

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)

National Interest Analysis

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Frequently used Acronyms and Terms

ABMT	Area-Based Management Tool
ABNJ	Areas Beyond National Jurisdiction
ATS	Antarctic Treaty System
BBNJ Agreement	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
CBTMT	Capacity-Building and the Transfer of Marine Technology
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
COP	Conference of the Parties
DSI	Digital Sequence Information
EIA	Environmental Impact Assessment
IMO	International Maritime Organisation
ISA	International Seabed Authority
MGR	Marine Genetic Resource
MPA	Marine Protected Area
RFMO	Regional Fisheries Management Organisation
UNCLOS	United Nations Convention on the Law of the Sea

Executive Summary

1. 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* (the **BBNJ Agreement** or **the Agreement**) is an implementing agreement under the United Nations Convention on the Law of the Sea (UNCLOS), one of New Zealand's most important international agreements. It was adopted by consensus in New York in June 2023.
2. The BBNJ Agreement applies to marine Areas Beyond National Jurisdiction (ABNJ). These are the high seas (waters beyond any country's Exclusive Economic Zone) and the Area (the deep seabed beyond any country's continental shelf). These areas constitute most of the world's ocean and contain a high level of marine biodiversity. This biodiversity is crucial to a healthy and productive ocean, which underpins New Zealand's future economic prosperity and that of our region.
3. Reflective of the collective ambition of all UN Member States, the objective of the 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 [UNCLOS] and further international cooperation and coordination."¹
4. The BBNJ Agreement seeks to fill gaps in the current UNCLOS legal framework by: establishing a new regime to govern marine genetic resources (MGRs) in ABNJ; clarifying thresholds and requirements for assessing the environmental impacts of activities; and setting up a decision-making process regarding the establishment of new area-based management tools (ABMTs).
5. New Zealand actively participated in the Agreement's complex and lengthy negotiations. Becoming Party to the Agreement would support a number of significant national interests for New Zealand, including upholding the centrality of UNCLOS and strengthening its legal framework, and maintaining New Zealand's influence on oceans issues of importance to our region.
6. Due to its strong international support, the BBNJ Agreement is widely expected to enter into force in the near future. The key advantage of the Agreement's entry into force for New Zealand is our consequent ability to ensure future decisions made under the Agreement advance our national interests. This includes influencing how the relationship between the BBNJ Agreement and other oceans governance frameworks develops, importantly its interaction with regional fisheries management organisations (RFMOs) and the Antarctic Treaty System (ATS) including the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).
7. In order to fulfil some of the obligations under the BBNJ Agreement, implementing legislation will be necessary. There will also be a need to develop new regulatory tools to ensure New Zealand remains compliant with its notification, reporting and other requirements under the BBNJ Agreement. There will be some costs associated with this, but these are expected to be small given the Agreement only applies to ABNJ, i.e. areas outside of New Zealand's EEZ and continental shelf.

¹ Article 2, BBNJ Agreement.

1. Nature and Timing of the Proposed Treaty Action

8. The United Nations Intergovernmental Conference that negotiated the text of the Agreement, adopted it by consensus on 20 June 2023 at the United Nations in New York. New Zealand signed the BBNJ Agreement on 20 September 2023. Signature conveys an intent to take steps to express consent to be bound to the Agreement at a later date.
9. At the time of drafting, the BBNJ Agreement has wide global support, with 105 signatories and 13 Parties to the Agreement. The Agreement will remain open for signature until 20 September 2025. After that date, States may join by accession.
10. To become a Party to the BBNJ Agreement, States must deposit their instruments of ratification, acceptance, approval or accession with the Secretary-General of the United Nations in New York as the Treaty Depository. Ratification is the method relevant to New Zealand. New Zealand would be in a position to ratify the Agreement once implementing legislation has been passed.
11. The BBNJ Agreement will enter into force 120 days after the date of deposit of the 60th instrument of ratification.² States have begun to ratify the Agreement. Several countries are making efforts to ratify the Agreement before the UN Ocean Conference in June 2025. If a sufficient number do, it could come into force and be implemented from as early as 2026.
12. If New Zealand were to ratify after the date of entry into force of the Agreement, the Agreement would enter into force for New Zealand on the 30th day following the deposit of our instrument of ratification.

Application to Tokelau

13. The Ministry of Foreign Affairs and Trade (the Ministry) is undertaking consultation with Tokelau to determine whether New Zealand's ratification of the BBNJ Agreement should extend to Tokelau.

2. Reasons for New Zealand to become Party to the Treaty

2.1 Background to the BBNJ Agreement

14. Nearly two-thirds of the world's ocean lies outside the national jurisdiction or control of any country. Comprising the high seas and deep seabed, this expanse of ocean contains an extremely high level of marine biodiversity. Scientists estimate there are still over two million yet-to-be identified species in the high seas, and there is still much to be discovered about deep-water ecosystems.

² Article 68, BBNJ Agreement.

15. This biodiversity is crucial to a healthy and productive ocean, which is a very significant factor in human health and economic prosperity. MGRs from ABNJ (which include marine plants and animals, but exclude fisheries resources) have a wide range of potential scientific and commercial applications, including in pharmaceutical research.
16. Scientific and technological developments over recent decades have made the high seas and deep seabed, and their resources, more accessible than was imagined when UNCLOS was agreed in 1982. In recent decades, increasing pressures from human activities, plastic pollution, the impacts of climate change (such as ocean warming and ocean acidification), and overfishing and illegal, unreported and unregulated (IUU) fishing have all impacted marine biodiversity in these areas. Meanwhile, States have had limited means of cooperation to address this biological diversity loss or to sustainably manage the use of resources.
17. UN Member States decided further rules were needed to deal with marine biodiversity beyond national jurisdiction in a cooperative and coordinated way. Discussions on a new global treaty that would fill gaps in the existing UNCLOS framework began in 2006, and a UN Preparatory Committee met from 2016 to 2017 to make substantive recommendations to the UN General Assembly (UNGA) on the elements of a new treaty.
18. In December 2017, UNGA established an intergovernmental conference to negotiate the draft Agreement. New Zealand was an active participant throughout the complex and lengthy negotiations, with Cabinet agreeing three negotiating mandates in March 2016, July 2018 and August 2022. Negotiations included in depth discussions on how to ensure the Agreement would respect States' existing rights in ABNJ and the competencies of other international oceans governance bodies, such as RFMOs, the International Maritime Organisation (IMO) and the International Seabed Authority (ISA). Negotiations concluded in March 2023 after six years of negotiations. The final text of the BBNJ Agreement was formally adopted by all 193 UN Member States at the United Nations in June 2023.

2.2 What does the BBNJ Agreement set out to achieve?

19. The overall objective of the 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 [UNCLOS] and further international cooperation and coordination.”³
20. As the third implementing agreement under UNCLOS,⁴ the BBNJ Agreement seeks to further implement and strengthen the UNCLOS framework, including its central obligation to protect and

³ Article 2, BBNJ Agreement.

⁴ Following the 1994 *Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982* (the 1994 Agreement) and the 1995 *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (the UN Fish Stocks Agreement).

preserve the marine environment, through filling important governance gaps relating to activities in ABNJ. Years of complex international discussions yielded the four substantive parts that form the backbone of the Agreement. These are:

- **Marine Genetic Resources and their associated digital sequence information (DSI):** the BBNJ Agreement establishes a new regime to govern the access, collection and utilisation of MGRs from ABNJ;
- **Area-based Management Tools:** the Agreement provides new processes and rules for States to agree to the creation of area-based management tools, such as high seas marine protected areas (MPAs);
- **Environmental Impact Assessments (EIAs):** the Agreement clarifies and improves existing rules under UNCLOS related to environmental impact assessments for activities on the high seas;
- **Capacity-Building and the Transfer of Marine Technology (CBTMT):** the Agreement promotes further cooperation and capacity-building related to the conservation and sustainable use of marine biodiversity and resources, with a focus on developing countries.

21. These areas strike a careful balance between a wide range of ambitions of both developed and developing States, including those seeking a more resource-oriented regime and those seeking a more conservation-oriented regime.

22. New Zealand has a strong interest in the success of the BBNJ Agreement in strengthening international cooperation in these areas. Becoming a Party to the Agreement, and supporting its timely entry into force globally, would support a number of significant strategic, legal, economic and environmental interests for New Zealand, including:

- upholding the centrality of UNCLOS and strengthening its governance framework;
- maintaining influence on oceans issues of importance to our region and the international rules based order;
- contributing to global efforts to protect vital marine biodiversity; and
- promoting greater cooperation in global marine science, research and innovation.

23. Each of these significant national interests is discussed below.

2.3 Upholding the centrality of UNCLOS and strengthening its governance framework

24. UNCLOS is the constitution for the world's ocean and one of the most significant international treaties for New Zealand. It establishes the basis for maritime zones (including the Exclusive Economic Zone (EEZ)), recognises States' sovereign rights (including rights to exercise jurisdiction over natural resources in their EEZ), and codifies the international rules on the use of the high seas that underpin maritime trade (such as the freedom of navigation).

25. This governance framework guarantees New Zealand's large maritime domain and rights to an extended continental shelf, secures our sovereign rights to resources within our jurisdiction, and supports 99 per cent of New Zealand's goods exports. New Zealand has strong interests in ensuring that the UNCLOS framework remains effective, and that future international activity in ABNJ related to biodiversity takes place under its purview.
26. The successful achievement of the Agreement's objective of enhancing international cooperation and coordination will demonstrate the continued efficacy and importance of the UNCLOS framework as a whole. In particular, by establishing new rules around unregulated activities that affect biodiversity in ABNJ (such as bioprospecting), the BBNJ Agreement enables the effective implementation of UNCLOS's vision for an 'equitable and efficient' utilisation of resources.⁵
27. Becoming a Party to the Agreement, and supporting its implementation, would positively reaffirm New Zealand's long-standing role as a defender of UNCLOS and would help to reinforce UNCLOS as the governance framework in which all activities in the oceans and seas take place.

2.4 Maintaining influence on oceans issues of importance to our region and the international rules-based order

28. The multilateral rules-based system remains crucial to New Zealand's security, prosperity, and sustainability, providing New Zealand with a voice and ability to influence global issues. The system is facing significant challenges adapting to a more divided and multipolar world. Set against that backdrop, the consensus adoption of the BBNJ Agreement is a powerful demonstration of the multilateral system's ability to continue to deliver real outcomes to manage global resources. It also signifies the degree of accord among the international community that the BBNJ Agreement represents the path forward for high seas oceans governance under UNCLOS.
29. There remains strong support for the BBNJ Agreement globally. At the time of drafting, 13 States have ratified the Agreement (including Palau, Singapore and Chile) and 105 States have signed, including Canada, the United Kingdom, the United States of America, India, Indonesia, Philippines, Viet Nam, Australia and the majority of Pacific Islands Forum (PIF) members. Should New Zealand ratify, this would likely place us squarely in the company of like-minded countries and would affirm our shared interests and priorities in relation to the high seas and deep seabed. It would also demonstrate New Zealand's commitment to – and leadership on – effective international oceans governance to key and emerging partners across the Indo-Pacific.
30. PIF members are strong proponents of the BBNJ Agreement, as a healthy and productive ocean is central to the well-being and economic growth of the vast 'Blue Continent'. Successful conservation of marine biodiversity in ABNJ is expected to increase the resilience of the ocean to climate change impacts that threaten the livelihoods of many Pacific communities, such as sea-level rise. PIF leaders encouraged signature and ratification in their November 2023 Communiqué.

⁵ UNCLOS, Preamble.

The PIF Secretariat's Office of the Pacific Ocean Commissioner is currently working with the UN to support implementation of the Agreement in the Pacific.⁶

31. When in force, the Agreement will provide Pacific States Parties with a forum to influence an international governance framework for ABNJ that aligns with their individual interests and the interests of the region. This is particularly important in relation to how the Agreement interacts with RMFOs and contributes to the sustainable management of fish stocks, especially as the impacts of climate change are projected to drive fisheries from Pacific EEZs into the high seas. As a Party, New Zealand could support, and advocate for, the unique interests of the region within international fora to be established under the Agreement. Alongside Australia, we could also play a key role in supporting implementation in the Pacific. This supports the Coalition Government's policy of sustaining our Pacific focus and our long-standing commitment to a sustainable, resilient and prosperous region.
32. Lastly, becoming Party to the BBNJ Agreement early would be consistent with the active role New Zealand played during its negotiations. This included strongly advocating, alongside like-minded States, for the Agreement to respect and not undermine the roles and responsibilities of existing institutions, frameworks and other bodies that play roles in the management of marine biodiversity in ABNJ. In addition, it would be in line with our current active participation in international oceans management bodies, where New Zealand benefits from the ability these processes give New Zealand to influence activities in ABNJ.

2.5 Contributing to global efforts to protect vital marine biodiversity

33. The high seas and deep seabed beyond national jurisdiction are home to a diverse range of ecological processes, from large migrations of highly-migratory species to stable deep-sea ecosystems. While understanding of high seas and deep-sea ecosystems currently trails behind that of terrestrial and coastal systems, it is widely accepted that they are of major significance for supporting climate regulation and the long-term viability of high seas fish stocks. This biodiversity underpins the ecosystem services on which all life on Earth depends and accordingly underpins New Zealand's – and the world's – future food security and economic prosperity.
34. The BBNJ Agreement provides States with the tools to establish ecologically-representative and well-connected networks of marine protected areas, address new and emerging impacts of human activity on marine biodiversity, and strengthen international coordination around the conservation and sustainable use of marine biodiversity. New institutional architecture under the Agreement, in particular the work of the subsidiary bodies in guiding its implementation, is widely expected to raise environmental protection standards, and promote principles such as the use of best available science, across the plethora of existing bodies under the UNCLOS framework.⁷

⁶ In January 2024, Palau became the first country in the world to ratify the Agreement. The Federated States of Micronesia also ratified in June 2024.

⁷ Subsidiary bodies established under the Agreement will be required to cooperate and coordinate with existing bodies and frameworks, including with regards to the sharing of information and in making non-

35. The Agreement also requires States Parties to be guided by certain key principles in international environmental law to achieve its objectives, including the polluter-pays principle, the precautionary approach, the avoidance of transboundary harm, taking an ecosystem approach, and using the best available science, as well as requiring States to take an approach that builds ecosystem resilience and maintains and restores ecosystem integrity in the context of climate change.⁸
36. By becoming Party to the Agreement, New Zealand would contribute to the global response to declining marine biodiversity. It would also align with New Zealand's efforts to protect biodiversity and the natural environment.

2.6 Promoting greater cooperation in global marine science, research and innovation

37. In line with its overarching objective of ensuring conservation and sustainable use of marine biological diversity, the BBNJ Agreement includes a strong focus on promoting international cooperation in marine research with regards to ABNJ and its resources and the transfer of relevant marine technology.⁹ Successful implementation of the BBNJ Agreement would enable greater North-South and South-South research collaboration,¹⁰ generate new data sets accessible by researchers worldwide within a centralised, open-access platform, and provide for the establishment of new funding mechanisms for international research related to ABNJ.
38. New Zealand has an interest in ensuring that research and innovation related to MGRs and their associated DSI from the high seas and deep seabed occurs sustainably, transparently and under the auspices of UNCLOS. The Agreement seeks to promote transparency around international research and biodiscovery activities in the high seas – the high costs of which currently present a barrier to access for many States, including New Zealand. Becoming Party to the Agreement would support the establishment of new mechanisms to facilitate greater scientific cooperation and access to information regarding MGRs, including their role in marine ecosystems.
39. Becoming Party to the Agreement may also enable New Zealand's comparatively modest, though growing, marine research and biotechnology sectors to cooperate and form partnerships with those of other Parties. This may open up new avenues for New Zealand to participate in research collaborations, including with institutions in the Pacific and in South-East Asia, where we can demonstrate our unique value proposition in marine research.

binding recommendations (for example, in relation to proposals for new marine protected areas): Article 5(2); Article 47(6)(c), BBNJ Agreement.

⁸ Article 7(h), *ibid*.

⁹ Article 9, BBNJ Agreement. One of the objectives of the Agreement's chapter on MGRs is the "generation of knowledge, scientific understanding and technological innovation, including through the development and conduct of marine scientific research as fundamental contributions to the implementation of this Agreement".

¹⁰ Article 40, *ibid*. The Agreement's provisions on CBTMT are intended to "develop the marine scientific and technological capacity, including with respect to research, of Parties, in particular developing States Parties".

3. Advantages and Disadvantages to New Zealand of the Treaty Entering into Force and Not Entering into Force for New Zealand

40. This section outlines the advantages and disadvantages to New Zealand of the BBNJ Agreement entering into force for New Zealand.

41. While conferring significant advantages for New Zealand, there are very few disadvantages in becoming a Party to the Agreement.

3.1 Advantages of the Agreement entering into force for New Zealand

42. Due to strong international support (having been adopted by consensus), the Agreement is widely expected to enter into force for States that have ratified or acceded to it from as early as 2026.

43. Regardless of whether New Zealand is a Party to the BBNJ Agreement, regional and sectoral bodies (such as RFMOs, the IMO, and the ISA) that New Zealand is party to will interact with, and likely receive recommendations from, the BBNJ Agreement's Conference of the Parties (COP). The Agreement entering into force for New Zealand would confer rights on New Zealand to fully participate in decision-making mechanisms under the Agreement.¹¹ This has the key advantage of giving New Zealand a 'seat at the table' to influence how the Agreement is implemented, and how the relationship between the BBNJ Agreement and other frameworks and bodies develops. Importantly, this includes its interaction with RFMOs, the IMO, the ISA, and the Antarctic Treaty System (ATS), including the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). Practically, this could entail:

- Working with other Parties to help shape new ABMT proposals related to the high seas, ensuring they are fit for purpose, in accordance with UNCLOS, and support New Zealand's national interests – including our interest in sustainable fisheries resources; and
- Seeking to ensure that decisions and recommendations by the COP respect the competency of the ATS as the primary framework for international management of the Antarctic, including the conservation of marine biodiversity.

44. **These advantages would be fully realised by early ratification of the Agreement.** This would give New Zealand a voting presence at the first COP, where important early decisions regarding the implementation of the Agreement will be taken. It would allow us to ensure the development of rules of procedure, and other institutional arrangements, align with the Agreement's intended purpose under UNCLOS, New Zealand's interests and the interests of our Pacific neighbours.

45. Ratification of the Agreement would also be a strong demonstration of New Zealand's ongoing commitment to UNCLOS and to being part of the global response to declining marine biodiversity

¹¹ Article 47(6)(a), BBNJ Agreement. This includes the ability to vote on decisions and recommendations made by the COP regarding the implementation of the Agreement.

in ABNJ. This has the advantage of protecting a number of strategic national interests for New Zealand, as outlined in Section 2 above.

3.2 Disadvantages of the Agreement entering into force for New Zealand

46. There are very few disadvantages for New Zealand in becoming a Party to the BBNJ Agreement, and those relate only to the costs to New Zealand of meeting its obligations. These are described further at Section 7 of this Analysis. In brief, they are: contributing to financing institutions established under the Agreement and resourcing New Zealand's participation; a mandatory annual fee for capacity-building linked to the purposes of the Agreement; and the costs of establishing new regulatory tools to implement the Agreement's MGR, EIA and ABMT requirements. It is expected that domestic implementation costs can be kept minimal and financed from agencies' baselines.

3.3 Overall Assessment

47. It is to New Zealand's advantage that the Agreement enter into force for New Zealand. It would place New Zealand 'inside the tent', alongside our traditional and regional partners, including from the Pacific, and ensure New Zealand has an opportunity to influence the implementation of the Agreement. Early ratification and participation would present the greatest opportunity to shape modalities and processes yet to be defined in a way that further benefits New Zealand's interests.
48. These advantages strongly outweigh the disadvantages related to cost, which are expected to be minimal (discussed further at Section 7). Conversely, should the Agreement enter into force without New Zealand, this is likely to damage significant New Zealand national interests (as described at Section 2).

4. Legal Obligations which would be imposed on New Zealand by the Treaty Action, the Position in Respect of Reservations to the Treaty, and an Outline of any Dispute Settlement Mechanisms

49. This section describes the obligations which New Zealand would accept under the Agreement, including the position on reservations and dispute settlement, and related anticipated measures that New Zealand would take in conjunction with its obligations.

50. Once in force, the BBNJ Agreement requires Parties to:

- **cooperate** to achieve the objectives of the Agreement, including through capacity-building, benefit-sharing, and participating in mechanisms established under the Agreement;
- **notify and report** their activities to relevant bodies to be established under the Agreement; and
- **monitor and regulate** activities by New Zealanders and New Zealand companies in ABNJ.

51. Should New Zealand ratify the Agreement, those obligations requiring New Zealand to regulate and monitor activities by New Zealanders and New Zealand companies in ABNJ will need implementing legislation. Many of the other obligations provide a wide degree of discretion in how they are fulfilled.

4.1 Obligations related to Marine Genetic Resources

Part II sets out new rules for access to, and benefit-sharing from, marine genetic resources collected from areas beyond national jurisdiction. These rules would not apply to fishing or research conducted for the purposes of fisheries management.¹²

52. The Agreement's MGR provisions apply to activities "with respect to marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction."¹³ Article 11 contains a general obligation that MGR-related activities (such as bioprospecting) are carried out for "peaceful purposes" only.

53. The Agreement defines "marine genetic resources" as "any material of marine plant, animal, microbial or other origin containing functional units of heredity of actual or potential value".¹⁴ Digital sequence information is not defined in the BBNJ Agreement. This is because discussions on this definition are the subject of ongoing international negotiations under the Convention on Biological Diversity. It is up to individual parties to define this term, if necessary.

¹² Article 10(2)(a), BBNJ Agreement, captures "fishing regulated under relevant international law and fishing-related activities". Fishing-related activities are not defined within the Agreement.

¹³ Article 10(1), *ibid.* (Emphasis added.)

¹⁴ Article 1(8), *ibid.*

54. MGR provisions do not apply to fishing or research conducted for the purposes of fisheries management.¹⁵ They relate only to resources that have been collected in areas beyond national jurisdiction. They do not apply to marine species or genetic resources that are collected within New Zealand's EEZ, continental shelf, territorial sea or internal waters, even if they are the same resources. They also do not apply to military activities, including by government vessels or aircraft.¹⁶
55. The Agreement's provisions also only apply to activities with respect to MGRs and DSI generated after the entry into force of the Agreement for New Zealand. States that are party to the Agreement are allowed to make an exception to ensure the obligations pertaining to utilisation of MGRs and DSI do not extend to MGRs and DSI in ABNJ collected or generated before entry into force of the Agreement. The intention would be for New Zealand to make this exception so as not to capture MGRs and DSI that are already in collections (for example, physical collections and databases under New Zealand's Nationally Significant Collections and Databases, funded by the Ministry of Business, Innovation and Employment).

4.1.1 Collecting MGRs in ABNJ

56. New Zealand would be required to take measures to ensure that information about the *in situ* collection of MGRs from ABNJ by New Zealanders and New Zealand companies is notified to a Clearing House Mechanism (CHM) to be established under the Agreement.¹⁷ This includes:
- information about proposed activity (including the subject matter of research, location and dates) provided to the CHM at least six months in advance or as early as possible; and
 - information about the MGRs post-collection (including their storage location) provided to the CHM no later than one year after collection.
57. This would include instances, for example, where a New Zealand research vessel is planning a Marine Scientific Research voyage which includes the collection of MGRs from the high seas (and could also include planned collection of seawater samples from the high seas).

4.1.2 Utilising MGRs from ABNJ, including for commercial purposes

58. "Utilisation of marine genetic resources" means to conduct research and development on the genetic and/or biochemical composition of MGRs, including through the application of biotechnology.¹⁸ This could include, for example, research being conducted by a New Zealand Crown Research Institute into the bio-medical applications of marine living resources collected from ABNJ.

¹⁵ Article 10(2), BBNJ Agreement. See footnote 11.

¹⁶ Article 10(3), *ibid.*

¹⁷ "Collection in situ" means the collection or sampling of marine genetic resources in areas beyond national jurisdiction.

¹⁸ Article 1(14), BBNJ Agreement.

59. New Zealand would be obligated to ensure that information about the utilisation of MGRs by New Zealanders and New Zealand companies is notified to the CHM (including patents to the extent possible, location of original samples, data management plan, and available information on sales and product development if marketed).¹⁹ New Zealand would also be required to ensure MGRs from ABNJ samples and related DSI are identified and lodged with an appropriate repository or database that is publicly accessible.²⁰

4.1.3 Physically storing and/or holding information about MGRs and DSI in New Zealand

60. Repositories and databases located in New Zealand that contain MGRs from ABNJ and associated material would be required to store the material so that it can be identified, and to report on how material and associated DSI can be accessed.²¹ The BBNJ Agreement does not require the Government to establish or maintain a repository or database itself – the obligations apply only to any repositories or databases that may exist currently or are established in the future.

4.1.4 Benefit-sharing

61. Articles 14 and 15 create obligations to share monetary benefits and non-monetary benefits (e.g. access to data, capacity-building, technical and scientific cooperation) from the utilisation of MGRs and DSI from ABNJ. Benefit-sharing will initially be implemented via an additional fixed subscription fee rather than linked to actual utilisation of MGRs from ABNJ.

62. After the entry into force of the BBNJ Agreement, the COP is mandated to develop a mechanism for sharing monetary benefits from the utilisation of MGRs and DSI from ABNJ (provided there is sufficient support from Parties to the Agreement). Other benefit-sharing modalities could include milestone payments; payment of percentage of revenue from sale products; a tiered fee based on aggregate levels of Parties' activities; or any other form. If a new modality is decided by the COP, New Zealand will have four years to implement it.

4.1.5 Access to traditional knowledge associated with MGRs from ABNJ

63. Article 13 contains an obligation to take measures aimed at ensuring that traditional knowledge associated with MGRs in ABNJ held by indigenous peoples is accessed with the full, prior and informed consent, or approval and involvement, of the holders of such knowledge.²² It is anticipated that traditional knowledge held by Māori that falls within the scope of this provision will be limited, given the Agreement is only focused on MGRs from ABNJ. The Ministry of Foreign Affairs and Trade will work in close consultation with Māori to determine the scope and application of this provision within New Zealand.

¹⁹ Article 12(8), BBNJ Agreement

²⁰ Article 14(3), *ibid.*

²¹ Articles 12(6) and 12(7), *ibid.*

²² Article 13, *ibid.*

4.2 Obligations related to Area-Based Management Tools

Part III sets out a process for Parties to the Agreement to cooperate and adopt new ABMTs for the protection of the marine environment, including MPAs, while not undermining the competence of other institutions, frameworks, or bodies (including RFMOs). The power to establish new ABMTs under the Agreement lies with the COP.

64. Article 25 places an obligation on Parties to ensure that activities under their jurisdiction or control that take place in ABNJ are conducted consistently with decisions adopted under Part III.²³ The Scientific and Technical Body established under the COP will monitor and periodically review ABMTs established under the Agreement.
65. The creation of new ABMTs under the Agreement will not automatically affect activities that are regulated under the competence of other institutions, frameworks, or bodies, including RFMOs. The Agreement is required to respect the competences of, and not undermine, these organisations and other existing governance bodies.²⁴ Where another body has competence, the COP is limited to recommending measures.²⁵ Effective implementation of the Agreement is premised on cooperation and dialogue being established between such bodies and the COP. Parties are required to promote, as appropriate, the adoption of measures within other existing governance bodies of which they are members and to support the implementation of decisions and recommendations made by the COP.²⁶
66. A three-quarters majority is required for a COP decision, and Parties to the Agreement may object to ABMT decisions by the COP on particular grounds, in which case the ABMT in question will not be binding on that Party. Objection procedures are tightly constrained. They require an explanation by the Party for the objection, and the Party is obliged to adopt alternative measures or approaches that are equivalent in effect to the ABMT objected to.
67. The Agreement also includes a provision enabling the establishment of emergency measures where there are serious threats to marine biodiversity that cannot be managed in a timely manner through the application of other provisions of the Agreement or by other relevant legal instrument, framework or body.

4.3 Obligations related to Environmental Impact Assessments

Part IV establishes processes for how Parties are to implement the existing UNCLOS obligation to conduct environmental impact assessments for planned activities that meet a threshold of potential harm in areas beyond national jurisdiction, or activities within national jurisdiction that may impact the marine environment in ABNJ. It also sets out a process for screening activities to determine whether an EIA is required.

²³ Article 25(1), BBNJ Agreement.

²⁴ Article 22(2), *ibid.*

²⁵ Article 22(1)(c), *ibid.*

²⁶ Article 25(4), *ibid.*

68. Part IV of the Agreement aims to operationalise existing UNCLOS EIA provisions and achieve a coherent EIA framework for activities in areas beyond national jurisdiction.²⁷ Under Article 28(1), New Zealand would be obligated to ensure that the potential impacts on the marine environment of planned activities by New Zealanders and New Zealand companies in ABNJ that meet particular thresholds are assessed before those activities proceed.²⁸
69. The provisions of this Part would require New Zealand to ensure an initial screening of activities in ABNJ by New Zealanders and New Zealand companies that may have “more than a minor or transitory effect on the marine environment”, and an EIA for activities that may cause “substantial pollution of or significant and harmful changes to the marine environment”.²⁹ They would also place an obligation on New Zealand to ensure an EIA is conducted for activities within New Zealand’s jurisdiction, where the government has determined that they may cause substantial pollution of or significant and harmful changes to the marine environment of ABNJ.³⁰ The obligation to conduct an EIA for activities that meet this threshold already exists under UNCLOS.
70. Provisions of Part IV would apply to New Zealanders and New Zealand companies planning activities in ABNJ over which New Zealand has jurisdiction or control (regardless of whether they are operating New Zealand flag state vessels).³¹ This is designed to discourage ‘forum shopping’ by actors seeking to utilise flags of convenience to avoid obligations under the Agreement.
71. An EIA is not required, however, for activities in ABNJ if the New Zealand Government determines that the potential impacts of the activity or category of activity have been assessed under another body (such as an RFMO) and the regulations or standards of that body are complied with and were designed to prevent substantial pollution of or significant and harmful changes to the marine environment.³²
72. The Agreement outlines the steps, procedural requirements, and types of information required for conducting an EIA and producing an EIA report for EIAs under Part IV.³³ The New Zealand Government would be responsible for determining whether a planned activity in areas beyond national jurisdiction that are under its jurisdiction and control may proceed, and could only do so when, taking into account mitigation or management measures, it determines it has made all reasonable efforts to ensure the activity can be conducted in a manner consistent with the prevention of significant adverse impacts on the marine environment.

²⁷ Article 27, BBNJ Agreement.

²⁸ Article 28(1), *ibid.*

²⁹ Article 30(1), *ibid.*

³⁰ Article 28(2), *ibid.*

³¹ As above.

³² Article 29(4), BBNJ Agreement.

³³ Articles 31-33, *ibid.*

4.4 Obligations related to Capacity-Building and the Transfer of Marine Technology

Part V creates obligations for Parties in relation to capacity-building and the transfer of marine technology. These include obligations to provide resources to support capacity-building and to cooperate to achieve the transfer of marine technology.

73. Article 41(1) requires Parties to the Agreement to cooperate to assist developing Parties, in achieving the objectives of this Agreement, through “capacity-building and development and transfer of marine science and marine technology”. This would require New Zealand to provide, within its capabilities, resources to support capacity-building and development and transfer of marine technology for developing Parties.³⁴ New Zealand would have wide discretion in choosing how to fulfil this obligation.

74. Under Article 42(3), capacity-building programmes and transfer of marine technology “should be country driven, transparent, effective and iterative process” and that it should “build upon and not duplicate existing programmes”.

4.5 Obligations related to Cooperation and ‘Cross-cutting’ provisions

Parts I, VI, VII, VIII, IX, X, XI and XII set out general, institutional, dispute settlement, and associated provisions. These parts require New Zealand to cooperate with other Parties to achieve the objectives of the Agreement and provide ongoing financial contributions and reporting to relevant BBNJ Agreement treaty bodies.

75. The Agreement contains standard “cross-cutting” provisions (such as the preamble, objective and principles, international cooperation, institutional arrangements, review procedures, funding, and implementation and compliance mechanisms). The Agreement provides for a standalone secretariat, decision-making procedures that include voting, and compulsory binding dispute settlement. The Agreement also establishes the following institutional mechanisms:

- The **Conference of the Parties**, the main decision-making body, which is required to make every effort to adopt decisions and recommendations by consensus;³⁵
- The **Scientific and Technical Body** (STB) under the authority of the COP. This will provide scientific, technical and other relevant expertise to the COP, and may draw on “appropriate advice emanating from relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies, as well as from other scientists and experts”;³⁶

³⁴ Article 42, BBNJ Agreement.

³⁵ Article 47(5), *ibid*: If all efforts to reach consensus have been exhausted, the COP may adopt decisions and recommendations on questions of substance by a two-thirds majority vote, and questions of procedure by a majority vote.

³⁶ Article 49(3), *ibid*.

- A **Clearing House Mechanism** (CHM). This will consist of an open-access, centralised platform that will provide and disseminate information on the four substantive elements of the BBNJ Agreement; and
- Various **subject matter committees** mandated to provide guidance on the implementation of different aspects of the Agreement, including access and benefit-sharing, implementation and compliance, and financial mechanisms.

76. As a Party, New Zealand would be required to promote the Agreement’s objectives of cooperation and transparency.³⁷ This would require, at a minimum, ongoing participation by New Zealand in the Agreement’s COP, which would be held at a frequency to be established at the first COP. New Zealand would be required to report to the COP on the implementation of its obligations, in order to support the Agreement’s underlying objective of promoting transparency.³⁸

77. New Zealand would also be required to “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” (e.g. RFMOs) to ensure coherence across the oceans governance framework.³⁹

4.6 Reservations

78. No reservations may be made to the Agreement unless expressly permitted under other Articles within the Agreement.⁴⁰ Parties have the ability under Article 10(1) of the Agreement to exclude the application of the Agreement to MGRs collected before the Agreement enters into force, by making an exception in writing when ratifying the Agreement.

4.7 Dispute Settlement Mechanisms

79. Part IX of the BBNJ Agreement outlines the procedures and expectations around the settlement of disputes. The Agreement has a robust dispute settlement system, similar to that which already exists under UNCLOS. Parties are obligated to cooperate to prevent disputes⁴¹ and to settle disputes by peaceful means, including “negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice”.⁴²

80. Technical disputes can be dealt with by Parties establishing an ad hoc expert panel.⁴³ The panel shall endeavour to resolve the dispute expeditiously and without recourse to binding procedures established by Article 60. Article 60 provides for the settlement of disputes concerning the

³⁷ Article 8, *ibid.*

³⁸ Article 48, Article 54, BBNJ Agreement.

³⁹ Article 8, *ibid.*

⁴⁰ Article 70, *ibid.*

⁴¹ Article 56, *ibid.*

⁴² Article 57, *ibid.*

⁴³ Article 59, *ibid.*

interpretation or application of the BBNJ Agreement and adopts the dispute settlement process under UNCLOS Part XV in full.⁴⁴ UNCLOS Part XV provides that States can choose one or more of the following means for settling disputes:

- the International Tribunal for the Law of the Sea (ITLOS) in Hamburg, Germany;
- the International Court of Justice in The Hague, The Netherlands;
- ad hoc arbitration (in accordance with Annex VII of UNCLOS); or
- a “special arbitral tribunal” constituted for certain categories of disputes (established under Annex VIII of UNCLOS).

81. An ad hoc arbitral tribunal is the default if a Party to a dispute under the Agreement is not also a Party to UNCLOS and if no preference is expressed⁴⁵. The Agreement also provides for the COP to request an advisory opinion from ITLOS on a “legal question on the conformity with [the BBNJ Agreement] of any proposal before the COP on any matter within its competence”.⁴⁶ However, a request for an advisory opinion shall not be sought on matters within the competencies of other bodies.⁴⁷

⁴⁴ Note that UNCLOS Part XV applies to BBNJ Agreement disputes, even where a state is not party to UNCLOS (refer art 60(2) BBNJ Agreement).

⁴⁵ Article 60(5)(c)), BBNJ Agreement.

⁴⁶ Article 47(7), *ibid*.

⁴⁷ As above.

5. Measures which the Government could or should adopt to Implement the Treaty Action, the Intentions of the Government in Relation to such Measures, including Legislation

82. New Zealand will need to pass implementing legislation to be in a position to meet some of the obligations that would apply to New Zealand through ratification of the BBNJ Agreement. New Zealand will also need to take policy and administrative measures to implement monitoring, reporting, cooperation and capacity-building obligations.

83. It is envisaged that the approach to implementation could be light touch and would make use of existing regulatory mechanisms where possible. The overarching policy objectives of domestic implementation would be to design a system that is:

- **Proportionate** to the actual level of activity that is – or is likely to be – requiring regulation (e.g. the number of New Zealand-regulated entities in respect of MGRs is likely to be few);
- **Complementary** to, rather than duplicative of, existing powers to regulate activities in areas beyond national jurisdiction;
- **Enabling** of future activity and innovation by New Zealanders and New Zealand entities; and
- **Flexible** to keep domestic policy options to develop further regulations suitable for New Zealand (for example for marine bioprospecting or to meet benefit-sharing obligations in the future).

84. This section broadly outlines New Zealand's existing regulatory powers related to activities in ABNJ, the gaps currently identified, and a proposed approach to implementation of the Agreement – including through legislative amendments.

5.1 New Zealand's existing regulatory framework for activities in marine areas beyond national jurisdiction

85. The existing legislative framework in New Zealand applying to activities in ABNJ includes the *Antarctica (Environmental Protection) Act 1996*; *Continental Shelf Act 1964*; *EEZ and Continental Shelf (Environmental Effects) Act 2012*; *Antarctic Marine Living Resources Act 1981*; *United Nations Convention on the Law of the Sea Act 1996* (the *UNCLOS Act 1996*); *Fisheries Act 1996*; *Maritime Transport Act 1994* and *Submarine Cables and Pipelines Protection Act 1996*; and the secondary legislation (regulations and rules) made under these Acts.

86. Under these Acts, New Zealand can regulate mineral resource activities and the environmental impacts of shipping and fishing activities in ABNJ.⁴⁸ It can also regulate the environmental aspects

⁴⁸ *Continental Shelf Act 1964* ss 4 -5; *EEZ and Continental Shelf (Environmental Effects) Act 2012*, s 20; *United Nations Convention on the Law of the Sea Act 1996* ss 6 – 8; *Fisheries Act 1996* s 113D; *Maritime Transport Act 1994* s 368(1)(a) (Minister may make Marine Protection Rules “to implement New Zealand’s obligations under any marine protection convention”. “Marine protection convention” would include the BBNJ Agreement).

of activities being carried out in Antarctic waters.⁴⁹ However, there is currently no general ability to regulate other activities – such as marine scientific research, collection of MGRs, removal of non-mineral material from the seafloor, or the construction or removal of structures, cables or pipelines, in ABNJ.

87. Specifically, there is no power to ensure New Zealanders and New Zealand companies collecting MGRs from ABNJ provide the necessary international notifications both before and after collection, or that repositories and databases located in New Zealand containing MGR and associated material meet the requirements for storage and reporting. There is also no power to monitor and provide the required information in respect of the utilisation of MGRs from ABNJ in New Zealand.

88. Moreover, the Government currently has no power to ensure that New Zealanders, or New Zealand companies, that seek to carry out activities in ABNJ (other than shipping or fishing by a New Zealand vessel) comply with any ABMT adopted under the BBNJ Agreement.

5.2 Key regulatory gaps and implementation measures

89. In order to comply with the BBNJ Agreement, New Zealand would need to:

- Implement necessary legislative changes through amendments to the UNCLOS Act 1996, with consequential amendments to other relevant legislation;
- Designate an agency or agencies with operational responsibility for the oversight of the notification processes and the preparation and submission of reports (as described in above Section 4.5);⁵⁰
- Develop an administrative process to ensure notifications and reports are submitted as required; and
- Identify and consider practical opportunities to provide capacity-building and benefit-sharing opportunities. This is expected to involve provision of financial assistance under New Zealand's International Development Cooperation programme.

90. Implementing legislation would have two purposes:

- An immediate purpose to ensure that New Zealand is able to comply with its international obligations under the Agreement, and
- An underlying purpose to provide for the conservation and sustainable use of the marine biodiversity of areas beyond national jurisdiction.

⁴⁹ *Antarctica (Environmental Protection) Act 1996*, s 10. Under this section, the Minister may issue directions or impose conditions on any person carrying out an activity in Antarctica. Minister's power is limited for the purposes of environmental protection. Power could be used to issue directions to comply with BBNJ Agreement ABMT requirements, where these have been adopted for environmental protection purposes.

⁵⁰ Articles 48 and 54, BBNJ Agreement.

91. Legislative changes would need delegated authority to develop subsequent, more detailed secondary legislation in the form of regulations or rules. Secondary legislation could provide for the compulsory certification and reporting requirements, i.e. requiring regulated persons to certify that certain steps have been taken or to monitor the environmental impacts of their activities (where appropriate) and provide reports to the Ministry (in many cases, the Government will be reliant on information from private actors in order to compile the necessary information for notification or reporting).
92. The current gaps in New Zealand's framework likely to require regulation-making power relate to the access, collection, utilisation and storage of MGRs; regulating EIA requirements for activities in ABNJ where these apply; and regulating activities where an ABMT applies outside of the mandate of an existing RFMO or other sectoral body to which New Zealand is Party. Of these, legislative measures to implement EIA and ABMT requirements are likely to require consequential amendments to existing legislation.
93. Considering the above, it is proposed that a simple, permissive regime – where activities are permitted so long as they comply with the requirements and conditions set out in legislation – is appropriate. This approach would allow for regulatory requirements to be narrowly tailored to the specific obligations of the Agreement. This would avoid unnecessary regulatory barriers for activities and allow for future innovation, similar to approaches adopted under the *EEZ and Continental Shelf (Environmental Effects – Permitted Activities) Regulations 2013*.
94. Policy measures will be required for implementation of Article 13, which is limited in scope to traditional knowledge associated with MGRs from ABNJ. New Zealand does not currently have a specific domestic regime for traditional knowledge associated with genetic resources sourced from within New Zealand's jurisdiction that could also apply to traditional knowledge associated with MGRs from ABNJ. It is therefore considered that the appropriate measures for implementation of Article 13 will be non-legislative policy measures which do not prejudice any future consideration of such a regime.

5.3 Next Steps

95. Cabinet has given approval to place a new bill on the 2024 Legislation Programme. Preparation of this Bill will be carried out in accordance with the standard requirements set out in the Cabinet Manual. Continued consultation on measures to implement the Agreement will occur – including with Māori, the New Zealand research sector, and other interested stakeholders.
96. Entry into force of any amendments to primary enactments or new legislation would be coordinated with the entry into force of the BBNJ Agreement for New Zealand – ensuring that it does not take effect until it is legally required.

6. Economic, Social, Cultural and Environmental Costs and Effects of the Treaty Action

6.1 Economic Costs and Effects

97. The Treaty Action is expected to have long term positive economic effects for New Zealand. The health of the marine environment beyond New Zealand's jurisdiction is integral to the sustainability of fisheries resources both within and beyond our jurisdiction. The successful implementation of the Agreement will support the ongoing sustainability of high seas fisheries and the significant economic benefits they provide for New Zealand.
98. As the BBNJ Agreement only applies to areas beyond New Zealand's jurisdiction, where there are limited activities by New Zealanders or New Zealand companies, the impacts on and costs to domestic industry are expected to be limited. The primary economic benefit to New Zealand of activities currently taking place in ABNJ by New Zealanders or New Zealand vessels is from high seas fishing activities. Fishing activities, and other sectoral activities such as shipping, are regulated by existing instruments, frameworks and bodies. As the Agreement is required to respect the competences of, and not undermine these bodies, it is not expected to have a major economic impact on these activities.
99. While there is a possibility that new ABMTs could impact or reduce future activities in the high seas, this would not apply to areas already managed under regional fisheries bodies without a corresponding decision by that body.
100. Officials are not aware of other significant New Zealand activity in ABNJ not already subject to existing international sectoral regulation. However, as a new regulatory regime, there may be minor compliance costs that flow through to persons whose activities are captured, including new activities not already regulated (for example, marine bioprospecting in the high seas). However, these are expected to be low and largely met through existing compliance regimes.

6.2 Environmental Costs and Effects

101. The BBNJ Agreement is expected to have significant positive environmental effects for the marine environment in ABNJ (as described in Section 2.5 of this Analysis). These effects include to protect, preserve, restore and maintain biological diversity and ecosystems, including with a view to enhancing their long-term sustainability, and strengthen resilience to stressors, including those related to climate change, ocean acidification and marine pollution. The BBNJ Agreement's provisions on ABMTs and EIAs will provide Parties with tools and processes to conserve and sustainably manage marine biodiversity in ABNJ.

102. This is expected to have positive environmental effects for New Zealand's large maritime domain, as resilience of biodiversity in the high seas and deep seabed is intricately linked to the health of the marine environment within our own national jurisdiction.
103. The establishment of a comprehensive EIA framework for activities on the high seas and the deep seabed and a well-connected network of ecologically representative marine protected areas will also generate improved data upon which New Zealand could base decision-making regarding conservation and sustainable use of marine biodiversity – both in and beyond New Zealand's national jurisdiction.
104. There are no environmental costs to the Treaty Action.

6.3 Social and Cultural Costs and Effects

105. As a source of new genetic and biochemical material, marine biodiversity in the high seas and deep seabed is at the frontier of global marine bioprospecting efforts and has a range of potential human health applications. If successful in its objectives of promoting transparency around biodiscovery activities in ABNJ, and ensuring the fair and equitable sharing of benefits arising from these activities, society at large will likely benefit from important new technological and biomedical applications of MGRs from ABNJ.⁵¹
106. Access and benefit-sharing of MGRs from ABNJ is particularly beneficial for developing countries. The Agreement aims to facilitate the full and effective participation of developing countries – including Pacific Island States – in the conservation and sustainable use of marine biodiversity in ABNJ and in the sharing of knowledge from MGRs.⁵² Many Pacific countries have expressed interest in increasing accessing capacity-building and marine technology opportunities under the Agreement.
107. Lastly, food security and other socioeconomic objectives, including cultural values, will be supported through the protection of vital high seas biodiversity.⁵³

6.4 Effects on Māori

108. It is expected that the BBNJ Agreement will have positive effects for Māori. Outcomes of the text are supportive of core Māori interests in the BBNJ Agreement, which were identified during consultation with Māori prior to negotiations (these are further discussed below at Section 8.1). In particular, the Agreement will likely benefit the long-term sustainability of Māori fisheries through enhanced protection of the global marine environment.

⁵¹ Article 9(a), BBNJ Agreement.

⁵² Article 40(c), *ibid*.

⁵³ Article 17(d), *ibid*.

109. The Agreement also requires measures are taken that aim to protect traditional knowledge associated with MGRs in ABNJ. This will be relevant for mātauranga Māori associated with MGRs from ABNJ, for example in relation to taonga species that migrate through the high seas. This promotes the realisation of kaitiaki responsibilities of Māori as holders of such knowledge, and potentially creates opportunity for economic benefits.
110. The Ministry plans to conduct further Māori engagement throughout the implementation of the BBNJ Agreement. This will ensure effects on Māori are fully surfaced, Māori interests are advanced, and Treaty of Waitangi obligations are met.

7. The Costs to New Zealand of Compliance with the Treaty

111. There would be direct financial costs to New Zealand of complying with the BBNJ Agreement. This includes an assessed contribution towards its administrative functions and an annual fee towards capacity-building. Neither of these costs will be incurred until the BBNJ Agreement enters into force and the institutions set up under the Agreement are established.
112. There would also be costs associated with establishing, monitoring and enforcing a regulatory regime to ensure New Zealand is compliant with its MGR, ABMT and EIA obligations. The limited number of activities that would be within scope of the Agreement means these costs are anticipated to be minimal. Implementation measures will be managed within relevant departmental baselines.

7.1 Annual Fees

113. New Zealand will pay an annual assessed contribution towards funding the administrative functions of the new Secretariat, including servicing meetings of Parties and subsidiary bodies to the Treaty. This cost will depend on the budget for the Secretariat approved by Parties, and the number of Parties, which is unclear at the time of drafting this analysis. However, it is expected to be in line with New Zealand's annual assessed contributions to similar bodies (for example, New Zealand makes an annual contribution of around NZD 41,000 to the International Seabed Authority, NZD 89,000 to the Antarctic Treaty Secretariat, and NZD 82,000 to the Secretariat of the Convention on Biological Diversity).
114. There will also be an additional mandatory annual fee for developed countries, including New Zealand, paid to a fund for capacity-building and projects linked to the purposes of the Agreement. This fee will be 50 percent of the annual assessed contribution each Party pays to cover the institutions of the Treaty.

7.2 Costs to Government Agencies of Implementing and Complying with the Treaty

115. Implementing legislation will need to be developed and passed, and relevant departments will need to allocate ongoing resource to notification, reporting and other requirements under the Agreement. While difficult to quantify until the substantive legislative work has been undertaken, these costs are expected to be manageable within departmental baselines, particularly given the light-touch approach to implementation.
116. There will be ongoing costs for agencies associated with the administration of a new regulatory framework. This will include facilitating access to MGRs held in New Zealand collections and databases, where appropriate; administering access to the CHM (once established); assessing EIAs by New Zealanders or New Zealand vessels for activities in the high seas within scope of the

Agreement; contributing to and/or assessing new ABMT proposals; and reporting annually to the Secretariat. Some monitoring and enforcement action will be required, which will also incur costs. In some cases, such as fishing activity under an RFMO, this will be a negligible or limited increase on existing costs.

117. It is expected that administration costs will be low (i.e. require no new FTEs) and be met from agencies' baseline appropriations. The number of New Zealanders or New Zealand companies involved in the collection and utilisation of marine genetic resources is likely to be few. Likewise, costs associated with ongoing monitoring and enforcement are also expected to be low. All New Zealand-flagged fishing on the high seas occurs under the auspices of an RFMO or CCAMLR and, as such, any relevant ABMTs would be implemented through those organisations and the resulting costs would be a negligible to limited increase as a result.

8. Consultation with Māori, the Community and Interested Parties in respect of the Treaty

118. Māori and wider stakeholder consultation has been an important part of New Zealand's engagement on the BBNJ Agreement, particularly in advance of formal treaty negotiations commencing in 2018. A network of stakeholders was regularly consulted throughout the negotiations.

8.1 Engagement with Māori

119. The Ministry of Foreign Affairs and Trade conducted Māori engagement to identify Māori interests in the BBNJ Agreement. Initially, the Ministry built a list of potentially interested Māori organisations/iwi/hapū in close consultation with TPK and other agencies, including MPI, DOC, MfE and EPA. The Ministry sent out a public call for submissions, as well as multiple pānui aimed at growing the database of Māori representatives.

120. An informal working group comprised of interested Māori was established in March 2020, following a hui in February 2020. The working group comprised nine individuals, including representatives from Ngāi Tahu and Te Ohu Kaimoana, who work to advance Māori interests in the marine environment. The working group met five-times in 2020 and advised officials the areas that were of greatest interest to Māori in the negotiations. Following on from this, Māori delegates attended various BBNJ Agreement negotiating rounds to represent Māori interests. Through this consultation, four main Māori interests were identified in the BBNJ Agreement:

- The relationship between the BBNJ Agreement and RFMOs (given Māori interests in such fisheries);
- Opportunity to improve protection of taonga species such as tītī (muttonbird or sooty shearwater) and tuna (longfin eel) that migrate through the high seas between New Zealand's waters and those of our Pacific Island neighbours;
- Recognition of traditional knowledge (mātauranga Māori) of indigenous peoples and local communities related to the conservation and sustainable use of high seas biodiversity and requirements of free, prior and informed consent for accessing said knowledge; and
- Regulation of access to and benefit-sharing of genetic resources from the high seas and deep seabed beyond national jurisdiction, and implications for any future such regulation within New Zealand.

121. Strong support for pursuit of the BBNJ Agreement was evident in consultation with Māori in the negotiation phases. Together with the UK, Norway, Canada, Australia and other Pacific partners, New Zealand negotiators advocated for the incorporation of indigenous peoples' traditional knowledge was a strong principle of the Agreement, as now enshrined in Articles 7(j) and 13.⁵⁴

⁵⁴ To achieve the objectives of the Agreement, Article 7(j) requires Parties to be guided by the "use of relevant knowledge of Indigenous Peoples and local communities".

8.2 Stakeholder Engagement

122. Stakeholder engagement was ongoing throughout the BBNJ Agreement's development process. Engagement during the treaty negotiation phase commenced in June 2018 with a public call for submissions advertised on the Ministry of Foreign Affairs and Trade's website. In tandem to open public consultation, Ministry officials met with a smaller group of stakeholders in July 2018 comprising representatives from academia, environmental NGOs, affected industries and Crown Research Institutes and the business community. Subsequent engagement with these groups continued throughout the negotiations.
123. During the preparation of this National Interest Analysis (NIA), the Ministry engaged with stakeholders within the New Zealand research sector, including Crown Research Institutes and relevant representative bodies. The overarching intention of this engagement was to raise further awareness of the BBNJ Agreement and to surface the nature and quantity of research activities being undertaken by New Zealand researchers and entities in ABNJ which might be captured within any new implementing legislation and policy.
124. So far, this engagement has indicated that there is limited research activity being undertaken by New Zealanders/New Zealand institutes in the high seas and deep seabed, but that there is strong interest within the research community in being engaged in the implementation process. The Ministry will therefore continue to deepen its sector engagement during implementation.
125. The Ministry is undertaking consultation with Tokelau to determine whether New Zealand's ratification of the BBNJ Agreement should extend to Tokelau.

8.3 Inter-agency Engagement

126. The Ministry of Foreign Affairs consulted the following agencies on this NIA:
- Department of Conservation
 - Maritime New Zealand
 - Ministry for Business, Innovation and Employment
 - Ministry for the Environment
 - Ministry for Primary Industries
 - Ministry of Defence
 - Ministry of Transport
 - Te Puni Kōkiri
 - The Treasury

9. Subsequent Annexes or Amendments to the Treaty and their likely Effects

127. The BBNJ Agreement provides that any Party may propose an amendment to the Agreement. If more than half of the Parties respond favourably to the amendment proposal, it can progress to consideration by the COP. The COP is required to make every effort to adopt an amendment by consensus, or if consensus negotiations are exhausted, a two-thirds majority.
128. Article 74 envisages that annexes will be used as a vehicle to update the Agreement. A new annex is considered to be an “amendment” for the purpose of the process relating to amendments.
129. Any future amendments to the BBNJ Agreement would be subject to New Zealand’s domestic treaty-making requirements, including parliamentary treaty examination.

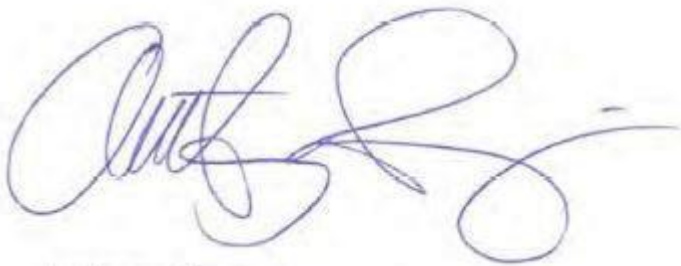
10. Withdrawal or Denunciation Provision in the Treaty

130. *Denunciation* refers to withdrawal from a treaty. Article 73 of the BBNJ Agreement enables a Party to make written notification that they *denounce* the Agreement.
131. A Party may provide its reasons for denunciation, but reasons are not required for the denunciation to be valid. The denunciation takes effect one year from the date of the denunciation (or later if the notification specifies).

11. Agency Disclosure Statement

132. The Ministry of Foreign Affairs and Trade has prepared this NIA in consultation with other relevant agencies. Under Standing Order 397, the Government is required to present to the House a NIA for any treaty that is to be subject to ratification by New Zealand. This NIA addresses the matters required by Standing Order 398, including the reasons for New Zealand becoming a Party to the BBNJ Agreement, and has been extended to include regulatory impact analysis. It provides an analysis of New Zealand becoming a party to the BBNJ Agreement.
133. In preparing this NIA, the Ministry had the benefit of wide-ranging public consultation undertaken as part of the treaty negotiation process. However, it is possible that some stakeholders did not provide submissions or have their views considered.
134. There are a few additional limitations to the analysis undertaken:
- 1) Based on targeted engagement with the New Zealand research sector, the fishing sector and Māori, the Ministry’s understanding is that the regulated community is small and will remain so;

- 2) An assumption that New Zealand's high seas fishing interests will remain similar to the current constellation (e.g. SPRFMO, Pacific Fisheries and CCAMLR);
- 3) Implementation costs remain difficult to precisely quantify at this stage. However, given the limited number of activities that are likely to be within scope of the Agreement, these costs will be minimal and implementation measures can be designed to be managed within relevant departmental baselines;
- 4) There remain uncertainties regarding the operation of the Agreement, including how it will interact with other bodies and what modalities will be decided for benefit-sharing, capacity-building and technology transfer;
- 5) More detailed legislative analysis is required to determine what obligations under the Agreement require the Government to have regulatory and enforcement powers in legislation. This analysis will be undertaken at the drafting stage.



Anthony Simpson
For Secretary of Foreign Affairs and Trade

24 October 2024