



Inside the New High Seas Treaty

Provisions on marine life, human impact, protected areas, and more show the promise of international cooperation

On 20 September 2023, the United Nations opened its new agreement on the conservation and sustainable use of marine biodiversity beyond national jurisdiction—also known as the BBNJ treaty or high seas treaty¹—for signature and ratification. The U.N. adopted the agreement in June 2023 by consensus after nearly two decades of discussions. This historic agreement offers the global community an opportunity to protect some of the abundant marine life and ecosystems in the two-thirds of the ocean that lie beyond any country's jurisdiction.

Treaty provisions

Research has shown that the high seas hold some of the largest reservoirs of biodiversity on Earth,² supporting important fisheries, providing migratory routes for whales and sharks and harboring remarkable ecosystems such as deep-water corals and other majestic marine life.³

The high seas treaty covers four key “package” elements:⁴

- Marine genetic resources (MGRs).
- Area-based management tools (ABMTs), which include marine protected areas (MPAs).
- Environmental impact assessments (EIAs).
- Capacity-building and the transfer of marine technology (CBTMT).

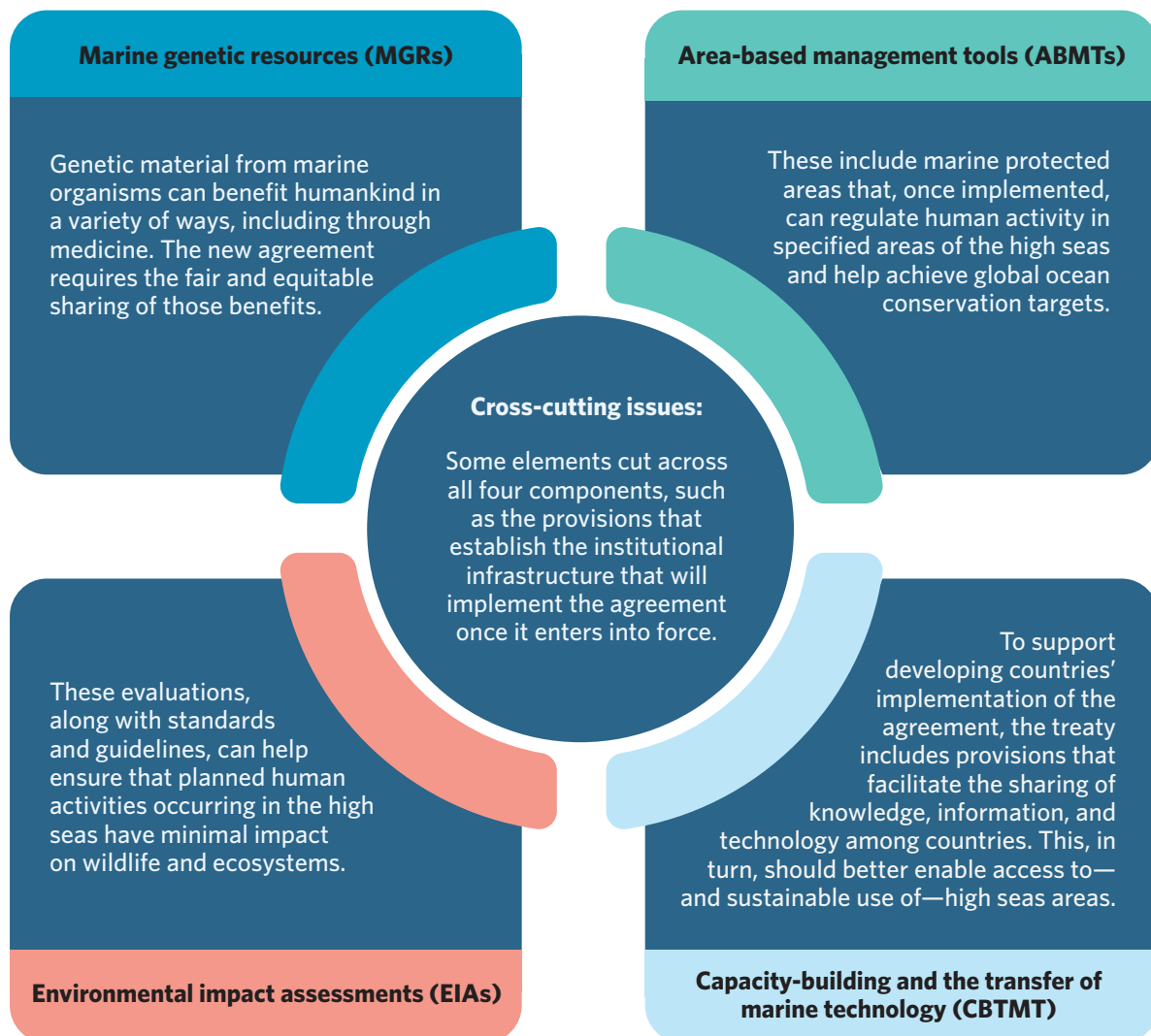
The treaty also establishes a decision-making body (known as the Conference of the Parties, or COP), a scientific and technical body, a Secretariat and other committees and mechanisms to carry out specific functions.

The treaty will enter into force 120 days after the 60th country formally ratifies the agreement.

Figure 1

New High Seas Treaty Is a ‘Package Deal’

Four key ‘package’ elements that will contribute to the conservation and sustainable use of high seas biodiversity once the agreement enters into force



Marine genetic resources

Marine genetic resources (MGRs) refer to the genetic code and other information, including digital sequencing information, contained in sea life that could potentially hold commercial value. And when MGRs are associated with traditional knowledge held by Indigenous peoples and local communities, the treaty requires that Parties ensure that those MGRs are accessed only with the free, prior and informed consent or approval and involvement of those Indigenous peoples and local communities.

The treaty states that access to, and benefit-sharing from, MGRs should:

- Be fair and equitable.
- Build developing countries' capacity.
- Advance the generation of knowledge and innovation.

The treaty, which does not restrict access to MGRs, sets out obligations for State Parties to transparently share information about their collection and use of these resources, and to share opportunities for scientists, especially those from developing countries, to access high seas MGRs and participate in related research.

The treaty also specifies that benefits from MGRs, including monetary benefits, must be shared fairly and equitably but leaves it up to the future BBNJ body to determine exactly how that sharing will happen. In the meantime, the treaty obliges developed State Parties to contribute a set amount of money to a special fund that will be used to assist developing countries in implementing the treaty. The treaty also establishes a committee to help develop the detailed guidelines and modalities for sharing benefits from MGRs.

Area-based management tools

This chapter of the treaty sets out the legal pathway and process for countries to establish area-based management tools (ABMTs), including marine protected areas (MPAs), in the high seas. The treaty's ABMT provisions will be essential to help the global community achieve the Kunming-Montreal Global Biodiversity Framework goal of protecting 30% of the ocean by 2030. The U.N. Convention on Biological Diversity adopted that goal, known as "30 by 30," in December 2022.

The BBNJ treaty does more than enable countries to establish high seas protections: It sets an objective for member countries to establish an "ecologically representative and well-connected network" of MPAs and to provide capacity and technology transfer to support developing countries in creating and implementing MPAs.

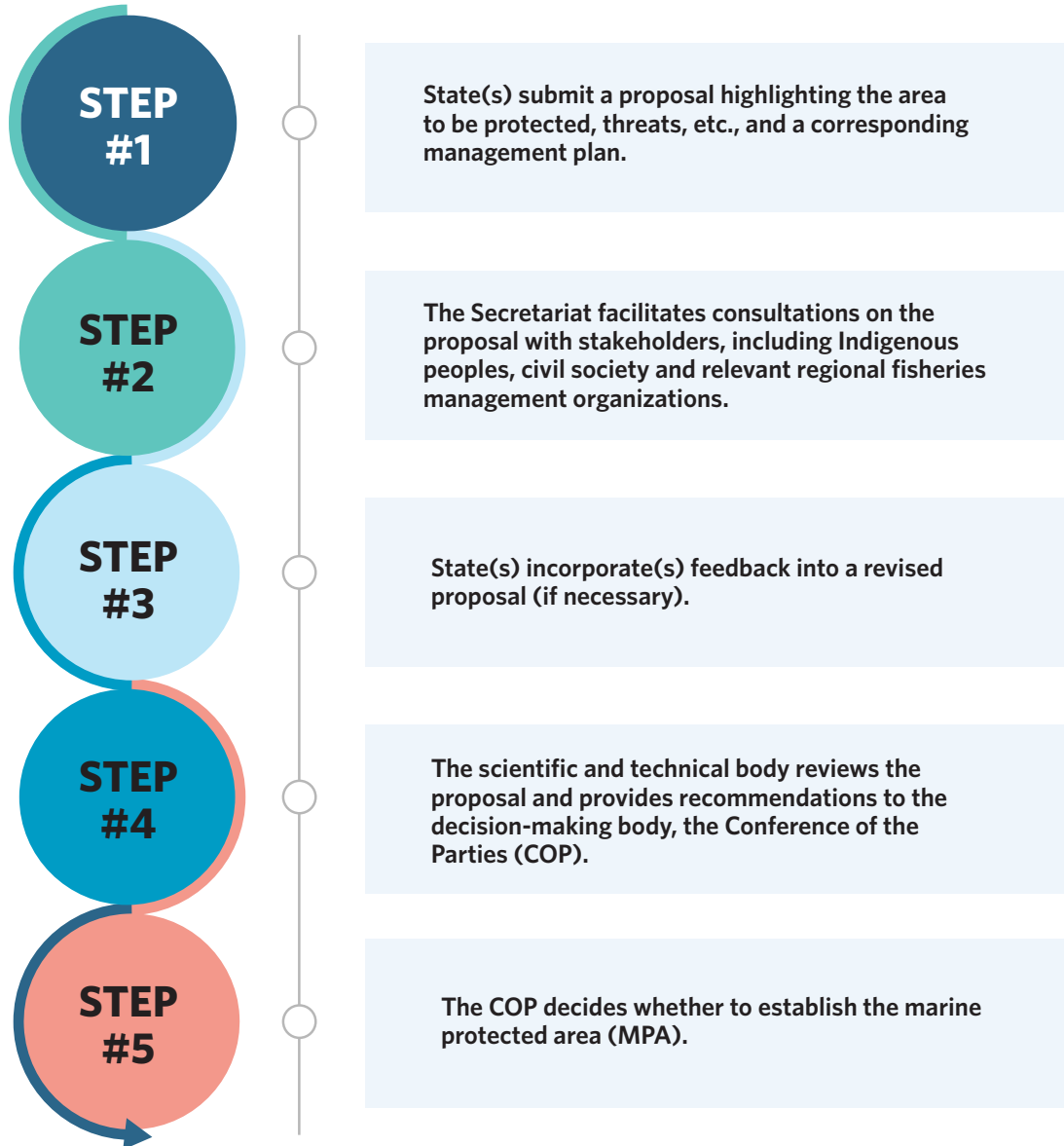
The process for establishing an ABMT or MPA under the treaty begins with a treaty Party submitting an MPA proposal and undertaking a robust stakeholder consultation process. After input from consultations is taken into account, the BBNJ scientific body reviews and assesses the proposal before it advances to the BBNJ decision-making body (the COP referenced above). That body will weigh stakeholder and scientific body input when deciding whether to establish the MPA. The decision-making body will aim to adopt MPAs by consensus but can adopt the MPA by a three-fourths majority vote if consensus cannot be reached.

Once an MPA is established, State Parties and the scientific committee are responsible for monitoring and reviewing the protected area to ensure that it is making progress towards its conservation objectives. The decision-making body can adjust the MPA or its management measures when the scientific body recommends that changes are needed to increase the MPA's effectiveness.

Figure 2

Creating Protected Areas Under the High Seas Treaty

A step-by-step process to meet global ocean conservation targets



Source: United Nations, "Agreement Under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction" (June 19, 2023).

© 2024 The Pew Charitable Trusts

The treaty also authorizes the decision-making body to take "emergency measures" when necessary to address natural or human-caused disasters that have (or are likely to have) seriously harmed high seas ecosystems. Before these measures can be used, however, the BBNJ decision-making body must first decide on additional procedures and guidelines that clarify precisely how these measures should be carried out.

The treaty recognizes that this new BBNJ body will operate alongside other organizations that manage different aspects of human activities on the high seas, such as fishing, mining and shipping. To that end, the treaty emphasizes that the BBNJ body must cooperate and coordinate with and among these other bodies to advance ABMTs and MPAs.

Environmental impact assessments

The treaty’s environmental impact assessment (EIA) chapter includes numerous vital provisions for protecting ocean health. In particular, the EIA chapter establishes basic modern requirements for assessing planned human activities and requires activities that take place on—or may have a significant effect on—the high seas to be managed in a way that avoids, mitigates or manages significant adverse effects.

In instances where activities are assessed and managed by another governance body, the report of that EIA must still be publicly shared via the BBNJ clearinghouse mechanism—a centralized platform for Parties to share information and, in this instance, communicate the results of their EIAs. When the governance body that conducted the EIA does not also monitor and review the activity after the EIA is conducted, the high seas treaty obliges the State responsible for that activity to monitor and review it, and to share those monitoring and reviewing reports via the BBNJ clearinghouse mechanism.

Figure 3

Environmental Impact Assessments Under the High Seas Treaty

A process to prevent and mitigate harmful changes to the marine environment

Step #1 Screening	An initial assessment of the planned activity and its potential impacts. If the activity may cause substantial pollution or significant and harmful changes, proceed to scoping.	Ongoing Consultation and reporting:
Step #2 Scoping	The identification of key environmental and any associated impacts (such as economic, social, cultural and human health impacts and potential cumulative impacts), as well as any alternatives to the planned activity.	
Step #3 Assessment & evaluation	The planned activities and impacts are assessed and evaluated. The Party should fully consider the EIA and authorize the activity only if all reasonable efforts have been made to prevent significant adverse impacts.	
Step #4 Management & review	Measures to prevent, mitigate and manage potential adverse effects of the planned activities are identified. Permitted activities are monitored to determine whether they are likely to pollute or harm the environment.	
		Public notification of the planned activity along with opportunities for all States and stakeholders to participate (including through submitting comments) in the EIA process. EIA and monitoring reports are made publicly available.

New activities, such as large-scale geengineering, high seas aquaculture and floating energy installations, will be subject to the BBNJ treaty’s EIA requirements, which also include detailed public notice and consultation provisions. In addition, the treaty empowers the BBNJ scientific and technical body to review EIA monitoring reports and to make recommendations to the responsible Party if the scientific body determines that the activity could have unforeseen significant adverse impacts or could breach any conditions of approval.

Furthermore, another BBNJ treaty Party may register concern about the activity having unforeseen significant adverse impacts on the environment or breaching agreed conditions, and the BBNJ scientific and technical body may review that as well.

Regardless of whether it is a new activity that should be reviewed under the BBNJ agreement or an existing activity managed under another management organization, the report of the EIA must be publicly shared through a clearinghouse mechanism. The agreement includes a “decision-making standard” that stipulates that activities should be authorized only when they can be managed to prevent significant adverse impacts.

While it is up to the responsible Party to decide whether an activity may proceed, the requirements for assessment and monitoring reports to be made publicly available as well as the option for review and recommendations from the scientific and technical body provide greater transparency and accountability for high seas activities.

In addition to EIAs, the treaty also enables the COP or Parties to undertake a strategic environmental assessment of the potential effects of a plan or program on the marine environment. While additional guidance will need to be developed, strategic environmental assessments could be powerful tools for synthesizing the best available information about a region, evaluating current and potential future impacts and identifying data gaps and research priorities.

Capacity-building and transfer of marine technology

Capacity-building and the transfer of marine technology (CBTMT) is both a stand-alone chapter of the agreement and a cross-cutting element.

The CBTMT chapter sets out objectives, including to:

- Assist Parties, in particular developing State Parties, in implementing the agreement.
- Enable inclusive, equitable and effective cooperation and participation in the activities undertaken under the agreement.
- Advance marine scientific and technological capacity.
- Increase and share knowledge on the conservation and sustainable use of high seas biodiversity.

The treaty also provides guidance on ways to build capacity and transfer technology, and more specifically stipulates that CBTMT efforts should be country-driven, transparent, effective and iterative. The chapter provides examples of different types of CBTMT, such as the sharing and use of relevant data, information, knowledge and research, as well as the development of technical, scientific, and research and development programs. This chapter of the text also establishes a committee that will be dedicated to monitoring, reviewing and advancing CBTMT.

Other treaty chapters reference CBTMT and how it could help ensure effective implementation of the MGR, ABMT and EIA provisions. This inclusion of capacity-building and transfer of marine technology throughout the text reflects the recognition that the treaty’s success will require all State Parties to be sufficiently empowered and equipped to take advantage of the opportunities and carry out their obligations under the treaty.

Cross-cutting issues

In addition to these four package elements, there are several cross-cutting elements in the treaty. For example, the treaty establishes the different bodies that will be necessary to operationalize the treaty text—such as the decision-making body (the COP), the scientific and technical body and the implementation and compliance committee. Other cross-cutting elements identify certain principles and approaches that should be followed, such as the “polluter pays” principle and the ecosystem approach to marine management.⁵ Cross-cutting elements also spell out financing provisions, guidance on how to settle disputes and the relationship between the BBNJ agreement and other relevant governing entities.

What’s next

The first COP meeting will take place within one year after the agreement enters into force. There is still a lot of work to be done before the treaty can be operational.⁶ For example, while the treaty established a number of different bodies to help carry out its work, many key details for those bodies—such as rules of procedure, qualifications to serve on committees and mobilization of financial resources—need to be fleshed out. By engaging in preparatory meetings to settle these details, States can help facilitate rapid implementation of the agreement.

Additionally, while the agreement provides a legal mechanism to establish a network of high seas MPAs, the global community will still need to develop proposals for priority areas for protection. Governments, scientists, funders, advocates and other stakeholders can begin advancing and sharing scientific knowledge of such areas and building national and regional capacity and technology.

The treaty is a momentous and exciting first step towards protecting the high seas—and an opportunity for the global community to come together and consider the cumulative impact of human activities on the ocean and how to best address these concerns holistically.

The treaty includes some important wins for equity, particularly in its provisions on benefit-sharing; capacity-building; and including Indigenous knowledge holders, Indigenous peoples and local communities in decisions. It is critical to ensure that the global community uses the tools set out in the treaty text to advance the conservation and sustainable use of marine biodiversity. That could help secure a thriving future for the high seas and for all who depend on a healthy ocean.

Endnotes

- 1 The treaty is available in all official U.N. languages: https://treaties.un.org/doc/Treaties/2023/06/20230620%2004-28%20PM/Ch_XXI_10.pdf. The scope of the BBNJ treaty encompasses all areas beyond national jurisdiction, including “the area” (the international seafloor) and the high seas. The choice to refer to the “high seas treaty” or the “high seas” instead of “areas beyond national jurisdiction” throughout this brief is intended to ease understanding for broad audiences and does not convey a prioritization among the BBNJ agreement’s components or principles.
- 2 Kristina M. Gjerde, “Ecosystems and Biodiversity in Deep Waters and High Seas,” International Union for Conservation of Nature, 2006, <https://policycommons.net/artifacts/1376176/ecosystems-and-biodiversity-in-deep-waters-and-high-seas/1990438/>.
- 3 M.E. Visalli et al., “Data-Driven Approach for Highlighting Priority Areas for Protection in Marine Areas Beyond National Jurisdiction,” *Marine Policy* 122 (2020), <https://doi.org/10.1016/j.marpol.2020.103927>.
- 4 United Nations, “Agreement Under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction,” 2023, https://treaties.un.org/doc/Treaties/2023/06/20230620%2004-28%20PM/Ch_XXI_10.pdf.
- 5 “What Is Ecosystem-Based Fishery Management?” The Pew Charitable Trusts, Jan. 27, 2016, <https://www.pewtrusts.org/en/research-and-analysis/video/2016/what-is-ecosystem-based-fishery-management-a-cartoon-crash-course>.
- 6 “With High Seas Treaty Near Final, New Paper Offers Roadmap for Rapid Implementation,” The Pew Charitable Trusts, Nov. 14, 2022, <https://www.pewtrusts.org/en/research-and-analysis/articles/2022/11/14/with-high-seas-treaty-near-final-new-paper-offers-roadmap-for-rapid-implementation>.

For more information, please visit: pewtrusts.org/highseas

The Pew Charitable Trusts

Contact: Kathryn Bomey, communications manager

Email: kbomey@pewtrusts.org

Project website: pewtrusts.org/en/projects/protecting-ocean-life-on-the-high-seas

Founded in 1948, **The Pew Charitable Trusts** uses data to make a difference. Pew addresses the challenges of a changing world by illuminating issues, creating common ground, and advancing ambitious projects that lead to tangible progress.

