



Background Note on 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

Background Information

On 4 March 2023, countries meeting at the United Nations reached a significant milestone for the ocean and for efforts to stem global biodiversity decline when they agreed a new international treaty to safeguard marine life in areas that lie beyond national jurisdiction.

Commonly known as the high seas, these vast areas cover two-thirds (64%) of the global ocean – almost half the planet’s entire surface. They include some of the most ecologically vital, yet critically threatened and least protected areas on Earth; less than 1% are fully or highly protected.

Following two decades of discussions, countries agreed on the Final Act of the implementation agreement to the United Nations Convention on the Law of the Sea (UNCLOS) on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction. The BBNJ Agreement – or High Seas Treaty (as it is commonly referred to) – is the world’s first cohesive, international, and legally binding framework to specifically protect high seas’ biodiversity within the context of UNCLOS.

Rationale

UNCLOS established a general obligation on nations to protect the marine environment, however, given its general provisions, the need was felt to have the BBNJ Agreement as an Implementation Agreement under UNCLOS to clarify further its provisions and implementation, even in the light of new scientific and technological discoveries. The High Seas Treaty provides a more coherent and holistic framework for the protection of our ocean and the equitable sharing of benefits from its marine genetic resources.

On 19 June 2023, the negotiating States at the United Nations formally adopted the Treaty text. The treaty will **enter into force when 60 countries ratify it**. In summary, once it has entered into force, the Treaty will:

- Set out a legal framework and clear process for establishing networks of marine protected areas in the ocean **beyond national jurisdiction**. If effectively protected and well-managed, these will help realize the already agreed target to protect at least 30% of our ocean by 2030, under the UN Kunming-Montreal Global Biodiversity Framework.
- Provide more transparency and a greater say in decisions regarding activities that could harm high seas ocean biodiversity through its provisions on environmental impact assessments.



- Ensure the fair and equitable sharing of benefits derived from exploitation of marine genetic resources from the high seas and seabed.
- Enhance and build capacity and ensure the transfer of marine technology to assist developing countries in the implementation of the agreement. A funding mechanism will be established to support such activities.
- Scientific and Technical Body of expert members from different geographies with multidisciplinary expertise, including traditional knowledge, will advise the COP. These will be nominated by Parties and elected by the COP.
- An Implementation and Compliance Committee that is facilitative in nature and will function in a manner that is transparent, non-adversarial and non-punitive.
- An Access and Benefit-Sharing Committee.
- A Finance Committee with a financial mechanism that, in addition to the core budget for the running of the institutions, has a voluntary trust fund, a special fund and a GEF trust fund sector.

Malta's Vision

Our vision is that UNCLOS remains the framework treaty for ocean governance. The BBNJ Agreement is the third Implementation Agreement under UNCLOS. The other Implementation Agreements to which Malta is a party relate to the Deep Seabed and the management of straddling and migratory fish stocks.

Malta supported the adoption of the BBNJ Agreement by consensus, which is a historic achievement of multilateralism is the latest implementing agreement of UNCLOS, that provides the legal framework within which all activities in the oceans and seas must be conducted. The BBNJ Agreement is key for achieving the overall ambition for a more sustainably managed ocean and its ecosystems.

Jurisdictional Scope of the BBNJ Agreement

The Obligations of the BBNJ Agreement apply to the areas beyond national jurisdiction, namely the high seas and the deep seabed. The provisions of the BBNJ Agreement will **NOT** apply within the marine space over which Malta exercises jurisdiction in accordance with international law.

As a flag State Malta would need to abide by the provisions of the BBNJ Agreement when operations in such area are conducted under its jurisdiction and control.

Way forward in terms of implementation of the BBNJ Agreement

- In terms of aspects on biodiversity protection, marine protected areas (MPAs), and marine genetic resources, Environment & Resources Authority (ERA) will be tasked with overseeing aspects linked to environmental assessments, protected area site management, area-based management tools, environmental permitting, and marine genetic resource benefit sharing in BBNJ. In addition, the newly adopted EU Nature Restoration Regulation provides the main legal framework in the EU on nature aspects



with provisions and targets including the continental shelf and areas upon which the Member State exercises jurisdiction.

- In relation to MPAs, the BBNJ Agreement introduces a procedure allowing MPAs and other area-based management tools to be adopted in areas beyond national jurisdiction through a three-quarter majority vote if consensus is not reached. This contrasts with the SPA/BD Protocol under the UN Barcelona Convention, which requires full consensus among Contracting Parties for similar designations in the Mediterranean. However, given the provision of:
 - Article 5, which calls for coherence with existing regional frameworks
 - Article 6 which provides that: “*any acts, measures or activities undertaken on the basis thereof, shall be without prejudice to, and shall not be relied upon as a basis for asserting or denying any claims to, sovereignty, sovereign rights or jurisdiction, including in respect of any disputes relating thereto*”;
- Marine genetic resources benefit-sharing provides an economic activity that is accessible to all States when conducted on the high seas under the BBNJ Agreement. Consequently, Malta would have exclusivity (as is the case with fishing) for genetic marine resource exploitation within the marine areas falling under its jurisdiction. Moreover, national regulators are to ensure that any operation by Maltese flagged vessels or other operations carried out in areas beyond national jurisdiction under Maltese control will need to comply with BBNJ provisions. This matter is expected to be coordinated through ERA, in collaboration with the Access to Benefit-Sharing Advisory Committee set up through the Environment Protection Act (Cap. 549).

Lead ministry, supporting agencies and budget

- As the BBNJ Agreement is about ocean conservation, MEEC is considered to be the Lead Ministry in the consultations and implementation of the MPAs and aspects on biodiversity beyond national jurisdiction.
- A coordinated approach is required to ensure the involvement of the main regulators in relation to issues of environmental assessments, environmental permitting, access to genetic resources, maritime transport, fisheries, and compliance and enforcement of measures pursuant to any BBNJ area. Coordination would need to rope in the main regulators involved in activities beyond national jurisdiction, including *inter alia*, AFM, CSD, DFA, ERA, PA, TM and the Ministries responsible for energy and foreign affairs, the latter in view of potential aspects linked with disputed areas.
- Once in force, areas beyond national jurisdiction may be designated under the BBNJ Agreement. Site management considerations and related monitoring and compliance would be required in a collective manner by the Parties concerned. This may imply additional capacity and resources within the relevant regulatory national entities.
- Relevant annual budgets to address the national monetary contributions to the BBNJ Agreement, and the relevant administrative and reporting costs associated with its implementation as well as the attendance to the various meetings, including the Conference of the Parties (COP).