

Formal adoption of UN's BBNJ treaty – what does it mean for marine insurers?



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On 19 June 2023, the UN adopted 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 Treaty](#)). The BBNJ Treaty has been the subject of decades of international negotiations and has been welcomed as a landmark agreement to protect areas beyond national jurisdiction. This means the high seas and the Area, being the sea and seabed area beyond nations' 200nm Exclusive Economic Zone ([EEZ](#)). This briefing summarises the key elements of the BBNJ



Treaty and analyses what impact it could have for marine insurance once ratified. At this time, it is important to keep in mind that the BBNJ Treaty provides an international framework for nation states to develop legislation and it is unclear how long it may take for the treaty to be ratified, thereby giving it legal force.

Structure and scope: Four key parts

The BBNJ Treaty lays down a framework for managing and conserving marine natural resources on the high seas and in the Area in four key parts:

- The collection of and activities relating to marine genetic resources ([MGR](#)), such as benefit-sharing;
- The establishment of area-based management tools (including marine protected areas or [MPAs](#)) on the high seas;
- Conducting environmental impact assessments ([EIAs](#)) for planned activities in areas beyond national jurisdiction; and
- Capacity-building and transfer of marine technology.

Part II of the BBNJ Treaty sets out the framework for collecting and sharing of benefits of MGR. Fishing is expressly excluded from the framework, meaning that research activities and genetic sequencing of MGR are likely to be the focus. No state can claim national sovereignty over MGR in areas beyond national jurisdiction and the BBNJ Treaty also provides that any non-monetary

benefits should be shared in a fair and equitable manner, setting out a mechanism for sharing non-monetary benefits in Article 14, as well as a financial mechanism for sharing the monetary benefits in Article 52 (through a special fund). The BBNJ Treaty establishes an 'access and benefit-sharing committee' under Article 15 that will make guidelines and recommendations for implementing the framework for MGR collection and benefit-sharing.

States can propose to establish area-based management tools, including MPAs, in areas beyond national jurisdiction. The BBNJ Treaty emphasises the need for collaboration and consultation with all stakeholders in this process (in particular adjacent coastal states). Any decisions as to establishing MPAs would be taken by the Conference of the Parties (i.e. the states party to the BBNJ Treaty) by consensus, or otherwise by a three-fourths majority. The BBNJ Treaty also requires activities taking place within national jurisdictions to be consistent with the decisions taken under the BBNJ Treaty.

Part IV sets out measures on conducting EIAs for planned projects in areas beyond national jurisdiction, which may include deep sea mining or offshore energy projects. The state with jurisdiction or control over a planned activity is responsible for ensuring EIAs are carried out where such a planned activity "*may have more than a minor or transitory effect on the marine environment, or the effects of the activity are unknown or poorly understood*" (Article 30(1)). This is a low threshold and EIAs are therefore likely to be required in most, if not all, cases. The BBNJ Treaty sets out the process to be followed for conducting EIAs including screening, scoping, impact assessment and evaluation, prevention and mitigation, public notification and consultations as well as the publication of an environmental impact assessment report. In effect, this provides a standard to be followed for EIAs, however, if the state determines that the national procedures for EIAs are equivalent to the international framework, then the requirement for a separate EIA falls away (Article 29(4)). This avoids the risk of double-burden on operators and on nation states, who can consider the environmental impact of planned activities on areas beyond national jurisdiction via already established national mechanisms. There is, however, a focus on transparency, as the BBNJ Treaty requires the national EIA report, along with monitoring and review reports, to be published through the BBNJ Treaty's Clearing-House Mechanism (a type of open-access platform).

Finally, the BBNJ Treaty requires state parties to cooperate and for developed state parties to make upfront payments to support and provide capacity-building for the transfer of marine technology upon its entry into force. The aim is to provide support and reduce the financial burden on developing states to achieve the BBNJ Treaty's objectives in relation to MGR activities, establishing MPAs and conducting EIAs. The types of capacity building and technology transfer are broadly set out, including a non-exclusive list incorporating data sharing, information dissemination and developing guidelines.

What does it mean for marine insurers?

The BBNJ Treaty will come into force only after 60 states have ratified it. [At the time of writing, 82 states have signed the BBNJ Treaty](#) (including the United Kingdom, USA and China). The signing of the Treaty does not in and of itself constitute consent to be bound by it, but it does signal that the BBNJ Treaty is gaining international support. Ratification requires each state to follow its national procedures for consenting to be bound by an international treaty. It is difficult to predict

how long ratification might take, but the bottom line is that the BBNJ Treaty is not yet in force and therefore is not legally binding. However, this may not stop states from passing national legislation in line with the framework the BBNJ Treaty provides.

The second point to bear in mind is that the Treaty regulates nation states and not private actors, meaning that there are no direct obligations imposed on private parties. Nonetheless, the Treaty's framework establishes that in the not so distant future MPAs can be established on the high seas (imposing obligations on seagoing vessels traversing those areas) and EIAs would be required for planned activities in areas beyond national jurisdiction. Insurers should therefore consider the risk profile of their portfolios and what issues may arise for insureds operating vessels or planned activities on the high seas or in the Area.

Furthermore, as a named intergovernmental body in Article 51, it is foreseen that the IMO will have a role to play in supporting the secretariat with the management of the Clearing-House Mechanism, and accordingly with the future development and implementation of the aims of the BBNJ Treaty. Given its remit to govern the safety and security of shipping, including the prevention of marine and atmospheric pollution by ships, the IMO has the power to adopt international regulations intended to reduce, prevent or control marine pollution from ships, which extends to developing frameworks and enacting mechanisms which will bind governments and shipping industry stakeholders in areas beyond national jurisdiction, such as mechanisms for the purpose of implementing the goals of the BBNJ Treaty.