National Interest Analysis 2024 ATNIA 12

with attachment on consultation

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

(New York, 19 June 2023)

[2024] ATNIF 18

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

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

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Nature and timing of proposed treaty action

1. The proposed treaty action is ratification of 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 Agreement). The Agreement was adopted on 19 June 2023 in New York. In accordance with Article 65, Australia signed the treaty on 20 September 2023.

2. It is proposed that Australia ratify the Agreement in accordance with Article 66 as soon as practicable after the Committee reports, implementing legislation is passed and Federal Executive Council approval to ratify is granted. Under Article 68(1), the Agreement will enter into force 120 days after the deposit of the 60th instrument of ratification, acceptance, approval or accession. If Australia ratifies the Agreement after it has entered into force, under Article 68(2) it will enter into force for Australia on the 30th day following the deposit of the instrument of ratification.

Overview and national interest summary

3. The Agreement is an implementing agreement under the 1982 *United Nations Convention on the Law of the Sea* [1994] ATS 31 (UNCLOS). UNCLOS provides the comprehensive legal framework within which all activities in the ocean and seas are carried out. Among other obligations, UNCLOS imposes a general obligation to protect and preserve the marine environment (Article 192). The Agreement augments this general obligation by establishing a regime to conserve and sustainably use marine biological diversity in areas beyond national jurisdiction – that is, the water and seabed outside the exclusive economic zone and continental shelf (up to and sometimes beyond 200 nautical miles from States' baselines). The Agreement will not apply to areas within Australia's national jurisdiction.

4. The purpose of the Agreement is to address gaps in the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction. The Agreement addresses four topics in this respect: marine genetic resources, including benefit sharing (Part II); area-based management tools, including marine protected areas (Part III); environmental impact assessments (Part IV); and capacity building and the transfer of marine technology (Part V). The Agreement also enhances coordination and cooperation across the existing different sectoral and regional regimes (Article 5(2)).

5. A healthy and resilient ocean supports Australia's significant marine industries and is a critical connection between Australia and our region. For example, marine protected areas will improve the long-term viability of fish stocks and improve protection for migratory megafauna. As a major coastal State, ratification of the Agreement enables Australia to

take an active role in the conservation and sustainable use of marine biodiversity beyond our extensive maritime boundaries, helping to safeguard ocean health within our jurisdiction and supporting the government's international environmental leadership and nature positive agendas.

Reasons for Australia to take the proposed treaty action

6. Australia is a strong supporter of the Agreement and its entry into force supports significant Australian interests - bolstering the international rules-based order, enhancing domestic environmental action, improving scientific endeavours, and supporting foreign policy objectives.

7. Australia was an active proponent and leader of the negotiations to secure the Agreement, including as a member of the High Ambition Coalition (HAC) for biodiversity beyond national jurisdiction, a group of 52 countries led by the European Union. Australia will seek membership of the Bureau of the Preparatory Commission that will prepare for the entry into force of the Agreement. Australia, as a member of the HAC, is also encouraging countries to ratify the Agreement to achieve the 60 ratifications needed for it to enter into force as soon as possible, preferably by the June 2025 United Nations Ocean Conference. Ratification will make Australia a Party to the Agreement, allowing us to shape decisions and contribute to the maintenance of the international rules-based order.

8. The ocean is by its nature global; ecosystems, biodiversity and marine resources extend beyond and across maritime boundaries. The health of the waters under our jurisdiction are intertwined with the health of the ocean as a whole. The ocean is intrinsically and culturally valuable, particularly for First Nations peoples, and provides essential services for life on Earth, including the production of oxygen and the absorption of excess heat. These ecosystem services are of significant social and economic value. Australian marine industries such as tourism, fishing and aquaculture, which generate significant revenue and jobs rely on a healthy and resilient ocean. These industries operate in a regional and global context and will benefit from the clear and level regulatory environment that the Agreement will help to provide.

9. Much of Australia's vast maritime jurisdiction is bordered by the high seas in the Pacific, Indian and Southern Oceans. Most of the ocean exists beyond countries' maritime boundaries, with the high seas comprising over 60 per cent of the ocean and over 90 per cent of its volume. No one country has responsibility for the conservation and management of areas beyond national jurisdiction. It is vital that Australia becomes a Party to the Agreement to enable us to contribute to the global rules that govern this extensive space beyond our national jurisdiction, including to ensure they align with our national interests.

10. As of 2023, only 24.9 per cent of the global seafloor is estimated to have been mapped clearly.[1] Roughly two-thirds of the estimated 700,000 to 1 million species in the ocean have yet to be discovered or officially described.[2] Deep-sea environments, including those beyond national jurisdiction, are considered large reservoirs of biodiversity that could contain material to improve human wellbeing. For example, helping to fight disease

[1] Seabed 2030 at https://seabed2030.org/our-mission/ accessed on 15 May 2024
[2] https://oceanexplorer.noaa.gov/facts/explored.html accessed on 15 May 2024

and develop new foods for future generations. The Agreement provides a framework for the use of marine genetic resources collected from the high seas and seabed beyond national jurisdiction. This would provide clarity for scientists and may stimulate Australia's research sector.

11. The Agreement is complementary to Australia's own domestic and regional practices in ocean conservation and management. Australia is committed to the Kunming-Montreal Global Biodiversity Framework, which includes a global goal to protect 30 per cent of marine and coastal areas by 2030. Marine protected areas established under the Agreement will be important to achieving this goal. Australia could propose marine protected areas under the Agreement contiguous with Australia's existing comprehensive network of marine protected areas (marine parks) that cover 48 per cent of our national waters. Doing so would enhance the conservation outcomes of both the domestic and adjacent marine protected areas under the Agreement, and allow for regional collaboration and information-exchange on marine protection. The Agreement will also support international action to address the impacts of climate change through the Paris Agreement.

12. Australia is committed to a secure, stable and prosperous Indo-Pacific, of which a healthy and productive ocean is a critical component. This Agreement is a priority for many States in our region and provides an opportunity to cooperate on enhanced ocean management outside national jurisdiction.

13. As a Party to the Agreement, Australia could play a leading role in its regional implementation, using its significant expertise in ocean management to support Pacific, Southeast Asian and Indian Ocean States to achieve the objectives of the Agreement, including through capacity-building on matters such as conducting environmental impact assessments and establishing and managing marine protected areas.

14. The Agreement is also expected to raise standards that can be applied across other existing international instruments, frameworks and bodies while respecting their mandates and competencies. This may include regional fisheries management organisations, the International Maritime Organization, and the International Seabed Authority. Institutions set up under the Agreement would cooperate and coordinate with these other bodies, including on the sharing of information, processes and non-binding recommendations related to, for example, marine protected areas and environmental impact assessments.

15. The Agreement provides that it shall be interpreted and applied in a manner that does not undermine relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies (Article 5). It shall also be interpreted and applied in a manner that promotes coherence and coordination with those instruments, frameworks and bodies. This means, for example, that in taking decisions the Conference of the Parties must respect the competence of other competent bodies. This would include the Antarctic Treaty system, which provides a comprehensive framework for international management of the Antarctic, including the conservation of marine biodiversity and comprehensively addresses the legal, political, and environmental considerations unique to that region. It is proposed that Australia make a declaration in accordance with Article 71 highlighting this.

Obligations

16. The treaty contains a range of mandatory and permissive obligations across 12 Parts. Most obligations are contained within four Parts, which encompass the four pillars of the Agreement: marine genetic resources; area-based management tools; environmental impact assessments; and capacity building and transfer of marine technology. There are two annexes that provide guidance only in respect of area-based management tools and capacity building and transfer of marine technology respectively.

Marine genetic resources

17. Part II of the Agreement imposes obligations to ensure that subjects under Australia's jurisdiction or control abide by a regime regulating the collection and use of marine genetic resources and digital sequence information on marine genetic resources of areas beyond national jurisdiction. Marine genetic resources are defined under Article 1 as any material of marine plant, animal, microbial or other origin containing functional units of heredity of actual or potential value. Digital sequence information is not defined in the Agreement but is generally understood to refer to genetic sequence data and is treated as distinct from marine genetic resources (one is a physical sample, the other is data).

18. Article 11 requires Parties that carry out activities with marine genetic resources and digital sequence information on marine genetic resources in areas beyond national jurisdiction to do so in accordance with the Agreement (Article 11(1)), to promote cooperation in all such activities (Article 11(2)), and to carry them out exclusively for peaceful purposes (Article 11(7)). When collecting marine genetic resources in areas beyond national jurisdiction, Parties must have due regard for coastal and other States and must endeavour to cooperate, including with the Clearing-House Mechanism (an open-access information platform managed by the Secretariat) under Article 51 (Article 11(3)).

19. Article 12 covers notification requirements for Parties when collecting or utilising a marine genetic resource. It requires Parties to provide certain information to the Clearing-House Mechanism prior to the collection of marine genetic resources in areas beyond national jurisdiction (Article 12(2) – including inter alia the research subject matter, location, and timing of the collection), any material changes to that information (Article 12(4)), and additional information after the collection (Article 12(5) – including the collection and storage location). It also obliges each Party to ensure such samples of marine genetic resources and digital sequence information in their repositories can be identified as collected from areas beyond national jurisdiction in accordance with current international practice and to the extent practicable (Article 12(6)), and for those repositories, to the extent practicable, to provide a biennial report to the access and benefit-sharing committee (see below on Article 15) on access to marine genetic resources and digital sequence information (Article 12(7)).

20. Where marine genetic resources from areas beyond national jurisdiction and, where practicable their digital sequence information, is utilised (defined in Article 1 as essentially the conduct of research or development), including commercialisation (for example a marketable product is made), Article 12(8) requires the relevant Party to provide certain information to the Clearing-House Mechanism, including the results of the utilisation, including publications and patents, the modalities for access to the relevant resource or information utilised and, once marketed, information on sales.

21. Article 13 requires that Parties aim to ensure that traditional knowledge associated with marine genetic resources in areas beyond national jurisdiction that is held by Indigenous Peoples and local communities shall only be accessed with free, prior and informed consent or approval and involvement of such groups, and on mutually agreed terms.

22. Article 14 contains obligations relating to the fair and equitable sharing of both non-monetary and monetary benefits arising from the activities with respect to marine genetic resources and digital sequence information on marine genetic resources from areas beyond national jurisdiction. Article 14(2) sets out several non-monetary benefit-sharing obligations, including ensuring access to samples and information and providing opportunities for developing State Party participation in relevant activities. Article 14(3) requires each Party to ensure marine genetic resources and digital sequence information on marine genetic resources from areas beyond national jurisdiction that are the subject of research or development (utilisation) are kept in publicly available repositories and databases within three years from the start of that utilisation, or as soon as they become available (which could be more than three years).

23. Article 14(5) contains the general obligation to share monetary benefits through the financial mechanism to be established under Article 52. Article 14(6) requires developed Parties, including Australia, to pay an additional 50 per cent of their individually assessed contribution (outlined below under Costs) into a 'special fund' referred to in Article 52. The Conference of the Parties, once established, could decide to implement an alternative monetary benefit sharing regime in future under Article 14(7). Any alternative monetary benefit-sharing regime would need to be agreed by a three-fourths majority. Under Article 14(8), Parties may take up to four years to implement the new arrangement if they declare accordingly.

24. Article 15 establishes an access and benefit-sharing committee, which addresses access and benefit-sharing issues. Article 15(4) requires each Party to provide the committee with information on its measures on access and benefit-sharing and national focal points.

25. Article 16(2) requires periodic reporting to the access and benefit-sharing committee regarding the implementation of Part II. Article 16(1) requires Parties to participate in any additional monitoring and transparency procedures that may be adopted by the Conference of Parties as recommended by the access and benefit-sharing committee.

26. In accordance with Article 70 of the Agreement, it is proposed that Australia make an exception to Article 10(1) so that the Agreement does not apply to the utilisation of marine genetic resources and digital sequence information collected or generated prior to the entry into force of the Agreement.

Area-based management tools

27. Part III of the Agreement imposes obligations relating to the establishment, implementation, and review of area-based management tools (defined in Article 1). One area-based management tool is highlighted throughout the Agreement, the marine protected area (separately defined in Article 1), which has a stronger conservation focus than area-based management tools generally.

28. Article 18 addresses the area of application of area-based management tools. It requires Parties to refrain from submitting proposals for area-based management tools in relation to any areas within national jurisdiction and to refrain from relying on the establishment of area-based management tools as a basis for asserting or denying claims to sovereignty, sovereign rights or jurisdiction. On its face, this is straightforward as the Agreement applies to areas outside of national jurisdiction. However, some countries may claim areas as within their national jurisdiction that other countries would consider outside of every country's national jurisdiction. It will be up to the proponent of an area-based management tool to consider whether its proposal covers an area of national jurisdiction.

29. Additionally, the Conference of the Parties shall not consider for decision a proposal that includes an area of national jurisdiction. No proposal can be interpreted as amounting to recognition or non-recognition of any claims to sovereignty, sovereign rights or jurisdiction.

30. Article 19 requires proponents of area-based management tools to *inter alia* submit any proposals to the secretariat, consult and collaborate with relevant stakeholders on a proposal, use the best available science and traditional knowledge of Indigenous Peoples and local communities where relevant, include specific information and address certain criteria in a proposal, including relating to the geographical area and a draft management plan. Following a preliminary review by the Scientific and Technical Body, Article 20 requires the proponent to re-transmit a proposal to the secretariat, who will then publish that proposal and facilitate consultations. Article 21 addresses the consultation process, and specifically requires the proponent to undertake targeted and proactive consultations with relevant States where a proposal affects areas entirely surrounded by exclusive economic zones of States (known as 'high seas pockets') (Article 21(4)), consider and take into account the contributions received during the consultation period and revise a proposal as appropriate (Article 21(5)), and then submit a revised proposal to the Scientific and Technical Body (Article 21(7)). Australia would need to comply with consultation obligations under Articles 19, 20, and 21 only where it was a proponent of a proposal to establish an area-based management tool.

31. As a general rule, decisions under Part III are made by consensus. However, if no consensus is reached then decisions are made by three-fourths majority. Article 23(3) requires that a decision or recommendation in relation to an area-based management tool taken by the Conference of the Parties enter into force after 120 days and be binding on all Parties. Under Article 23(4), a Party may object to a decision within the 120 days and that decision would not be binding upon that Party. Under Article 23(5), that Party must provide an explanation to the secretariat at the time the objection is made, which must be based on one or more specified grounds.

32. A Party objecting to a decision to establish an area-based management tool has several additional obligations. Article 23(6) requires an objecting Party to adopt alternative measures to the extent practicable and to not adopt measures that would undermine the effectiveness of the decision. Article 23(7) requires a Party to report to the Conference of Parties on its alternative measures. Article 23(8) requires an objecting Party to, if it considers necessary, renew and provide an explanation for its objection every three years. If it does not, under Article 23(9) the objection is automatically withdrawn, and the decision will be binding on the Party 120 days after the automatic withdrawal.

33. Article 25(1) requires each Party to ensure that subjects under their jurisdiction or control act consistently with adopted area-based management tools. Such a Party could also adopt more stringent measures (Article 25(2)). Each Party must promote, as appropriate, decisions and recommendations of the Conference of the Parties in other relevant international organisations of which they are members (Article 25(4)) and encourage non-Parties to adopt similar measures, particularly those that conduct activities within the area of the area-based management tool (Article 25(5)). Under Article 25(6), a Party must cooperate in accordance with the Agreement to the extent that Party is not a party to or participant in another relevant international organisation.

34. Article 26(1) requires periodic reporting on the implementation of area-based management tools.

Environmental impact assessments

35. Part IV of the Agreement imposes obligations on Parties to ensure that environmental impact assessments are conducted for planned activities under their jurisdiction or control that may cause substantial pollution of, or significant and harmful changes to, the marine environment in areas beyond national jurisdiction (Article 28(1)).

36. Generally, each Party retains the right of decision-making over its own activities. The Agreement or future Conference of the Parties has no decision-making role. Whilst the Agreement applies to activities taking place in areas beyond national jurisdiction, Parties will also have obligations to assess, monitor and provide information regarding any activities within national jurisdiction that may cause substantial pollution of or significant and harmful changes to the marine environment in areas beyond national jurisdiction (Article 28(2)).

37. Articles 30 and 31 contain several mandatory steps each Party must follow in their conduct of an environmental impact assessment as well as the relevant thresholds. These include an initial screening of the activity, scoping to identify key environmental and associated impacts, assessment and evaluation of impacts, and measures for the prevention, mitigation and management of potential impacts. A Party must also advise, and consider any concerns raised, if it determines no environmental assessment is required. Articles 31(1)(e) and 32(1) require consultation to take place throughout the assessment process with opportunities for others to provide comments. The planned activity is also notified to the Clearing-House Mechanism and secretariat.

38. The Party planning the activity must consider and respond to comments, particularly those concerning consequential impacts in areas within national jurisdiction, and publish both comments and responses (Article 32(5)). A further obligation arises where the planned activity affects ‘high seas pockets’ (small areas of the high seas surrounded by exclusive economic zones), requiring the planned activity to be revised in accordance with the comments provided by the surrounding States (Article 32(6)). The Party is also required to ensure access to information related to the environmental impact assessment, including by indicating where confidential information has been redacted (Article 32(7)).

39. Articles 32(1)(f) and 33(1) requires the preparation of an environmental impact assessment report that must include information specified in Article 33(2). The Party

must make the draft report available through the Clearing-House Mechanism during the consultation period so the Scientific and Technical Body can evaluate it (Article 33(3)). The Party must consider (but is not required to adopt) the Scientific and Technical Body's comments and publish the final report through the Clearing-House Mechanism (Articles 33(4) and 33(5)).

40. Under Articles 34(1) and (2), the Party planning the activity is responsible for deciding whether the activity can proceed, taking into account the environmental impact assessment. A decision to authorise the activity must only be made when the Party has determined it has made all reasonable efforts to ensure that the activity can be conducted in a manner consistent with the prevention of significant adverse impacts on the marine environment (Article 34(2)). They must publish the decision through the Clearing-House Mechanism, which must outline any conditions of approval relating to mitigation and follow-up requirements (Article 34(3)). Articles 35 and 36 require Parties to monitor and report on environmental and associated impacts of activities they authorise or engage in, and make such reports public, including through the Clearing House Mechanism.

41. Article 37(1) also requires Parties to review the impacts of their authorised activities. If there are unforeseen adverse impacts or impacts that result from breaches of conditions set out in the approval of the activity, Parties must review the decision to authorise the activity, notify the Conference of Parties, put in place measures to mitigate those impacts and/or halt the activity and evaluate such measures (Article 37(2)). The Party undertaking the activity must consider concerns raised by any Party and recommendations made by the Scientific and Technical Body (Article 37(4)). That Party must also keep adjacent coastal and other relevant States informed and publish reports on the review and any change of decision authorising the activity, including through the Clearing-House Mechanism (Articles 37(5) and (6)).

42. Article 29 covers the relationship between this Agreement and other international organisations. If a Party determines that an equivalent screening or environmental impact assessment for a planned activity has been correctly conducted in another organisation, then they do not have to do one under this Agreement (Article 29(4)). The Party must ensure that any equivalent environmental impact assessment is published through the Clearing-House Mechanism (Article 29(5)). Similarly, a Party must review and monitor activities and ensure related reports are published through the Clearing-House Mechanism to the extent similar processes are not provided for in another organisation (Article 29(6)). Parties must also promote the use of environmental impact assessments and the adoption of standards and/or guidelines in other international organisations (Article 29(1)).

43. Finally, Parties must consider conducting strategic environmental assessments for plans and programmes relating to activities under their jurisdiction or control, to be conducted in areas beyond national jurisdiction, in order to assess their potential effects or those of any alternatives on the marine environment (Article 39(1)). The results of any strategic environmental assessments must be taken into account when undertaking any environmental impact assessments in accordance with Part IV (Article 39(2)).

Capacity-building

44. Part V of the Agreement imposes obligations on Parties to cooperate directly or through international organisations and partnerships with other stakeholders to assist Parties, in

particular developing States Parties, to achieve the objectives of the Agreement through capacity-building and transfer of marine technology (Article 41(1)). Cooperation must occur at all levels and in all forms (Article 41(2)), whilst Parties must give full recognition to the special requirements of developing States and not condition capacity-building and technology transfer on onerous reporting requirements (Article 41(3)). Australia, as a developed State, will be required to engage in capacity-building initiatives to this end, however, the Agreement does not bind Parties to any specific forms of capacity-building. Australia will also be obligated to cooperate to achieve the transfer of marine technology to developing States Parties.

45. Article 42 describes the modalities for Parties to provide capacity building and technology transfer. Parties are required to, within their capabilities, ensure capacity-building and cooperate to achieve technology transfer (Article 42(1)), and provide supporting resources and facilitate other sources of support taking into account their national policies, priorities, plans and programs (Article 42(2)). Efforts must build upon rather than duplicate existing programmes, be guided by lessons learned, and insofar as possible maximise efficiency and results (Article 42(3)). They must be needs-based where needs can be self-assessed or facilitated through the future capacity-building and transfer of technology committee and Clearing-House Mechanism (Article 42(4)).

46. Article 43 provides further modalities for the transfer of marine technology. Transfers are required to take place on terms that are fair and most favourable (for the recipient), but also mutually agreed (by both Parties) (Article 43(2)). Parties must promote economic and legal conditions that facilitate transfers, which may include providing incentives to enterprises and institutions (Article 43(3)). All rights over such technologies must be taken into account (Article 43(4)) and the technology transferred must, among other things, be relevant, reliable, and affordable (Article 43(5)). These additional modalities ensure Parties are not forced to hand over technology, and that rights such as intellectual property rights are respected.

47. Article 44 lists a non-exhaustive list of types of capacity-building and transfer of marine technology and refers to a more detailed list in Annex II.

48. Article 45(3) requires Parties to submit reports to the capacity building and transfer of marine technology committee, which takes into account input from regional and subregional bodies where applicable.

Funding and Implementation

49. Article 52 requires each Party to pay assessed contributions to fund the institutions established under the Agreement (see further below under Costs). Under Articles 53 and 54, Parties must take necessary legislative, administrative or policy measures to ensure the implementation of the Agreement and must also monitor and report on the implementation of their obligations.

Dispute Settlement

50. Each Party must cooperate to prevent disputes (Article 56). The remaining obligations exist only where the Party is involved in a dispute. Parties must settle a dispute using peaceful means of their choice (Article 57). Disputes concerning the interpretation or

application of the Agreement are to use the UNCLOS dispute settlement regime (Article 60(1)) taking into account the procedures Parties accepted and declarations they made under UNCLOS (Articles 60(3) and (4)). Pending the settlement of a dispute, Parties must make every effort to enter provisional arrangements of a practical nature (Article 61).

Cross-cutting and other obligations

51. Article 7 requires Parties to be guided by several well-known environmental principles and approaches to achieve the objectives of the Agreement, including inter alia the precautionary principle/approach and the use of best available science. Articles 8(1) and (2) requires Parties to cooperate under the Agreement, including by improving cooperation with other relevant international organisations, including promoting the Agreement's objectives in those organisations. Parties must also promote cooperation in marine scientific research and the development and transfer of marine technology (Article 8(3)).

52. Article 62 requires Parties to encourage non-parties to join the Agreement and to adopt consistent laws. Parties must also act in good faith and not exercise their rights in a way that is an abuse of right (Article 63).

Implementation

53. Some of the Agreement's obligations can be implemented through existing policy and legislation. However, changes to policies and legislation will be necessary to implement many of the Agreement's obligations. We propose implementing the legislation through a new Commonwealth Act related to the conservation and sustainable use of marine biodiversity of the high seas. The Act would regulate the use of marine genetic resources and digital sequencing information from marine genetic resources of areas beyond national jurisdiction, require those under Australian jurisdiction or control to comply with future area-based management tools in areas beyond national jurisdiction, and establish a mandatory procedure to assess the environmental impacts of activities under Australian jurisdiction or control in areas beyond national jurisdiction.

54. The Department of Climate Change, Energy, the Environment and Water (DCCEEW) will lead Australia's engagement with the Agreement. DCCEEW with support from Australia's overseas diplomatic network will engage with the Agreement's institutions, including the Conference of the Parties, and report necessary information to the Clearing-House Mechanism. DCCEEW will coordinate with relevant government departments in engagement with the Agreement and its institutions, and when necessary will coordinate with the relevant lead agency to implement the Agreement's obligations in other international organisations.

55. Australia has already provided funding to support Pacific Island countries to sign and ratify the Agreement through the Office of the Pacific Ocean Commissioner. Australia has also participated in regional capacity building workshops to raise awareness of the Agreement and assist States to better understand the obligations it contains. Further capacity building and technology transfer initiatives will be informed by needs assessments and the advice of developing States.

Costs

56. Australia will be required to pay an annual assessed contribution in accordance with the United Nations scale of assessment adjusted appropriately, to support the implementation of the Agreement and assist its objectives to be met (Article 52).

57. As outlined in the above obligations (Articles 14 and 52), Australia would be obliged to contribute an additional 50 per cent of its annual assessed contribution to a 'special fund' to account for the monetary benefit sharing obligations for marine genetic resources, until such a time that a new monetary benefit sharing arrangement is agreed by the Conference of the Parties. Parties may also choose to make additional voluntary financial contributions.

58. There may be some costs for the Commonwealth associated with decisions on environmental impact assessments to ensure that Australian subjects are compliant with future area-based management tools. However, these costs are expected to be minimal due to the small number of activities that take place under Australian jurisdiction or control that would be captured by the scope of the Agreement. The government has existing resources and processes in place to manage domestic activities that may be leveraged to meet the new obligations imposed by this Agreement.

59. There will also be costs associated with becoming a Party to the Agreement, such as those required to fund attendance at meetings including the regular Conference of the Parties.

60. The regulatory impact of ratifying the Agreement is also expected to be minimal due to the small number of activities that take place under Australian jurisdiction or control that would be captured by the scope of the Agreement. The Office of Impact Analysis was consulted and found that the Agreement is unlikely to have more than a minor regulatory impact on Australia, and no Impact Assessment is required.

Future treaty action

61. Article 70 of the Agreement provides that no reservations or exceptions may be made, unless expressly permitted. As noted above, Australia proposes to make a temporal exception to Article 10(1), limiting operation of the Agreement to use of marine genetic resources and digital sequence information collected after the Agreement's entry into force. Article 71 allows declarations or statements when signing, ratifying, approving, accepting or acceding to the Agreement, provided they do not purport to exclude or modify the Agreement's legal effect. As also noted above, Australia proposes to make a declaration highlighting that in accordance with Article 5, the Agreement shall be interpreted and applied in the context of, and in a manner consistent with UNCLOS and in a manner that does not undermine relevant legal instruments, frameworks and bodies, including those of the Antarctic Treaty system.

62. Under Article 72, Parties may propose amendments to the Agreement, including new annexes. Amendment proposals are circulated by the secretariat and, if after six months half of the Parties have responded to it favourably, the Conference of Parties will consider it and can adopt the amendment with a two-thirds majority of Parties present and voting. Parties would then need to ratify, approve or accept the amendment, 30 days after which the amendment would enter into force for that Party. For Australia, such an amendment

would require progress through its domestic treaty process before accepting the amendment.

63. Annexes may be amended in accordance with Article 74. Any Party proposing an amendment must communicate the proposal to the secretariat at least 150 days before the Conference of Parties meets to consider it (Article 74(3)(a)). Following consultation with relevant subsidiary bodies, the Conference of Parties will decide on the amendment by two thirds majority of Parties present and voting. The amendment will enter into force after 180 days for all Parties, except for those Parties that make an objection.

Withdrawal or denunciation

64. Parties are able to denounce the Agreement pursuant to Article 73(1), and reasoning for doing so is not required. Denunciation would take one year to take effect. Where an obligation embodied in the Agreement is also imposed independently under international law, the denunciation does not affect that Party's duty to fulfil that obligation (Article 73(2)).

Contact details

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Department of Climate Change, Energy, the Environment and Water

ATTACHMENT ON CONSULTATION

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

Adopted in New York on 19 June 2023 (ATNIF 18)

CONSULTATION

65. Public consultation and stakeholder engagement on the Agreement began prior to the commencement of negotiations in 2018. Industry and civil society stakeholders were consulted iteratively, including through roundtables, and views were fed into a whole of government negotiation mandate to enable the delegation to shape an Agreement to which Australia could become a Party. Stakeholders were also in attendance at international working group meetings and at the Intergovernmental Conferences where negotiations took place. There was a non-government representative on Australia's delegation during all rounds of formal negotiations.

66. Following the adoption of the Agreement, DCCEEW ran a public consultation survey for 6 weeks from 10 August to 21 September 2023 seeking views on whether Australia should ratify the treaty and what impacts this might have. Key stakeholders were directly invited to participate in the consultation, including representatives from the fishing, shipping and cable industries, scientific and research centres, non-profit organisations, indigenous organisations, and academics. There were 23 responses to the survey, all of which supported ratification. A further 3,052 campaign emails were received from the public that strongly supported ratification.

67. The consultation survey identified minimal Australian activities that would be captured by the Agreement should it be ratified, consistent with prior consultation and assessment. In relation to marine genetic resources of areas beyond national jurisdiction, only the work of one organisation was identified as potentially being in scope. The survey did not identify any upcoming activities under Australian jurisdiction or control planned to occur in areas beyond national jurisdiction that would be captured by the requirements of the environmental impact assessment process of the Agreement. Stakeholders most strongly supported the conservation benefits that the Agreement would deliver, particularly by enabling the establishment of marine protected areas beyond national jurisdiction. A positive connection was drawn between establishing high seas marine protected areas and the effectiveness of Australia's domestic marine parks network.

68. Two stakeholders mentioned the Agreement may have some impacts upon Australian business and institutions, but both were of the view that these could be managed. An ecology group noted potential new administrative costs associated with the notification and reporting requirements for marine genetic resources and suggested that government should proactively communicate the new requirements to those affected and provide guidance, coordination and support. In this regard, an academic noted that this change in status quo for marine genetic resources and digital sequencing information would provide clarity and legal certainty which would likely translate to economic and reputation benefits for Australian researchers and organisations. One individual envisioned that there

could be some costs to businesses planning activities in the high seas to conduct environmental impact assessments but thought that businesses could manage the impacts without any government assistance and that the long-term benefits would outweigh any potential costs.

69. The cable industry raised concerns that the Agreement could be misapplied and delay the laying of new submarine cables by applying the environmental impact assessment processes to cables, and/or distort their routing due to area-based management tool restrictions. They suggested that Australia should seek to minimise such misapplication, including by consideration of submarine cables during the proposal and implementation phases of area-based management tools, ensuring submarine cable expertise in the Scientific and Technical Body, using the best available science, and developing appropriate guidelines.

70. A respondent from the fishing industry suggested that compliance with the Agreement may be an issue based on experience in the fishing sector, where not all states obey the conservation management measures of regional fishing management organisations. It was suggested that careful thought should be given to the consequences for noncompliance under the Agreement. This suggestion was also made by another respondent.

71. Respondents remarked on the opportunity the treaty presents for Australia, as an influential state with strong ocean governance credibility, to demonstrate leadership in an area in need of responsible stewardship. There was wide support from stakeholders for Australia to play a significant role in bringing the treaty into force and supporting its implementation through capacity building including regular workshops, technical and expert assistance, partnerships, funding, technology transfer, outreach initiatives and through educational institutions.

72. Australian states and territories were not directly consulted due to the extraterritorial nature of the Agreement.

Stakeholder list

Public survey responders 2023 (anonymous responders not reflected)

- Andrew Sullivan, Fish Focus Consulting
- Centre for Biodiversity and Conservation Science, University of Queensland
- Cynthia Riginos, academic at the University of Queensland
- Dr Fran Humphries, Professor Charles Lawson, Dr Michelle Rourke (joint response)
- Dr Sarah Louise Lothian, academic
- Drew Russell (individual)
- Ecological Society of Australia
- High Seas Alliance
- Institute for Marine and Antarctic Studies, the University of Tasmania
- International Cable Protection Committee
- Law Council of Australia
- Morgan Goss (individual)
- Pew Charitable Trust, World Wide Fund for Nature, Humane Society International Australia, Australian Marine Conservation Society (joint response)
- Piers Dunstan, Commonwealth Scientific and Industrial Research Organisation
- Southern Cross Cable Network
- Tuna Australia

Stakeholders consulted during the treaty negotiation process

- Austral Fisheries
- Australia Marine Sciences Association
- Australian Association for Maritime Affairs
- Australian Committee for International Union for Conservation of Nature
- Australian Conservation Foundation
- Australian Institute of Petroleum
- Australian Marine Conservation Society
- Australian Marine Sciences Association
- Australian National Centre for Ocean Resources & Security, University of Wollongong
- Australian National University
- Australian Oceans Institute
- Australian Petroleum Production and Exploration Association
- Australian Ship Owners Association
- BHP Billiton
- Birdlife Australia
- Bush Heritage Australia
- Cat Dorey, consultant
- Centre for Policy Development
- Commonwealth Fisheries Association
- Conservation Council of South Australia
- Conservation International
- Conservation Volunteers Australia
- International Union for Conservation of Nature
- International Union for Conservation of Nature Commission on Ecosystem Management
- James Cook University
- Landcare Australia Ltd
- Lawyers for Forests
- Macquarie University
- Macquarie Law School
- Marine Stewardship Council
- Minerals Council of Australia
- MyEnvironment
- National Seafood Industry Alliance
- Natural Resource Management Region Working Group
- Nature Conservation Society of South Australia
- New Zealand Bar Association
- OceanWatch Australia
- Orient Overseas Container Line (Australia) Pty Ltd
- Places You Love Alliance
- Shipping Australia Limited
- Southern Cross Cable Network
- Tasmanian Land Conservance
- The Nature Conservancy
- The Pew Charitable Trusts

- Dr Fran Humphries
- Environment Defenders Office, New South Wales
- Environment East Gippsland
- Environmental Justice Australia
- Fisheries on the High Seas
- Fisheries RDC
- Frank Fenner Foundation
- Friends of the Earth Australia
- Fungimap
- Gene Ethics
- Green Institute
- Greenpeace
- Humane Society International
- International Fund for Animal Welfare Oceania Office
- International Sustainable Sea Food Foundation
- The Wilderness Society
- Traffic Australia
- United Nations University, Institute of Advanced Studies
- Trust for Nature
- University of Auckland
- University of New South Wales
- University of Queensland
- University of Technology Sydney
- University of Western Australia
- Victoria University, Wellington Law Faculty
- Western Australian Forest Alliance
- Wentworth Group of Concerned Scientists
- Wetlandcare Australia
- Wetlands International
- World Wide Fund for Nature