support of monitoring and enforcing the Agreement could expose proprietary data and increase competition.

Agreement experts also see the norms of open access – that is, a general sense that these areas are available for use without significant regulatory burden – under which some industries have previously operated as difficult to shift. More generally, many industry participants express resistance to additional bureaucracy and layers of decision-making that could result in increased regulatory or participatory burdens.



Many industry participants express resistance to additional bureaucracy and layers of decision-making that could result in increased regulatory or participatory burdens.

Uncertain pathways to industry involvement

Participants agree that the most direct way for stakeholders to influence implementation of the Agreement is through engagement with national delegations to the COP. Alternative ways for industry to get involved – either prior to the establishment of the COP or through participation as observers in meetings of the COP and its subsidiary bodies, or through the preparatory commission established by the United Nations General Assembly – remain less clear.

National delegations are seen to have a responsibility to bring industry on board. However, because national-level capacity to conduct industry consultations varies widely among states, not all states are believed to have successfully done so.

Respondents further note that even states that thoroughly consult with key sectors may have insufficient negotiating power to protect the interests of nationally important industries.

Industry engagement through national governments is further complicated by agency staff turnover; while long-term relationships are seen as necessary to maintain a voice, long-term engagement is identified as a potential weakness of industry. Meanwhile, governments themselves may not speak with a single voice. National representatives may take different positions in different fora, depending on their home agencies, the industries they regulate or work most closely with, and the presence or absence of institutions and capacity to support the development of an integrated national stance.

2.6 Opportunities

Participants identify a number of opportunities associated with the Agreement, including: improved operational environments; opportunities for innovation; access to new financing mechanisms; broader social benefits; and increased international salience of issues faced by ABNJ stakeholders. These opportunities are explored in more detail below.

Improved operational environments

Early and ongoing industry involvement is seen as likely to support improved operational environments.

Participants note that unregulated arenas can be messy, so they see the Agreement as a tool to improve industry's ability to navigate ABNJ by establishing better organization and cooperation between governance bodies and users, clarifying rules and requirements, and driving more harmonized and consistent regulation. More specifically, successful implementation of the Agreement is framed as likely to reduce use conflicts, both by curtailing previously unregulated activities, such as illegal and unreported fishing, and by creating a framework to plan and coordinate multiple, potentially conflicting uses.



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Innovation

Respondents note that industry, as primary users of ABNJ, are well-placed to help fill gaps in the basic knowledge of the ocean. Vessels navigating or operating in ABNJ could serve as data collection platforms. Equipping maritime vessels with instruments that passively collect ocean data would allow continuous sampling, yielding masses of data and enabling tracking of ocean change over time. Alternatively, participants suggest that data collection could be incentivized through data markets or special regulatory consideration.

The need for data to scope, specify and adapt the management of ocean activities is well-recognized among participants. As well as equipping vessels with instruments, respondents suggest this demand for data could be answered by technological innovation (see Box 2). Designing various low-cost, low-impact data-collection technologies that provide FAIR data, especially on less-studied parts of the water column, areas unfrequented by ABNJ users, or industry impacts (e.g. ship noise), is seen as a fruitful opportunity for innovation and profit.



Designing low-cost, low-impact data-collection technologies that provide data on less-studied parts of the water column is seen as a fruitful opportunity for innovation and profit.

Access to new industry financing

While some participants emphasize potential costs associated with the Agreement, others note that the Agreement may open new financing opportunities

for industry. European Commission-sponsored research shows that investors want to invest in the ocean.³⁶ The Agreement may create new tools to do so, including ocean-focused impact funds, resilience credits and more.

Social benefits and environmental, social and governance (ESG) goals

Many participants note that their industries rely on ABNJ for their operations, making well-designed rules governing conservation and sustainable use a long-term win. In the words of one participant, “sustainability is good for business.” In a broader social and ESG context, the regulatory push created by the Agreement can also serve to address other issues that affect operations in ABNJ (e.g. pollution) and may have positive spillover effects on non-regulatory approaches (e.g. demand reduction to reduce overfishing). The Agreement’s provisions on capacity-building and marine technology transfer could create opportunities to continue to prioritize social equity in ABNJ processes, creating both

impetus and institutional structures that enable all people to share the benefits of this “common heritage of humankind” (Art 7(b)).³⁷

Greater international salience of ABNJ issues

Increased attention to the issues faced by sectors active in ABNJ may help drive needed changes beyond the scope of the Agreement. Given the reliance of international communication and financial networks on subsea cables, for example, BBNJ conversations provide a high-profile forum to discuss how to best achieve cable network resilience and security. Similarly, existing, effective governance mechanisms can be highlighted and built upon during ABNJ implementation processes.

CASE STUDY

Case study of innovation in data collection in ABNJ: Ocean Data Network

World Economic Forum Uplink Innovator [Ocean Data Network](#) equips fishing gear, including nets and traps, with sensors to collect and share real-time ocean data throughout the water column. Integrated digital technologies allow data collection in the course of normal fishing operations and with no interruption to the day’s work. Ocean Data Network works in multiple European and North American nations and plans to continue to expand to new regions with continued corporate growth. Similar approaches could be deployed in ABNJ, providing needed data to support BBNJ Agreement implementation.

According to a company spokesperson, “We collect more subsurface physical EOY (essential ocean variables) data, where it matters most for the blue economy, maritime safety, coastal resilience and ecosystem health than anyone else. Our data is of documented and assured quality, is already being used operationally, and we know how to put all that data to work to benefit a wide array of stakeholders.”

Source: World Economic Forum, Uplink.³⁸

3

Recommendations

Creative cooperation between industry, civil society, Parties and the Secretariat on data, science and incentives will give the Agreement the greatest chance of success.

Based on the findings presented in the previous chapter, this report proposes the following four recommendations for near-term actions that the Secretariat, Parties, existing governance bodies with authority over ABNJ, civil society and industry can prioritize to support the achievement of the Agreement's objectives:

- Engage industry early and keep them engaged.
- Cooperatively build a foundation for implementation.
- Creatively incentivize implementation and compliance.
- Strive for universal ratification.



3.1 Engage industry early and keep them engaged

Participants largely agree that, when it comes to the BBNJ Agreement, early and ongoing industry engagement would benefit both industry actors themselves and the achievement of the Agreement's objectives. Industry stakeholders, as primary users of ABNJ, hold extensive expertise and have access to information and resources necessary to support states' efforts towards the Agreement's swift entry into force and implementation.

In the context of industry expertise, Agreement-established cooperation and coordination mechanisms can lead to more integrated and holistic

approaches to the management of ABNJ activities. Although the Agreement is binding upon states and regional economic integration organizations, it will also have significant implications for industry users of ABNJ, who must comply with Agreement measures for implementation to be successful. Consequently, industry stakeholders will play a key role in implementing the Agreement and facilitating their early engagement could help create stakeholder buy-in and knowledge in support of that role. Industry stakeholders should proactively seek opportunities for engagement and for sharing their expertise.



Industry stakeholders will play a key role in implementing the Agreement and their early engagement could help create stakeholder buy-in.

Participants note that it will benefit industry to have their concerns heard early. The Agreement presents an opportunity for industry to plan for future uses of ABNJ, which are likely to become more accessible with ongoing technological developments. Involvement in Agreement processes can be seen as one component of broader corporate stakeholder efforts to prepare for ongoing and inevitable ocean change (e.g. species shift, extreme weather) that will continue to affect operations.

The COP will determine the details of implementation, but ratification must precede the establishment of that body. The Secretariat,

Parties and civil society organizations should begin reaching out to industry stakeholders now to ensure participation and support for implementation. Given differences in consultative capacity between states, the Secretariat and Parties should focus early capacity-building efforts on institutional as well as technical capacity. For their part, industry should engage in pre-entry into force processes by ensuring that ratifying states are aware of and are good brokers for their concerns. Industry should maintain ongoing conversations that seek to ensure that those who are experts in their fields are represented in relevant subsidiary bodies such as the STB.

3.2 Cooperatively build a foundation for implementation

Identify and collate necessary data

In the interests of supporting entry into force, the Secretariat and Parties to the Agreement should immediately begin to identify and collate resources, particularly data, necessary for implementation, including data held by industry, academia and civil society organizations, and provide mechanisms and incentives to share that data. One early focus should be existing data on ABNJ/BBNJ uses, impacts and baseline conditions. It is crucial to coordinate with many similar efforts already underway. These include those overseen by the UN system, as well as by regional, national and non-state actors – for example:

- UN Ocean Decade outputs, including the Intergovernmental Oceanographic Commission's white papers on ocean observations and digital representations of the ocean.³⁹

- European Union: European Marine Observation and Data Network (EMODnet).⁴⁰
- US government: National Oceanic and Atmospheric Administration's (NOAA) World Ocean Database.⁴¹
- Non-state: HUB Ocean.⁴²

Early engagement with data needs and availability will also allow identification and targeting of data gaps. Industry and civil society stakeholders should, in preparation for data sharing, inventory existing data, identify non-proprietary data and ensure data quality and the meeting of FAIR standards. They should also encourage partners to share ABNJ data. Similarly, existing governance organizations should take stock of their data repositories and make them available to support implementation.



Industry and civil society stakeholders should inventory existing data, identify non-proprietary data and ensure data quality.

Coordinate with and solicit advice from existing governance bodies

As noted above, the Agreement tasks the COP to “promote cooperation and coordination with and among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, with a view to promoting coherence among efforts” (Art. 47(6) (c)).⁴³ Existing relevant bodies and others with influence over ABNJ possess deep reservoirs of expertise necessary to lay the groundwork for and to support implementation. Early identification of potential ABNJ MPA sites, for example, could involve partnerships with regional organizations with extensive regional knowledge (e.g. the Pacific Commission), perhaps with the support of civil

society. Early identification of potential MPA sites would also support international efforts such as “30 by 30” – the goal of protecting 30% of the world’s terrestrial and marine ecosystems by 2030 under the Kunming-Montreal Protocol.

Similarly, as RFMO practices continue to evolve and adapt to changing ocean and resource conditions, these organizations should consider how to constructively interact with BBNJ. Existing efforts such as FAO’s Common Oceans partnership⁴⁴ provide a potential template and forum to do so. RFMOs have an interest in maintaining a voice in ABMT processes, both pre- and post-entry into force. They also possess valuable expertise on the regions they oversee and on potential MPA sites that could yield the greatest benefits.



Regional fisheries management organizations possess valuable expertise on the regions they oversee and on potential MPA sites that could yield the greatest benefits.

Address contestation over science with broad-based expertise

Participants stress the need for science in support of implementation, calling for dispassionate, objective science free from agendas and derived from broad-based expertise. The Agreement identifies the use of the best available science as a guiding principle.

Parties and the COP should ensure they are inclusive when consulting experts within the processes set out in the Agreement, accepting that science can be contested and that appropriate, rigorous and valuable research originates from multiple sources, including existing scientific and technical bodies, industry and civil society.

3.3 Creatively incentivize implementation and compliance

As implementation is clarified, Parties should explore ways of incentivizing specific components of implementation, including compliance with national-level measures. Incentives proposed by participants include the following:

- Special consideration in return for co-ownership of implemented measures.
- Special tax or tariff considerations, such as ocean-health linked economic levies.

- Leveraging social pressures, including advocacy work or consumer preferences for corporate consideration of ESG priorities.

Incentives should be context-specific, varying by industry and Party. There is no one-size-fits-all solution, underlining the need for ongoing consultations between industry and states. However, where ESG, blue finance and similar approaches are social, national or regional priorities, financial institutions can encourage voluntary initiatives.



Incentives should be context-specific, varying by industry and Party. There is no one-size-fits-all solution, underlining the need for ongoing consultations between industry and states.

3.4 Strive for universal ratification

All actors, including signatories and ratifying states, civil society and industry, should encourage universal ratification, swift entry into force and inclusive, transparent and effective participation in

the COP. This will allow the Agreement the greatest chance of success and help achieve coherence and coordination with existing relevant legal instruments, frameworks and relevant bodies.

Conclusion

Industry representatives and Agreement experts who participated in these consultative conversations agree that implementation of the BBNJ Agreement will, almost by definition, require public-private partnerships. As a leading actor in the public-private space, the World Economic Forum intends this white paper as a first effort towards those partnerships. The Forum's Ocean Action Agenda invites other relevant institutions, such as the United Nations Global Compact, to join these early efforts to collectively catalyse system-wide progress.

Although awareness of and engagement with the Agreement varies among participants, nonetheless, points of agreement have emerged. Interviewees identify ABMT, especially MPAs and EIAs, as the Agreement components most salient to the shipping, fishing and subsea cable industries. Industry participants agree that regulatory consistency and clarity on interactions between the Agreement and existing governance are of the utmost importance for successful implementation.



Industry participants agree that regulatory consistency and clarity on interactions between the Agreement and existing governance are of the utmost importance for successful implementation.

Participants across sectors identify a set of broader implementation needs, focusing on early action to establish the necessary informational, political, social and economic conditions for successful Agreement implementation. They also identify implementation challenges around timelines, scale, and pre-existing perceptions of the Agreement and management of ocean activities more generally. Lastly, participants see opportunities associated with the Agreement which, if realized, could result in smoother operations, innovation and benefits to society as a whole.

The report closes with four high-level recommendations for the implementation of the Agreement:

- The Secretariat and subsidiary bodies should engage industry early and keep them engaged throughout implementation processes.
- The Secretariat, Parties to the Agreement, existing government bodies, civil society and industry should cooperatively build a foundation for implementation.

- The Secretariat and Parties to the Agreement should explore creative ways to encourage implementation and compliance, through incentivizing shared responsibility and co-ownership of strategies, as well as economic incentives.
- Parties, civil society and industry should strive for universal ratification .

In conclusion, the BBNJ Agreement provides great opportunities for innovation and collaboration among public and private stakeholders. Early engagement of diverse stakeholders has the potential to contribute to the achievement of the Agreement's overarching objective to promote the conservation and sustainable use of biological diversity in marine areas beyond national jurisdiction, now and in the future.

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Acknowledgements

The authors of this white paper extend their deepest gratitude to the participants in the consultative conversations and to all who helped make those conversations possible. In addition, we would like to acknowledge the support of the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations in helping ensure accuracy and consistency of language and references to the Agreement, as well as the contributions of the United Nations Global Compact and Guillermo Ortuño Crespo, co-lead of the High Seas Specialist Group of the International Union for Conservation of Nature's World Commission on Protected Areas.

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