

BirdLife International positions on the resumed 5th session of the BBNJ negotiations under the United Nations Convention on the Law of the Sea.



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BirdLife International is the world's largest global conservation partnership, with national Partners working in 115 countries, and is the pre-eminent international authority on bird conservation. BirdLife International's Marine Programme uses an evidence-based approach, highlighting bird conservation issues to protect marine ecosystems globally.

This document sets out BirdLife International's position for the 5th session of the Intergovernmental Conference on the BBNJ agreement for which negotiations will resume in New York on the 20th of February 2023.

SUMMARY

BirdLife International's key points with respect to the BBNJ agreement negotiations are:

- To ensure that biodiversity protection and the development of an effective network of area-based management tools (ABMTs) including marine protected areas are at the centre of the BBNJ agreement;
- To advocate for appropriate rigor in assessing the impacts of human activities in areas beyond national jurisdiction through a robust Environmental Impact Assessment (EIA) process with clear standards or guidelines;
- To encourage Parties to adopt the terminology of a "**precautionary approach**" as this is an accepted and widely used terminology¹ and should be used in preference to "applying precaution".
- To request that the BBNJ agreement operates with transparency and is inclusive of stakeholders such as Environmental NGOs, who can intervene through structures such as an implementation committee to participate in the policy development and technical activities of the agreement;
- To encourage parties to use best available science and including relevant traditional knowledge in their deliberations;
- To encourage transparency in the activities of the agreement, and inclusive practices, such as through open access to all texts, assessments, and proceedings of meetings of the agreement and its subsidiary bodies;
- To reinforce that BirdLife favours decision making in the agreement by a three quarters majority vote, rather than a consensus-based decision making, as this will ensure that resolutions and measures are passed which are considered favourably by a majority of parties and are not delayed or diluted by a small minority of parties with divergent views.

¹ The Rio Declaration: Principle 15 - the Precautionary Approach. <https://www.gdrc.org/u-gov/precaution-7.html>

BirdLife International is the world's largest nature conservation partnership, with national partners in 115 countries. Through our unique local-to-global approach, we deliver high impact and long-term conservation for the benefit of nature and people.

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Specific points in relation to the text of the BBNJ agreement are set out in the following sections. Text cited in quotes comes from the UN paper [ACONF-232-2023-2 Track Changes EN.pdf](#).

1. Definitions of terms in the agreement

Article 1. Terms of Use

The definition of cumulative impacts in Article 1 paragraph 8 should take into account the combined effects of the same and different activities and not just the effects of incremental use of the same activities. A broad definition of cumulative impacts is therefore required.

The rationale for the definition of “marine protected areas” in Article 1 paragraph 12 is to benefit biodiversity protection. As such, the definition should include the term “long-term biodiversity”, currently in square brackets. Inclusion of “long-term” ensures that the future needs of ecosystems and species are considered, to enable maintenance and recovery of populations of marine biota.

BirdLife recommendations

- Define “Cumulative impacts” to include “combined and/or incremental impacts” in Article 1 paragraph 8.
- Retain the text in square brackets “[long-term biodiversity] conservation objectives” in Article 1 paragraph 12.

2. Precautionary principle or approach

BirdLife would prefer that the term “precautionary approach” be used as this is an accepted and clearly defined terminology, used in contexts such as The Rio Declaration: Principle 15 - the Precautionary Approach². In contrast the term “applying precaution” should not be used as this is open to interpretation and is not a standard terminology in this context.

BirdLife recommendations

- The terminology “applying precaution” should be replaced with “applying a precautionary approach” in Article 5 (d), but also in Article 17 paragraph 3, and Article 21 paragraph 5.

3. Decision making

Article 19 bis sets out the decision-making process for establishing ABMTs. While consensus is desirable, it should be noted that a small group of Parties with different views from the majority may delay or deter decision making in the agreement so that its effective operation is compromised. For this reason, BirdLife would prefer that voting in favour of measures by a three-quarters majority of representatives is an adequate basis for decisions in the agreement.

BirdLife recommendations

- In Article 19 bis paragraph 2, adoption the proposed text enabling adoption of recommendations or measures by voting with a three-quarters majority.

4. Environmental Impact Assessments and their processes

Article 24 Threshold[s] and factors for conducting environmental impact assessments

Article 24 paragraph 1 elaborates when EIA will be conducted before the planned activity is undertaken. Option A1, which includes paragraph 1 bis, Option A2 and Option B provide varying degrees of rigor in the justification and in

² <https://www.gdrc.org/u-gov/precaution-7.html>

the assessment of the scope and nature of impacts of human activities on the marine environment. BirdLife does not prefer any one of these options, rather sees benefit in specific elements.

Article 24 paragraph 2 relates to the thresholds and the set of criteria that should be used when conducting an EIA. This element remains in square brackets, and it would be beneficial if it were included.

BirdLife recommendations

- BirdLife would prefer that the Conference of Parties and Scientific and Technical Body (STB) review the EIA and decisions to implement EIA as set out in Option A1, paragraph 1 bis.
- EIAs should be conducted using a clear set of standards or guidelines. BirdLife would prefer that standards and thresholds are specified.
- BirdLife considers that the Clearing House Mechanism is beneficial in providing transparency in decision making and monitoring the impacts of activities.
- BirdLife would prefer the square bracketed text in Article 24 paragraph 2 be retained, thus requiring thresholds and a process for the EIA to be followed as defined in the proposed text.

Independent and scientific review, and transparency

Public notification and assessment processes for EIAs are set out in Articles 34 and 35. There remain aspects for debate, particularly relating to the STB involvement in the process. In addition, text relating to the review and publication of EIA by the STB remains in square brackets (Article 34 paragraph 5 and Article 35 paragraph 5).

Proposals and assessments should make use of best available scientific information and relevant traditional knowledge. These aspects are elaborated in several places in the text, for example in Article 17 paragraph 2.

BirdLife recommendations

- That the reports and advice of STB be included in decision making processes throughout and that their guidance or input be sought on technical matters wherever relevant, for example in Article 17 paragraphs 2 and 5, Article 17 bis, Article 18 paragraph 5, Article 19 paragraph 3.
- Retain the text in square brackets in Article 34 paragraph 5 and Article 35 paragraph 5 to ensure the STB may conduct public consultation.

Article 35 Environmental impact assessment reports

It is important to treat cumulative effects when managing impacts on the marine environment, including effects from diverse sources. Further, review of EIAs by the STB is important and should be retained, whilst transparency also increases the credibility and effectiveness of the agreement in reducing environmental impacts.

BirdLife recommendations

- In Article 35 paragraph 2, retain “including potential cumulative impacts”
- In Article 35, paragraph 5 is preferred as it improves transparency and uses the Clearing House Mechanism whilst including consultation by the STB on EIA reports.

Article 41 Review of authorised activities and their impacts.

BirdLife would favour independent assessments and transparency throughout the process of EIA assessments.

BirdLife recommendations

- In Article 41, BirdLife would favour retaining review of materials by the SBT throughout and retaining the text in square brackets in paragraphs 2a through 4.

Article 41 bis Standards and guidelines...to be developed by the Scientific and Technical body...

BirdLife is in favour of mandatory development of standards and guidelines.

BirdLife recommendations

- In Article 41 bis, it would be preferable to retain “shall” rather than “may” throughout this paragraph.

Article 41 ter Strategic Environmental Assessments (SEAs)

SEAs are mechanisms that provide a broader assessment to multiple activities or activities by multiple actors. This would potentially enable pooling of resources to enable an assessment to be undertaken for similar activities proposed by several Parties and would support an integrated approach to ocean management. These assessments also promote the generation and use of scientific data, synthesis and analysis of existing information, and the ability to assess current and future impacts of activities. It remains to be decided whether SEAs are mandatory.

BirdLife recommendations

- BirdLife would prefer that SEAs be mandatory, thus would prefer “shall” and not “may” throughout Article 41 ter.

5. Defining Marine Protected areas in Annex I

There is a need to align the language of the BBNJ agreement with that recently agreed under Target 3 of the Global Biodiversity Framework to the Convention on Biological Diversity, by the inclusion of the concepts that preserved areas are ***areas of particular importance for biodiversity***.

It would be more appropriate to focus the protection of biodiversity in those areas are of particular importance for biodiversity, rather than areas that may not be useful for maintaining biodiversity or are of partial use. Areas that are of particular importance for biodiversity can be defined as those that contain (A) globally significant populations/extents of a threatened species or ecosystem, (B) globally significant populations/extents of geographically restricted species or ecosystems, (C) sites of globally outstanding ecological integrity, (D) sites of global significance for the maintenance of biological processes (e.g. bottlenecks or stepping stones for ecological connectivity), or (E) sites quantitatively defined as irreplaceable, as well as areas of that provide ecological connectivity to maintain the global significance of these sites.³

BirdLife recommendations

- Ensure that the criteria set out in Annex I capture the concepts set out above describing *areas of particular importance for biodiversity*.

³ Definition proposed by Plumptre, A. et al., pers. comm. in a review of recent developments in conservation site management needed in order to achieve new global biodiversity goals.