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IUCN Briefing for BBNJ negotiators

Capacity building and transfer of marine technology, Part V

Key Messages: Capacity building and transfer of marine technology that is sustained, well-resourced and needs-based will be fundamental to the effective and equitable implementation of all elements of the BBNJ Agreement. Hence, the actual roles, responsibilities and mechanisms for implementation and review need to be more clearly defined and definitions of marine technology and transfer of marine technology broadened to encompass technologies relevant to study, use, protection and management of BBNJ, such as monitoring, control and surveillance. Intellectual property aspects can and should be addressed in a way that incentivizes use of existing possibilities to limit the impact of intellectual property rights while also respecting their role in encouraging innovation.

1. Effective, sustained, well-resourced and needs-based capacity building is fundamental for effective implementation of the BBNJ Agreement

Why? Effective, well-resourced and needs-based capacity building and transfer of marine technology (CBTMT) will be important for ensuring the ability of all States to ratify and administer the treaty; develop, implement, and enforce area-based management tools (ABMTs) including marine protected areas (MPAs); supervise, conduct and review environmental impact assessments (EIAs); facilitate cross-sectoral cooperation and coordination (domestically and internationally); participate in strategic environmental assessments (SEAs); and utilize marine genetic resources (MGRs). Crucially, provisions for CBTMT also provide a key opportunity to fill pressing gaps in scientific and technological capacity for understanding our shared and common ocean in a time of increasing threats. As our ocean is ecologically and culturally connected, equitable partnerships will be key.

How? To ensure long-term sustained outcomes, the word “ensure” should be preferred over “promote” in multiple places as it brings a clear obligation to act and will ease many uncertainties surrounding funding, information sharing, intellectual property rights, monitoring, and informed decision-making to advance the objectives of the BBNJ Agreement. The detailed list of objectives including all the elements in Article 42(f) should be retained as there is no other reference to the application of CBTMT to ABMTs including MPAs, as well as EIAs and SEAs.

Article 42. Objectives

~~{(c) [Promote and encourage] [Ensure] access to marine technology by and transfer of marine technology for peaceful purposes to developing States Parties for the attainment of the objectives of this Agreement;}~~

(f) Ensure that developing States Parties have: ...*The detailed list of objectives for CBTMT that currently includes ABMTs and EIAs should be retained; references to MGRs, SEAs and building endogenous and local research capabilities should be accepted.*

Article 43. Cooperation in capacity-building and transfer of marine technology

1. States Parties, directly or through relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, shall ~~[promote]~~~~[ensure]~~ cooperation
2. Capacity-building and the transfer of marine technology under this Agreement shall be ~~[carried out]~~~~[promoted]~~ through enhanced cooperation at all levels and in all forms,
3. In giving effect to the duty to ~~[cooperate]~~~~[promote cooperation]~~ under this article, States Parties shall give full recognition to the special requirements....



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2. Modalities for capacity building and transfer of marine technology should be clarified to ensure lines of responsibility for implementation

clear

Why? To ensure that effective capacity building or technology transfer actually takes place, actual modalities (roles, responsibilities and mechanisms) need to be more clearly spelled out in Articles 44 and 47. The Agreement should provide support and resources (including funding) for needs assessments, strategies to meet self-identified needs, and implementation, including through international partnerships. An institutional mechanism such as a CBTMT Committee can help facilitate coordination of implementation, information sharing, licensing of IP rights, among others.

How?

Article 44. Modalities for capacity-building and the transfer of marine technology

1. States Parties, recognizing that capacity-building, access to and the transfer of marine technology, ~~including biotechnology,~~ among States Parties are essential elements for the attainment of the objectives of this Agreement, ~~[undertake to provide or facilitate]~~ ~~[shall promote]~~ ~~[shall ensure]~~ access to and the transfer of marine technology, and capacity-building, ...
2. Capacity-building and the transfer of marine technology ~~[shall]~~ ~~[may]~~ be provided on a ~~[mandatory and voluntary]~~ ~~[voluntary]~~ ~~[bilateral, regional, subregional and multilateral]~~ basis.
3. Capacity-building and the transfer of marine technology shall be transparent and **needs country driven** ~~[, and shall not duplicate existing programmes]~~. Capacity building and the transfer of marine technology shall be guided by lessons learned, including those from capacity building and the transfer of marine technology activities under relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, and should be an effective, iterative process that is **adequately funded, sustained, responsive**, participatory, cross-cutting and gender-responsive.
4. Capacity-building and the transfer of marine technology shall be based on and be responsive to the **self-identified** needs and priorities of developing States Parties... Such needs and priorities may be self-assessed or facilitated through a mechanism, ~~which may~~ **to** be established by the Conference of the Parties.
- ~~[5. The Conference of Parties shall develop, review and revising as necessary Detailed modalities, procedures and guidelines for capacity-building and the transfer of marine technology [may] [shall] be developed and for adoption by the Conference of the Parties;~~

Article 47 Monitoring and review

1. ~~The Conference of the Parties shall facilitate the monitoring and~~ Capacity-building and the transfer of marine technology activities undertaken in accordance with this Agreement shall be ~~monitored and reviewed periodically~~ **review of progress, delivery of periodic reports, sharing of best practice approaches, and make recommendations based thereon.**

3. Definitions of marine technology and technology transfer need to remain broad to encompass technologies relevant to study, use, protection and management of BBNJ

Why? Transfer of marine technology should include equipment and expertise relevant to conservation and sustainable use of BBNJ, including marine scientific research, observation and monitoring of ocean change, management of human activities, as well as compliance and enforcement.

How? Draft revised text definitions of Article 1.11 “marine technology” and Article 1.14 on “transfer of marine technology” should be simplified and amended..

~~[11. “Marine technology” means information and data, provided in a user-friendly format, on marine sciences and related marine operations and services; manuals, guidelines, criteria,~~



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standards, reference materials; sampling and methodology equipment; observation facilities and equipment... and expertise, knowledge, skills, technical, scientific and legal know-how and analytical methods related to **the conservation and sustainable use of marine biodiversity, including implementation, compliance and enforcement.**]

[14. “Transfer of marine technology” means the transfer of the instruments, equipment, **expertise**, vessels, processes and methodologies required to **study, understand, assess, conserve and manage marine biodiversity in ABNJ, including if relevant through the licensing of intellectual property rights**. produce and use knowledge to improve the study and understanding of the nature and resources of the ocean.]

4. Engagement with Intellectual property

Why? The dissemination and sharing of knowledge on the conservation and sustainable use in article 42(d), and capacity building and transfer of marine technology in Articles 43(2) and 44(2) can in some cases only be delivered effectively if there is an engagement with intellectual property law. For example, It is possible to incentivize use of existing possibilities to limit the impact of intellectual property rights while also respecting their role in encouraging innovation: relevant possibilities in TRIPS are spelled out in [art. 9](#), [art. 30](#), [art. 31](#) . Particular reference could be made to countries having national provisions which enable research and use of technology for energy transitions or ecologically sustainable products.

How? An alternative to the existing options for Article 45.2 could provide:

Alt: 45.2 The transfer of marine technology shall be carried out with due regard for all legitimate interests, including the owners of intellectual property rights and rights and duties of holders, suppliers and recipients of marine technology. States shall ensure that intellectual property rights shall be subject to specific limitations which are permitted under international intellectual property framework in furtherance of technology transfer related to marine technology under this Agreement.

For more information, see:

Harden-Davies, H., Amon, D., Chung, TR., Gobin, J., Hanich, Q., Hassanali, K., Jaspars, M., Pouponneau, A., Soapi, K., Talma, S., Vierros, M. (2022) [How can a new UN ocean treaty change the course of capacity building? Aquatic Conservation](#). Aquatic Conservation, <https://doi.org/10.1002/aqc.3796>

[070-DOSI-Policy-brief-Intellectual-Property-Rights-V2-web1.pdf \(dosi-project.org\)](#)

M Jaspars and A Brown “[Benefit sharing: combining intellectual property, trade secrets, science and an ecosystem-focused approach](#)” in Myron H. Nordquist and *Ronán* Long, *Marine Biodiversity of Areas beyond National Jurisdiction* (Brill, 2021) .

[BBNJ Knowledge Series | IUCN](#) (all IUCN resources are compiled here)

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