



BBNJ Agreement @ IMO

Could it stimulate changes to the approach and regulation of area-based shipping measures and EIAs?

Centre for International Law - NUS, Singapore
7 April 2026

Prénom Nom

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Outline

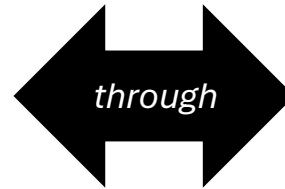


1. BBNJ Agreement mandate and approach
2. PrepCom 3: Status, issues and dynamics
3. Profiling cooperation and coordination processes
4. EIA process for planned activities under BBNJA and IMO
5. ABMTs under BBNJA and the IMO
6. Thoughts on avenues for change at the IMO
7. Future prospects

1. BBNJ Agreement mandate and approach



Art 2 GENERAL OBJECTIVE
...ensure the **conservation and sustainable use of marine [biodiversity] of ABNJ**, for the present and in the long term,



effective implementation of the relevant provisions of [UNCLOS]

+

further international cooperation and coordination

Art 7 GENERAL PRINCIPLES & APPROACHES

... **precautionary principle/approach** ...
... **ecosystem approach** ...
... **integrated approach to ocean management** ...
... building **ecosystem resilience** ... [associated with]
... **maintaining and restoring ecosystem integrity** ...
... **best available science and scientific information** ...
... **Non-transfer, directly or indirectly, of damage or hazards and non-transformation of one type of pollution into another...**



1. BBNJ Agreement mandate and approach



MGRs

Research freedom
BUT
notification to the
CHM and info on
cruise before and
after
+ data sharing
+ sharing of benefits
+ capacity building



ABMTs

Conserve, sustainably
use, protect, preserve,
restore
State(s)' proposal
Consultation (incl. IFBs)
COP Decision



EIAs

Operationalise UNCLOS'
provisions on EIAs w.
processes, thresholds,
etc
State-led with
publication, consultation
and reporting



CBTMTs

Realise provisions in
UNCLOS that are not
implemented
Incl.
- implementation
- effective cooperation
- dvpt of marine scientific
and technological capacity
incl. on monitoring

Scientific and Technical Body

Clearing House Mechanism (CHM)

**CBTMT
Committee**

**Access & Benefit
Sharing Committee**

**Implementation and
Compliance Committee**

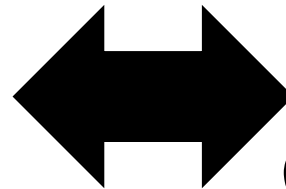
Finance Committee

**+ trust fund + special fund + potential additional
fund for rehabilitation and ecological restoration**

1. BBNJ Agreement mandate and approach



Art 5 **RELATIONSHIP BETWEEN THIS AGREEMENT AND [UNCLOS] AND RELEVANT LEGAL INSTRUMENTS AND FRAMEWORKS AND RELEVANT GLOBAL, REGIONAL, SUBREGIONAL AND SECTORAL BODIES (=IFBs)**



(1) ... [to] be interpreted and applied **in the context of and in a manner consistent with [UNCLOS] ...**

(2) ... in a manner that **does not undermine relevant [iFBs] and that promotes coherence and coordination ...**

Art 8 **INTERNATIONAL COOPERATION**

(1) ... strengthening and enhancing cooperation with and **promoting cooperation among relevant IFBs** in the achievement of the objectives of this Agreement ...

(2) ... endeavour to **promote**, as appropriate, the objectives of **this Agreement** when participating **in decision-making under other relevant IFBs ...**

2. PrepCom 3 : Status, issues and dynamics



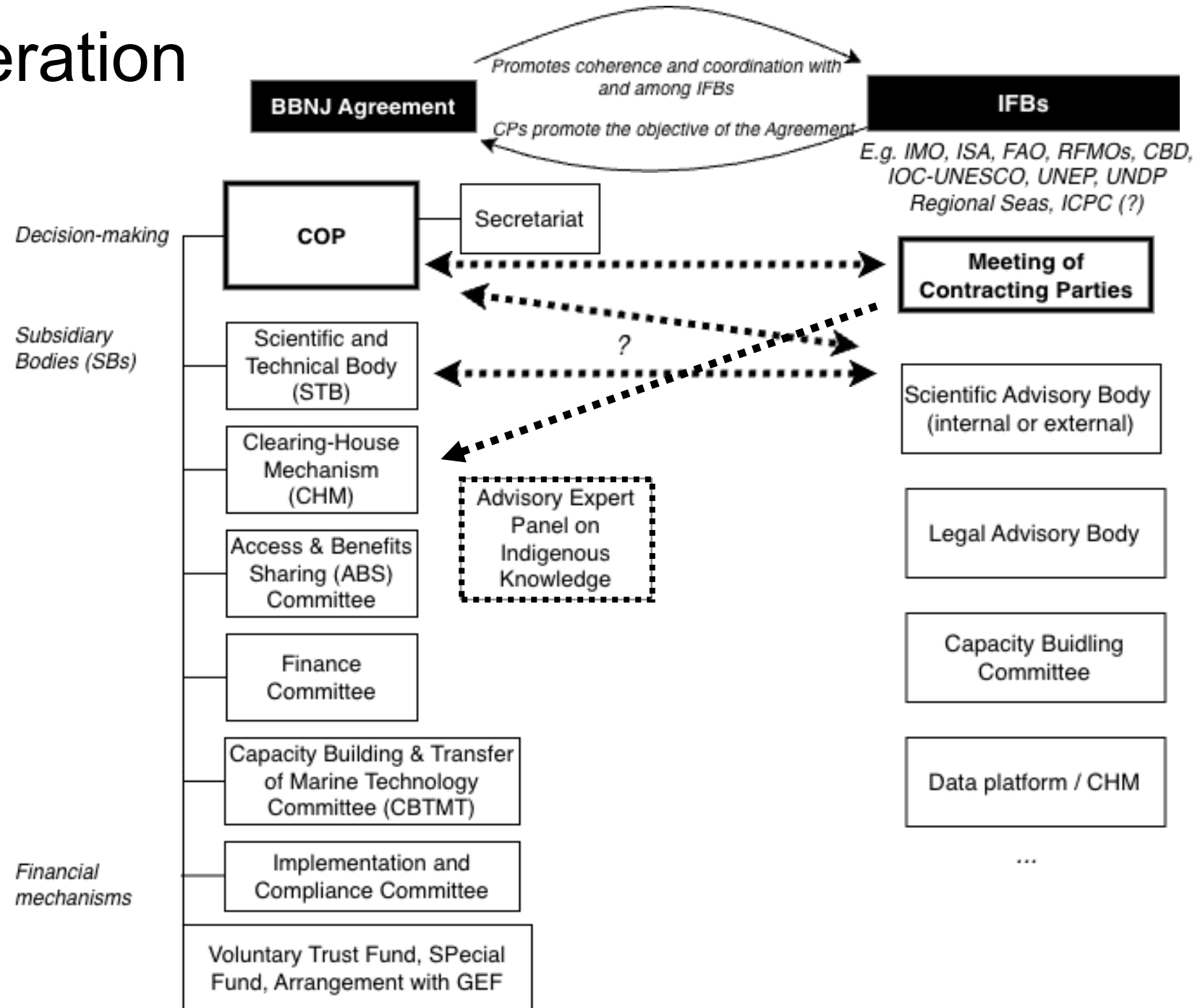
- Entered into force on 17 January 2026
- Prep Com 3 on 23 March to 2 April 2026 → COP 1 planned in January 2027
- Preparation of documents for consideration by COP1:
 - COP: Rules of Procedure (RoP)
 - Secretariat: Arrangement for its functioning, including its seat
 - Subsidiary Bodies: Terms of Reference (TOR), modalities of operation and RoP
 - Financial rules for COP, SBs and the Secretariat
 - Infrastructure of the CHM
 - Operationalisation of the Voluntary Trust Fund (VTF) and Special Fund (SF)
 - Arrangements with the GEF
 - Arrangements to enhance cooperation with relevant IFBs

2. PrepCom 3 : Status, issues and dynamics

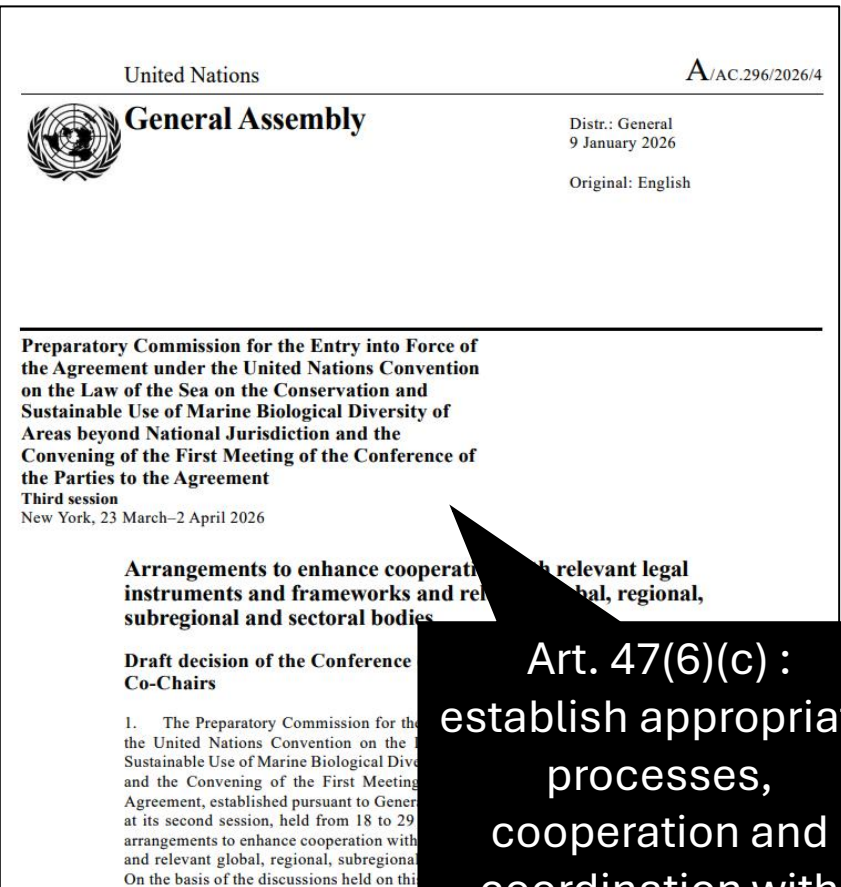


- Stubborn issues and dynamics:
 - Preventing proposals in disputed area (Art18 BBNJA) + State-control
 - Composition and representation of States in Bureau, COP and SBs (e.g. issues of equity, functional or geographic groupings (LLDCs and new groupings requested))
 - CHM infrastructure
 - Inclusion of non-state actors, including indigenous people and IFB's bodies
 - Decision-making: consensus vs 2/3 or else, secret ballot, etc
 - Modalities of work: meeting frequency, in person/virtual meetings
 - Indigenous people's rights vs traditional communities
 - Cooperation with IFBs
 - Representation and voting of EU + effect on quorum
 - Pressure from the early movers who seek to submit MPA proposals at COP1

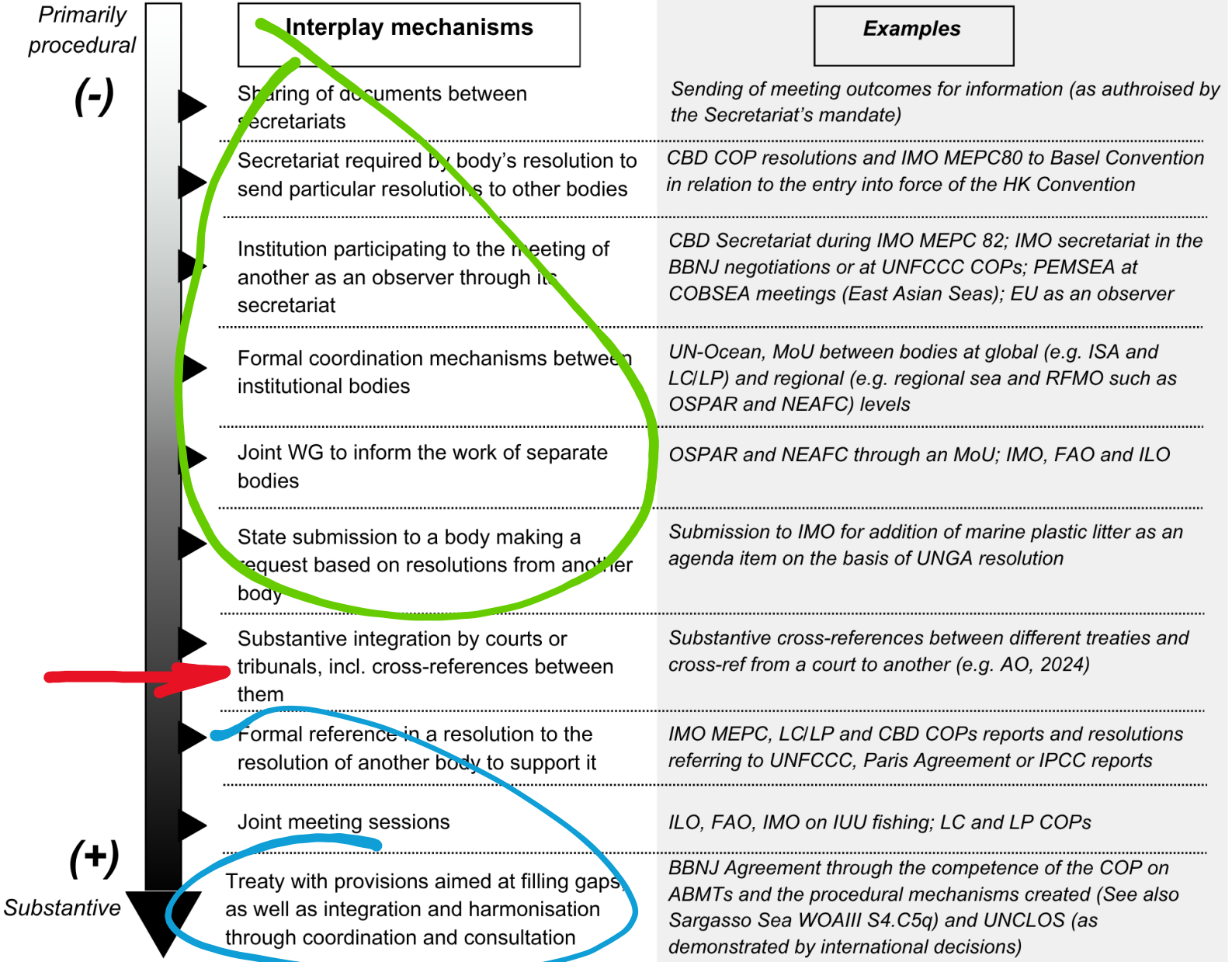
3. Profiling cooperation and coordination processes



3. Profiling cooperation and coordination processes



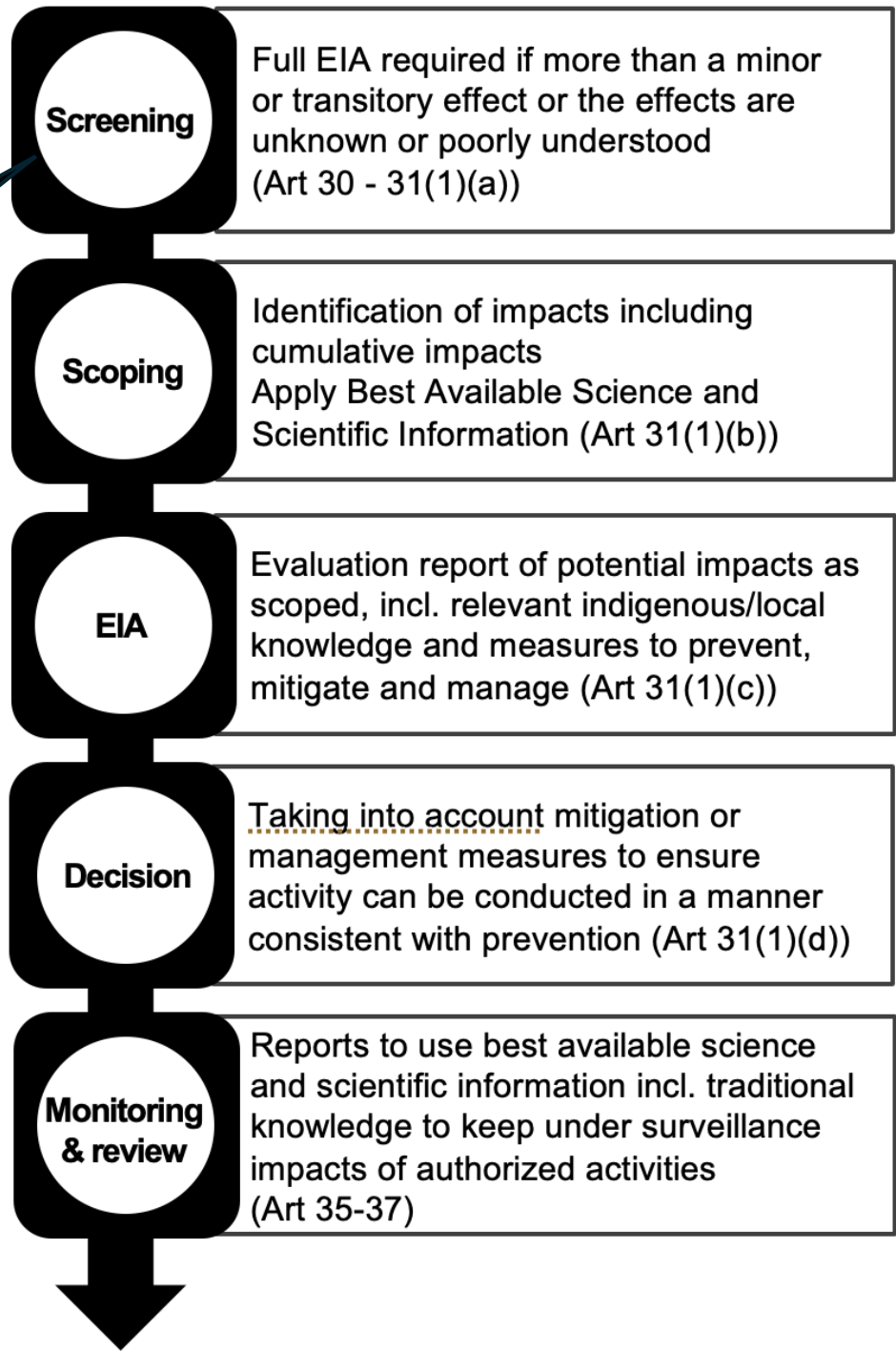
**Art. 47(6)(c) :
establish appropriate
processes,
cooperation and
coordination with
and among IFBs**



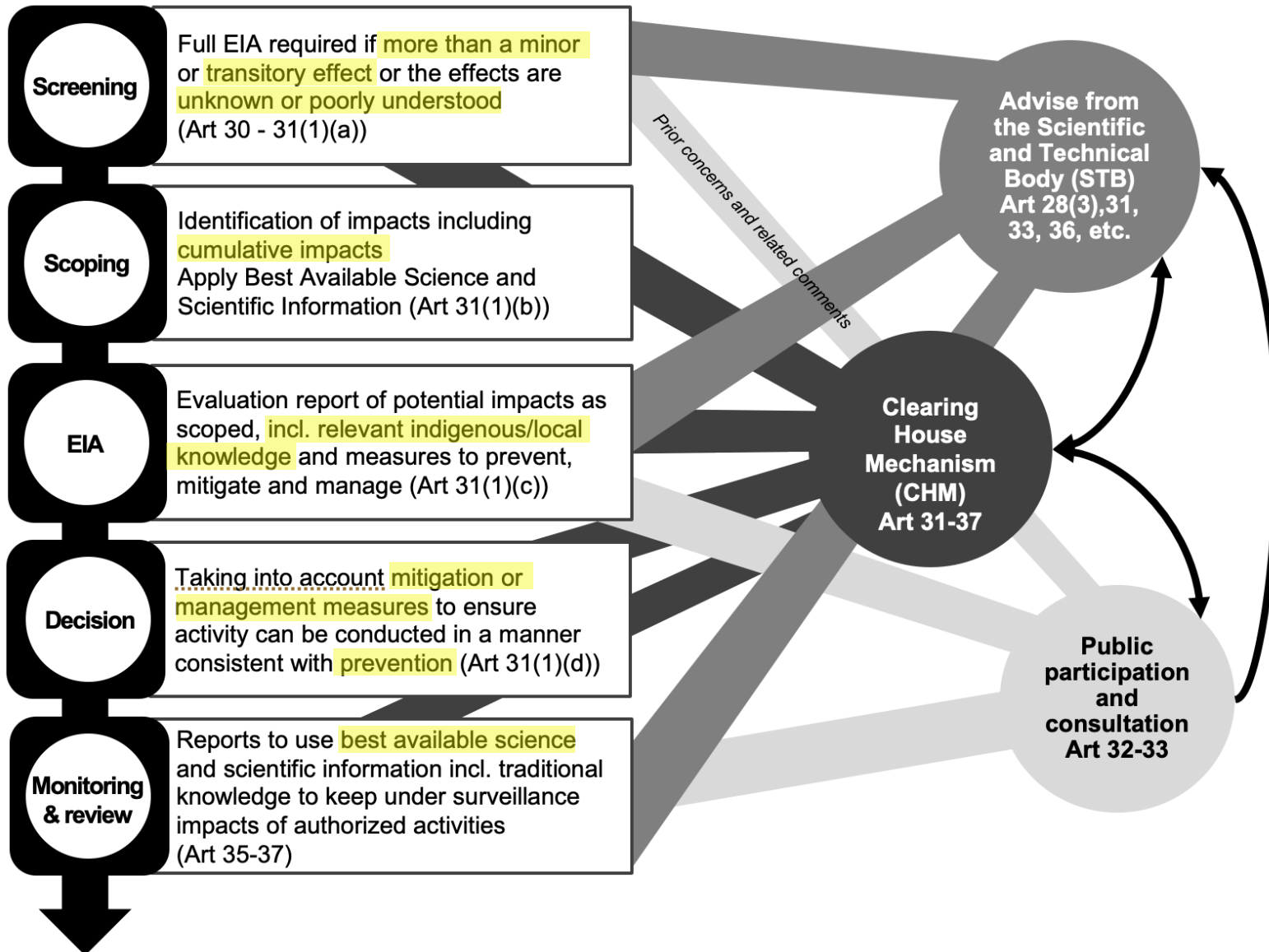
4. EIA process for planned activities under BBNJA



Must be sufficient to determine whether there is a risk of substantial pollution of or significant and harmful changes to the marine env.



4. EIA process for planned activities under BBNJA



EXEMPTION IF

(i) Potential impacts from planned activity **already assessed under an IFB**

AND

(ii) It is **equivalent**

OR

(iii) The regulations or standards of the relevant IFB were designed **to prevent, mitigate or manage** potential impacts below the thresholds for EIA and have been **complied with**

+ Publication on CHM of assessments, monitoring and review reports

???

- *Due diligence*
- *Inclusiveness and equity*
- *Transparency*

4. EIA process for planned activities under BBNJA



IMO context

- International sailing does not start in ABNJ
- No explicit EIAs – But implicitly imbedded in the development of treaties, standards, recommendations and guidelines

Differences

Expected information

- ✓ Duration, intensity and potential impacts including cumulative impacts
- ✓ Baseline assessment
- ✓ Best available science and scientific information
- ✓ Type and technology (for the activity) and manner in which it is to be conducted
- ✓ Alternatives to the planned activity
- ✓ Extent to which effects are unknown or poorly known
- ✓ Impact assessment and evaluation
- ✓ Mitigation/management measures & environmental management plan

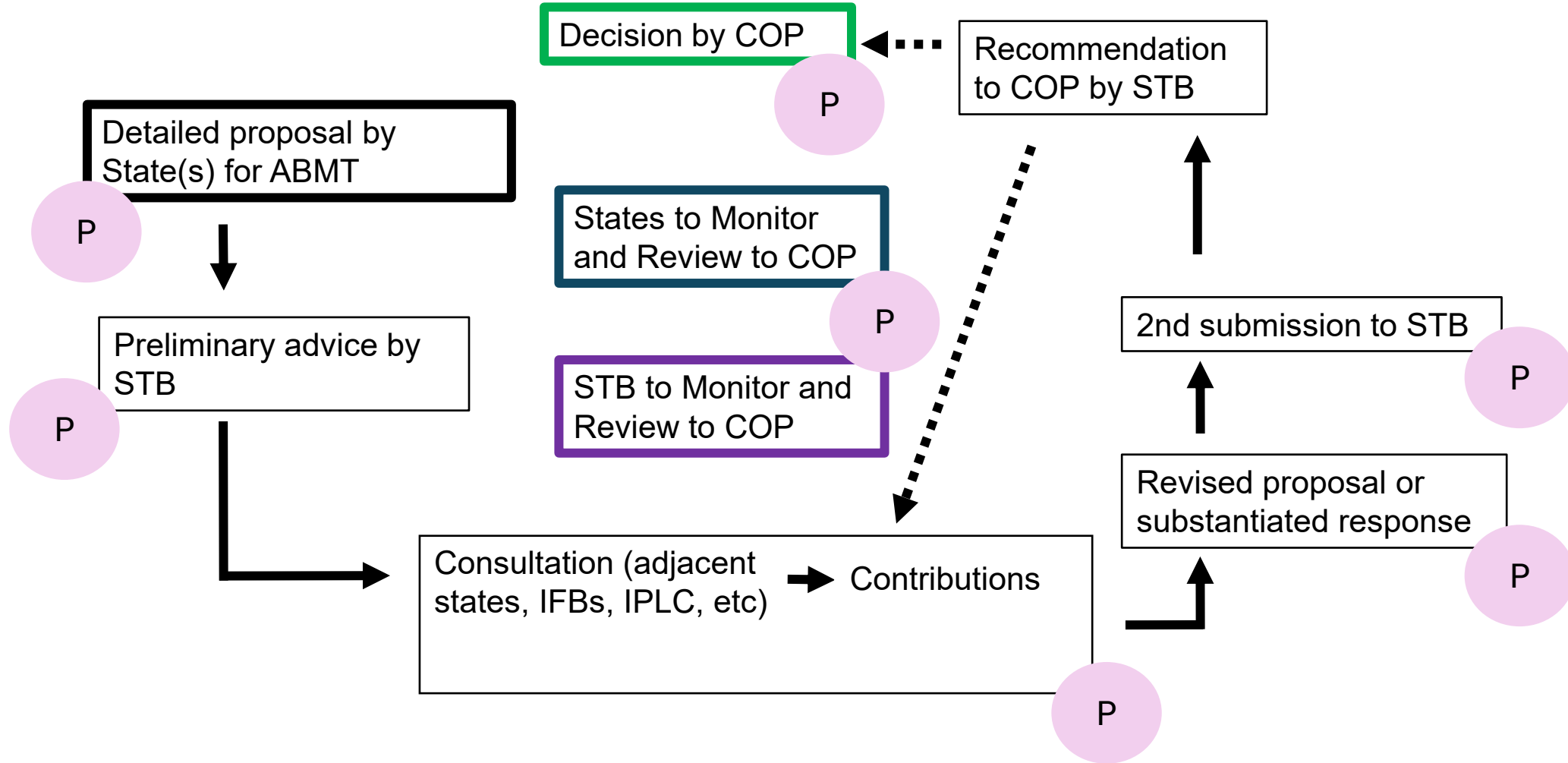
Monitoring & review reports

- Monitoring reports available through CHM
- OR
- Through IFB's mechanism
- Monitoring/surveillance of impacts of authorized activities
- Periodic reports + review reports
- Also for CBTMT

Publication and consultation process

- Publication of reports at all stages
- Broad consultation processes, incl. responses to comments

5. ABMTs under the BBNJA



*P Publication

5. ABMTs under the BBNJA



Elements in the proposal for an ABMT

- ✓ Geographic/spatial description
- ✓ **Indicative criteria**: ecological, economic and social, cultural, existence of conservation measure (NO oceanography)
- ✓ Human activities
- ✓ State of the marine environment and biodiversity
- ✓ Conservation/sustainable use to be applied
- ✓ Draft management plan
- ✓ Duration
- ✓ Info on consultation
- ✓ Existing ABMTs under other IFBs
- ✓ Scientific input, including traditional and indigenous knowledge

PSSA Proposal: Factors to be considered

Criteria Ecology, socio-cultural and economic, scientific and educational

Vessel Traffic Characteristics

- Operational factors (type of maritime activities)
- Vessel types
- Traffic characteristics
- Harmful substances carried

Natural Factors

- Hydrographical
- Meteorological
- Oceanographic

- Evidence that international shipping activities are causing or may cause damage
- Significance of the risk, potential damage, degree of harm
- History of grounding or other incidents if any and of consequences
- Adverse impacts to shipping anticipated from proposed PSSA
- Stresses from other sources
- Measures already in effect

Actual or potential risk?
Precautionary approach?

Special Area under MARPOL Proposal:

Criteria Oceanography and ecology

Vessel traffic Discharge would be unacceptable in the existing conditions

6. Thoughts on avenues for change at the IMO



Procedural

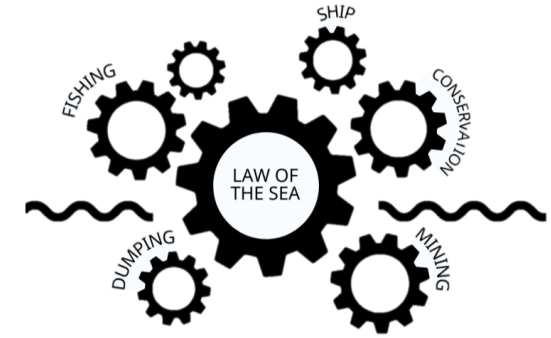
- New output ie agenda item for MEPC
- Agreement or arrangement on institutional mechanisms for cooperation and coordination
- Review of publication infrastructure

Substantive : Many possible paths

- Review of substantive areas of overlap and alignment / misalignment (regulatory matrix)
- Review of IMO Strategy?
- Revise and update the Guidelines on incorporation of the precautionary approach (MEPC.67(37) of 15 Sept 1995) : Add ecosystem approach and other principles and approaches in the BBNJ Agreement?
- New Guidelines on EIAs? Revision of PSSA and MARPOL Special Area Guidelines?

Etc.

7. Future prospects



Effects of dynamics of functional coalitions and representation logics?

BBNJ COP: political (e.g. AOSIS, PSIDS, CLAM, CARICOM, EU, CANZI, G77, LLDCs), geographical based on continents vs regional seas

VS *shipping-related grouping with industry's involvement*

@ BBNJ COP and SBs

- Guidance Decision on cooperation and coordination with relevant IFBs
- Arrangement with IMO?
- Development of guidelines on operationalisation of EBMT, EIA, CBTMT parts, including with respect to IFBs

@ IMO

- Procedural steps to (1) develop institutional mechanisms for cooperation and coordination; (2) have suitable publication process for consultation
- Substantive review