

Proactive Release

Published on or before: 31/01/2025

The following Cabinet papers and related Cabinet minutes have been proactively released by the Minister of Foreign Affairs

Title	Reference
<i>Cabinet Minute of Decision – Report of the Cabinet Foreign Policy and National Security Committee: Period Ended 22 November 2024 (Part 1)</i>	CAB-24-MIN-0456
<i>Cabinet Foreign Policy and National Security Committee Minute of Decision - Agreement on the Conservation and Sustainable Use of Marine Biodiversity Beyond National Jurisdiction: Policy Decisions and Approval to Ratify</i>	FPS-24-MIN-0033
<i>Agreement on the Conservation and Sustainable Use of Marine Biodiversity Beyond National Jurisdiction: Policy approvals for implementing legislation and approval to ratify</i>	

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the OIA). Where this is the case, the relevant sections of the OIA that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to OIA redaction codes:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government;
- 6(b)(i): to protect the passing of information from another government on a confidential basis;
- 9(2)(g)(i): to protect the free and frank expression of opinions by departments;
- 9(2)(f)(iv): to protect the confidentiality of advice tendered by Ministers of the Crown and officials; and
- 9(2)(h): to maintain legal professional privilege.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Foreign Policy and National Security Committee: Period Ended 22 November 2024 (Part 1)

On 25 November 2024, Cabinet made the following decisions on the work of the Cabinet Foreign Policy and National Security Committee for the period ended 22 November 2024:

Out of scope

Proactively Released by the Minister of Foreign Affairs

FPS-24-MIN-0033

Agreement on the Conservation and Sustainable Use of Marine Biodiversity Beyond National Jurisdiction: Policy Decisions and Approval to Ratify

Portfolio: Foreign Affairs

CONFIRMED

Out of scope

Out of scope

Rachel Hayward
Secretary of the Cabinet

Proactively Released by the Minister of Foreign Affairs



Cabinet Foreign Policy and National Security Committee

Minute of Decision

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Agreement on the Conservation and Sustainable Use of Marine Biodiversity Beyond National Jurisdiction: Policy Decisions and Approval to Ratify

Portfolio Foreign Affairs

On 19 November 2024, the Cabinet Foreign Policy and National Security Committee:

- 1 **noted** that in March 2016, the then government agreed to New Zealand's interests and objectives for the preparatory phase of negotiations on the *Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction* (the BBNJ Agreement) [ERD-16-MIN-0001];
- 2 **noted** that in July 2018 and August 2022, the previous government agreed to two further negotiating mandates for the text of the BBNJ Agreement [ERS-18-MIN-0011, ERS-22-MIN-0035];
- 3 **noted** that in June 2023, the previous government approved the final text of the BBNJ Agreement, and agreed that New Zealand should sign the Agreement at the earliest appropriate opportunity [ERS-23-MIN-0029];
- 4 **noted** that on 20 September 2023, New Zealand became a signatory to the BBNJ Agreement, the text of which is attached as Annex 1 to the paper under FPS-24-SUB-0033;
- 5 **approved** the content of the National Interest Analysis (NIA), attached as Annex 2 to the paper under FPS-24-SUB-0033;
- 6 **agreed** that the text of the BBNJ Agreement and the NIA be presented to the House of Representatives for the purposes of the Parliamentary treaty examination process, under Standing Orders 405;
- 7 **noted** that the ratification of the BBNJ Agreement will require amendments to existing legislation;
- 8 **agreed** that all legislative amendments required to comply with the BBNJ Agreement be given effect through the United Nations Convention on the Law of the Sea (Biodiversity Beyond National Jurisdiction Implementation) Bill (the Bill);

- 9 **noted** that the Bill holds a category 6 priority on the 2024 Legislation Programme (drafting instructions to be issued by the end of 2024);
- 10 **invited** the Minister of Foreign Affairs to issue drafting instructions to the Parliamentary Counsel Office to draft the Bill to give effect to the BBNJ Agreement, as outlined in paragraphs 40-45 of the paper under FPS-24-SUB-0033;
- 11 **noted** that secondary legislation may be required to implement aspects of the BBNJ Agreement;
- 12 **authorised** the Minister of Foreign Affairs and, where necessary, relevant portfolio Ministers to make any subsequent policy decisions consistent with Cabinet's decisions relating to the paper under FPS-24-SUB-0033 to facilitate the drafting of legislation and any other policy measures identified as necessary to implement the BBNJ Agreement;
- 13 **noted** that in developing legislation and policy measures for implementation, consultation will be undertaken with relevant interested stakeholders and Māori;
- 14 **invited** the Minister of Foreign Affairs to report back to the Cabinet Legislation Committee to seek approval to introduce the Bill to the House;
- 15 **noted** that the BBNJ Agreement will enter into force either 120 days after the date of deposit of the 60th instrument of ratification, approval, acceptance or accession, or on the 30th day following the deposit of New Zealand's instrument of ratification if the Agreement has already entered into force;
- 16 **agreed** that New Zealand ratify the BBNJ Agreement, subject to the satisfactory completion of the Parliamentary treaty examination process and the passage of implementing legislation;
- 17 **noted** that the financial costs to implement the Agreement will be met as follows:
- 17.1 for the assessed contribution and mandatory capacity-building fee: the Ministry of Foreign Affairs and Trade will meet this within the current Vote Foreign Affairs appropriation;
- 17.2 for all other costs: within relevant departmental baselines.

Jenny Vickers
Committee Secretary

Present:

Rt Hon Christopher Luxon
Rt Hon Winston Peters (Chair)
Hon David Seymour
Hon Mark Mitchell
Hon Todd McClay
Hon Nicola Grigg

Officials present from:

Office of the Prime Minister
Officials Committee for FPS
Office of the Minister of Foreign Affairs

~~In Confidence~~

Office of the Minister of Foreign Affairs

Foreign Policy and National Security Committee (FPS)

Agreement on the Conservation and Sustainable Use of Marine Biodiversity Beyond National Jurisdiction: Policy approvals for implementing legislation and approval to ratify

Proposal

1. This paper seeks approval to present the *Agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction* (the BBNJ Agreement) and the National Interest Analysis for the BBNJ Agreement to the House of Representatives for parliamentary treaty examination.
2. Further, this paper seeks policy approvals for the legislation required to implement New Zealand's obligations under the BBNJ Agreement as well as approval for the Minister of Foreign Affairs to issue drafting instructions to the Parliamentary Counsel Office to draft the United Nations Convention on the Law of the Sea (Biodiversity Beyond National Jurisdiction Implementation) Bill.
3. Finally, this paper seeks approval to ratify the BBNJ Agreement subject to completion of parliamentary treaty examination and passage of implementing legislation.

Relation to government priorities

4. The BBNJ Agreement is a legally binding agreement under the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS is one of New Zealand's most important international treaties and is essential for New Zealand's security and prosperity. It provides the basis for maritime zones, including New Zealand's Exclusive Economic Zone (EEZ), and global rules for the high seas that support international trade, freedom of navigation, and rights and duties in the marine environment.
5. The Agreement upholds and reinforces the centrality of UNCLOS as the governance framework in which all activities in the ocean take place. It provides an opportunity for New Zealand to maintain and pursue its interests within the UNCLOS framework as it provides for "guardianship for and protection of our environment" - one of the stated values driving the Coalition Government's foreign policy.
6. The Agreement is of significant interest to international partners which New Zealand is seeking to strengthen and refresh relationships with. Australia, the United States, the United Kingdom, Canada, India, Singapore, Indonesia, the Philippines, and Viet Nam are all signatories. Australia and the UK have completed Parliamentary scrutiny, resulting in recommendations to ratify, s6(a), s6(b)(i) Chile and Singapore are among those who have already ratified. Pacific countries place priority on the Agreement for their interests in high seas areas of the Pacific Ocean and most have signed the Agreement. s6(a)

Executive summary

7. The BBNJ Agreement implements and strengthens the wider UNCLOS framework by filling gaps in relation to the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction (ABNJ) (i.e. beyond the EEZ and continental shelf of any State).
8. Benefits to New Zealand of ratifying the Agreement include upholding New Zealand's security and prosperity by reinforcing UNCLOS, contributing to decisions for marine biodiversity and stewardship of the ocean, and maintaining influence on oceans governance and the international rules-based order. New Zealand's existing high seas interests are protected through provisions in the Agreement that ensure regional and sectoral governance arrangements are not undermined. Implementation costs will be minimal, and it is in New Zealand's interests to ratify the Agreement. Legislation and policy measures will be required for implementation, and policy approvals for the issuing of drafting instructions are sought for this purpose.

Background

9. Nearly two-thirds of the world's oceans lie outside the national jurisdiction of any country. These areas contain a high level of biodiversity, which provides resources and services that underpin human health, wellbeing, and prosperity. It also supports resilience of the ocean which contributes to climate change mitigation and adaptation. Pressures on marine biodiversity from human activities are increasing, as are the impacts of climate change on the oceans, including ocean acidification.
10. There are already international rules for some activities and resource use on the high seas and deep seabed (ABNJ), including for fishing, shipping, and mining. However, when UNCLOS was agreed in 1982, the importance of high seas biodiversity, including its genetic resources, and the tools needed to manage it beyond sector-specific management such as fisheries and shipping, were not well understood.
11. In 2006, UN Member States initiated discussion on gaps in the existing international legal framework and ways to address pressures on marine biodiversity in a coordinated way. Following extensive discussions, in 2017 the UN General Assembly established an intergovernmental conference to negotiate a new legally binding agreement to fill these gaps. New Zealand actively participated, with Cabinet agreeing three negotiating mandates in March 2016, July 2018 and August 2022.
12. Negotiations concluded in March 2023 and the Agreement text was adopted by consensus in June 2023. New Zealand signed the Agreement on 20 September 2023 (attached as **Annex 1**). Signature is not legally binding but indicates an intention to take steps to express consent to be bound to the Agreement.

Overview and analysis of the BBNJ Agreement

13. The BBNJ Agreement only applies to areas beyond national jurisdiction, i.e. areas outside of countries' EEZs and continental shelves. It provides tools and systems to conserve and sustainably use marine biodiversity in ABNJ, including through clear procedures and requirements for assessing environmental impacts, and enabling the establishment of area-based management tools such as marine protected areas. The Agreement also provides a specific regime for access to, and use of, marine genetic resources in ABNJ, which did not previously exist.
14. The Agreement is designed to do this while not undermining existing institutions, frameworks and bodies that play a role in the conservation and sustainable use of marine biodiversity in ABNJ. This is particularly important for New Zealand in relation to regional fisheries

management organisations (RFMOs), and the Antarctic Treaty System, where New Zealand has significant fisheries, conservation, and strategic interests. Areas within New Zealand’s jurisdiction, including the EEZ and territorial sea, are not in scope of the Agreement.

Table 1: Summary of the provisions of the BBNJ Agreement

General, institutional, dispute settlement provisions (Parts I, VI, VII, VIII, IX, X, XI, XII)
<p>The Agreement contains standard “cross-cutting” provisions (preamble, objective and principles, international cooperation, institutional arrangements, review procedures, funding, implementation and compliance mechanisms, and dispute settlement). The Agreement provides for a Secretariat, decision-making procedures that include voting, and compulsory binding dispute settlement like that which already exists under UNCLOS.</p> <p>Cooperation and consultation with other relevant instruments, frameworks, and bodies (e.g. RFMOs) is required to ensure coherence across the oceans governance framework. There will be a Conference of the Parties (COP) and several subsidiary bodies to facilitate the operation of the Agreement, including a Scientific and Technical Body to provide advice to the COP and perform a range of functions under the Agreement.</p>
Marine genetic resources (MGRs) (Part II)
<p>The Agreement sets out new rules for access to, and benefit-sharing from, MGRs collected from ABNJ. MGR rules do not apply to fishing or research conducted for the purposes of fisheries management.</p> <p>From entry into force of the Agreement, developed countries will pay an upfront annual fee to fund capacity-building and projects linked to the purposes of the Agreement. This fee is 50 percent of the annually assessed contribution each Party pays to cover the costs of the institutions of the Agreement. The COP is expected to decide on an alternative system for monetary benefit-sharing. While some Parties are likely to advocate for benefit sharing that is linked to actual use and commercialisation activities, such as royalties, this decision requires a three-quarters majority vote. s9(2)(g)(i)</p>
Area-based management tools (ABMTs), including marine protected areas (Part III)
<p>The Agreement empowers the COP to establish ABMTs, including ecologically representative and well-connected networks of marine protected areas. It sets out a process for ABMT proposals, including a three-quarters majority vote for decisions and a tightly constrained “opt-out” for Parties objecting to a decision. Emergency measures may be decided where serious threats to marine biodiversity cannot be managed in a timely manner through the application of other provisions of the Agreement or by other relevant bodies.</p> <p>The Agreement will facilitate cooperation and coordination between States and regional and sectoral bodies for ABMTs and fill international governance gaps while not undermining existing instruments, frameworks, and bodies. This will promote greater consistency and coherence across the oceans governance regime.</p>
Environmental impact assessments (EIA) beyond national jurisdiction (Part IV)
<p>The Agreement requires a screening process if a proposed activity beyond national jurisdiction may have more than a minor or transitory effect on the marine environment, like processes required under the Antarctic Treaty System. A full EIA is required if, based on the screening, the proposed activity may cause substantial pollution of, or significant and harmful changes to, the marine environment. Processes and standards for these EIAs are set out in the Agreement. Decisions to approve activities rest with the consenting Party. The Scientific and Technical Body can provide expert advice and these decisions may be scrutinised by the COP.</p> <p>EIA requirements do not apply to activities that have been assessed by another relevant body (e.g. an RFMO), either under an equivalent EIA process, or if they are carried out in accordance with rules that have been designed to ensure that the activity will not cause substantial pollution or significant and harmful changes to the environment.</p>

Capacity-building and the transfer of marine technology (Part V)

The Agreement includes obligations for developed States to provide resources to support capacity-building for developing countries and to promote legal conditions for the transfer of marine technology. s6(a), s9(2)(g)
(i)

Key benefits of the BBNJ Agreement for New Zealand

Upholding New Zealand's security and prosperity by supporting UNCLOS

15. New Zealand benefits from a large maritime domain. Commercial fisheries bring significant economic benefits, and our export goods trade is dependent on safe and effective shipping. New Zealand therefore has a strong interest in upholding UNCLOS, which provides the basis for our maritime zones, the peaceful settlement of disputes, and global rules on the use of the high seas, including freedom of navigation.
16. By ratifying the BBNJ Agreement, New Zealand would be reinforcing UNCLOS as the legal framework which governs all activities in the oceans, and under which more detailed conservation and sustainable use rules should rightly sit. This would support the broader rights New Zealand derives from UNCLOS, including sovereign rights over the natural resources in the EEZ and the maritime trade rules which support 99% of New Zealand's goods exports.

Contributing to decisions for marine biodiversity and stewardship of the ocean

17. The BBNJ Agreement will help to support healthy marine ecosystems, including those adjacent to New Zealand, and in the Pacific region. This will support the long-term productivity of fisheries resources, ecosystem services that underpin the wellbeing of New Zealanders, and ocean resilience, including to the impacts of climate change.
18. The Agreement also provides tools to manage pressures on marine biodiversity in ABNJ, including from new or unregulated activities. New Zealand has a strong stake in ensuring that such tools are effective. The Agreement will contribute to a level playing field and reduce competitive disadvantages for New Zealand vessels. For example, the Agreement will set out environmental assessment standards for high seas fishing by any foreign vessels not operating under RFMO standards, which New Zealand's fleet operates under.

Maintaining influence on oceans governance and the international rules-based order

19. Ratifying the Agreement would help to maintain and promote New Zealand's influence on international oceans rules and governance. New Zealand was influential in negotiations on the Agreement to secure an outcome that will both improve biodiversity outcomes and respect the competencies of regional and sectoral organisations on which New Zealand's current high seas economic interests depend.
20. New Zealand would need to become a party to the Agreement to have a 'seat at the table' and to continue shaping its implementation and decisions in a way that supports our conservation, economic, and strategic interests. Early ratification will give New Zealand the best chance to influence future decisions in our interests, as early meetings of the COP will make important decisions on rules of procedure and terms of reference for bodies under the Agreement.
21. The BBNJ Agreement was adopted by consensus at the UN, which is extraordinarily rare for a new multilateral agreement. s6(a), s9(2)(g)(i)

This signifies the degree of accord in the international community that the BBNJ Agreement represents the path forward for high seas oceans governance under UNCLOS. At the time of drafting, 105 States have signed the Agreement, including Australia,

Canada, the United Kingdom, and the United States of America, and thirteen have ratified it. Pacific Islands Forum (PIF) members are also strong proponents of the BBNJ Agreement. PIF leaders encouraged signature and ratification in their November 2023 Communiqué.

Costs arising from the BBNJ Agreement for New Zealand

Direct financial costs

22. While there are no apparent disadvantages to New Zealand ratifying the BBNJ Agreement, as with all international treaties there are some direct associated financial costs to doing so. This includes an annual assessed contribution to fund the administrative functions of the Secretariat and capacity-building for developing countries. This cost will depend on the budget for the Secretariat approved by States Parties, and the number of States Parties. While it is not possible to forecast this exactly, based on New Zealand's assessed contributions to similar bodies, officials estimate the total will be approximately NZD 150,000 per annum.
23. Neither of these costs will be incurred until the BBNJ Agreement enters into force and the institutions set up under the Agreement are established. These costs will be met from within departmental baselines of the Ministry of Foreign Affairs and Trade.

Implementation costs

24. Implementing legislation will need to be developed and passed. The Ministry of Foreign Affairs and Trade will be the responsible agency for any necessary legislative changes, in consultation with other relevant departments. There will be some ongoing cost to administering legislative and regulatory implementation measures to ensure New Zealand complies with the notification, reporting and other requirements under the Agreement. The limited number of activities that would be within scope of the Agreement means these costs are anticipated to be managed within existing departmental baselines. Resources required to participate in meetings under the Agreement will also be met from within existing departmental baselines. These resources may vary according to the interests New Zealand has to prosecute or defend at any given time.

Compliance costs

25. Some compliance costs may arise for New Zealand persons undertaking activities covered in ABNJ. However, these are expected to be low and largely met through existing compliance regimes. For example, should NIWA collect MGRs from ABNJ, existing permitting and declaration requirements could enable BBNJ notification requirements to be met. There are very few New Zealand persons involved in the collection and utilisation of MGRs from ABNJ. Should modalities for the sharing of monetary benefits from utilisation of MGRs from ABNJ be decided, these may need to be applied to New Zealand persons engaged in this activity.
26. New Zealand would be required to ensure that New Zealand persons comply with any ABMTs adopted under the Agreement. Most New Zealand activities in the high seas are regulated by RFMOs or the International Maritime Organization which would be responsible for deciding whether and how to implement such ABMTs. The powers to ensure compliance within those bodies already exist. Additional compliance costs may be incurred should new, currently unregulated, activities emerge.

Uncertainty about area-based management tools and benefit sharing

27. Because decisions on ABMTs and benefit-sharing for marine genetic resources will be made by the COP in the future, there is uncertainty about future costs and risks in relation to these decisions. However, these decisions and the accompanying uncertainty will affect New

Zealand whether or not it ratifies the Agreement. This is because the COP will make ABMT recommendations to bodies which regulate New Zealand activities on the high seas (such as RFMOs). Ratifying the Agreement and participating in these processes from the beginning will give New Zealand the best chance to influence these discussions and reduce uncertainty.

28. s9(2)(g)(i)

Overall assessment

29. Overall, the advantages for New Zealand of the BBNJ Agreement entering into force outweigh the costs that would be incurred, and it is in New Zealand's interests for the Agreement to enter into force and for New Zealand to ratify it, and to do so early.

Next steps and implementation

30. Under Standing Order 405, the Government is required to present to the House a National Interest Analysis (NIA) for any treaty that is to be subject to ratification by New Zealand. A NIA for the BBNJ Agreement has been prepared by the Ministry of Foreign Affairs and Trade and is attached as **Annex 2**.

31. The BBNJ Agreement would enter into force 120 days after the date of deposit of the 60th instrument of ratification, approval, acceptance or accession. Were New Zealand to ratify before entry into force of the Agreement, this would be the date the Agreement enters into force for New Zealand. If New Zealand were to ratify after the date of entry into force of the Agreement, the Agreement would enter into force for New Zealand on the 30th day following deposit of our instrument of ratification.

32. s9(2)(g)(i), s9(2)(f)(iv), s9(2)(h)

33. Several countries are making efforts to ratify the Agreement before the UN Ocean Conference in June 2025. If enough do, it is possible that the Agreement will come into force from as early as 2026. As New Zealand will need to pass legislation to implement the Agreement (see legislative implications section) officials assess the earliest New Zealand will be able to ratify is in 2026.

34. If Cabinet agrees to ratify the BBNJ Agreement, officials will seek to develop implementing legislation to be introduced to the House in 2025.

35. In addition to these legislative amendments, to comply with the BBNJ Agreement, New Zealand would need to:

35.1. Identify and consider practical opportunities to provide capacity-building and benefit-sharing opportunities. This could include the provision of financial assistance under the NZ International Development Cooperation programme;

35.2. Ensure operational responsibility for the oversight of the notification process and preparation of reports;

35.3. Develop an administrative process to ensure notifications and reports are submitted as required; and

35.4. Implement appropriate policy measures with the aim of ensuring that traditional knowledge associated with MGRs in ABNJ held by "Indigenous Peoples and local

communities” is accessed with free, prior and informed consent or their involvement. Alignment would be sought with any developed domestic biodiscovery policy measures.

35.5. The approach to implementation of the BBNJ Agreement would need to be proportionate to the overall benefits to New Zealanders and actual level of activity that is – or is likely to be – carried out by New Zealanders in ABNJ. The number of New Zealand persons involved in the collection and utilisation of marine genetic resources, or engaged in high seas activities not already regulated is likely to be small.

36. Implementing legislation and regulation would be designed to complement, and not duplicate existing powers to regulate activities in ABNJ under the Antarctic (Environmental Protection) Act 1994, the Antarctic Marine Living Resources Act 1981, the United Nations Convention on the Law of the Sea Act 1996, the Fisheries Act 1996, and the Maritime Transport Act 1994.

Cost-of-living implications

37. This proposal has no expected cost-of-living implications for New Zealanders.

Financial implications

38. As noted in paragraphs 113 to 116 of the NIA, there will be some direct financial costs and implementation costs associated with the BBNJ Agreement. Implementation costs will be minimal and managed within departmental baselines.

39. The Ministry of Foreign Affairs and Trade will meet the external costs of ratification of the Agreement – both the assessed contribution and the mandatory annual fee to fund capacity-building – within current baselines.

Legislative implications

40. To ratify the BBNJ Agreement, amendments to existing legislation will be required. The inclusion of the UNCLOS (Biodiversity Beyond National Jurisdiction Implementation) Bill in the 2024 Legislation Programme was agreed by Cabinet in April 2024, with drafting instructions to be issued by the end of 2024 (priority 6).

41. New Zealand can already control mineral resource activities and regulate the environmental impacts of shipping and fishing activities in ABNJ and all activities carried out in Antarctic waters. There is no general ability to regulate other activities in ABNJ including marine scientific research, collection of MGRs, removal of non-mineral material from the seafloor, or the construction or removal of structures, cables or pipelines (see **Annex 3** for a summary of how New Zealand’s existing legislation applies in relation to the BBNJ Agreement).

42. To comply with the obligations in the BBNJ Agreement, existing legislation would need to be amended to ensure that New Zealand can:

42.1. Regulate (including by prohibiting and imposing conditions on) activities of New Zealand persons and vessels in ABNJ where required to ensure compliance with an ABMT adopted under the Agreement and where such regulatory power is not otherwise provided for in existing legislation (e.g., as it may be in Antarctica, for New Zealand registered ships, for New Zealanders fishing on the high seas, or undertaking seabed mineral activities).

42.2. Require the environmental impacts of activities carried out by New Zealand persons and vessels in ABNJ to be assessed, monitored and reviewed as required by the Agreement, and regulate the form and procedural requirements of such assessment, monitoring, and

review. This would exclude activities that are already subject to an equivalent assessment and/or managed below the threshold for conducting an environmental impact assessment.

- 42.3. Ensure requirements under the Agreement are met in respect of New Zealand persons and vessels collecting and utilising MGRs from ABNJ. This will include the ability to require notification of access to MGRs in ABNJ and utilisation of MGRs from ABNJ, and to prescribe requirements for depositories and databases storing MGRs from ABNJ, including reporting requirements.
- 42.4. Require New Zealand persons and vessels to provide sufficient information about activities undertaken in ABNJ to enable New Zealand to meet reporting obligations under the Agreement.
43. Depending on future rules to be negotiated at the COP on the sharing of monetary benefits from MGRs, the government may be required in the future to have the ability to ensure such benefits from the utilisation of MGRs from ABNJ by New Zealand persons can be shared. As these modalities are not yet in place and could take various forms, it would be desirable for this ability to be provided for in a regulation-making power.
44. For any required legislative and regulatory amendments, it is proposed that a simple, permissive regime – where activities are permitted so long as they comply with the requirements and conditions set out in legislation – is appropriate. This approach would allow for regulatory requirements to be narrowly tailored to the specific obligations of the Agreement.
45. The necessary legislative changes could be implemented through amendments to the United Nations Convention on the Law of the Sea Act 1996, including consequential amendments to other legislation such as the Fisheries Act 1996 and the EEZ and Continental Shelf (Environmental Effects) Act 2012. The legislation would include a regulation making power to provide more detailed secondary legislation in the form of regulations or rules, including to provide for designation of ABMTs adopted under the Agreement, and prescribed forms and procedures for environmental assessments, and reporting and notification requirements. The legislation would bind the Crown.
46. Entry into force of the legislation would need to be coordinated with the entry into force of the BBNJ Agreement for New Zealand – ensuring that it does not take effect until required.

Impact analysis

47. An extended NIA, attached as **Annex 2**, has been prepared in accordance with the necessary requirements for a Regulatory Impact Analysis. The NIA sets out, amongst other things, the advantages and disadvantages of the BBNJ Agreement, costs and benefits, what the Agreement would mean for New Zealand, and limitations of the impact analysis.

Population implications

48. None.

Human rights

49. This proposal has no expected inconsistencies with the Human Rights Act 1993 or the New Zealand Bill of Rights Act 1990.

Use of External Resources

50. A specialist barrister was consulted in relation to the legislative implications of the BBNJ Agreement for New Zealand. There is no intention to use further external resources.

Publicity

51. Should Cabinet agree that New Zealand should ratify the Agreement, then it would be appropriate to publicly highlight New Zealand's intention to do so.

Proactive Release

52. This paper will be proactively released within 30 business days of decisions being confirmed by Cabinet, subject to redactions as appropriate under the Official Information Act 1982.

Consultation

53. Agencies involved in development of this paper: Ministry of Foreign Affairs and Trade, Department of Conservation, Ministry for Primary Industries, Ministry for the Environment. Agencies consulted: Maritime New Zealand, Ministry of Business, Innovation and Employment, Ministry of Defence, Ministry of Transport, Te Puni Kōkiri, and the Treasury.
54. Officials consulted throughout the negotiations with:
 - 54.1. Representatives from the fishing industry and the cable-laying industry, environmental NGOs, scientists, and academics. Most stakeholders viewed the BBNJ Agreement as an opportunity to develop international environmental law and improve marine conservation but differed on how much of a role existing bodies managing activities in ABNJ (fishing, shipping and mining) should have in implementing the new Agreement.
 - 54.2. The BBNJ Māori Working Group. Key interests identified in discussions with this group included: the application of kaitiakitanga to ABNJ and the interests of coastal states; opportunities to improve protection of taonga species that migrate through the high seas; the ability to take account of traditional knowledge of indigenous peoples related to conservation and sustainable use of biodiversity and conditions for use of this knowledge; and implications for any future domestic biodiscovery regime.
 - 54.3. Tokelau. Officials consider that Tokelau's interests in the BBNJ Agreement closely mirror those of New Zealand and will consult with Tokelau on whether the application of the Agreement will extend to Tokelau.
55. Further consultation will be conducted, as required, with interested groups as implementing legislation and policy measures are developed.

Recommendations

56. The Minister of Foreign Affairs recommends that the Committee:
 - 56.1. Note that in March 2016, the Cabinet External Relations and Defence Committee agreed New Zealand's interests and objectives for the preparatory phase of negotiations on the BBNJ Agreement [CAB-16-MIN-0069 refers];
 - 56.2. Note that in July 2018 and August 2022, the Cabinet External Relations and Security Committee agreed two further negotiating mandates for the text of the Agreement [CAB-18-MIN-0363 and CAB-22-MIN-0301 refer];
 - 56.3. Note that in June 2023, the BBNJ Agreement was adopted and the Cabinet External Relations and Security Committee agreed that New Zealand should sign the Agreement at the earliest appropriate opportunity [CAB-23-MIN-0264 refers];
 - 56.4. Note that on 20 September 2023, New Zealand became a signatory to the Agreement, the text of which is attached as **Annex 1**;

- 56.5. Approve the content of the National Interest Analysis (NIA), which is attached as **Annex 2**;
- 56.6. Agree to present the Agreement and the NIA to the House of Representatives for the purposes of the parliamentary treaty examination process, under Standing Orders 405;
- 56.7. Note that the ratification of the BBNJ Agreement will require amendments to existing legislation;
- 56.8. Agree that all legislative amendments required to comply with the BBNJ Agreement be given effect through the United Nations Convention on the Law of the Sea (Biodiversity Beyond National Jurisdiction Implementation) Bill;
- 56.9. Note that on 12 April 2024, the Cabinet Legislation Committee agreed the inclusion of the UNCLOS (Biodiversity Beyond National Jurisdiction Implementation) Bill in the 2024 Legislation Programme as a Category 6 priority (instructions to be provided to Parliamentary Counsel Office before the end of 2024);
- 56.10. Invite the Minister of Foreign Affairs to issue drafting instructions to Parliamentary Counsel Office to draft the UNCLOS (Biodiversity Beyond National Jurisdiction Implementation) Bill to give effect to the Agreement as outlined in paragraphs 40-45;
- 56.11. Note that secondary legislation may be required to implement aspects of the BBNJ Agreement;
- 56.12. Authorise the Minister of Foreign Affairs and, where necessary, relevant portfolio ministers, to make any subsequent policy decisions consistent with this paper to facilitate the drafting of legislation and any other policy measures identified as necessary to implement the BBNJ Agreement;
- 56.13. Note that in developing legislation and policy measures for implementation, consultation will be undertaken with relevant interested stakeholders and Māori.
- 56.14. Invite the Minister of Foreign Affairs to report back to the Cabinet Legislation Committee to seek approval to introduce the Bill to the House;
- 56.15. Note that the Agreement will enter into force either 120 days after the date of deposit of the 60th instrument of ratification, approval, acceptance or accession; or on the 30th day following the deposit of our instrument of ratification if the Agreement has already entered into force.
- 56.16. Agree New Zealand should ratify the BBNJ Agreement, subject to the satisfactory completion of the parliamentary treaty examination process and the passage of implementing legislation; and
- 56.17. Note that the financial costs to implement the Agreement will be met:
 - 56.17.1. For the assessed contribution and mandatory capacity-building fee, the Ministry of Foreign Affairs and Trade will meet this within current departmental baselines within Vote Foreign Affairs appropriation; and
 - 56.17.2. For all other costs, within relevant departmental baselines.

Authorised for lodgement

Rt Hon Winston Peters
Minister of Foreign Affairs

Annex 1: Text 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

Annex 2: National Interest Analysis

Proactively Released by the Minister of Foreign Affairs

Annex 3: Summary of existing legislation application to the BBNJ Agreement

Antarctica (Environmental Protection) Act 1994: This Act implements the Protocol on Environmental Protection to the Antarctic Treaty. It requires that all activities by New Zealanders in Antarctic waters (south of 60° S) must undergo an environmental impact assessment. The Minister of Foreign Affairs may also impose directions on activities by New Zealanders in Antarctic waters. s9(2)(g)(i)
It could also be used to direct compliance with any ABMT that are adopted. But this legislation does not apply to activities outside of Antarctic waters.

EEZ and Continental Shelf (Environmental Effects) Act 2012: This Act is New Zealand’s primary legislative mechanism for managing the environmental effects of seabed activities. However, this Act does not apply to activities that are undertaken outside the New Zealand EEZ or continental shelf. The Act does allow for consideration of the environmental impacts of activities within the New Zealand EEZ on the “waters in areas beyond national jurisdiction”. But it does not require consideration of the impacts on the seabed or marine environment more generally.

United Nations Convention on the Law of the Sea Act 1996: This Act provides that a licence from the Minister of Foreign Affairs is required in order to explore for or exploit the “resources of the Area”. The Minister may impose conditions on such licences, but only to the extent that these are consistent with New Zealand’s obligations under Part XI of UNCLOS. This Act applies only to mineral resources in the seabed in areas beyond national jurisdiction and does not apply to MGRs and other non-mineral resources.

Fisheries Act 1996: This Act prohibits New Zealanders using a New Zealand ship to fish on the high seas except with a High Seas Fishing Permit issued by the Chief Executive of the Ministry for Primary Industries. New Zealanders using a non-New Zealand ship must be authorised by another responsible government. These requirements do not apply to marine scientific research and may not apply to the collection of MGRs. The Chief Executive may place conditions on a New Zealand High Seas Fishing Permit. This could include conditions requiring compliance with any ABMT adopted under the BBNJ Agreement. But there is no capacity to place conditions where the fishing has been authorised by another government.

Maritime Transport Act 1994: This Act and secondary legislation regulates maritime activities in New Zealand’s national waters (including the EEZ and waters above the continental shelf as permitted under international law) and NZ registered ships wherever they are. Safety and protection coverage under the Act extends to the high seas in some cases, for example the Director has powers of intervention if a ship outside of NZ continental waters risks polluting the marine environment inside NZ waters. These powers range from issuing instructions, through to taking control of the ship, and can include requiring the removal, salvage, sinking or destruction of the cargo/ship/offshore structure. Detailed provisions under the Act are set out in Maritime and Marine Protection Rules, and Transport Instruments. Rules may be adopted for the purposes of “ensuring environmental sustainability” (s 36(1)(2)) or to “implement New Zealand’s obligations under any marine protection convention” (s 386(1)(a)). s9(2)(g)(i)

Submarine Cables and Pipelines Protection Act 1996: This Act provides for the protection of cables and pipelines but does not regulate their placement or removal. Placement and removal in the EEZ or on the New Zealand continental shelf is covered by the EEZ and Continental Shelf (Environmental Effects) Act 2012. There is no regulation of placement or removal of cables and pipelines by New Zealanders in area beyond national jurisdiction.