

OceanCare Briefing for BBNJ IGC3: Transboundary Pollution Proposed Text

This Briefing is intended to support OceanCare's proposed text that is included in the accompanying edited relevant sections of the President's Draft of the BBNJ Agreement which was prepared for IGC3. Please see the highlighted text on pages 6, 7, 15, 16, 23, 25, 26 and 27.

OceanCare's position is that UNGA resolution 72/249 is a legal **outcome document** that charges the IGC with putting into place processes and measures pursuant to UNCLOS and other international law **to achieve the result** of the conservation and sustainable use of marine biological diversity beyond national jurisdiction (BBNJ). This UNGA directive encompasses all living resources that comprise BBNJ and all measures for conservation and sustainable use of BBNJ. OceanCare advocates for incorporating provisions for management of transboundary pollution into the sections of the BBNJ Agreement for environmental impact assessments and strategic environmental assessments, and for area-based management tools, including marine protected areas, as well as a comprehensive definition of transboundary pollution as one of the terms of the Agreement.

Although the new Agreement will have no legal authority within national jurisdiction, **resolution 72/249 clearly mandates the inclusive conservation and sustainable use of BBNJ without reference to the jurisdiction where the risks to BBNJ, including transboundary pollution, may physically originate.** Human activities that take place within the jurisdiction of a coastal state may generate transboundary pollution that crosses into the adjacent area beyond national jurisdiction causing significant adverse impacts to BBNJ and vice versa.

The BBNJ Agreement should provide robust authority without regard to the jurisdiction where the transboundary pollution originates or the location of the activity that generates the transboundary pollution,

- **For assessing all significant adverse impacts to BBNJ due to transboundary pollution, and**
- **For considering transboundary pollution in any framework for conservation management of BBNJ.**

Alternate proposals for substituting the term 'transboundary impact' in place of transboundary pollution in the Agreement are not adequate, although in the interest of completeness, OceanCare could support the inclusion of both terms:

- Transboundary pollution is easily defined and can be readily measured through scientific investigation, whereas transboundary impact is vague and it may be difficult to establish criteria acceptable to all parties.
- Transboundary pollution is referred to in an extensive body of existing international law, whereas transboundary impact is not.
- Transboundary pollution can be managed with practical concrete measures mandating the reduction of the polluting emissions. Conversely, there is no practical way to manage transboundary impacts without also managing the causes, so it makes sense to address the cause of the pollution in the first instance anyway.
- Article 1 of UNCLOS defines marine pollution and can easily be used as a starting point to define transboundary pollution that impacts BBNJ.
- The argument that transboundary pollution is too narrow a category does not stand up to scrutiny; transboundary pollution potentially includes a vast assortment of destructive pollutants—from plastics to chemicals to oil to noise to sediment and much more.

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