The BBNJ Agreement and the Convention on the Conservation of Migratory Species of Wild Animals

Summary

- The BBNJ Agreement and the Convention on the Conservation of Migratory Species of Wild Animals **both have mandates relevant to the conservation of biodiversity in areas beyond national jurisdiction, with significant scope for synergies**.
- By signing and ratifying the BBNJ Treaty, and contributing to its early operationalization, CMS Parties can add an important new asset to their toolkit in fulfilling CMS obligations:
    - **Area-based management tools**, including marine protected areas in areas beyond national jurisdiction, **can be important tools to protect critical sites for migratory species**, in particular to extend or create new networks of ecologically representative and well-connected marine protected areas.
    - **The BBNJ Agreement's environmental impact assessment provisions** modernize assessment procedures, encourage harmonization, increase transparency and **will contribute to reducing impacts on migratory species and their habitats in areas beyond national jurisdiction.**
    - The BBNJ Agreement's capacity building and marine technology transfer provisions will contribute towards the efficacy of both the CMS and the BBNJ Agreement and offer opportunities for mutual learning.

The BBNJ Agreement

The Agreement under 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 (BBNJ Agreement) entered into force on 17 January 2026.

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 UNCLOS 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, as well as addressing climate change and its effects on the ocean.

The Convention on the Conservation of Migratory Species of Wild Animals

The United Nations Convention on the Conservation of Migratory Species of Wild Animals (CMS) is a multilateral environmental agreement that entered into force in 1983 and currently has 133 Parties. Its objective is the conservation of migratory animals and their habitats. Species under its mandate are listed on one or both of its Appendices.

Appendix I contains species that are endangered. Parties to the CMS are required to strictly protect such species (with some exceptions),[2] as well as endeavor to conserve their habitat, prevent, remove, compensate for, or minimize, adverse impacts or obstacles to their migration and, to the extent feasible or appropriate, reduce or control other threats.[3]

Appendix II contains species that require, or are expected to significantly benefit from, international cooperation. Parties to the CMS are required to endeavor to conclude more specific agreements to that end among range states of the species concerned.[4] There are currently 26 such agreements under the CMS,[5] which is why it is often referred to as a framework convention.

General scope and guidance: BBNJ and CMS interaction

The CMS includes conservation obligations that extend to activities under the control of Parties in ABNJ.[6] These provisions are particularly relevant for the conservation of the many species of marine mammals, marine fish, marine turtles and seabirds listed on the CMS Appendices, and their habitats. Several agreements and memoranda of understanding concluded in line with CMS Appendix II also focus on the conservation of migratory marine species and explicitly address ABNJ.[7]

The shared objective to conserve biodiversity (in the case of the CMS, specifically listed species and their habitats), coupled with their overlap in spatial scope, means that future interactions between the provisions of the CMS and the BBNJ Agreement are highly likely.

[1] Vienna Convention on the Law of Treaties, Art. 18.
[2] CMS Convention, Art. III(5).
[3] CMS Convention, Art. III(4).
[4] CMS Convention, Art. IV.
[5] The term "Agreements" in the Convention includes both those called Agreements, of which there are 7, and memoranda of understanding of which there are 19. CMS Resolution UNEP/CMS/Resolution 12.8 preamble.
[6] CMS Convention, Art. I(1)(h) and Art. VI(2).
[7] E.g. Agreement on Albatross and Petrels (ACAP).

The BBNJ Agreement foresees such potential overlaps. It is to be interpreted and applied in a manner that does not undermine relevant legal instruments, frameworks and bodies (IFBs) and promotes coherence and coordination with them.[8] This is supplemented by an obligation for Parties to the BBNJ Agreement to promote the objectives of the Agreement in decision-making under other relevant bodies.[9]

Potential specific interactions between the BBNJ Agreement and the CMS

To further assess potential interactions between the CMS and the BBNJ Agreement, it is important to consider the four main elements contained in the BBNJ Agreement package:

- Part II: Marine genetic resources (MGRs), including the fair and equitable sharing of benefits
- Part III: Area-based management tools (ABMTs), including marine protected areas (MPAs)
- Part IV: Environmental impact assessments (EIAs)
- Part V: Capacity-building and the transfer of marine technology (CBTMT)

This briefing explains what the different parts of the Agreement do and highlights some potential interactions between the BBNJ Agreement and the CMS, starting with ABMTs, EIAs, then CBTMT and closing with MGRs.

ABMTs

Area-based management tools, including MPAs, are an important component of the marine conservation toolbox, yet processes to create them in ABNJ have only existed within a few regional and international organizations. The BBNJ Agreement closes this gap by establishing a legal framework and process for the creation of ABMTs anywhere in ABNJ.

One of the objectives of the ABMT part of the BBNJ Agreement is to establish a comprehensive system of ABMTs with ecologically representative and well-connected networks of MPAs.[10] Similarly, Parties to the CMS have also recognized the value of ecological networks, including "coherent ecological networks of protected sites", in the implementation of the CMS obligations[11] and promoted the creation of a network of MPAs.[12] **The ABMT provisions of the BBNJ Agreement give CMS Parties the necessary legal framework to expand existing networks of ABMTs, including MPAs, into ABNJ and/or create new such networks.**

The existing work and priorities of the CMS could also provide valuable inputs into the designation process of ABMTs under the BBNJ Agreement. Following the BBNJ Agreement's overall emphasis on improved international coordination, its process to

[8] BBNJ Agreement, Art. 5(2) the CMS has a similar "not undermine" provision specific to the codification and development of the UN Convention on the Law of the Sea: CMS Convention, Article XII(1).
[9] BBNJ Agreement, Art. 8(2).
[10] BBNJ Agreement, Art. 17.
[11] UNEP/CMS/Resolution 12.7 (Rev.COP13).
[12] UNEP/CMS/Resolution 12.24.

establish ABMTs **includes consultation and coordination with relevant stakeholders, including international bodies, such as the CMS**, both during the development of proposals and after their submission.[13] Proposals are to be submitted by States, based on the best available science and, where available, relevant traditional knowledge, and to include information against indicative criteria.[14] These include **several criteria that may be of special relevance for synergies with provisions under the CMS**, for example "special importance for the life history stages of species", "the importance for threatened, endangered or declining species or habitats" and "ecological connectivity",[15] all of which may fit breeding and feeding areas as well as migratory corridors. CMS Parties also endorsed more specific criteria for the identification and prioritization of areas of particular importance to listed species or species groups, such as Important Marine Mammal Areas (IMMAs) and Important Shark and Ray Areas (ISRAs), that may also be relevant to inform BBNJ ABMT proposals.

EIAs

The EIA part of the BBNJ Agreement establishes modern requirements for assessing and managing planned human activities affecting marine biodiversity in ABNJ, including public notice, consultation and review provisions. The scope of these provisions covers activities taking place in ABNJ. Activities that take place within national jurisdiction also need to be assessed if there is a possibility they may cause substantial pollution of, or significant and harmful changes to, the marine environment in ABNJ.[16]

Both the BBNJ Agreement and the CMS resolutions[17] recognize EIAs as an important tool in marine conservation. The proper application of the BBNJ EIA regime - including the consideration of cumulative impacts and migratory paths - would be synergistic to the CMS' obligations to conserve marine species, both within and beyond the spatial scope of any ABMT measures. It is worthwhile noting that both instruments explicitly address cumulative impacts.[18]

The BBNJ Agreement also presents an opportunity to scale the CMS' experience in, and resources on, the application of EIAs in the marine environment, including activities with transboundary impacts, such as the CMS Family Guidelines on Environmental Impact Assessment for Marine Noise Generating Activities.[19] When developing or updating standards or guidelines for EIAs in ABNJ, the BBNJ Agreement foresees collaboration and consultation with relevant IFBs, such as the CMS.[20] Once standards and guidelines have

[13] BBNJ Agreement, Art. 19(2) and Art. 21, respectively.
[14] BBNJ Agreement, Arts. 19(1), 19(3). and 19(4) (b), respectively.
[15] BBNJ Agreement, Annex I.
[16] BBNJ Agreement Art. 28. Pollution can be an obstacle that Range States of a migratory species listed in Appendix I must "prevent, remove, compensate for or minimize, as appropriate, the adverse effects of activities or obstacles that seriously impede or prevent the migration of the species". CMS Convention Art. III(4)(b).
[17] See for example, UNEP/CMS/Resolution 12.14, paragraph 3.
[18] BBNJ Agreement, Arts. 29 and 30, CMS Family Guidelines on Environmental Impact Assessment for Marine Noise Generating Activities.
[19] See supplementary information, including basic principles of strategic environmental assessments in Module G: https://www.cms.int/sites/default/files/basic_page_documents/CMS-Guidelines-EIA-Marine-Noise_TechnicalSupportInformation_FINAL20170918.pdf
[20] BBNJ Agreement, Art. 29(3).

been adopted, Parties to the BBNJ Agreement will be obliged to promote their implementation in other IFBs.[21]

CBTMT

Capacity building and technology transfer are specific obligations under the BBNJ Agreement, as well as a means of implementation for other parts of the Agreement. The Agreement seeks to learn from UNCLOS' experience on capacity building (which has often been seen as not fully operationalized) by adding many operational elements from the start. These include: the incorporation of a funding source (e.g., through the MGR provisions); the establishment of a monitoring and review framework; and a separate committee - the capacity building and transfer of marine technology committee - to ensure that the implementation of this part of the Agreement is continuously followed up.

Following the approach of the BBNJ Agreement to improve coordination and coherence, the CBTMT section also embraces existing cooperation and capacity-building work taking place in IFBs, such as in Goal 6 of the Samarkand Strategic Plan for Migratory Species 2024-2032, adopted at the CMS 14th Conference of the Parties (CoP14).[23]

The positive experience of Parties to the CMS and its instruments in supporting scientific collaboration, such as international research groups, may also be a helpful lesson to learn from when developing future CBTMT initiatives under the BBNJ Agreement.

The CBMT provisions will contribute towards the efficacy of both the CMS and the BBNJ Agreements.

MGRs

The marine genetic resources provisions of the BBNJ Agreement seek to balance fair and equitable benefit sharing of MGRs (including monetary benefit sharing) from ABNJ with as few burdens on marine scientific research as possible. To do so, it sets out a new set of rules for how activities relating to MGRs and digital sequence information (DSI) from ABNJ will be governed, and how both monetary and non-monetary benefits from their use will be shared to further the objectives of this Agreement.

One potential interaction between the CMS and the BBNJ Agreement in the context of MGRs could be when an MGR sample is taken from a species listed on the CMS Appendices. If that species were listed on CMS Appendix I, which requires CMS Parties to "prohibit the taking of animals belonging to such species", this could suggest a potential conflict. However, the CMS explicitly allows for exceptions to this rule, including "if the taking is for scientific purposes".[24] Whether and under what circumstances this exception could be applied in the context of MGR collection in ABNJ is an area that may require further guidance by the Conference of the Parties.

[21] BBNJ Agreement, Art. 29(1).
[22] UNEP/CMS/Resolution 11.2 (Rev. COP12) p.12.
[23] UNEP/CMS/COP14/Doc.14.2/Annex 1.
[24] CMS Convention, Art. III(5)(a).

Specific opportunities to enhance synergies at CMS CoP15

The 15th CMS Conference of the Parties (COP15) will take place in Campo Grande, Brazil, from March 23–29, 2026. The following agenda items may be of particular relevance to enhance synergies between BBNJ and CMS at the upcoming CMS CoP15:

- Priorities for area-based conservation of marine migratory species (25.3.1)
- Seabirds and Marine flyways (Agenda item 26.3.2)
- Seamounts (25.3.3)

Recommendations

- States should ratify or accede to the BBNJ Agreement as soon as possible to harness synergies between it and the CMS.
- States should work to identify ABNJs of particular relevance for CMS-listed species to flow into the first generation of ABMT proposals.
- States should work to identify and rank activities of particular concern for CMS-listed species (including through conducting EIAs where appropriate).

Authors: Daniel Kachelriess, Duncan Currie, Johannes Müller, Nikolas Entrup, Lisa Speer, Ralf Sonntag, Matthew Collis, Nichola Clark, Aline Kühl-Stenzel, Matilda Bradshaw

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