

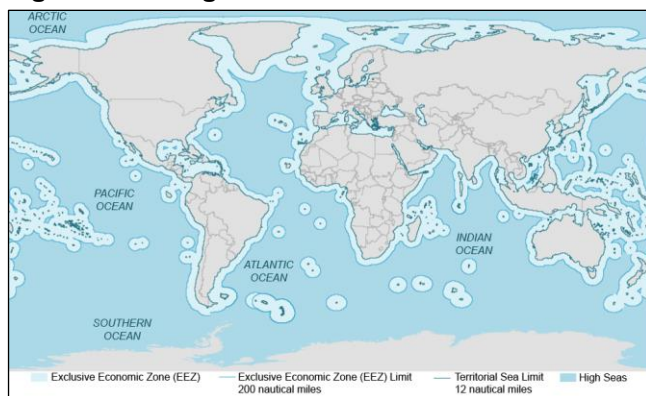
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The Biodiversity Beyond National Jurisdiction Agreement (High Seas Treaty)

On March 4, 2023, United Nations (U.N.) member countries finalized the text of an international legally binding instrument to address marine biodiversity on the *high seas* (international waters). This agreement is the first single international instrument to address biodiversity on the high seas as a whole. The instrument is commonly referred to as the *Biodiversity Beyond National Jurisdiction (BBNJ) Agreement* or the *High Seas Treaty*. The high seas comprise about 95% of the global ocean by volume (**Figure 1**) and include unique ecosystems rich in biodiversity, such as hydrothermal vents and deep-sea coral gardens.

Certain commercial activities on the high seas that may affect the marine biodiversity, such as fishing, shipping, seabed mining, and dumping, are covered by international agreements. The United States is a party to some but not all of these agreements. According to the U.S. Department of State, the high seas have only limited governance and are often unmonitored. Congress generally has expressed interest in various aspects of domestic and international marine biological conservation. Under the Constitution, the Senate provides advice and consent to ratify international agreements, including those aimed at the conservation and sustainable management of the global ocean.

Figure 1. The High Seas



Source: Illustration created by CRS using the Sovereign Limits database (sovereignlimits.com).

Notes: The figure is an illustration only and not for official purposes of identifying specific boundaries for the high seas, exclusive economic zones (EEZs), or territorial sea limits. The darker blue areas represent the high seas (i.e., areas beyond national jurisdiction), and the lighter blue areas represent EEZs, within which coastal nations have jurisdiction over both living and nonliving resources.

The BBNJ Agreement is a legally binding instrument under the 1982 U.N. Convention on the Law of the Sea (UNCLOS) and was officially proposed by the U.N. General Assembly in June 2015. The agreement is intended

to ensure conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction. The Department of State's Bureau of Oceans and International Environmental and Scientific Affairs led the U.S. delegation in the negotiation of the BBNJ Agreement. The most recent intergovernmental conference ran from February 20 to March 3, 2023; negotiations ran past the scheduled dates and concluded March 4, 2023. Delegations intend to reconvene at a later date to formally adopt the text. Should the BBNJ Agreement be adopted, the Senate may consider the advantages and disadvantages of ratifying it.

Background

UNCLOS establishes a legal regime governing activities on, over, and under the global ocean. The Senate has not ratified UNCLOS. However, members of the executive branch have stated that some portions of UNCLOS reflect customary international law. The Senate has ratified other agreements developed under the UNCLOS rubric without being a party to UNCLOS. For example, the United States is a party to the 1995 U.N. Fish Stocks Agreement, which was adopted after UNCLOS entered into force. The United States also could become a party to the BBNJ Agreement through Senate ratification without ratifying UNCLOS.

Four Themes of the BBNJ Agreement

The BBNJ Agreement has four themes:

Area-Based Management Tools. Conservation efforts for marine biodiversity on the high seas under the agreement focus primarily on establishing new marine protected areas (MPAs). MPAs are to be identified based on the best available science and, where available, relevant traditional knowledge of Indigenous peoples, among other criteria. An MPA provides protection for all or part of the natural resources within it by prohibiting or limiting certain activities that could harm its biodiversity. To date, the largest international MPA is in Antarctica's Ross Sea. It was established by the Commission for the Conservation of Antarctic Marine Living Resources, of which the United States is a member. There are also MPAs within countries' exclusive economic zones (EEZs). The National Oceanic and Atmospheric Administration (NOAA) MPA Inventory estimates nearly 1,000 U.S. MPAs cover 26% of U.S. marine waters (including the Great Lakes).

Environmental Impact Assessment (EIA). The agreement provides an EIA framework (i.e., global standard) for identifying and evaluating the potential impacts of an activity in areas beyond national jurisdiction. If a party to the agreement determines that an activity under their control may pollute or cause significant harm to the marine

environment, the party is required to conduct an EIA. Further, the agreement directs parties to communicate EIA reports to the clearing-house mechanism established by the agreement, thereby making reports publicly available.

Marine Genetic Resources (MGRs). The agreement promotes accessibility to MGRs collected in areas beyond national jurisdiction. MGRs are “any material of marine plant, animal, microbial or other origin containing functional units of heredity of actual or potential value.” For example, MGRs may be of value in developing pharmaceuticals and cosmetics. The agreement prohibits any nation from claiming or exercising sovereignty over MGRs. The agreement states that activities with MGRs and digital sequence information on MGRs are for the benefit of all humanity, with particular consideration for developing nations. Benefits derived from such activities are to be shared in a fair and equitable manner and contribute to the conservation and sustainable use of marine biodiversity. The agreement outlines that non-monetary benefits include access to samples and digital sequence information, transfer of marine technology, and data sharing, among others.

Capacity Building and Transfer of Marine Technology. The agreement requires parties to develop and implement mechanisms for capacity building, including financing research programs and dedicated initiatives, to help developing nations fulfill the obligations of the agreement. Under the agreement, capacity-building and the transfer of marine technology initiatives may include sharing data and information in user friendly formats; information dissemination, such as marine scientific research and EIAs; and developing and strengthening institutional capacity and national regulatory frameworks.

Considerations for Congress

Demand for certain marine resources, such as seafood, seabed minerals, and MGRs, is expected to grow over the next few decades. Current and emerging maritime activities intended to meet these growing demands may contribute to marine biodiversity loss. Although there are international and U.S. federal protections for threatened and endangered marine species, the protections afforded from instruments may be limited in scope or challenging to enforce. The adoption of the BBNJ Agreement may influence the regulation of certain high seas activities, management and use of marine resources, and marine conservation efforts. The Senate may consider the advantages and disadvantages of ratifying the agreement.

Policymakers reported that the most contentious aspect of the BBNJ Agreement negotiations was whether the common heritage principle (CHP) should apply to MGRs. The BBNJ Agreement text adopted the CHP. In UNCLOS, the CHP establishes that all activities occurring on the international seabed (e.g., seabed mining) must be carried out for the benefit of all humanity. In BBNJ Agreement negotiations, developing nations (i.e., G77) contended that MGRs should be considered common heritage, whereas developed nations countered that, under UNCLOS, the CHP applies only to seabed minerals. The mechanism for benefit sharing has not been determined, but it may redistribute income from wealthier member countries to

poorer ones. The inclusion of the CHP may be an issue of congressional interest, as it was in prior discussions of UNCLOS.

A goal of the BBNJ Agreement is to expand the coverage of protections for living resources. Blanket protections for the high seas could help cover geographic areas that lack conservation-focused bodies (e.g., regional fisheries management organizations) or agreements. The final BBNJ Agreement text allows existing international bodies and agreements to continue regulating high seas fisheries, shipping, and seabed mining without applying the agreement’s EIA framework. Some conservationists expressed concerns about exempting these commercial activities from this EIA framework. The Senate may consider whether the BBNJ Agreement and existing international agreements to which the United States is a party—including the 1995 U.N. Fish Stocks Agreement—would be redundant or complementary.

The BBNJ Agreement may further support protections for threatened and endangered marine species by allowing for the establishment of large-scale MPAs on the high seas; approximately less than 1% of the high seas currently are in MPAs. Newly established MPAs would contribute to the global target to protect 30% of the global ocean by 2030, for which over 100 countries, including the United States, have announced their support. Some stakeholders and countries (e.g., Russia, China) have not supported establishing certain international MPAs because some activities may be prohibited or limited within MPA boundaries (e.g., fishing). Countries may establish MPAs within their EEZs, and the United States can establish new MPAs within its EEZ without the Senate ratifying the BBNJ Agreement. Alternatively, Senate ratification of the BBNJ Agreement may be seen to demonstrate U.S. global leadership and support U.S. international commitments aimed at protecting the ocean, such as those made at Our Ocean Conferences.

Congress has supported domestic marine biological conservation efforts and directed the federal government to regulate certain marine commercial activities occurring within the U.S. EEZ that have the potential to affect marine biodiversity. Congress could continue, or may consider increasing, support for domestic marine biodiversity conservation efforts in addition to or in lieu of ratifying the BBNJ Agreement. For example, some Members in the 118th Congress expressed the need for a national strategy for protecting biodiversity (both terrestrial and marine; H.Res. 195). Congress also has directed federal agencies to monitor marine commercial activities conducted by foreign nations to help safeguard marine biodiversity (e.g., High Seas Driftnet Moratorium Protection Act; Title VI of the Fisheries Act of 1995, P.L. 104-43) and may consider whether to continue to support these initiatives or implement new ones regardless of the United States becoming a party to the BBNJ Agreement.

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