



# BBNJ Agreement

Briefing note 4 (April 2026)

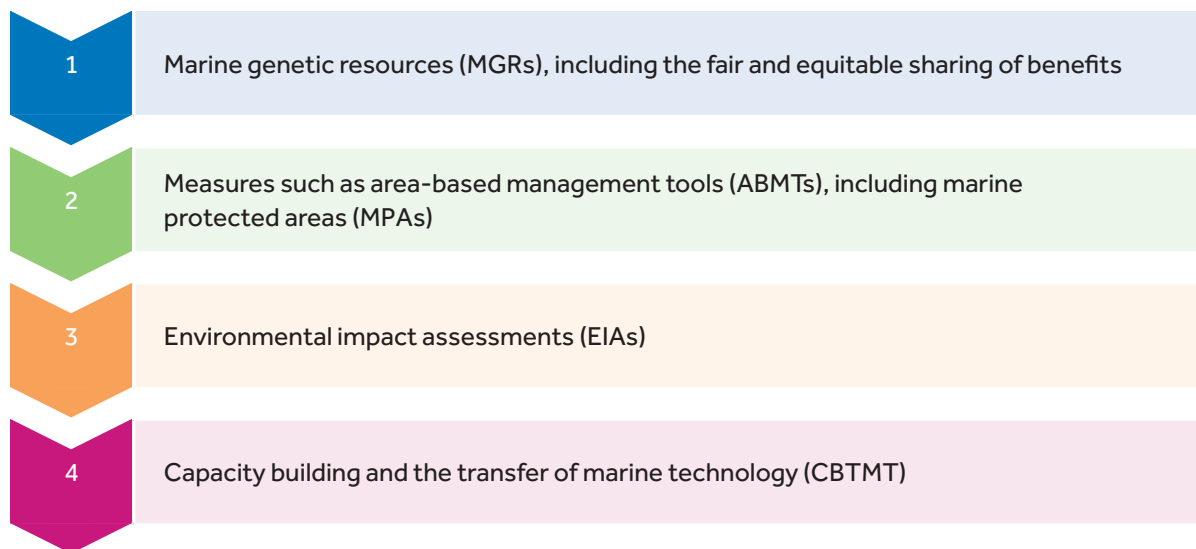
## Overview of Elements

### Introduction

On 17 January 2026, the *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*, better known as the BBNJ Agreement, entered into force.

The BBNJ Agreement is the third implementing agreement under the 1982 *United Nations Convention on the Law of the Sea* (UNCLOS, or 'the Convention') and, like its parent treaty, it has been structured around a complex package of indivisible issues. Each element carries its own unique set of obligations, rights and duties for States Parties under the BBNJ Agreement. This briefing note summarises the four key elements (Figure 1).

Figure 1: The four elements of the BBNJ Agreement



This is issue 4 of the Commonwealth Secretariat's BBNJ briefing note series – for further issues and the latest updates see [thecommonwealth.org/bluecharter/BBNJ](https://thecommonwealth.org/bluecharter/BBNJ).

These briefings supplement the Secretariat's six-part BBNJ webinar series, which can be found at [thecommonwealth.org/BBNJ-webinar](https://thecommonwealth.org/BBNJ-webinar).

## Marine genetic resources, including the fair and equitable sharing of benefits

MGRs and digital sequence information (DSI) hold the potential to benefit humankind in a variety of ways, including through innovations in the pharmaceutical, cosmetic and food industries, among others.<sup>1</sup> Given that sophisticated and expensive technologies are required to reach deep-sea environments and sample organisms, access to these resources in marine areas beyond national jurisdiction (ABNJ) has been limited to date to a small number of developed States.

Part II of the BBNJ Agreement now governs the conservation of, access to and benefit-sharing of MGRs found beyond national jurisdiction. This Part is intended to level the playing field and ensure activities relating to MGRs and DSI on MGRs of ABNJ are conducted in the interests of all States and for the benefit of all humanity. Figure 2 outlines the four main objectives of Part II of the BBNJ Agreement.

### Application

Part II of the BBNJ Agreement applies to all activities with respect to MGRs and DSI on MGRs of ABNJ collected and generated **after** the

Agreement's entry into force. MGR collection and analysis involves two main activities: bioprospecting and marine scientific research.<sup>2</sup> Bioprospecting is essentially the search for commercially valuable genetic resources and usually consists of four key stages (Figure 3).

Part II of the BBNJ Agreement will also apply to the utilisation of MGRs and DSI on MGRs collected or generated **before** the Agreement's entry into force, unless a Party makes an exception under Article 70 (Reservations and Exceptions) of the instrument.

A common misconception is that the BBNJ Agreement does not apply to fish taken in fishing and fishing-related activities in ABNJ. If fish are taken for commodity purposes, the access and benefit-sharing provisions of the BBNJ Agreement will not apply to these resources. However, if the fish are collected for their genetic properties, they will fall under the scope of Part II of the BBNJ Agreement.

### Key definitions

Significantly, the BBNJ Agreement includes the first internationally agreed definition of the term '*marine genetic resource*.'

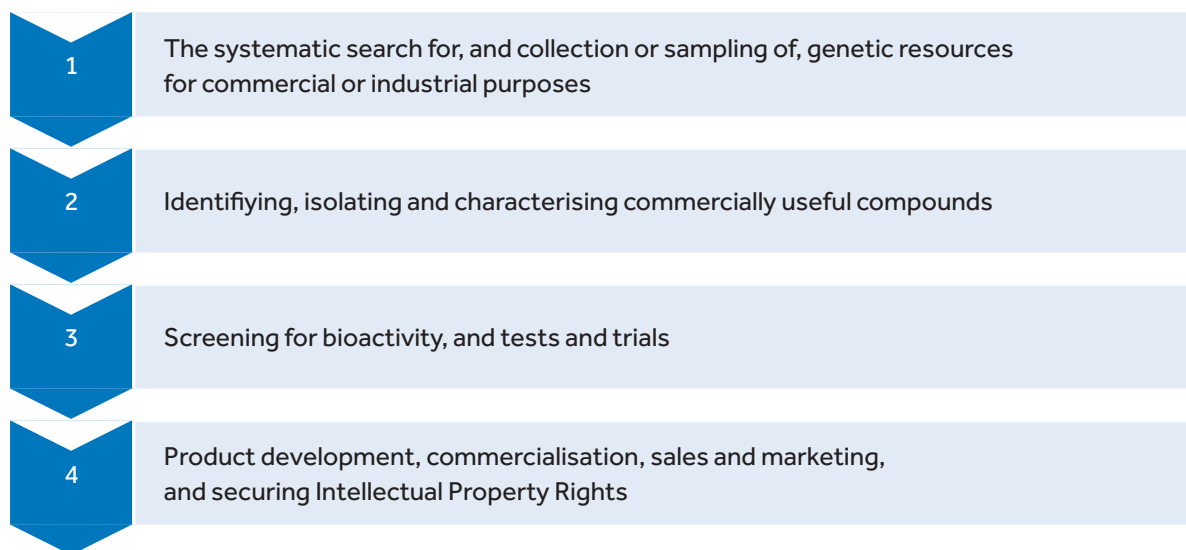
Figure 2: The four main objectives of Part II of the BBNJ Agreement

1. Fair and equitable sharing of benefits	2. Building and development of the capacity of Parties, particularly developing States
3. Generation of knowledge, scientific understanding and technological innovation	4. Development and transfer of marine technology

1 Morgera, E. (2015) 'Do We Need a New Treaty to Protect Biodiversity in the Deep Seas?' SDG Knowledge Hub Online Commentary, 20 January. <http://sdg.iisd.org/commentary/policy-briefs/do-we-need-a-new-treaty-to-protect-biodiversity-in-the-deep-seas/>

2 Lothian, S.L. (2023) *Marine Conservation and International Law: Legal Instruments for Biodiversity Beyond National Jurisdiction*. Abingdon: Routledge (3).

Figure 3: Overview of bioprospecting stages



Source: Lothian, S.L. (2023) *Marine Conservation and International Law: Legal Instruments for Biodiversity Beyond National Jurisdiction*. Abingdon: Routledge.

### Marine genetic resource

*'... any material of marine plant, animal, microbial or other origin containing functional units of heredity of actual or potential value.'*

BBNJ Agreement, Article 1(8)

The BBNJ Agreement also provides other relevant definitions relating to the collection and utilisation of MGRs, including definitions for *'biotechnology'*, *'collection in situ'* and *'utilisation of marine genetic resources'*. No definition of DSI is included in the BBNJ Agreement because no internationally recognised definition existed at the time of the negotiations. A definition of DSI is currently being negotiated under the United Nations Convention on Biological Diversity.

### Access and benefit-sharing

Part II of the BBNJ Agreement provides that monetary and non-monetary benefits derived from MGRs must be shared fairly and equitably. How monetary benefits will be shared is a matter to be determined at a later date by the Conference of the Parties (COP). Until this determination is made, developed States Parties are required to contribute to a special fund that will be used to assist developing States in implementing the BBNJ Agreement.

### Obligations of States Parties

Upon the BBNJ Agreement's entry into force, States Parties will be subject to a number of key obligations under Part II, including, but not limited to:

- **Obligation to co-operate:** To promote co-operation in all activities with respect to MGRs and DSI on MGRs of ABNJ (Article 11(2)).
- **Obligation to act with due regard:** To carry out collection of MGRs in ABNJ with due regard for the rights and interests of coastal States in areas of national jurisdiction, and with due regard to all States (Article 11(3)).
- **Obligation to notify:** To take all necessary legislative, administrative or policy measures to ensure the required information is notified to the BBNJ Agreement's Clearing-House Mechanism at various stages, including:
  - notification *prior to collection* (Article 12(2));
  - notification *post-collection* (Article 12(5)); and
  - notification at the stage of *utilisation, including commercialisation* (Article 12(8)).

## Measures such as area-based management tools, including marine protected areas

ABMTs, including MPAs, are widely used to manage activities in geographically defined areas with the aim of achieving specific conservation and sustainable use objectives. Such measures can be used to protect habitats and species and can help restore ecosystem productivity and strengthen resilience to stressors, including the effects of climate change.

Part III of the BBNJ Agreement regulates the use of ABMTs, including MPAs, and includes provisions relating to the process for making proposals, the information that such proposals must include and how the COP will make decisions on these proposals, particularly with regard to the involvement of relevant legal Instruments and Frameworks and global, regional, subregional and sectoral Bodies (IFBs). Part III also includes provisions on the monitoring, review and implementation of ABMT measures taken under the Agreement. Figure 4 outlines the five specific objectives of Part III of the BBNJ Agreement.

## Key definitions

Helpfully, the BBNJ Agreement provides definitions for key terms, including 'area-based management tool' and 'marine protected area.'

### Area-based management tool

*'... a tool, including a marine protected area, for a geographically defined area through which one or several sectors or activities are managed with the aim of achieving particular conservation and sustainable use objectives in accordance with this Agreement.'*

BBNJ Agreement, Article 1(1)

### Marine protected area

*'... a geographically defined marine area that is designated and managed to achieve specific long-term biological diversity conservation objectives and may allow, where appropriate, sustainable use provided it is consistent with the conservation objectives.'*

BBNJ Agreement, Article 1(9)

**Figure 4: The five specific objectives in relation to ABMTs, including MPAs**

<p>1. Conserve and sustainably use areas requiring protection</p>	<p>2. Strengthen co-operation and co-ordination in the use of ABMTs, including MPAs, among states and relevant IFBs</p>
<p>3. Protect, preserve, restore and maintain biodiversity and ecosystems, including with a view to enhancing their productivity and health, and strengthen resilience to stressors</p>	<p>4. Support food security and other socio-economic objectives, including the protection of cultural values</p>
<p>5. Support developing states parties through capacity-building and the development and transfer of marine technology in developing, implementing, monitoring, managing and enforcing ABMTs, including MPAs</p>	

## Process for making proposals

Part III of the BBNJ Agreement sets out the following steps for submitting a proposal for an ABMT, including an MPA:

1. A State or a group of States submits a proposal to the BBNJ Secretariat (the proposal must include key information, including the area to be protected, threats and the draft management plan, which should include details of the proposed management measures).
2. The proposal needs to be based on the best available science and, where available, relevant traditional knowledge of Indigenous Peoples and local communities (IPLCs) and make a case that the proposed area meets at least one of the criteria in Annex I of the BBNJ Agreement.
3. The Scientific and Technical Body (STB) conducts a preliminary review to ensure the proposal is complete.
4. Parties can make revisions based on the preliminary review and resubmit the proposal.
5. Submitted proposals are made publicly available and reviewed by the STB, while the Secretariat facilitates inclusive, open, transparent and time-bound consultations, including with adjacent States, relevant IFBs, IPLCs, the scientific community, civil society and other relevant stakeholders.
6. Parties consider the input received during the consultation phase and may revise the proposal.
7. The proposal is submitted to the Secretariat for a full review by the STB, which assesses the proposal and provides recommendations.
8. The COP decides whether to establish the ABMT based on the proposal.

## Obligations of States Parties

States Parties are subject to a number of key obligations under Part III, including, but not limited to:

- **Obligation to collaborate and consult:** To collaborate and consult with all relevant stakeholders, including IFBs, IPLCs and adjacent coastal States in the development of proposals (Article 19(2)).
- **Obligation to co-operate:** To cooperate through the mechanisms established by the COP and other institutional bodies to strengthen co-operation and co-ordination in the use of ABMTs, including MPAs, among States and IFBs (Article 22(3)).
- **Obligation to ensure compliance:** To ensure that activities under a Party's jurisdiction or control that take place in ABNJ are conducted consistently with the conservation measures adopted under the BBNJ Agreement (Article 25(1)).
- **Obligation to monitor and review:** Parties shall, individually or collectively, report to the COP on the implementation of ABMTs, including MPAs and related measures (Article 26(1)).

## Environmental impact assessments

EIAs are commonly used in national and international frameworks to inform decision-makers about the likely environmental impacts of a proposed activity, as well as how an authorised activity can be adjusted to avoid possible adverse effects.

While UNCLOS does not specifically mention the term 'environmental impact assessment,' Article 206 of the Convention provides an obligation applicable to the marine environment that requires States Parties to assess the potential effects of activities under their jurisdiction or control when they have reasonable grounds for believing such activities may cause substantial pollution of or significant and harmful changes to the marine environment.

Part IV of the BBNJ Agreement operationalises Article 206 by establishing requirements for assessing and managing planned human activities affecting marine biodiversity in ABNJ. Figure 5 outlines the six main objectives of Part IV of the BBNJ Agreement.

### Key definitions

The BBNJ Agreement elaborates on Article 206 of UNCLOS and defines '*environmental impact assessment*.'

## Environmental impact assessment

*'... a process to identify and evaluate the potential impacts of an activity to inform decision-making.'*

BBNJ Agreement, Article 1(7)

When determining whether planned activities under their jurisdiction or control meet the threshold for conducting an EIA, Parties must consider the potential impacts of the activity, including the potential cumulative impacts.

## Cumulative impacts

*'... the combined and incremental impacts resulting from different activities, including known past and present and reasonably foreseeable activities, or from the repetition of similar activities over time, and the consequences of climate change, ocean acidification and related impacts.'*

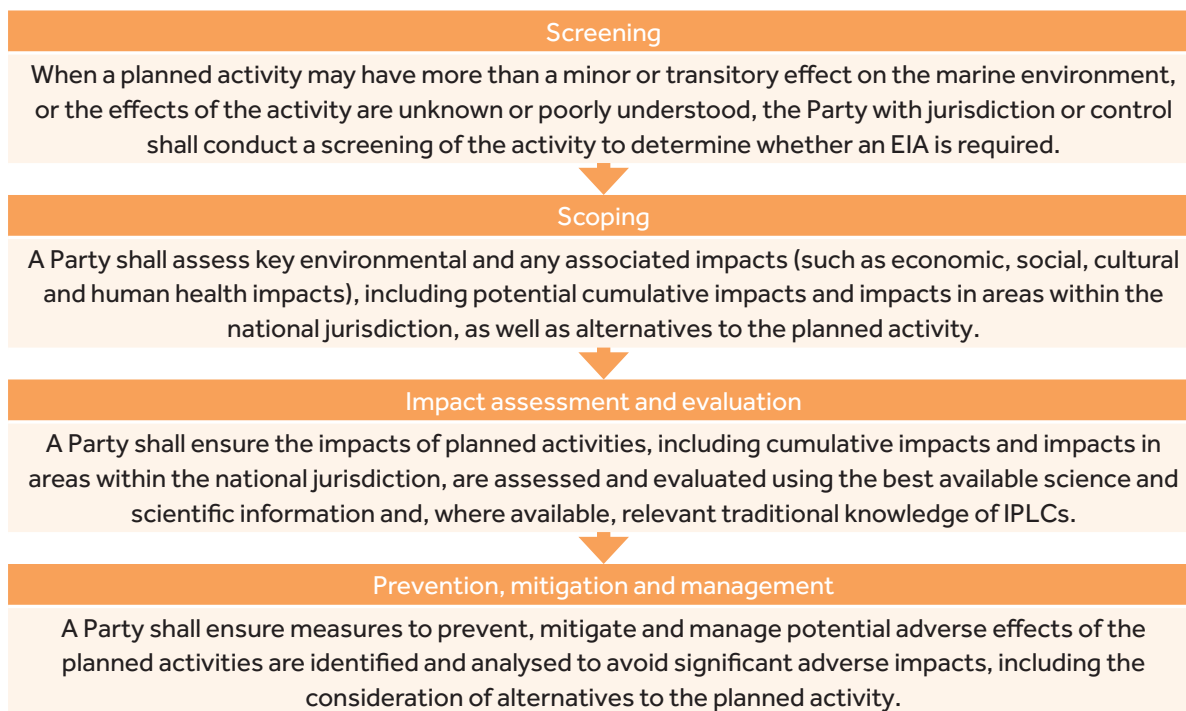
BBNJ Agreement, Article 1(6)

Given that Strategic Environmental Assessments (SEAs) are a relatively new type of assessment, BBNJ negotiators could not agree on a definition for this term. Consequently, no definition is included in the BBNJ Agreement.

**Figure 5: The six general objectives of Part IV of the BBNJ Agreement**

1. Operationalise the provisions of UNCLOS on EIAs	2. Ensure activities are assessed and conducted to prevent, mitigate and manage significant adverse impacts
3. Support the consideration of cumulative impacts and impacts within national jurisdictions	4. Provide for strategic environmental assessments
5. Achieve a coherent EIA framework for activities in ABNJ	6. Build and strengthen the capacity of Parties, particularly developing States, to prepare, conduct and evaluate EIAs

**Figure 6: The process for conducting an EIA under Part IV of the BBNJ Agreement**



### Obligations of States Parties

States Parties are subject to a number of key obligations under Part IV of the BBNJ Agreement, including, but not limited to:

- **Obligation to collaborate and consult:** To collaborate and consult with all stakeholders, including adjacent coastal States, potentially most affected States, IFBs and IPLCs (Article 32).
- **Obligation to co-operate:** To co-operate through the mechanisms established by the COP and other institutional bodies for the regulation of activities in ABNJ or the protection of the marine environment (Article 29(2)).
- **Obligation to promote:** To promote the use of EIAs and the adoption and implementation of the standards and guidelines developed by the STB in the IFBs of which they are members (Article 29(1)).
- **Obligation to notify:** To ensure timely publication of a planned activity to the Clearing-House Mechanism and all stakeholders, including adjacent coastal States, potentially most affected States, IFBs and IPLCs (Article 32).
- **Obligation to report:** To ensure the preparation of an EIA report and its timely publication through the Clearing-House Mechanism, and to periodically report on the impacts of the authorised activity (Articles 33(1) and 36)).
- **Obligation to determine:** To determine whether a planned activity under the Party's jurisdiction or control may proceed, provided the Party has made all reasonable efforts to consider mitigation or management measures and to ensure the activity can be conducted in a manner consistent with the prevention of significant adverse impacts on the marine environment (Article 34).
- **Obligation to monitor and review:** To keep authorised activities under surveillance using the best available science and scientific information and, where available, the relevant traditional knowledge of IPLCs, to determine whether these activities are likely to pollute or have adverse impacts on the marine environment (Articles 35 and 37).

## Capacity-building and the transfer of marine technology

The successful implementation of the BBNJ Agreement can be achieved only if all States Parties are able to implement its provisions and fully participate in the activities undertaken under the Agreement. To this end, Part V of the instrument regulates CBTMT by supporting developing States Parties in implementing the other package deal elements (outlined above) and the overall objectives of the BBNJ Agreement.

Part V includes provisions that facilitate various types of CBTMT, including the sharing of knowledge, information and marine technology. CBTMT under the BBNJ Agreement is to be country-driven, transparent, effective and iterative, in addition to being participatory, cross-cutting and gender-responsive in nature. Figure 7 outlines the five main objectives of Part V of the BBNJ Agreement.

### Key definitions

The BBNJ Agreement includes two helpful definitions for use in Part V governing CBTMT.

### Biotechnology

*'... any technological application that uses biological systems, living organisms or derivatives thereof, to make or modify products or processes for specific use.'*

BBNJ Agreement, Article 1(2)

### Marine technology

*'... includes, inter alia, information and data, provided in a user-friendly format, on marine sciences and related marine operations and services; manuals, guidelines, criteria, standards and reference materials; sampling and methodology equipment; observation facilities and equipment for in situ and laboratory observations, analysis and experimentation; computer and computer software, including models and modelling techniques; related biotechnology; and expertise, knowledge, skills, technical, scientific and legal know-how and analytical methods related to the conservation and sustainable use of marine biological diversity.'*

BBNJ Agreement, Article 1(10)

**Figure 7: The five main objectives of Part V of the BBNJ Agreement in respect of CBTMT**

1. Assist parties, particularly developing states, in implementing the BBNJ Agreement	2. Enable inclusive, equitable and effective co-operation and participation in activities
3. Develop marine scientific and technological capacity, including with respect to research	4. Increase, disseminate and share knowledge on the conservation and sustainable use of BBNJ
5. Support developing states in achieving the objectives of the other elements of the BBNJ package deal	

## Obligations of States Parties

States Parties are subject to a number of key obligations under Part V of the BBNJ Agreement, including, but not limited to:

- **Obligation to co-operate with IFBs:** To co-operate directly or through relevant IFBs to assist Parties, in particular developing States Parties, in achieving the objectives of the BBNJ Agreement through CBTMT (Article 41(1)).
- **Obligation to co-operate with stakeholders:** To co-operate at all levels and in all forms with all relevant stakeholders, such as the private sector, civil society and IPLCs, as well as through strengthening co-operation and co-ordination between and among relevant IFBs (Article 41(2)).
- **Obligation to ensure capacity-building:** To ensure capacity-building for developing States Parties and to co-operate to achieve the transfer of marine technology, particularly to developing States Parties (Article 42(1)).
- **Obligation to provide resources:** To provide resources to support capacity-building and the development and transfer of marine technology and to facilitate access to other sources of support (Article 42(2)).
- **Obligation to report:** To submit periodic reports to the CBTMT Committee in support of the monitoring and review of CBTMT under the BBNJ Agreement (Article 45(3)).



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