



GUIDANCE DOCUMENT FOR UNDERSTANDING THE
**UNITED NATIONS TREATY FOR THE
CONSERVATION AND SUSTAINABLE
USE OF MARINE BIODIVERSITY**
IN AREAS BEYOND NATIONAL JURISDICTION

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AUTHOR

Sonia Angélica Jurado Caicedo

EXECUTIVE DIRECTOR

Katherine Arroyo Arce

INTERNAL REVIEWERS

Jorge A. Jiménez Ramón

Katherine Arroyo Arce

Juan M. Posada

EXTERNAL REVIEWER

Mariamalia Rodríguez Chaves

EDITORIAL COORDINATION

Melissa Álvarez Barquero

Juan M. Posada

TRANSLATION

Ana María Piza

ILLUSTRATIONS

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Presentation

For more than ten years there have been discussions on the elaboration, and recently on the approval of a United Nations treaty for the high seas and the protection of its biodiversity. However, these discussions have taken place among governments, stakeholders, and intergovernmental organizations specialized in the multilateral environmental ocean agenda, ocean governance, marine conservation, and the sustainable use of marine and coastal resources.

The general public, ordinary citizens, and even people involved in environmental issues lack adequate information on the context, importance, and understanding of the issues that the BBNJ treaty will regulate once it begins to have legal effects for the countries that have ratified it; that is, the States that have incorporated it into their national legislation to be legally bound by the provisions of the treaty.

For this reason, with the purpose of disseminating knowledge and improving the understanding of what the BBNJ Treaty implies, I have decided to produce this *Guidance Document for the Understanding of the United Nations Treaty for the Conservation and Sustainable Use of Marine Biodiversity in Areas beyond National Jurisdiction* to make available to the public a simple, easy to read and accessible tool that provides the reader with the necessary information to know and understand what the BBNJ Treaty represents. This document is also intended to guide government officials in understanding the treaty and to enhance their capabilities in relation to its future implementation.

Sonia Angélica Jurado Caicedo¹

¹ Lawyer with a master's degree in International Affairs from Universidad Externado de Colombia. Since 2016 she has been working on international affairs, environmental multilateralism, ocean governance and sustainable development. She joined the SARGADOM project in May 2023 and is currently a Project Coordinator. As a consultant, she works with governments, NGOs, and international organizations to design conservation and marine management policies in the high seas. From 2016 to 2023, she worked for the Colombian Ministry of Foreign Affairs, where she led the international ocean and environmental affairs agenda in regional and global scenarios. From there, she led the development of public policies for marine conservation and prioritized ocean issues on the national and international agenda.



Acronyms

ABMT	Area-Based Management Tools
ABNJ	Areas beyond national jurisdictions
BBNJ	United Nations Treaty on the Conservation and Sustainable Use of Marine Biodiversity of Areas Beyond National Jurisdiction
CHM	Clearing-House Mechanism
COP	Conference of the Parties
DOALOS	Division for Ocean Affairs and the Law of the Sea
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
FAO	Food and Agriculture Organization of the United Nations
FM	Financial Mechanism
GBF	Kunming-Montreal Global Biodiversity Framework
GEF	Global Environment Facility
ICJ	International Court of Justice
IMO	International Maritime Organization
IOC	Intergovernmental Oceanographic Commission
IPCC	Intergovernmental Panel on Climate Change
ISA	International Seabed Authority
ITLOS	International Tribunal for the Law of the Sea
MPA	Marine Protected Area
NGO	Non-Governmental Organization
NM	Nautical miles
PSSA	Particularly Sensitive Sea Areas
RFMO	Regional Fisheries Management Organizations
STB	Scientific and Technical Body
UNCLOS	United Nations Convention on the Law of the Sea
UNGA	United Nations General Assembly

Why, how, and when was this treaty created?

Sixty-four percent of the ocean corresponds to areas beyond national jurisdiction (ABNJ). Despite the lack of sufficient data and information on these areas, more and more activities are taking place in these areas (e.g. navigation, fishing, research, mining exploration, among others). The Special Report on the Ocean and Cryosphere of the Intergovernmental Panel on Climate Change (IPCC) highlighted the enormous pressure and severe threats faced by the ocean, including acidification, rising temperatures, pollution, overfishing, coral bleaching and increasing biodiversity loss.

For more than a decade, the need to promote and regulate the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (BBNJ) has been discussed in various multilateral fora. For that reason, in 2004, UN General Assembly Resolution 59/24 created an informal working group to study this topic, which met 9 times between 2006 and 2015.

The informal working group agrees that the United Nations General Assembly shall initiate a process with a view to ensuring that the legal framework for the conservation and sustainable use of marine biodiversity in ABNJ effectively addresses these issues by identifying gaps and ways forward, as well as the possible development of a multilateral agreement under the United Nations Convention on the Law of the Sea (UNCLOS; United Nations, 1982).



In 2015, the United Nations General Assembly (UNGA) Resolution 69/292 decided to move forward with the adoption of an international instrument and convened the Preparatory Committee, which met four times between 2016 and 2017. The package of issues to be covered by this instrument was the same as that agreed in 2011.

UNGA Resolution 72/249 of 2017 convened the Intergovernmental Conference to develop and agree on the instrument, with a mandate to hold four meetings. The first was held in September 2018, the second between March and April 2019, the third in August 2019 and the fourth in March 2022.

Subsequently, it was agreed to convene an additional fifth meeting which was held in three sessions: August 2022, March 2023 and, finally, the adoption by consensus on June 19, 2023, of the final text of the Agreement under the United Nations Convention on the Law of the Sea relating to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (UN Resolution A/CONF.232, 2023; hereinafter BBNJ Treaty).

What is the purpose of the treaty?

The overall objective of the BBNJ Treaty is to close regulatory and governance gaps in the high seas, improve coordination and offer a more comprehensive approach to the conservation, management, and sustainable use of biodiversity in areas beyond national jurisdiction. The above, without undermining the jurisdiction of other regimes and instruments with competence in these areas,

such as the Regional Fisheries Management Organizations (RFMOs), the International Maritime Organization (IMO), and UNCLOS itself.

Article 2 of the adopted text establishes through its provisions that the general objective of the treaty is to ensure the conservation and sustainable use of marine biodiversity in the high seas. What this means is that it seeks to guarantee the care and use of ocean resources on the high seas, in a way and at a pace that does not generate a long-term decrease in biodiversity.

Why is this treaty important for the countries?

For developing countries, it is very important to ensure that the benefits (monetary and non-monetary) obtained from access and use of genetic information (marine genetic resources) contained in marine material of a biological nature from ABNJ are distributed in a fair and equitable manner; and that those few countries with the capacity to apply research, exploration and bioprospecting activities to those resources and in those areas, promote capacity building and technological transfer to developing countries. Ensuring the health of high seas ecosystems also generates other benefits for different economic activities in developing countries (e.g. fisheries and tourism), as well as the sustainability of important ecosystem services provided by the high seas (e.g. carbon sequestration, climate regulation, oxygen production, among others).



How does this international instrument affect the fishing sector?

The BBNJ Treaty must be incorporated into the architecture of high seas marine governance and ensure the sustainability and health of ecosystems in these areas.

During more than 10 years of treaty negotiations, a consensus was generated that fisheries management should not be regulated by the BBNJ Treaty. Along these lines, the treaty includes the principle of not undermining the powers of other existing bodies, instruments, and regimes. In the specific case of RFMOs, competencies such as assessing fish stocks, designing, and agreeing on management measures, implementing control and monitoring measures, controlling fishing effort, collecting data and conducting scientific studies would be maintained.

It also establishes that fishing is not included in the part related to marine genetic resources and, therefore, the registration requirement does not apply to fishing activities.

However, it should be recognized that the BBNJ Treaty can add value by recognizing, complementing, and strengthening cooperation and coordination within and between global and regional organizations. The treaty can also help to consider the cumulative impacts of multiple sectors, and work on their coordination, providing an inter-regional lens and facilitating cooperation.

What are the implications for the international shipping industry?

IMO, as the United Nations specialized agency for safe, responsible, efficient shipping and the prevention of pollution from maritime navigation, welcomes the treaty and its complementary role with existing provisions in the maritime sector for the conservation and sustainable use of oceans and marine resources. Particularly Sensitive Sea Areas (PSSA) represent one of the main biodiversity protection measures of the IMO, although currently no PSSA have been established on the high seas.

Consequently, this treaty represents a positive achievement for the international shipping industry as it is a universal and legally binding instrument, which recognizes and has the potential to complement the regulations already established by the IMO in favor of the protection of the marine environment.

How is this instrument connected to the 2030 Agenda, the Global Framework for Biodiversity, and the 30 x 30 Global Target?

The BBNJ treaty allows for the establishment of marine protected areas on the high seas and, in addition, provides for the goal that these constitute a connected network. This is critical to meeting the global target of protecting 30% of the world's oceans by 2030, included in the Kunming-Montreal Global Biodiversity Framework (GBF). In its third goal, the GBF foresees the conservation and effective management of 30% of oceans and coastal zones by 2030, and the restoration of 30% of degraded ecosystems and measures to control invasive alien species.

How will this instrument work within the framework of the United Nations and other Intergovernmental Organizations?

This treaty creates a **new body** to conserve and manage biodiversity in ABNJ. This body is the **Conference of the Parties (COP)**, which provides a suitable and specialized forum for

the implementation of the treaty. The COP will be able to take conservation measures, including by vote when consensus is not achieved, meaning that a single State will not be able to veto or truncate decisions.

There will also be a **Scientific Committee** that will incorporate the most recent knowledge of this sector into decision-making, as well as information and traditional knowledge in the governance of biodiversity in the high seas. Additionally, there will be a **Compliance and Implementation Committee** to help States parties to the treaty meet their obligations and ensure that activities and uses on the high seas are more sustainable. Also, the treaty establishes a **Committee on Capacity Building and Technology Transfer**, which will assist States, especially developing countries, in the implementation of the treaty and their more equitable and beneficial access to the high seas. The UN Division for Ocean Affairs and the Law of the Sea (DOALOS) will serve as the interim Secretariat, while the COP decides on the new Secretariat.

General Provisions of the Treaty

The agreement begins with important **definitions** for the interpretation of each of the treaty's chapters. These include area-based management mechanisms (ABMT), marine protected areas (MPA), biotechnology, environmental impact assessments, *in situ* harvesting, marine technology, and sustainable use, among others. The treaty applies only in the ABNJ, i.e., beyond the exclusive economic zones (EEZ) of the states (after two hundred nautical miles offshore). In Figure 1, the ABNJs in the world are seen in dark blue.

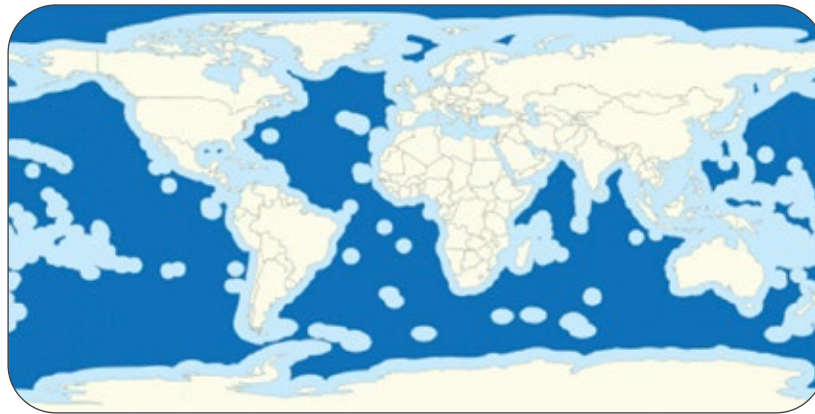


FIGURE 1. Location and coverage of ABNJs in the world (Source: <https://www.iucn.org/resources/issues-brief/governing-areas-beyond-national-jurisdiction>)

Figure 2 shows the delimitation of the maritime spaces contemplated by UNCLOS.

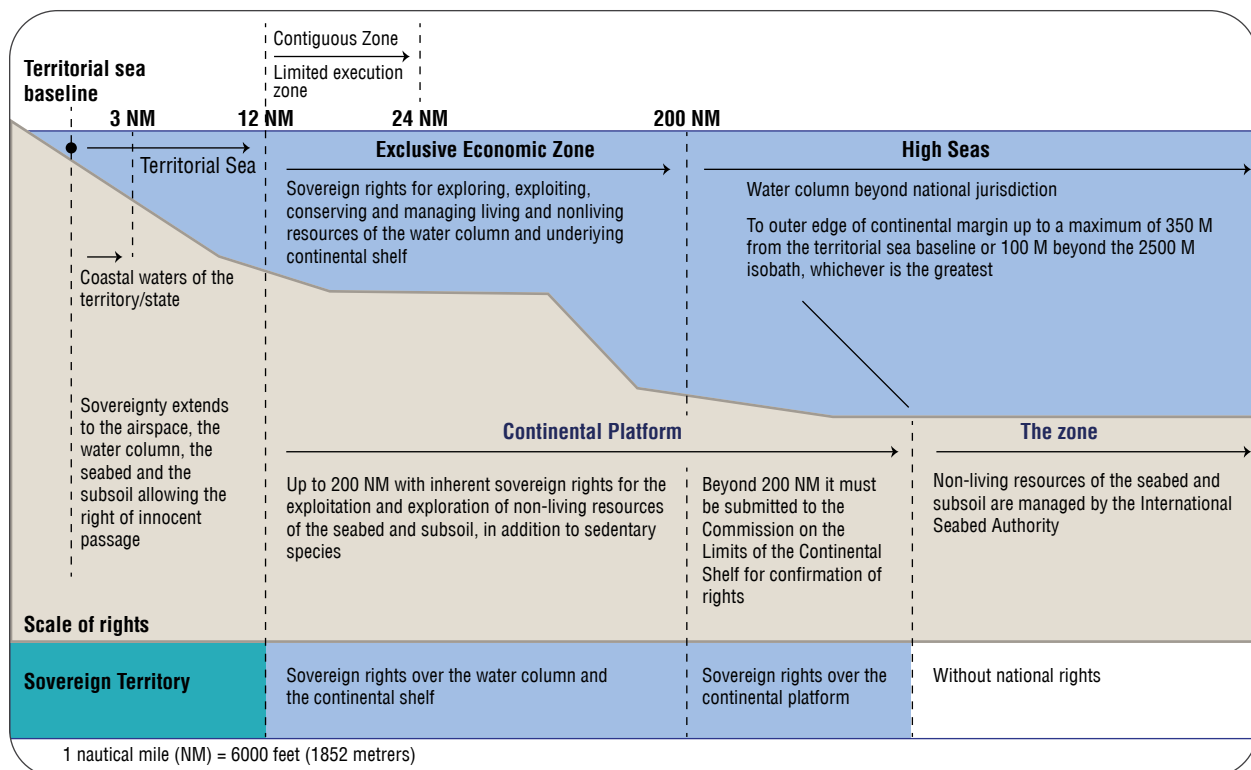


FIGURE 2. Delimitation of the maritime spaces contemplated by UNCLOS (Source: <https://www.iucn.org/resources/issues-brief/governing-areas-beyond-national-jurisdiction>)

This treaty, like any other instrument of international law, contains a list of principles that must be considered when applying its provisions and especially when implementing them. Some of the most notable principles are:

- The polluter pays.
- Common heritage of mankind.
- Freedom of marine scientific research.
- Equity and fair and equitable distribution of benefits.
- Precautionary principle and/or approach.
- Ecosystem approach.
- Respect, promotion and consideration of the rights of indigenous peoples.

This first part also establishes provisions on **international cooperation** between the

parties for the fulfillment of the objectives of the treaty, and especially for scientific research and the transfer of marine technology.

What subjects does the treaty regulate in each of its chapters?

The BBNJ Treaty provides, in addition to the cross-cutting issues, four key issues (known as the package):

- Marine genetic resources.
- Area-based management mechanisms, including marine protected areas.
- Environmental impact assessments.
- Capacity building and technology transfer.





Marine genetic resources, including the fair and equitable sharing of benefits

The treaty regulates activities related to marine genetic resources and digital information on their sequencing, considering that it can be used to produce food, raw materials, medicines, or cosmetics, and that it has the potential to generate important economic returns.

In this chapter, the treaty establishes an Clearing-House Mechanism that will manage everything related to the moment in which the State parties access, collect, use and commercialize products derived from marine genetic resources and/or the digital sequence information from the high seas. This includes the duty to notify six months in advance of the collection of material, until the moment it is marketed and used. This includes reporting on:

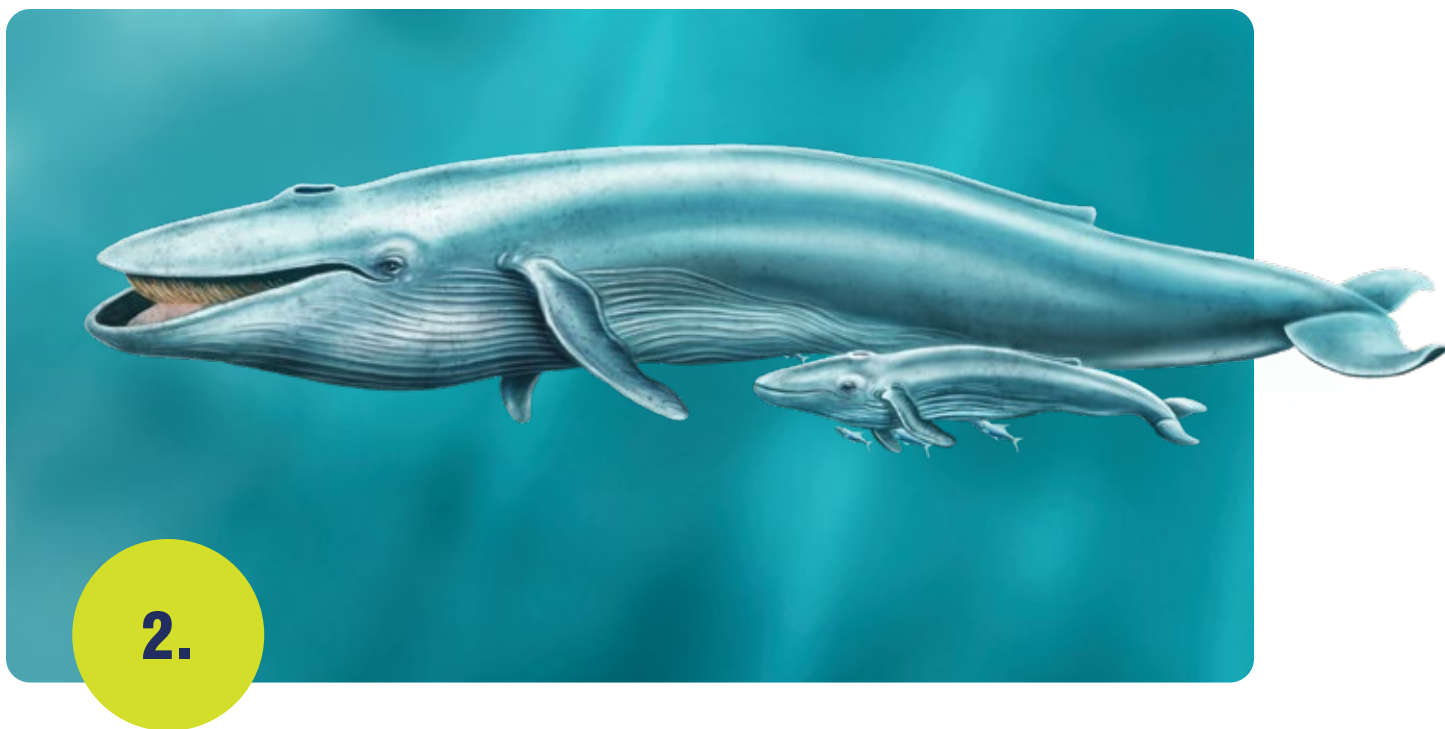
- The nature and purpose of the project for which the marine genetic resources are collected,
- the geographic area in which the collection will take place,
- the methods to be used for this purpose,
- the dates foreseen for sample collection,
- the sponsoring institution,
- the information repository or database,
- the information management plan,
- the place where the results of the utilization can be found (e.g. publications or patents),
- the place where the original sample is kept,



- the modalities foreseen for accessing these genetic resources and their digital sequence information, and
- If there is commercialization, information on sales of derivative products and subsequent developments.

The treaty states that no State may claim or exercise sovereignty over the marine genetic resources of ABNJ and that all related activities shall be carried out in the interest of all States Parties, for peaceful purposes and for the benefit of humankind, taking into particular account the needs of developing countries.

One of the most important achievements of this treaty is that from the moment it enters into force, the benefits derived from activities related to genetic resources and their digital sequence information must be shared in a fair and equitable manner. This sharing includes monetary and non-monetary benefits, which is a significant achievement, especially for developing countries, as they will be able to access samples, collections, databases, notifications and, especially, the transfer of marine technology, capacity building, funding for scientific research programs, scientific partnership opportunities and increased technical cooperation. The COP will subsequently be responsible for indicating the way to carry out this fair and equitable sharing of benefits.



Area-based management mechanisms, including marine protected areas

The treaty establishes necessary provisions for the protection of the ocean through area-based management tools (ABMTs), including marine protected areas (MPAs) for those areas that one or more States consider particularly or especially important, or need to be protected due to their specialty or vulnerability.

This treaty allows the international community to establish MPAs on the high seas. This is a great achievement for the international community as this was not possible before the BBNJ Treaty. Considering that the high seas represent 67% of the ocean and covers more than half of the planet's surface, having the possibility of protecting marine biodiversity in these areas through MPAs is an unprecedented milestone. In addition, the COP is empowered to consider a management plan and other associated conservation and management measures that underpin an MPA, key elements to ensure that the declaration is effective and does not remain merely on paper.

The treaty allows MPAs to be adopted by vote when it is not possible to reach consensus among the States Parties. This is another critically important element established in the Treaty, since it does not allow a veto to a country that would like to oppose a particular MPA.

The treaty establishes as one of its goals to support capacity building and the transfer of marine technology to developing countries to promote their effective involvement in the implementation, development, monitoring, and management of MPAs or other management mechanisms in the high seas.

The treaty also encourages the COP to act in emergency situations so that the international community can respond more quickly to natural or human-caused disasters.

Figure 3 summarizes the steps set forth in Part III of the BBNJ Treaty for requesting and declaring an ABMT, including MPAs.

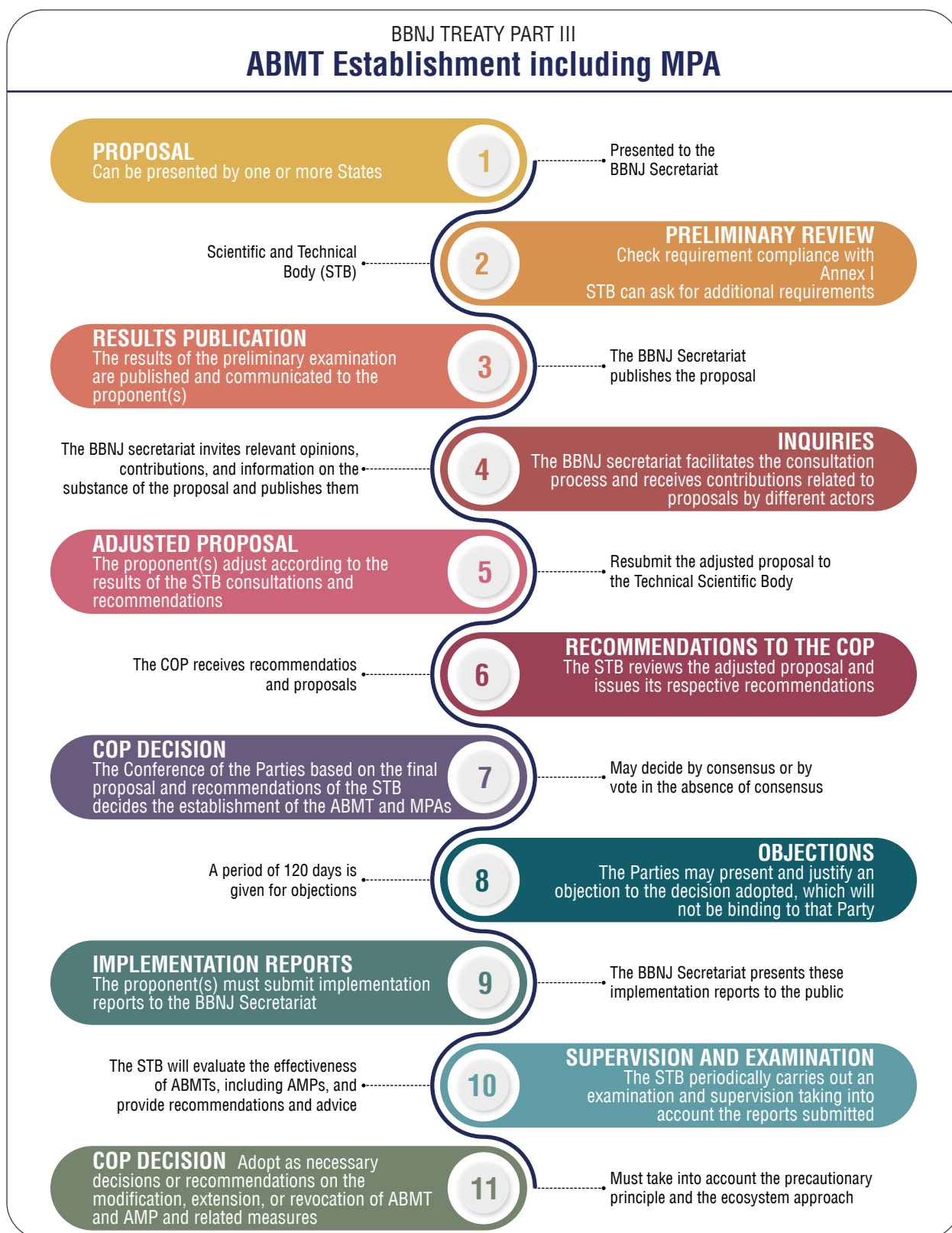
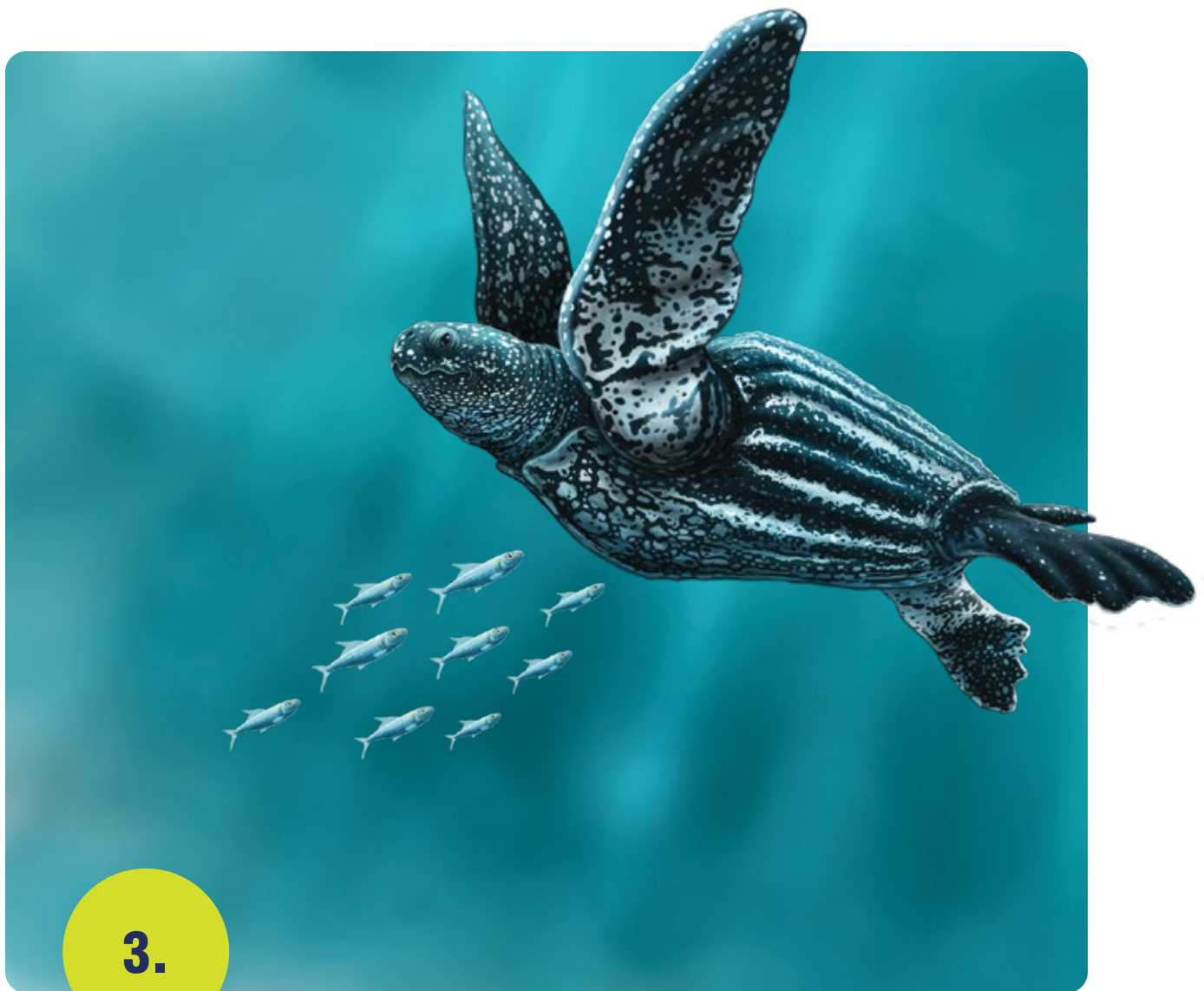


FIGURE 3. Process to establish an ABMT, including MPAs (Source: Own elaboration based on the articles of the BBNJ Treaty contained in Resolution A/CONF.232/2023/4 (2023), part III; General Assembly of the United Nations Organization, 2023)



3.

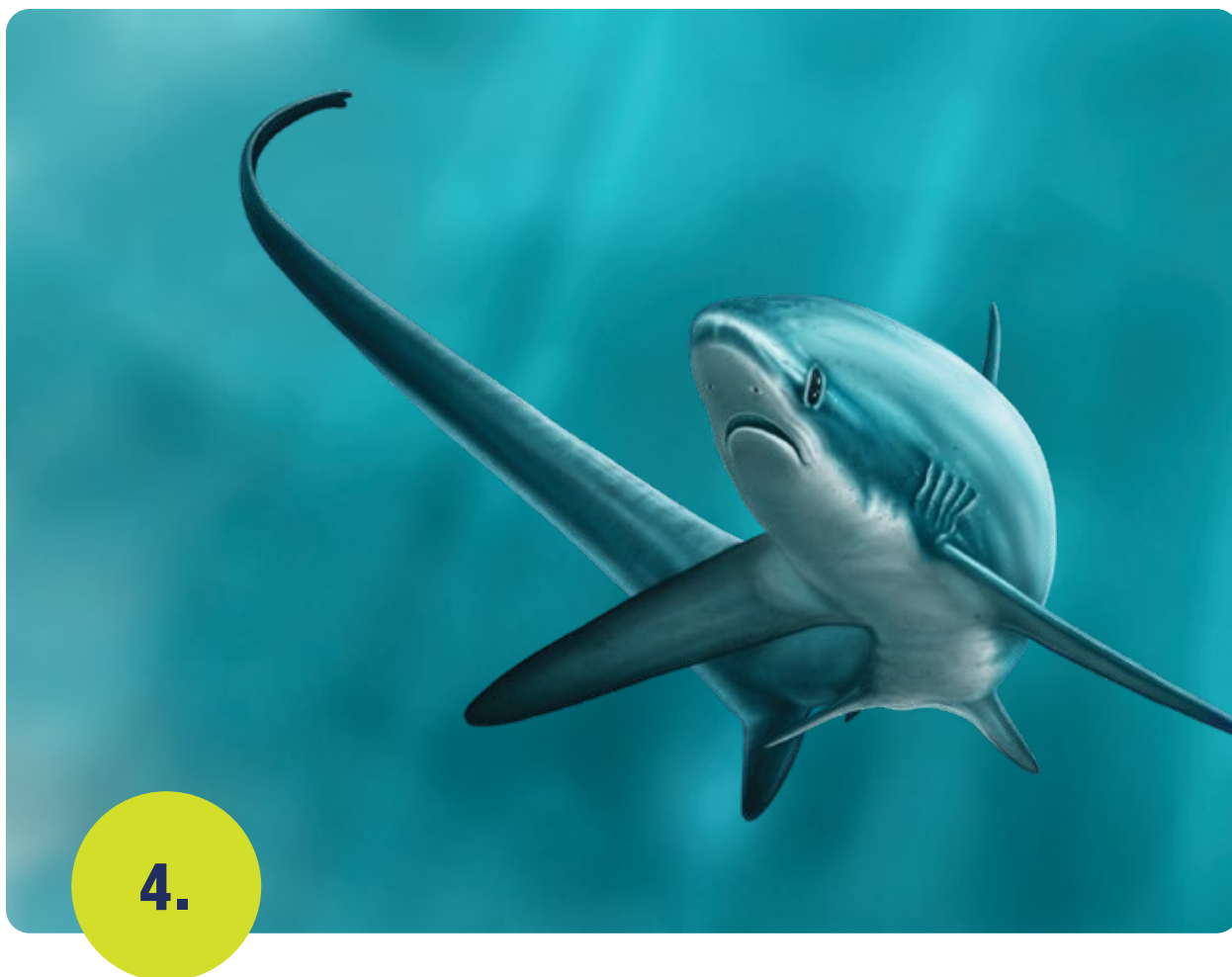
Environmental impact assessments

The treaty establishes the necessary provisions for the protection of the high seas through requirements that indicate when it is necessary to conduct the environmental impact assessment (EIA) of an activity that will be carried out in an ABNJ. The objective is to protect the marine environment by ensuring that all activities are previously evaluated and developed to prevent, mitigate, and manage any significant adverse impacts.

Activities that must undergo an EIA will be subject to public consultations and notifications. Likewise, a standard is created for all activities by which they can only be authorized when

they can be managed to prevent an adverse and significant impacts on the marine environment. In assessing and evaluating the impact of the activity, States Parties must ensure that the cumulative impacts of the planned activities are also considered based on the best available scientific knowledge and information.

The treaty also establishes greater transparency and accountability for high seas activities, requiring that impact assessments and monitoring reports to be made public through the Clearing-House Mechanism (CHM) and through the Secretariat.



Capacity building and transfer of marine technology

The treaty establishes assistance for its implementation by the States parties as well as in the construction of capacities through a flow of predictable resources operationalized by the Committee on Capacity Building and Technological Transfer. The work of this committee must begin with the identification of needs by country to provide an effective response that contributes to closing the gaps and differences between member countries. In this way, another of the objectives of this chapter is achieved, which consists of enabling inclusive, equitable and effective cooperation and participation in the activities to be carried out within the framework of the treaty.

Thus, the treaty recognizes the differences in capabilities between the State parties and establishes as an additional objective the development of scientific and technological capacity for marine research, especially in developing states. In the end, the treaty seeks to strengthen the capacities of its members in the conservation and sustainable use of marine biodiversity in the high seas.

Another important feature is the establishment of the obligation to share monetary and non-monetary benefits from marine genetic resources. The COP will establish the method for sharing benefits and, while this happens, a special fund will be established with additional contributions from developed countries.



Institutional arrangements

The BBNJ treaty establishes a series of provisions for its institutionality and operation through the creation of different instances. These are:

Conference of the Parties

The COP is the highest decision-making body of the treaty. Through its periodic meetings, it is responsible for evaluating, supervising, and reviewing its implementation. It consists of the meeting of the States Parties to adopt decisions and recommendations that include the establishment of subsidiary bodies considered necessary for the proper execution of the objectives of the treaty, as well as the establishment of procedures and the budget, among other institutional issues.

The first COP will be convened by the Secretary General of the United Nations no later than one year after the entry into force of the treaty, that is, when it is ratified by 60 States. At that meeting, the COP will adopt its rules of procedure and those of the subsidiary bodies, and the financial arrangements for their operation.

Consensus is established as a rule for decision making. However, when it is not possible to reach consensus, decisions may be taken by vote where the treaty so provides, as in the case of the establishment of ABMTs including MPAs. It is important to remember that like all COPs in multilateral environmental treaties, the BBNJ COP will have the participation of observers and a public record of its decisions. This will help fulfill the COP's mandate of promoting transparency in the implementation of the treaty and facilitating the participation of relevant global, regional, subregional, and sectoral bodies.

Scientific and Technical Body

The role of the Scientific and Technical Body (STB) is of the utmost importance for the proper implementation of this treaty, as it is responsible for providing scientific and technical advice to the COP to execute the established obligations and procedures. An example is the essential role of the STB in issuing a preliminary concept and final recommendation to the COP in the process of establishing an ABMT, including MPAs, in accordance with part III of the treaty.

Likewise, the STB has the authority to consolidate the advice required from other intergovernmental organizations at the global, regional, or subregional level on specific topics of this agreement.

The composition, member selection process, procedures, powers, and operating modalities of the STB will be determined at the first meeting of the COP.

Secretariat

The Secretariat is the administrative body of the treaty, and its main task is to ensure its proper operation and implementation. To this end, the Secretariat will be primarily responsible for always providing administrative and logistical support to the COP and other subsidiary bodies. Among these we have: i) organize their meetings, ii) disseminate information related to the implementation of the treaty and iii) make public the decisions adopted. It is also responsible for facilitating cooperation and coordination with the secretariats of other international agreements and instruments, for the benefit of the fulfillment of the treaty's objectives.

The Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations Secretariat will serve as Secretariat until the BBNJ Secretariat begins to perform its functions.

Clearing-House Mechanism

The Clearing-House Mechanism (CHM) is a platform open to the public. It must fulfill essential functions to promote transparency in the implementation of the treaty, since it aims to provide developing countries and small island developing States with access to information to carry out simple and unhindered consultations.

The CHM will function as a centralized platform for all treaty related activities. It will address marine genetic resources, the establishment and implementation of ABMTs and MPAs, EIAs, and requests for capacity building and transfer of marine technology, in accordance with the specific provisions of each chapter or part of the treaty.

The CHM will coordinate and cooperate with existing sources of information, including traditional knowledge of indigenous peoples and local communities, as well as information on genetic information, repositories, and databases. It shall be administered by the Secretariat and shall cooperate with the Intergovernmental Oceanographic Commission (IOC), the International Seabed Authority (ISA), IMO, the Food and Agriculture Organization of the United Nations (FAO) and such other bodies as may be determined by the COP.



Resources and financial mechanism

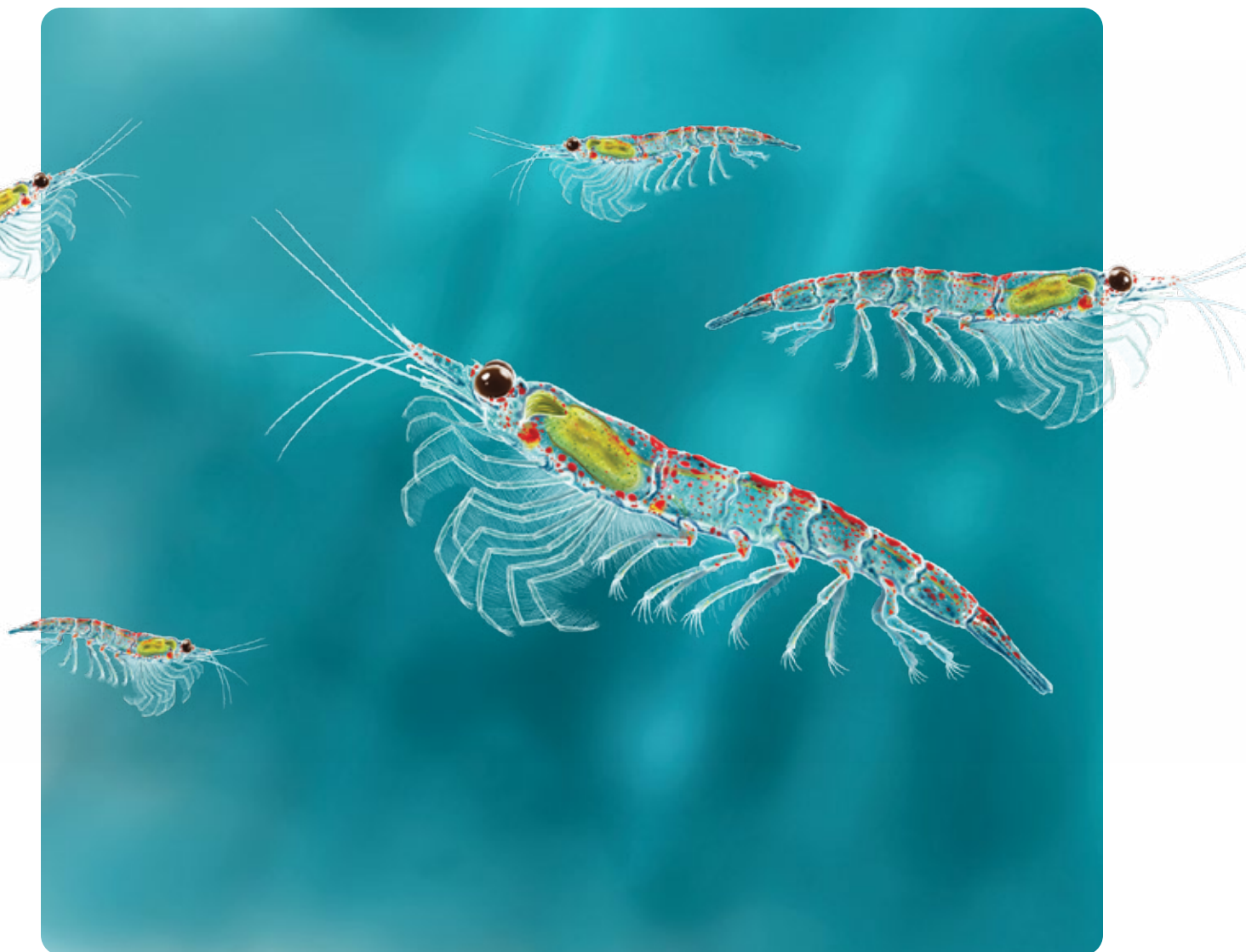
This treaty establishes the Financial Mechanism (FM) for the provision of adequate, accessible, new, or additional and predictable financial resources to assist member countries in the implementation of the treaty. The FM includes three types of funds:

- The trust fund of voluntary contributions,
- the special fund and,
- the Global Environment Facility (GEF).

The special fund and the Global Environment Facility (GEF) will be used to finance: i) capacity building projects, ii) assist States Parties in the implementation of the treaty, iii) promote conservation and sustainable use programs by indigenous peoples and local communities, and iv) support public consultations at the national, subregional, and regional levels.

It is also foreseen that financial resources may come from public and private, national, and international sources, donor agencies, international financial institutions, intergovernmental organizations, NGOs, natural and legal persons, as well as public-private partnerships, under the authority and guidelines of the COP. The COP is also expected to establish a Finance Committee, which will report periodically and make recommendations on the search for and mobilization of funds from this mechanism.

It is established as a principle that when agreeing on the amount of the contribution fee, each member will provide the mechanism with resources to the extent of its capabilities.



The BBNJ Treaty and gender

The BBNJ Treaty is the first Law of the Sea instrument with gender-related provisions. Specifically in relation to the subsidiary bodies mentioned above, these will be composed of members nominated by member countries and elected by the COP, taking gender equity into account.

Another important improvement of the language in this new Law of the Sea instrument is reflected in Article 5 on general principles and approaches, which would guide State Parties in implementing the provisions of the BBNJ. Article 5 (b) includes the principle of the common heritage of humankind, modernizing

the reference to the “common heritage of man” of Article 136 of UNCLOS. Finally, the BBNJ Treaty establishes modalities for capacity development and marine technology transfer, in a country-driven, transparent, effective, and iterative process that is participatory, transversal and gender-sensitive.

In summary, the explicit gender-sensitive language used in the BBNJ Treaty evidence progress within ocean affairs towards gender equality and the evolution of international instruments to reflect gender issues as a cross-cutting line of action.



Implementation and compliance

Through the creation of the **Implementation and Compliance Committee**, the treaty establishes provisions to facilitate implementation and promote compliance with its provisions by State parties. This Committee seeks to facilitate and not to punish, meaning

that it seeks to assist members who have difficulty complying with the provisions of the treaty, by providing them with the necessary means to fulfill their obligations. This Committee does not intend to punish or sanction States Parties for non-compliance.



Conflict resolution

It establishes as a rule the peaceful settlement of disputes between the States Parties by any means of their choice. This may include negotiation, investigation, mediation, conciliation, arbitration, judicial settlement, or recourse to preferred regional bodies or arrangements. It is also specified as a direct reference that the procedure for the resolution of disputes of the BBNJ treaty is that established in part XV of UNCLOS.

It is important to note that Part XV of the UNCLOS on dispute settlement will be applicable to the member States of the BBNJ treaty, which also participate in this convention. Parties that are not members of UNCLOS may, at the time of ratifying, signing, approving or acceding to the BBNJ Treaty, freely choose one or more of the following means of dispute settlement, such as the International Tribunal for the Law of the Sea (ITLOS), the International Court of Justice (ICJ), an arbitral tribunal in Annex VII of UNCLOS, or a special tribunal in Annex VIII of UNCLOS.



Final Provisions

The treaty contains provisions on the duty of State parties to comply with the provisions of the treaty in good faith. It also establishes that each member country will have one vote in the decision-making process.

Finally, the treaty will be open for signature as of September 20, 2023, for a period of

two years, as well as provisions regarding its ratification, accession and approval, reservations, amendments, denunciation, annexes, among others. It is established that this treaty will enter into force 120 days after obtaining the signature of 60 States parties, after the consignment of the instrument of ratification or accession.



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CONTACT US:

COSTA RICA +506 4052-2500

PANAMÁ +507 317-4350

COLOMBIA +571 743-5207



To collaborate with our efforts:
donaciones@marviva.net
www.marviva.net

