



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

2024/Factsheet 2

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

Introduction

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 Agreement") was adopted on 19 June 2023. It addresses a package of issues under the overall objective of ensuring the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long term, through effective implementation of the relevant provisions of the [United Nations Convention on the Law of the Sea](#) and further international cooperation and coordination.

These issues are:

- I marine genetic resources, including the fair and equitable sharing of benefits;
- II measures such as area-based management tools, including marine protected areas;
- III environmental impact assessments; and
- IV capacity-building and the transfer of marine technology.

This factsheet focuses on **marine genetic resources ("MGRs"), including the fair and equitable sharing of benefits** (Part II of the BBNJ Agreement).

Marine genetic resources are of particular interest for a number of sectors such as the pharmaceuticals, cosmetics, bioremediation and food sectors. Yet, the capacity to access those resources and carry out relevant research and development has been uneven among States.

The Agreement sets out a legal framework for activities with respect to MGRs and digital sequence information ("DSI") on MGRs of areas beyond national jurisdiction, including for the fair and equitable sharing of benefits arising from such activities. The implementation of these provisions is expected to contribute to levelling the playing field and ensure that activities with respect to MGRs and DSI on MGRs of areas beyond national jurisdiction are in the interests of all States and for the benefit of all humanity.

What are the objectives of the Agreement in relation to marine genetic resources?

The Agreement has several objectives with respect to MGRs, including:

- The fair and equitable sharing of benefits arising from activities with respect to MGRs and DSI on MGRs of areas beyond national jurisdiction;
- The building and development of capacity of Parties to the Agreement, particularly developing States Parties, to carry out activities with respect to MGRs and DSI on MGRs of areas beyond national jurisdiction;
- The generation of knowledge, scientific understanding and technological innovation, including through the development and conduct of marine scientific research; and
- The development and transfer of marine technology.

What are marine genetic resources?

The Agreement defines **marine genetic resources** as "any material of marine plant, animal, microbial or other origin containing functional units of heredity of actual or potential value". This is the first internationally agreed definition of MGRs.

The Agreement does not define **digital sequence information**. At the time of the conclusion of the Agreement, there was no internationally agreed definition

of digital sequence information and work was ongoing under the Convention on Biological Diversity on this issue.

The Agreement also contains several other relevant definitions, including "**collection in situ**", "**utilization of marine genetic resources**" and "**biotechnology**".

What does the Agreement apply to?

In relation to the **temporal scope**, the provisions of the Agreement apply to:

- Activities with respect to MGRs and DSI on MGRs of areas beyond national jurisdiction collected and generated after the entry into force of the Agreement for the respective Party; and
- Utilization of MGRs and DSI on MGRs of areas beyond national jurisdiction collected or generated before the entry into force of the Agreement, unless a Party makes an exception in writing under article 70 of the Agreement.

In relation to the **material scope**, the provisions of the Agreement apply to activities with respect to both MGRs of areas beyond national jurisdiction and DSI on MGRs of areas beyond national jurisdiction. However, the application of the provisions of Part II of the Agreement is subject to certain "**carve-outs**", including:

Fish-related "carve-outs"

The provisions of Part II of the Agreement do NOT apply to:

- Fishing regulated under relevant international law and fishing-related activities; or
- Fish or other living marine resources known to have been taken in fishing and fishing-related activities from areas beyond national jurisdiction, except where such fish or other living marine resources are regulated as utilization under Part II.

Military activities-related "carve-outs"

The obligations in Part II of the Agreement do NOT apply to:

A Party's military activities, including military activities by government vessels and aircraft engaged in non-commercial services.

The obligations with respect to the utilization of MGRs and DSI on MGRs of areas beyond national jurisdiction apply to a Party's non-military activities.

What are the general rules governing activities with respect to marine genetic resources and digital sequence information on such resources?

Activities with respect to MGRs and DSI on MGRs of areas beyond national jurisdiction **may be carried out by all Parties, irrespective of their geographical location**, and by natural or juridical persons under their jurisdiction. Parties are required to promote cooperation in all such activities.

Collection in situ of MGRs (defined as "collection or sampling of MGRs in areas beyond national jurisdiction") must be carried out with "**due regard**" for the rights and legitimate interests of coastal States in areas within their national jurisdiction, as well as for the interests of other States in areas beyond national jurisdiction. To this end, Parties must endeavour to cooperate, as appropriate, including through the Clearing-House Mechanism established under the Agreement.

No State shall claim or exercise sovereignty or sovereign rights over MGRs of areas beyond national jurisdiction. Collection in situ of MGRs shall not constitute the legal

basis for any claim to any part of the marine environment or its resources.

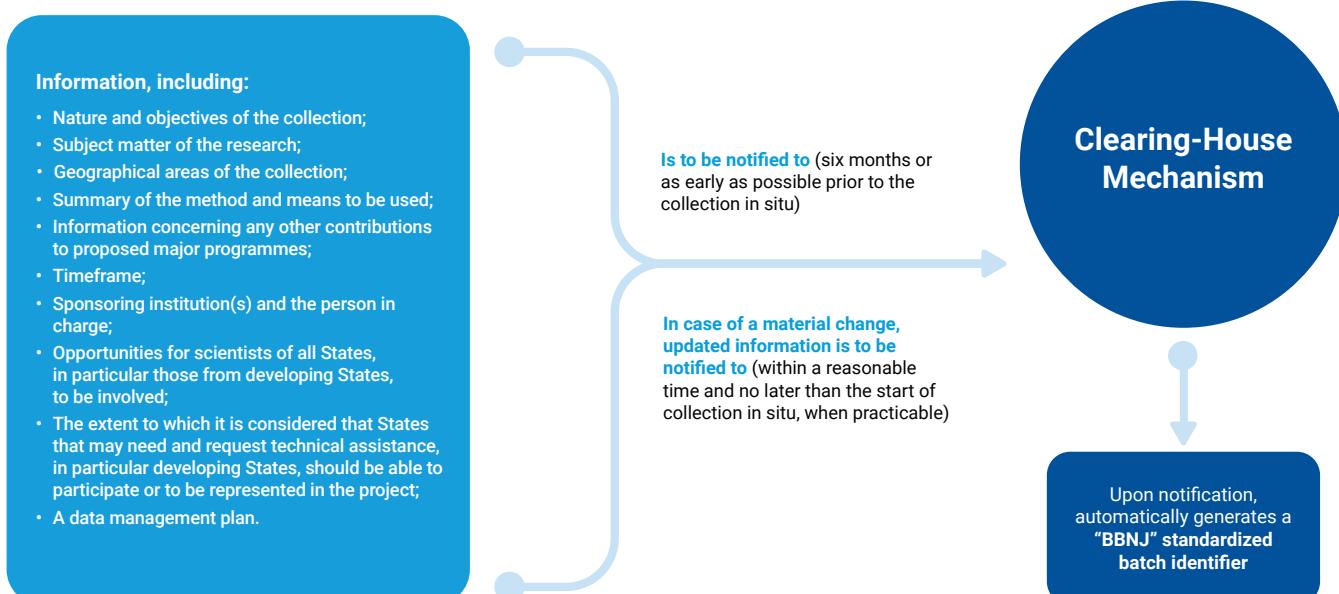
Activities with respect to MGRs and DSI on MGRs of areas beyond national jurisdiction are **in the interests of all States and for the benefit of all humanity**, particularly for the benefit of advancing the scientific knowledge of humanity and promoting the conservation and sustainable use of marine biological diversity, taking into particular consideration the interests and needs of developing States.

Such activities must be carried out exclusively for **peaceful purposes**.

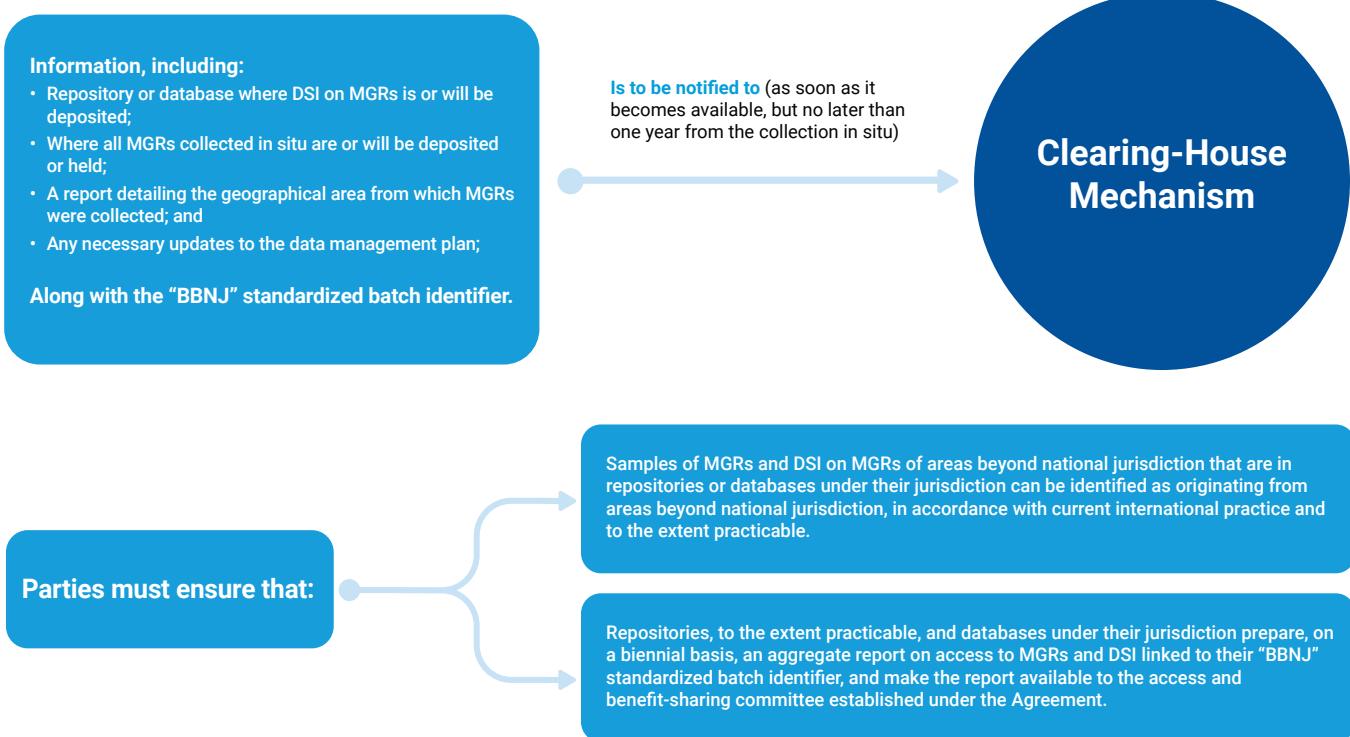
What are the notification requirements concerning activities with respect to marine genetic resources and digital sequence information on such resources?

The Agreement includes notification requirements on activities with respect to MGRs and DSI on MGRs of areas beyond national jurisdiction. Parties must take the necessary legislative, administrative or policy measures to ensure that information is provided to the Clearing-House Mechanism at different stages of the collection and utilization of MGRs and DSI on MGRs of areas beyond national jurisdiction. The requirements in relation to pre-collection notifications, post-collection notifications, and notifications at the stage of utilization are illustrated below.

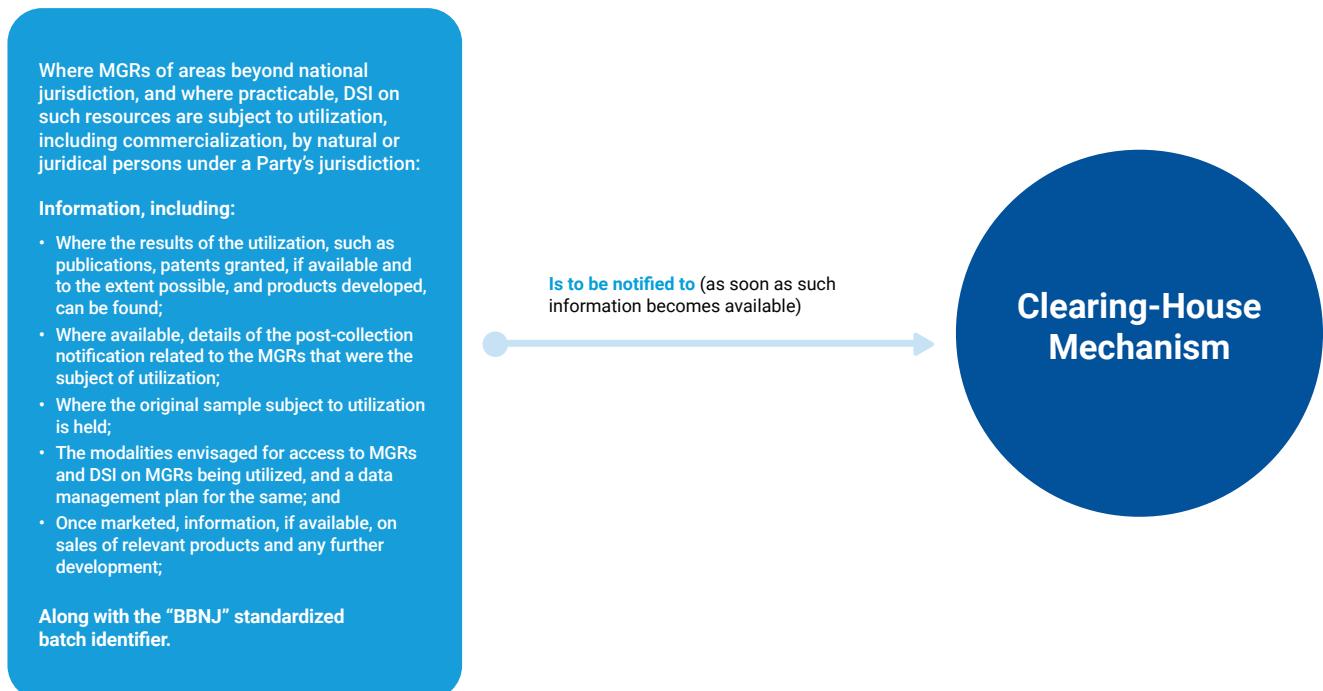
Notification prior to collection in situ



Notification post collection in situ



Notification at the stage of utilization



How will benefits arising from activities with respect to marine genetic resources and digital sequence information on such resources be shared?

The Agreement establishes a framework for the fair and equitable sharing of benefits arising from activities with respect to MGRs and DSI on MGRs of areas beyond national jurisdiction. Such benefits, including both non-monetary and monetary benefits, must be shared in a fair and equitable manner and contribute to the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. Parties will have to take the necessary legislative, administrative or policy measures to ensure that benefits arising from activities with respect to MGRs and DSI on MGRs of areas beyond national jurisdiction by natural or juridical persons under their jurisdiction are shared in accordance with the Agreement.

Modalities for the sharing of non-monetary benefits

The Agreement provides that **non-monetary benefits** will be shared in the form of, *inter alia*:

- Access to samples and sample collections;
- Access to DSI;
- Open access to findable, accessible, interoperable and reusable (FAIR) scientific data;
- Information contained in the notifications, along with "BBNJ" standardized batch identifiers;
- Transfer of marine technology;
- Capacity-building and partnership opportunities;
- Increased technical and scientific cooperation; and
- Other forms of benefits as determined by the Conference of the Parties to the Agreement.

Parties have the obligation to take the necessary legislative, administrative or policy measures to ensure that MGRs and DSI on MGRs of areas beyond national jurisdiction subject to utilization by natural or juridical persons under their jurisdiction are deposited in publicly accessible repositories and databases together with their "BBNJ" standardized batch identifier, no later than three years from the start of utilization or as soon as they become available.

Access to MGRs and DSI deposited in repositories and databases under a Party's jurisdiction may be subject to reasonable conditions, which include the need to preserve the physical integrity of MGRs, reasonable maintenance and access costs, and other reasonable conditions in line with the objectives of the Agreement. The Agreement also provides that opportunities may be provided to researchers and research institutions from developing States for them to access such MGRs and DSI on fair and most favourable terms, including on concessional and preferential terms.

Modalities for the sharing of monetary benefits

The Agreement provides that monetary benefits from the utilization, including commercialization, of MGRs and DSI on MGRs of areas beyond national jurisdiction must be shared:

- Fairly and equitably;
- Through the financial mechanism established under the Agreement (specially through the special fund); and
- For the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction.

The Agreement provides for an **initial modality** for the sharing of monetary benefits, which will apply from the entry into force of the Agreement until the Conference of the Parties decides on modalities for the sharing of monetary benefits from utilization:

- Developed Parties will make annual contributions to the special fund referred to in article 52 of the Agreement; and
- The rate of contribution for each developed Party is set at 50 per cent of its assessed contribution to the budget adopted by the Conference of the Parties.

The modalities to be decided upon by the Conference of the Parties may include:

- Milestone payments;
- Payments or contributions related to commercialization of products;
- A tiered fee based on the level of activities by a Party;
- And other forms as decided by the Conference of the Parties.

Payments under such modalities are to be made through the special fund established under article 52 of the Agreement as part of the financial mechanism of the Agreement.

A Party may make a declaration at the time the Conference of the Parties adopts such modalities stating that those modalities shall not take effect for that Party for a period of up to four years, in order to allow time for necessary implementation. That Party will continue to make the payment under the initial modality until the new modalities take effect.

Modalities for the sharing of monetary benefits from the use of DSI on MGRs of areas beyond national jurisdiction should be mutually supportive of and adaptable to other access and benefit-sharing instruments.

The Conference of the Parties will conduct a **biennial review** of the monetary benefits from the utilization of MGRs and DSI on MGRs of areas beyond national jurisdiction, including considering the annual contributions paid to the special fund under the initial

modality. The first of such reviews will take place no later than five years after the entry into force of the Agreement.

How does the Agreement address traditional knowledge?

The Agreement outlines three key elements in addressing traditional knowledge of Indigenous Peoples and local communities associated with MGRs in areas beyond national jurisdiction:

- Parties are required to take legislative, administrative or policy measures, where relevant and as appropriate, to ensure that such traditional knowledge can only be accessed with the **free, prior and informed consent or approval and involvement** of Indigenous Peoples and local communities.
- The Clearing-House Mechanism may play a role in facilitating access to such traditional knowledge.
- Access to and use of such traditional knowledge must be on **mutually agreed terms**.



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Other elements regarding marine genetic resources and digital sequence information under the Agreement

Access and benefit-sharing committee: the Agreement establishes an access and benefit-sharing committee, which will be composed of 15 members nominated by Parties and elected by the Conference of the Parties. Its terms of reference and the modalities for its operation will be determined by the Conference of the Parties. The committee may make recommendations to the Conference of the Parties on matters relating to Part II of the Agreement. Parties are required to provide relevant information to the committee, such as legislative, administrative and policy measures on access and benefit sharing, information on national focal points and other information required by the Conference of the Parties. The committee may consult and facilitate information exchange with relevant legal instruments and frameworks and relevant global, regional, subregional and sectoral bodies on activities under its mandate, among others.

Monitoring and transparency: the Agreement provides that monitoring and transparency of activities with respect to MGRs and DSI on MGRs of areas beyond national jurisdiction will be achieved through notification to the Clearing-House Mechanism, through the use of "BBNJ" standardized batch identifiers, and according to procedures adopted by the Conference of the Parties as recommended by the access and benefit-sharing committee. In addition, Parties are required to submit periodic reports on their implementation of the provisions of Part II of the Agreement on these activities and benefit-sharing. The committee will prepare a report based on information received through the Clearing-House Mechanism and make it available to Parties, which may submit comments. After considering this report, which will include the comments by Parties, and the recommendation of the committee, the Conference of the Parties may determine appropriate guidelines on monitoring and transparency, which must take into account national capabilities and circumstances of Parties.

Contact

For further information on the BBNJ Agreement, including with respect to capacity-building and technical assistance available to States in becoming parties to the Agreement and in relation to its implementation, contact the Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations:

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Disclaimer

The present factsheet is intended to promote a better understanding of the BBNJ Agreement and does not purport to be exhaustive. It should be read in conjunction with the full text of the Agreement, the certified true copy of which is available on the website of the United Nations Treaty Collection (<https://treaties.un.org/>)



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