Briefing Note:
Legal Implications of the Impending Entry into Force of the BBNJ Agreement

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Abstract

- Entry into force of the 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 (BBNJ Agreement) on January 17, 2026 will give rise to some specific obligations of Parties to the Agreement at that time.
- While some of the obligations are dependent on the establishment of mechanisms and institutions such as the Clearing-House Mechanism (Cl-HM) and Secretariat, not all are.
- In particular, obligations under article 8 for Parties to promote BBNJ objectives when participating in decision-making in international frameworks and bodies (IFBs) are particularly relevant.
- Also specifically relevant are the notification and other reporting requirements related to Marine Genetic Resources (MGRs), the sharing of non-monetary benefits, and cooperation for technology transfer and capacity building. This may be done through an interim Cl-HM.
- Environmental impact assessments (EIAs) will need to be carried out according to Part IV and notified through an interim Cl-HM unless carried out within IFBs in a manner that meets the equivalence and threshold tests of Part IV.

Introduction

Since the announcement by the United Nations Secretary-General on 19 September 2025[1] that the BBNJ Agreement[2] will enter into force on 17 January 2026, the question has arisen as to the legal consequences of its entry into force for Parties to the BBNJ Agreement at that time.

Every treaty in force is binding upon the parties to it and must be performed by them in good faith, and must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.[3]

The BBNJ Agreement includes a range of explicit obligations on States, some of which are obligations of conduct (a duty to make a good-faith effort towards a specific outcome) and some of which are obligations of result (a duty to guarantee a specific result). For some obligations, the Agreement explicitly requires States to take the necessary legislative, administrative or policy measures to ensure the implementation of the Agreement, and a general obligation to ensure the implementation of the Agreement as a whole (Art. 53). Some of these obligations cannot be fully operationalized until specific mechanisms or institutions they require are set up or pre-requisite decisions made, while others can be implemented unilaterally by Parties upon entry into force. It is also worth noting that signatory States are obliged to refrain from acts which would defeat the object and purpose of a treaty.[4]

This Note does not intend to be comprehensive, nor does it detail all the legal consequences of entry into force. Instead it highlights some practical consequences for Parties, including specific obligations.

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[1] C.N.447.2025.TREATIES-XXI.10 (Depositary Notification) 19 September 2025.

The helpful comments of Daniel Kachelriess are gratefully acknowledged. Any errors are those of the author.

[2] 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 ("BBNJ Agreement").

[3] Vienna Convention on the Law of Treaties. Concluded at Vienna 23 May 1969, entered into force: 27 January 1980. UN Doc A/Conf 39/28, UKTS 58 (1980), 8 ILM 679. Arts. 26, 31.

[4] Vienna Convention on the Law of Treaties, Art. 18.

Part I: General Provisions: Cooperation

First and foremost, article 8 on international cooperation provides that:

1. Parties shall cooperate under this Agreement for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening and enhancing cooperation with and promoting cooperation among relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies in the achievement of the objectives of this Agreement.
2. Parties shall endeavour to promote, as appropriate, the objectives of this Agreement when participating in decision-making under other relevant legal instruments, frameworks, or global, regional, subregional or sectoral bodies.
3. Parties shall promote international cooperation in marine scientific research and in the development and transfer of marine technology consistent with the Convention in support of the objectives of this Agreement.

This means that there are both general and specific actions required by Parties to both the BBNJ Agreement and legal instruments and frameworks and relevant IFBs to achieve the objectives of this Agreement.

Paragraph 2 sets out a general obligation to promote (as appropriate) the BBNJ objectives when participating in decision-making under relevant IFBs. The general objective is set out in article 2:

General objective

The objective of this Agreement is to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long term, through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination.

The objective to "ensure" is a lofty one:[5] an obligation to "ensure" is "an obligation to deploy adequate means, to exercise best possible efforts, to do the utmost, to obtain this result." (Para. 110). That obligation is to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (ABNJ). That means the Area and the High Seas.[6] The way the objective is to be achieved is set out: through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination.

Paragraph 2 of article 8 is more specific: "Parties shall endeavour to promote, as appropriate, the objectives of this Agreement when participating in decision-making under other relevant legal instruments, frameworks, or global, regional, subregional or sectoral bodies."

[5] The International Tribunal for the Law of the Sea (ITLOS) Seabed Disputes Panel (SDC) 2011 Advisory Opinion Case 17, Responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area (Request for Advisory Opinion submitted to the Seabed Disputes Chamber) 1 February 211. Para. 110.

https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_17/17_adv_op_010211_en.pdf.

[6] BBNJ Agreement, article 1(2).

Put simply, this means that BBNJ Parties, when participating in the work of the IFBs, such as regional fisheries management organizations (RFMOs), the International Maritime Organization (IMO), or the International Seabed Authority (ISA),[7] are to try to promote the BBNJ objectives, such as by endeavoring to ensure the consistency of decisions of such IFBs with BBNJ objectives. This mobilization of existing IFBs to achieve the BBNJ Agreement objectives has been termed by one observer as "a significant innovation in the design of multilateral environmental agreements."[8]

Another specific obligation of Parties to the BBNJ Agreement is set out in paragraph 3 of article 8: "Parties shall promote international cooperation in marine scientific research and in the development and transfer of marine technology consistent with the Convention in support of the objectives of this Agreement."

This could mean implementing the requirements of Part V on capacity-building and the transfer of marine technology (CBTMT) through engaging in the kinds of cooperation listed in article 44 of the BBNJ Agreement. It would also mean that cooperation in scientific research, including with respect to research with a view to establishing area-based management tools (ABMT) including marine protected areas (MPAs), is an obligation from January 17, even if proposals have not been submitted under article 19.

Part II: Marine Genetic Resources, including the fair and equitable sharing of benefits

The Agreement applies under article 10(1) to marine genetic resources (MGRs) and digital sequence information (DSI) on MGR of ABNJ.[9]

The Agreement creates a general obligation for activities related to MGRs and DSI to be carried out in accordance with its provisions (Art. 11(1)). Specific obligations for Parties are established with regard to notification of information and reporting (Art. 12(1), 12(7), 16(2)) and sharing of benefits (Art. 14(2), (3), (5), (6)).

Article 12(1) requires Parties to take the necessary legislative, administrative or policy measures to ensure that certain types of information are submitted to the Cl-HM pre-cruise (Art. 12(2)), post-cruise (Art.12(5)) and in the case of utilization (Art. 12(8)). Recognizing that this obligation applies from entry into force, the co-chairs of the Preparatory Commission (PrepCom) indicated in their closing statement at PrepCom2 that some form of interim arrangements would need to be in place by entry into force to receive such information. Even if this were not the case, Article

[7] See Duncan Currie and Johannes Muller. The governance of marine biodiversity beyond national jurisdiction: The BBNJ agreement and the International Seabed Authority. Marine Policy, Volume 178, 2025, https://doi.org/10.1016/j.marpol.2025.106689

[8] Kim, R.E. (2024) The likely impact of the BBNJ Agreement on the architecture of ocean governance. Marine Policy, 165. https://doi.org/10.1016/j.marpol.2024.106190.

[9] Unless an exception to the contrary has been made in writing by the Party upon ratification, the Agreement retroactively applies to MGRs and DSI collected or generated before entry into force. If a Party has made the exception, only MGRs and DSI collected and generated after the entry into force of the Agreement for the respective Party are covered. Article 10(1).

12(1) suggests that Parties would nevertheless be obligated to have the necessary measures in place to ensure such information is collected from entry into force and submitted to the Cl-HM as soon as feasible.

Notification of collection to the Cl-HM under article 12 raises the problem that the Cl-HM is not yet operational. But specific requirements such as those in paragraph 6 can be implemented independently of whether or not interim arrangements for the Cl-HM are in place: to ensure that samples of MGRs and DSI on MGRs of ABNJ that are in repositories or databases under their jurisdiction can be identified as originating from ABNJ (in accordance with current international practice and to the extent practicable).

A similar logic applies to the biennial aggregate report of databases and, to the extent practicable, repositories to the access and benefit sharing committee under Art. 12(7) – while the first such report may not be due until 2028, Parties should from the onset ensure that repositories, to the extent practicable, and databases under their jurisdiction are prepared.

With regard to benefit sharing, the non-monetary benefits under article 14, such as access to samples and sample collections, access to DSI, open access to findable, accessible, interoperable and reusable (FAIR) scientific data, as well as transfer of marine technology (TMT) according to Part V of the BBNJ Agreement and capacity building shall all and can all be implemented by Parties from entry into force onwards. The contribution by developed States under article 14(6) is also a requirement upon entry into force, but its operationalization requires 1) a budget and 2) a scale of assessments to be adopted by CoP1 in order to calculate the rate of contribution due by developed State Parties.

Part III Area-Based Management Tools

Many of Part III's operational steps require the secretariat, the Scientific and Technical Body (STB) and Cl-HM to be in existence. For example, proposals are to be submitted to the secretariat under article 19, made publicly available by the secretariat, and transmitted to the STB under article 20 for preliminary review. Consultations after the initial submission are to be facilitated by the secretariat and the STB is to assess the revised proposal under article 21(7). However, the Agreement also establishes an obligation for Parties to consult broadly in the development of the proposal (Art. 19(1)) and to formulate proposals on the best available science and, where available, relevant traditional knowledge, which can be started now.

Part IV: Environmental Impact Assessments

Entry into force will usher in obligations to perform environmental impact assessments (EIAs) for ABNJ set out in Part IV and introduced in article 28(1): "Parties shall ensure that the potential impacts on the marine environment of planned activities under their jurisdiction or control that take place in areas beyond national jurisdiction are assessed as set out in this Part before they are authorized."

One clear obligation for Parties is the timely public notification of a planned activity through the Secretariat and Cl-HM (Art. 32 (1)). As mentioned above , the Co-Chairs of the PrepCom indicated in their closing statement at PrepCom2 that some form of interim arrangements would be in place by entry into force to receive such information. Even if this were not the case, the obligation still applies and can be actioned, as it is only “including by” publication through the Cl-HM and through the secretariat under article 32.

Article 29 requires that Parties shall promote the use of EIAs in relevant IFBs of which they are members. This is directly relevant to the current negotiations in the ISA of exploitation regulations. The regulations should implement the BBNJ Part IV requirements: if they do not, they may not meet the equivalence test of article 29(4)(b)(i), or it may transpire that assessments were not designed to prevent, mitigate or manage potential impacts below the threshold for EIAs under Part IV, and they have been complied with, under article 29(4)(b)(ii).

Under article 28(1), when a Party with jurisdiction or control over a planned activity that is to be conducted in marine areas within national jurisdiction determines that the activity may cause substantial pollution of or significant and harmful changes to the marine environment ABNJ, that Party shall ensure that an EIA is conducted in accordance with Part IV or that an EIA is conducted under the Party’s national process. Such Party must implement transparency requirements by making relevant information available through the Cl-HM during the national process, monitor the activity and ensure the EIA reports and monitoring reports are made available through the Cl-HM. Once the STB is established it may provide comments to the Party (article 28(3)).

Part V: Capacity Building and the transfer of marine technology

As provided for in article 8(3), promotion of international cooperation in MSR, as well as in the development and TMT is a legal requirement. Cooperation under articles 41 and 42, which requires provision, within their capabilities, of resources to support such capacity-building and the development and transfer of marine technology and resources to facilitate access to other sources of support, taking into account their national policies, priorities, plans and programmes. Types of CBTMT are provided in article 44 and Annex II.

Conclusion

Upon entry into force on January 17, 2026, a number of specific legal obligations will come into force for Parties which have ratified the Agreement. While some are dependent on the operationalization of institutions and mechanisms such as the secretariat and the Cl-HM, not all are. Some of the actionable examples are the provisions applicable to BBNJ parties’ actions within IFBs under article 8.