Summary

- While capacity-building and the transfer of marine technology (CBTMT) are addressed in a standalone section in Part V, they are also included throughout the BBNJ Agreement in a cross-cutting manner.
- The objectives of CBTMT in the BBNJ Agreement are to support States, in particular developing States, in the implementation of the BBNJ Agreement and to advance the conservation and sustainable use of biodiversity from areas beyond national jurisdiction.
- The Agreement requires Parties to cooperate to provide assistance to ensure capacity-building, and to cooperate to achieve the transfer of marine technology.
- The Agreement has a particular emphasis on country and needs-driven and inclusive approaches, informed by needs assessments on a national sub-regional or regional basis.
- The BBNJ Agreement strengthens the approach of the United Nations Law of the Sea (UNCLOS) to capacity building by creating a monitoring and review process, by establishing a dedicated committee to oversee implementation of the provisions and by establishing a funding mechanism.
- Maintaining broad participation and bringing new communities on board should be a priority during ratification and entry into force. Capacity-building is the key tool to do so, both before and after entry into force.
The BBNJ Agreement

On 19 June 2023, the international community adopted the Agreement under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (BBNJ Agreement, also known as the High Seas Treaty). The Agreement opened for State signature on 20 September 2023 and will remain open for signature for two years. It will enter into force 120 days after 60 State ratifications. Until then, signatories are obliged to refrain from acts which would defeat the object and purpose of the Agreement.

The objective of the BBNJ Agreement is to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (ABNJ) for the present and in the long term, through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination. Promptly ratified and appropriately implemented, the Agreement can play a key role in halting the degradation of the marine environment and biodiversity loss in ABNJ, increasing knowledge, capacity and access to marine technologies, as well as addressing climate change and its effects on the ocean.

What are the obligations and processes established in BBNJ Part V?

Capacity-building and the transfer of marine technology are specifically addressed in Part V of the BBNJ Agreement yet are also referred to throughout the Agreement in a cross-cutting manner (BBNJ Arts. 9 (b); 17 (e), 27(f)).

The objectives of capacity-building and technology transfer in the BBNJ Agreement are to support States, in particular developing States, in the implementation of the BBNJ Agreement and to advance the conservation and sustainable use of biodiversity from areas beyond national jurisdiction more broadly (BBNJ Art. 40). The Agreement establishes an obligation for Parties to cooperate to provide assistance, either directly or through relevant legal instruments, frameworks and bodies (IFBs) (BBNJ Art. 410).

Part V of the Agreement promotes broad cooperation at all levels and in all forms. It explicitly includes the private sector, civil society and Indigenous Peoples and Local Communities (IPLCs) (BBNJ Art 41(2)) and also streamlines consideration of the special circumstances of small island developing States (SIDS) and least developed States (LDCs) throughout its provisions (BBNJ Arts. 40 c), (e); 41 (c); 42(4); 43(3); 43(5); 45(2 (a); 46(2)).

The specific modalities differ slightly between capacity-building and the transfer of marine technology. While Parties must ensure capacity-building for developing countries, within their capabilities, the obligation for technology transfer is to cooperate to achieve such transfer (BBNJ Art. 42(1)). Both capacity-building and transfer of marine technology should
be a “country driven, transparent, effective and iterative process that is participatory, cross-cutting and gender-responsive” (BBNJ Art. 42(3)). It must also be based on needs assessments, with needs identified on a national, subregional or regional basis, either via self-assessment or facilitated by the CBTMT Committee (BBNJ Art. 42(4)).

The Agreement contains additional modalities for the transfer or marine technology. It stipulates that such transfers “shall take place on fair and most favourable terms, including on concessional and preferential terms, and in accordance with mutually agreed terms and conditions, as well as the objectives of the Agreement” (BBNJ Art. 43). Marine technology transferred “shall be appropriate, relevant and, to the extent possible, reliable, affordable, up to date, environmentally sound and available in an accessible form for developing States Parties, taking into account the special circumstances of SIDS and of least developed LDCs” (BBNJ Art. 43(5)). The Agreement contains a list of types of capacity-building and transfer of marine technology, including data sharing, information dissemination and awareness raising (BBNJ Art. 44 and Annex II).

BBNJ strengthens the approach taken by UNCLOS, whose provisions on capacity-building and technology transfer are considered to be among its less well-implemented provisions,¹ by:

1. Creating a monitoring and review process (BBNJ Art. (45)) with a broad scope to assess the implementation of this part of the Agreement across different steps (such as country needs, provision of assistance, performance) and make recommendations to the BBNJ Conference of the Parties (CoP). It will also play a role in identifying and mobilizing funds under the financial mechanism.
2. Establishing a dedicated committee (BBNJ Art. (46)) to undertake the monitoring and review process, as well as submit other reports and recommendations to the CoP.
3. Establishing a financial mechanism, including specific funding provisions for capacity-building projects in the form of the Special Fund and the Global Environment Facility (GEF) (BBNJ Art. 52(6)).

**Recommendations to Signatories to the BBNJ Agreement**

The BBNJ negotiations have been inclusive and benefitted from broad participation, including from IPLCs, the private sector, civil society and academia. Facilitating and maintaining this broad participation and bringing new communities on board should remain a priority in the ratification and implementation phase. Capacity-building is the key tool to achieve this, both before and after the Treaty’s entry into force.

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Investment in activities under the CBTMT have the advantage that they go towards fulfilling obligations under a core pillar of the BBNJ Agreement while at the same time advancing Parties’, in particular developing States’, abilities to implement other parts of the Agreement.

Part V’s contribution is integral to the overall equity of the BBNJ Agreement. To demonstrate their continued demonstration of commitment to the full implementation of Part V and help maintain high ambition for the Agreement Parties could:

- When ratifying the Agreement agree to provisionally apply relevant provisions (see [High Seas Alliance Briefing on provisional application](https://highseasalliance.org) for further detail).
- Start providing funding and or capacity-building to support ratification and prepare for implementation of the BBNJ Agreement through existing initiatives and frameworks.
- Develop frameworks for and undertake needs assessments at a national and/or regional level.
- Support the establishment of a Preparatory Commission to prepare for early operationalization of the institutions relevant to Part V, in particular the CBTMT committee and the financial mechanism (see [High Seas Alliance Briefing on PrepCom](https://highseasalliance.org)).

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