

Biodiversity Beyond National Jurisdiction Update



Australia

Prepared for the Extended Commission of the 32nd Annual Meeting of the Commission for the Conservation of Southern Bluefin Tuna (CCSBT32)

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Purpose

At CCSBT31 Australia provided a paper on the potential interaction between the Agreement on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ, also known as the *High Seas Biodiversity Treaty*) and RFMOs, including the CCSBT. At the meeting Australia undertook to provide updates on progress with the BBNJ Agreement to annual Commission meetings.

Background

In June 2023, the United Nations adopted the BBNJ Agreement which was developed under the United Nations Convention on the Law of the Sea (UNCLOS). The treaty will create a comprehensive global framework for conserving and sustainably using marine biodiversity in the high seas – this is approximately 60% of the global ocean that is outside any State's jurisdiction.

It addresses a critical gap in international law that has allowed unregulated exploitation of high seas resources. It could also play a significant role in achieving the Kunming Montreal Global Biodiversity Framework global target to protect 30 per cent of the world's coastal and marine areas by 2030 – known as the 30 x 30 target.

The BBNJ Preparatory Commission (PrepCom) is a body established by the UN General Assembly (UNGA) to lay the groundwork for the Treaty's entry into force and to prepare for the first Conference of the Parties (COP) for the High Seas Treaty. These meetings are crucial in shaping how the Treaty will operate, ensuring that it delivers on its promise to protect two thirds of our ocean. Three PrepCom meetings were planned, PrepCom 1 happened in April 2025, PrepCom 2 in August, and the third is scheduled for March 2026.

Recent progress

Following the recent deposit of ratification instruments by four new countries at the United Nations– Sri Lanka, St. Vincent and the Grenadines, Sierra Leone and Morocco- the High Seas Treaty has reached the milestone of 60 state ratifications needed to trigger its entry into force. The treaty will become legally effective on 17 January 2026, 120 days after the 60th ratification.

When the agreement comes into force the first CoP will happen within a year, and this is where critical decisions will be negotiated and adopted. The first CoP is likely to be held in the second half of 2026.

With entry into force of the BBNJ Agreement fast approaching, States have started the process of operationalising the Agreement. The PrepCom brings together signatory States and other parties to outline what is needed to deliver on the BBNJ agreement.

At the PrepCom 2 there was a dedicated discussion about the interaction between BBNJ and other bodies (known as legal instruments, frameworks, and bodies or IFBs) – RFMOs are considered in this category.

There was a general exchange of views, with convergence on the following points.

- The starting point is the relevant provisions of the BBNJ Agreement. Article 8 of the agreement requires cooperation with IFBs- which is cross cutting; and Article 5 which requires BBNJ to 'not undermine' existing bodies.

- BBNJ should build upon and not fragment or duplicate existing practice by IFBs.
- Cooperation will need to occur between different bodies of BBNJ and IFBs (COP, Secretariats, subsidiary bodies) and be flexible, inclusive, and could be either ad hoc or formalised and ongoing. Complementarity is key to sustaining cooperation.

Some participants emphasised the importance of implementing cooperative arrangements into the governance documents being developed in the PrepComm, including the rules of procedure for the COP and subsidiary bodies, and terms of reference for subsidiary bodies. PrepCom Co-Chairs proposed producing a set of 'guiding principles' to be considered at PrepCom 3, which could be provided to COP1 as a draft decision. The purpose would be to guide the COP's approach to the IFB-BBNJ cooperation issue.

There were also side discussions and events held in the margins of PrepCom 2. A meeting was convened to specifically discuss BBNJ-RFMO interactions. RFMO participants emphasised timeframes required for consultation on BBNJ proposals, suggesting a 1 or 2 year minimum in some cases.

There was also discussion about the need to understand what '*not undermine*' means, and what actions are acceptable before that threshold is reached.

Some RFMO participants emphasised the time needed for consultation and capacity limits of SIDS, and the need to ensure smallest members of RFMOs can keep up.

RFMOs emphasised importance of having observer status to safeguard presence in BBNJ bodies.

Joint RFMO Secretariat statement

Five Tuna RFMO Secretariats (ICCAT, IOTC, WCPFC, IATTC and CCSBT) provided a joint statement to PrepCom 2 (see attached) regarding cooperation with IFBs which stressed that RFMOs are an essential component of the implementation of the BBNJ Agreement and should be given priority when considering cooperation arrangements with IFBs. The statement noted that the BBNJ Agreement and the five tuna RFMOs share a common commitment to the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction and that while the BBNJ Agreement introduces a new global framework for biodiversity governance, tuna RFMOs have, for decades, carried binding mandates, grounded in UNCLOS, the UN Fish Stocks Agreement, the FAO Code of Conduct for Responsible Fisheries, and related instruments.

The relationship between BBNJ and IFBs (RFMOs) will be further discussed at PrepCom3 in March 2026.

Recommendation

Members of the Extended Commission are invited to engage with their BBNJ representatives to ensure the relationship between BBNJ and RFMOs is effective, and any future action taken under the BBNJ agreement is consistent with RFMO mandates.