

SAVE OUR MARINE LIFE

15th July 2024

Committee Secretary
Joint Standing Committee on Treaties
PO Box 6021
Parliament House
Canberra ACT 2600

Re: 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 (BBNJ)

Save Our Marine Life alliance welcomes the opportunity to contribute to this inquiry by the Joint Standing Committee on Treaties (JSCOT) and urges the Australian Government to act with urgency so that the Agreement is ratified as soon as possible.

Save Our Marine Life alliance is led by *The Pew Charitable Trusts and the Australian Marine Conservation Society* and is made up of 27 environmental organisations.

KEY RECOMMENDATIONS

- **Leading ocean nations must promptly ratify the Agreement and promote near-universal ratification in 2024-25.**
- **Preparations for implementation should begin now, with support provided to countries that need it. As a developed country and prominent ocean nation, Australia must lead these efforts.**
- **If Australia does not prioritize the legislation, the June 2025 ratification target is likely to be missed, along with the opportunity to demonstrate ocean leadership and ambition by being amongst the first 60 countries to ratify.**

LEADERSHIP

Save Our Marine Life commends the Australian Government on signing the treaty on the first day it was open for signatures on 20 September 2023. We acknowledge the Government and its predecessors for their sustained commitment over almost twenty years to securing a positive

outcome for the High Seas. Australia is an influential maritime country and regional leader, successful at multilateralism and has committed to championing science-based marine protection and management. Our membership of the High Ambition Coalition of countries reflects our values and leadership in the Law of the Sea.

Save Our Marine Life welcomes the election of Australia's Chief Counsel and First Assistant Secretary Adam McCarthy as Co-Chair of the Preparatory Commission (PrepCom) for the entry into force of the BBNJ Agreement. We note that the other Co-Chair of the PrepCom (Belize) has already ratified the Agreement.

Early ratification presents a major leadership opportunity for Australia. Swift action by Australia will help generate the necessary critical mass and momentum of State Parties required for the treaty to enter into force.

OVERVIEW AND NATIONAL INTEREST ANALYSIS

Oceans beyond national jurisdiction are currently governed by a fragmented set of agreements, each typically addressing individual sectors or regions. There is no overarching system to protect the marine environment, its species, and habitats, leaving some activities completely unregulated. In recent decades, activities on the High Seas have increased dramatically, bringing about social and environmental challenges such as species collapse, plastic pollution, and immense cumulative pressures on marine ecosystems. As these challenges have intensified, so has our understanding of the need for comprehensive and effective marine ecosystem management, informed by decades of scientific research. We now have more knowledge than ever about marine migratory and widely distributed species, from great whales to tiny microbes. Ocean management must reflect our growing understanding of the interconnectedness within and across marine ecosystems and the multifaceted problems they face.

Save Our Marine Life endorses the analysis in this section of the NIA, especially the recognition of the significance of marine protected areas (MPAs) for migratory megafauna and fish stocks. We also emphasize the importance of Australia playing an active role in protecting ocean health both domestically and internationally (paragraph 5). Additionally, we underscore the leadership and critical role of Pacific Island Countries and Territories in the timely and effective implementation of the Agreement. We commend their strong and unified contribution throughout the negotiations, which has led to the most robust and comprehensive agreement possible. Two of the eight current signatories are from this region (Palau and the Federated States of Micronesia). Australia's ratification will further demonstrate our commitment to collaborating with and supporting Indo-Pacific countries, aligning with the shared goals for ocean health outlined in key regional strategies.

SWIFT RATIFICATION

Save Our Marine Life regards swift ratification of the BBNJ Agreement – and concurrent planning for and investment in its implementation – as a pillar of Australia's ongoing ocean leadership efforts on the global stage. Save Our Marine Life strongly welcomes the stated intention in the NIA (paragraph

2) to ratify the Agreement in accordance with Article 66 as soon as practicable following consideration by JSCOT, passage of legislation, and associated necessary processes.

We strongly support the rationale outlined at paragraph 5 of the NIA, which states that conservation measures to be implemented via the Agreement will support the Australian Government's regional and international environmental leadership and nature positive agendas.

Expediting ratification will enable the Australian Government to focus on preparation for the Agreement to come into effect, including by building support for universal participation by encouraging other States to ratify; by collaborating and leading at the global and regional level to build the scientific basis for effective High Seas conservation, including through the establishment of MPAs and operationalizing environmental impact assessment (EIA) requirements; and by providing capacity building support to other States, especially developing States in Australia's neighbouring regions.

Save our Marine Life supports swift ratification for the following reasons

1. *The treaty creates a framework to establish area-based management tools in the High Seas, such as MPAs, to protect and restore marine biodiversity and ecosystems.*

We encourage Australia to prioritise supporting the creation of a network of highly protected High Seas MPAs in the ocean surrounding the continent. This is a diverse and dynamic ocean area with high biodiversity values and in need of protection. The BBNJ Agreement could also provide an opportunity for Australia to enhance the protections afforded for our own domestic marine parks by extending those protections to High Seas areas that connect with or otherwise impact domestic marine parks. Australia should also support other nations in proposing High Seas MPAs across the world to ensure a comprehensive, representative and connected network of highly protected marine areas is achieved. This is a matter of high priority if we are to deliver the Kunming-Montreal Agreement to the Convention on Biological Diversity that commits to protecting at least 30% of land and sea by 2030.

2. *The treaty advances fairer and more equitable access to and sharing of benefits arising from marine genetic resources collected in the High Seas*

The oceans contain the highest functional biodiversity on earth, which is closely associated with and dependent upon underlying genetic diversity. Most of the ocean's biodiversity, including genetic diversity, remains unstudied, but holds great opportunities for the economy, science and conservation. For example, marine organisms are being collected and utilized to develop pharmaceutical and cosmetic products and this should be appropriately regulated. The BBNJ Agreement effectively balances the freedom and advancement of scientific research related to marine genetic resources with the need to fairly share the benefits therefrom.

3. *The treaty puts in place an environmental impact assessment process to avoid or reduce impacts on the marine environment from activities in the High Seas.*

Freedom of the High Seas is exercised under the conditions laid down by this Convention and covers a number of known current activities, like fishing. However, the High Seas are among the greatest of our global commons and highly connected to the ecosystems under national jurisdiction. It is critical

to mandate environmental impact assessment for possible future activities like geoengineering, oil and gas exploration, seabed mining, fishing, and for pollution events including, but not limited to, oil leaks and shipping incidents. The new High Seas provides greater transparency and accountability around the process for deciding if and how activities that pose a serious threat to this shared ocean environment proceed.

4. *The treaty requires Parties to provide capacity building and transfer marine technology to developing States assessed and managed for their cumulative impacts.*

A number of synergies exist with capacity building that Australia is already engaged in, and as such this treaty presents an opportunity to build on that capacity support in a coherent and coordinated way. This could, in line with Australia's [development cooperation priorities](#), focus in particular on partner countries in the Indian and South Pacific Oceans and Small Island Developing States, and could involve Australia considering as a first step, support for the development of needs-assessment frameworks or guidance and support partner countries in applying them.

Australia could also consider sharing its marine scientific and technological expertise in the period between the opening for signature and later entry into force of the treaty to support partner countries in laying the groundwork for future proposals for High Seas MPAs, the implementation of the EIA provisions, and to build capacity for Marine Genetic Resource-related research.

In addition to Australia rapidly ratifying the treaty, we see a number of opportunities for Australia to continue to play a lead role in delivering strong environmental outcomes under the treaty. Of particular note are the opportunity:

- for Australia to be among the members of the first BBNJ Conference of the Parties (COP); which would enable Australia to influence the ambitious operationalisation of the BBNJ's mandate and competency to designate and adopt management plans for High Seas MPAs, thus providing the governance arrangement for delivering on the "30 by 30" protected areas commitment for the High Seas;
- to implement the agreement on a tiered approach to environmental impact assessment (EIA). Importantly this tiered approach can support the assessment of cumulative impacts, e.g. those additional stresses on the environment that can occur when multiple different activities (such as fishing, shipping, and mining) happen in or affect the same area. These cumulative impact assessments could be conducted jointly by interested States responsible for the vessels involved; and
- for the COP to facilitate 'enhanced cooperation' and ensure that ecological connectivity is properly reflected in deliberations and decisions. We are particularly keen to see strengthened regional-scale cooperation across sectors and jurisdictions so that the oceans can be made safe for migratory species and their critical habitats throughout their ranges. This will require science-based cooperation with all relevant interests, including Indigenous Peoples and local communities with rights and interests in those waters and those species.

IMPLEMENTATION

Save Our Marine Life supports the development of a new Commonwealth Act focused on the conservation and sustainable use of marine biodiversity on the High Seas (paragraph 53) and the continuation of existing lead agency arrangements, with the Department of Climate Change, Energy, the Environment and Water (DCCEEW) coordinating with the Department of Foreign Affairs (DFAT) and other relevant government departments and institutions (paragraph 54). DCCEEW has developed substantial expertise and built important relationships throughout the negotiations, positioning it well to lead the next phase of work on the Agreement. As mentioned in the NIA, joint efforts by DCCEEW and DFAT are already assisting Pacific Island countries in signing and ratifying the Agreement through the Office of the Pacific Ocean Commissioner (paragraph 55).

COSTS

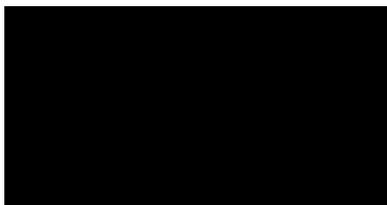
Joining any multilateral environmental agreement involves costs related to participation, compliance, and implementation, particularly in assisting developing countries to fulfill their obligations under the new instrument. As noted in the NIA (paragraphs 56-59), the method for calculating these costs is known, though specific amounts are not detailed. Save Our Marine Life views the Agreement as a critical advancement in the international community's approach to managing and conserving areas beyond national waters, and we believe that these modest costs are both necessary and manageable.

CONCLUDING COMMENTS

As one of the founding signatories of the Agreement, a co-chair of the PrepCom to prepare for BBNJ's implementation, and a champion for a robust and comprehensive agreement over several decades, Australia has a responsibility accompanied by a clearly stated commitment to swiftly ratify the BBNJ Agreement. As outlined above, Australia can derive significant conservation benefits through the new treaty regime, as well as delivering on our commitments and shared interests within the Pacific and other neighbouring regions and internationally. We look forward to working with the government to continue to ensure Australia acts as a champion for the new High Seas and its early implementation.

Thank you for considering our submission.

Yours sincerely,



Darren Kindleysides
CEO
Australian Marine Conservation Society

On behalf of the Save Our Marine Life alliance