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CHAPTER 16

High Seas Treaty: Our ocean and beyond Malaysian borders

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Abstract: The ocean is the source of life on Earth. At the present, mounting pressures driven by anthropogenic actions are negatively impacting the viability of the ocean and the biodiversity it harbours. The Biodiversity Beyond National Jurisdiction (BBNJ) Agreement, building upon the United Nations Convention on the Law of the Sea (UNCLOS), aims to conserve and sustainably utilise marine biodiversity in areas beyond national jurisdiction. The BBNJ Agreement's four pillars include Marine Genetic Resources, Area-based Management Tools, Environmental Impact Assessments, and Capacity-building and the Transfer of Marine Technology. These are essential keystones that enable Parties to the BBNJ Agreement to equitably and meaningfully participate in the governance and conservation of the ABNJ. While Malaysia is already a signatory to the BBNJ Agreement, it urgently needs to become a Party to the Agreement, where then Malaysia can meaningfully participate in the Agreement's decision-making processes and benefit from global ocean governance.

INTRODUCTION

Our ocean is fundamental to sustaining life on Earth. It covers approximately 71% of the Earth's surface and contains about 97% of the planet's water (World Meteorological Organisation 2026). The ocean produces half of the oxygen and absorbs more than a quarter of carbon dioxide from the atmosphere (United Nations 2022). This influence extends far beyond coastlines. People living in cities and even landlocked countries depend on the ocean for breathable air, climate regulation, food, trade, and other resources that support daily life.

In Malaysia, the ocean underpins the nation's economy, food security, and cultural heritage. Coastal and marine tourism, including recreational diving and nature-based tourism generates income and employment opportunities for the coal communities. It facilitates international trade through the Strait of Malacca, being one of the world's important maritime shipping routes (Bernama 2026). The ocean sustains fisheries that provide food and livelihoods for millions of Malaysians while shaping the traditions, cuisine, and ways of life of coastal communities. According to Southeast Asian Fisheries Development Center (2025), the fisheries sector achieved a self-sufficiency ratio of about 90.7% and had an average of 44.7 kg fish consumption per person, placing Malaysia among the highest in Southeast Asia in 2023.

A healthy ocean depends on resilient coastal ecosystems. Mangrove forests, seagrass meadows, and coral reefs are interconnected through the movement of marine species, nutrients and sediments. Mangrove forests serve as nursery grounds for commercially valuable marine fish such as barramundi (locally known as *siakap*) and toli shad (*terubok*) (Abu Bakar *et al*. 2025); seagrass meadows providing food and refuge to green sea turtles; and coral reefs support and protect a rich diversity of marine life.

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This ecological connectivity is not confined to coastal ecosystems. Our world's five recognised oceans: the Atlantic, Pacific, Indian, Arctic, and Southern Oceans, are not separate bodies of water—they are One Ocean (National Oceanic and Atmospheric Administration 2024). Global ocean currents transport nutrients, plankton, and marine larvae across vast distances, connecting marine ecosystems and supporting biodiversity across the world. Migratory species such as turtles and sharks move between habitats and across national boundaries. The concept of One Ocean emphasises that the ocean does not recognise human-made borders, protecting it requires countries to work together, both within and beyond national waters.

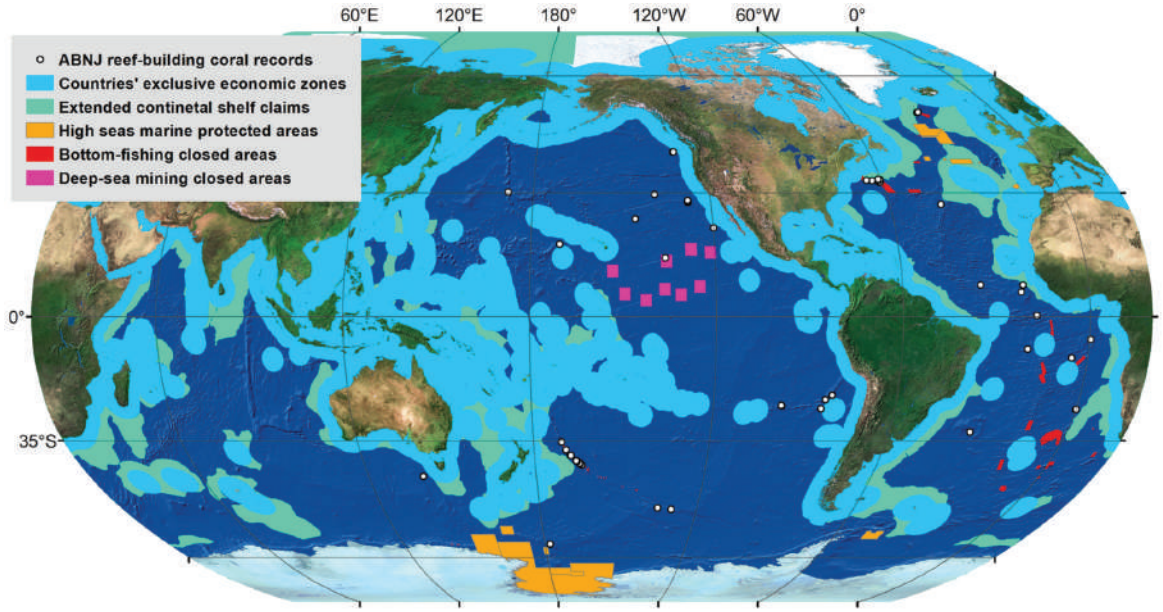

Figure 1. International waters constitute about 60% of the planet's oceanic area, and are the last safe haven for our marine biodiversity. (Source: Wagner *et al.* 2020).

THE AREA BEYOND NATIONAL JURISDICTION

The United Nations Convention on the Law of the Sea (UNCLOS), adopted in 1982, is an international framework governing the world's oceans (International Maritime Organization n.d.; FAO 2026). The framework divides the ocean into different maritime zones (Figure 2). Under UNCLOS, a coastal State—a country with coastline—has sovereignty[a] over its territorial sea, which may extend up to 12 nautical miles (about 22 km) from the coast (*UNCLOS*, Part II, Article 3). Extending up to 200 nm (about 370 km) from the coast is the Exclusive Economic Zone (EEZ) where the coastal States have the sovereign rights to explore, use, conserve and manage its natural resources, including fisheries, oil and natural gas (*UNCLOS*, Part V, Article 56) (Burgess *et al.* 2017). The areas beyond the EEZ are referred to as Areas Beyond National Jurisdiction (ABNJ).

The ABNJ comprises two distinct areas: The High Seas and "The Area". The High Seas refer to the water column beyond national jurisdiction, while "The Area" refers to the seabed, ocean floor and subsoil beyond the State's continental shelf margin (*UNCLOS*,

[a] Sovereignty refers to a State's full authority over its territory, while sovereign rights are limited rights to use and manage resources within specific maritime zones.

Article 89) (Burgess *et al.* 2017; International Seabed Authority 2026). Under UNCLOS, no State may claim sovereignty over any part of the high seas (*UNCLOS*, Article 89). The high seas are open to all States to exercise freedoms of navigation, fishing, and scientific research (*UNCLOS*, Article 87). However, these freedoms are not absolute and must be exercised responsibly (Garg 2026). As human activities expanded and pressures on marine ecosystems increased, countries recognised that freedom must also be accompanied by responsibility and cooperation.

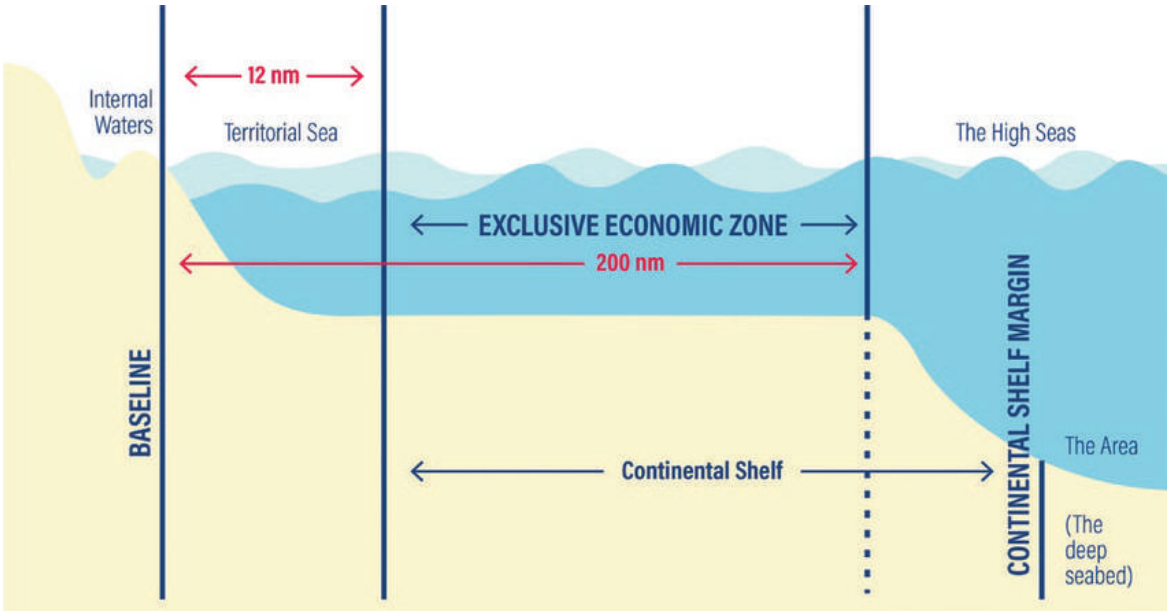

Figure 2. Maritime zones as defined by the United Nations Convention on the Law of the Sea (UNCLOS). (Source: Anders Skoglund, Norwegian Polar Institute 2020).

The High Seas may seem distant but marine species regularly move between them and waters within national jurisdiction. A decade-long study found that Indo-Pacific whale sharks spend most of their lives in the largely unprotected High Seas and migrate across the waters of 13 national jurisdictions and adjacent high-seas areas (Putra *et al.* 2026). Malaysia is also directly connected to the high seas through the fisheries industry. Malaysian fishing vessels operate in the Indian Ocean under conservation and management measures adopted by Regional Fisheries Management Organisations (RFMOs). Measures such as catch limits, fishing seasons, monitoring requirements and actions to combat Illegal, Unreported, and Unregulated (IUU) fishing help to ensure the sustainable management of shared fish stocks, including tuna and other highly migratory marine species (Department of Fisheries Malaysia 2021; European Commission 2026). The health of biodiversity in ABNJ therefore influences the fisheries and ocean resources that Malaysians depend on.

Existing international agreements, frameworks and bodies (IFB) already govern many activities in areas beyond national jurisdiction, but each has a specific sectoral mandate. The International Maritime Organization (IMO) regulates international shipping; RFMOs manage shared fish stocks; and the International Seabed Authority (ISA) manages exploration of mineral-related activities in "The Area". Despite the myriad of IFBs that are currently in force, they do not adequately address the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.

Why do the High Seas need protection?

For centuries, the High Seas were seen as vast, remote and beyond the reach of human activities. Today, scientific evidence shows human activities now affect even the most remote parts of the ocean, threatening biodiversity and the ecosystem services on which people depend.

One of the best-known examples of pollution in the ABNJ is the Great Pacific Garbage Patch, an accumulation of floating marine debris trapped by ocean currents in the North Pacific (National Oceanic and Atmospheric Administration 2025). According to Lebreton *et al.* (2018), approximately 79,000 tonnes of plastic were floating within an area of 1.6 million km^2, which is nearly thirteen times Sarawak's land area of 124,170 km^2 (Department of Statistics Malaysia 2025). Despite its name, the "patch" is not a solid island of rubbish. Its debris is widely dispersed from the surface to the ocean floor and ranges from large plastic objects to microplastics (National Oceanic and Atmospheric Administration 2025). Marine animals may become entangled in plastic debris or mistake plastic for food. Larger plastic items can also gradually break down into microplastics that spread throughout the marine food web (Evers 2026).

Deep-sea mining (DSM) is another growing concern. The activity involves extracting minerals such as cobalt, nickel and rare earth elements from the ocean floor for use in mobile phones, medical technologies and military equipment (Ashford *et al.* 2025). The full impacts of DSM remain unknown but scientists have warned that it could cause extensive and irreversible biodiversity loss (Deep Sea Conservation Coalition 2025). Sediment plumes, habitat destruction and noise generated by mining could affect species that have yet to be discovered (IUCN NL 2024). As exploration activities expand, DSM has become increasingly controversial, particularly in the Pacific, where Indigenous communities have raised concerns over its potential impacts on marine ecosystems, livelihoods and cultural connections to the ocean (Schertow 2026). More than 940 marine scientists and policy experts have called for a precautionary pause on commercial DSM until sufficient evidence is available, while 46 countries now support a moratorium, precautionary pause or ban on the industry (Deep Sea Conservation Coalition 2025; Greenpeace International 2025).

According to the 2025 fisheries profile for Malaysia by Southeast Asia Fisheries Development Centre (2025), capture fisheries contribute 71.1% of the country's total fisheries production . Nonetheless, the country's marine capture fisheries production declined from 1.46 million metric tonnes in 2019 to 1.27 million metric tonnes in 2023 (Figure 3). Although this decline is influenced by multiple factors like overfishing, destructive practices, climate change and pollution, it underscores the importance of maintaining healthy and resilient marine ecosystems. Malaysian fishing vessels operating in the Indian Ocean depend on healthy fish stocks that migrate through the High Seas and are managed under international conservation measures.

Biodiversity loss in ABNJ can eventually affect Malaysia's coastal ecosystems, fisheries and food security. As human activities exacerbate across the ocean, protecting the ABNJ requires more than managing sectors individually. Countries need to formalise partnerships and undertake shared responsibilities in conserving the biodiversity and ecological processes that connect a common vision of the ocean through a more comprehensive ocean governance regime. This has been the underlying gap that the BBNJ Agreement experienced and was created purposefully to address.

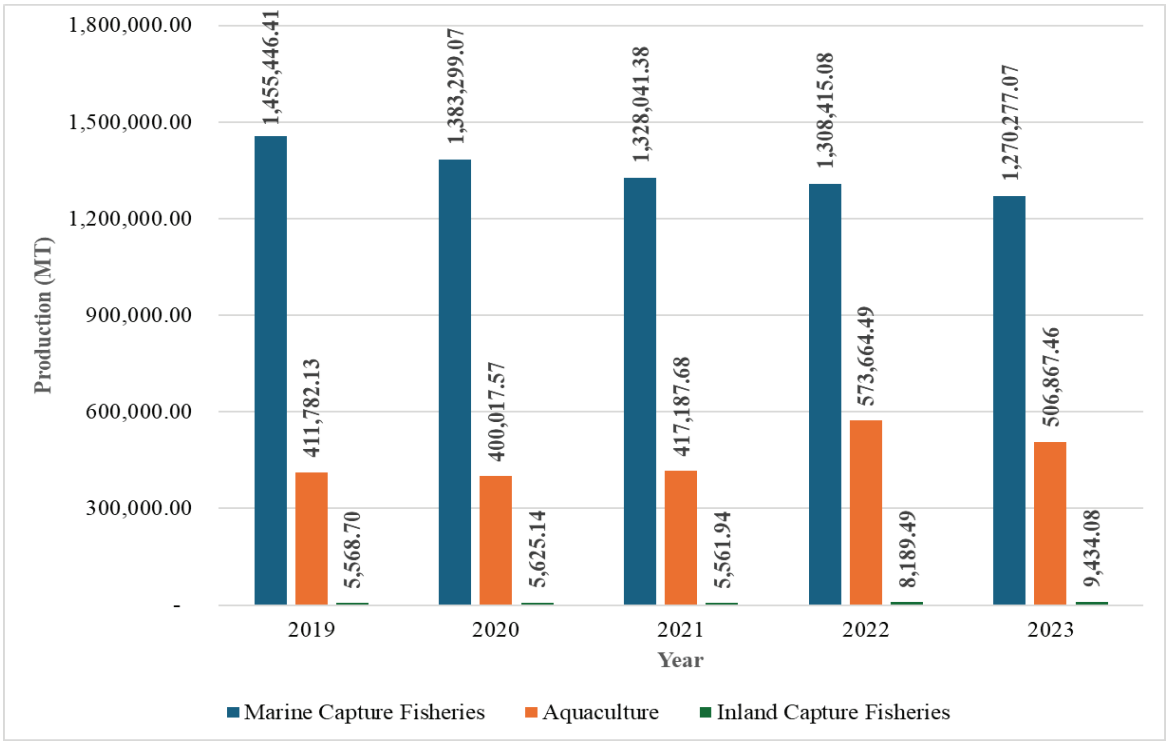

Figure 3. Fishery production of Malaysia in 2019-2023 by quantity (MT). (Source: Southeast Asian Fisheries Development Centre 2025).

THE BBNJ AGREEMENT: A NEW CHAPTER FOR OCEAN GOVERNANCE

Officially, it is termed as 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), though it is commonly referred to as the BBNJ Agreement (hereafter referred to as "the Agreement") or the High Seas Treaty. After nearly twenty years of negotiations, the Agreement was adopted on 19 June 2023 and entered into force on 17 January 2026 (Swift and Pickerell 2026; United Nations Indonesia 2026). As at 18 November 2026, it had 145 signatories and 105 Parties [b].

The Agreement builds upon UNCLOS. It promotes cooperation while acknowledging the roles and mandates of existing organisations such as RFMOs, ISA and IMO. The Agreement also sets a legal framework to establish marine protected areas in the ABNJ, which is critical to the achievement of the 30×30 under the Kunming-Montreal Global Biodiversity Framework. This means that Malaysia could be a strong advocate for strengthened international cooperation on ocean conservation through the BBNJ Agreement.

The Four Pillars of the BBNJ Agreement

The Agreement is built around four key pillars that work together to conserve and sustainably utilise marine biodiversity beyond national jurisdiction. Structured as a package deal, each pillar addresses a different aspect of ocean governance, but they are designed to operate as one coordinated framework to ensure the conservation of and equitable governance in the ABNJ.

[b] By becoming a signatory, a country hereby confirms its intent to be bound by the terms of the Agreement. Ratification formally makes the country a Party. When a country ratifies the Agreement, it amends, or gazettes a new legislation for the terms of the Agreement to take effect domestically.

1. Marine Genetic Resources (MGRs): Sharing the Benefits of Ocean Discoveries

MGRs are any material of marine plants, animals, microorganisms or other marine organisms containing functional units of heredity that have actual or potential value (*BBNJ Agreement*, Article 1). These resources may contain unique genes and compounds that can be used to develop new medicines, antibiotics, industrial enzymes, cosmetics and other biotechnology innovations. The Agreement also includes digital sequence information (DSI) of MGRs, which broadly refers to genetic information recorded in digital form, such as DNA sequences. This information allows the researchers to study genetic resources without directly assessing the original biological samples (Epps *et al.* 2025).

Accessing and studying genetic resources requires advanced technology, specialised expertise, and significant financial investment. These resources are not equally available to all Parties (*BBNJ Agreement*, Article 9). The Agreement therefore establishes a framework governing the fair and equitable (1) access to MGRs and associated DSI from ABNJ and (2) sharing of both monetary and non-monetary benefits arising from their use (*BBNJ Agreement*, Article 9 and 14) (Kachelriess *et al.* 2023). It also encourages Parties to share scientific knowledge, research data, technology and expertise through a central platform, known as Clearing-House Mechanism (Cl-HM). The CI-HM improves transparency and accessibility to scientific information, helping to strengthen the scientific, research and technical capacity of developing countries (*BBNJ Agreement*, Article 11 and 12).

2. Area-Based Management Tools (ABMTs): Protect important areas of the ocean

Some parts of the ABNJ are home to important and unique biodiversity or ecosystems that require greater protection (*BBNJ Agreement*, Article 17 and Annex 1). These tools allow countries to work together to protect and manage ecologically important areas of the ABNJ (*BBNJ Agreement*, Article 1). These include Marine Protected Areas (MPAs) and other measures that help conserve biodiversity, strengthen the resilience of marine ecosystems and support sustainable use.

Parties may propose the establishment of new MPAs using best available scientific evidence and, where available, relevant traditional knowledge (*BBNJ Agreement*, Article 19). Proposals undergo scientific review and public consultation involving governments, scientists, Indigenous Peoples, local communities, and other relevant stakeholders (*BBNJ Agreement*, Article 21). After consultation, the Scientific and Technical Body (STB) assesses the proposal and recommends action to the Conference of the Parties (COP), where countries decide whether to establish the proposed MPAs (*BBNJ Agreement*, Article 22).

3. Environmental Impact Assessment (EIA)

EIAs play an important role in the BBNJ Agreement by helping ensure that proposed activities are assessed prior to implementation, in order to prevent, mitigate, and manage significant adverse impacts on marine biodiversity in ABNJ. The process covers screening, scoping, impact assessment and evaluation, management measures and subsequent monitoring and reporting. Assessments must consider cumulative impacts and alternatives, using the best available science and traditional knowledge of Indigenous Peoples and local communities (*BBNJ Agreemen*t, Article 31). Transparency is embedded throughout the EIA process, where EIA reports are to be made publicly accessible, consultations are to be carried out before due consideration can be made in full, and monitoring reports of the approved activities are to be made available through the CI-HM (*BBNJ Agreement*, Articles 32–36).

The Agreement also requires EIAs for proposed activities within marine areas of national jurisdiction, if the responsible Party determines that it may cause detrimental impacts towards the marine environment of ABNJ (*BBNJ Agreement*, Article 27). These assessments may be carried out in accordance with the BBNJ framework or the Party's national process, with monitoring and sharing of relevant information and reports through

the Cl-HM required (*BBNJ Agreement*, Article 28). With respect to the EIA requirements between the Agreement and other IFBs, the EIA carried out is equivalent to the one required under Part IV of the Agreement, and at the same time the requirements for publication of reports, monitoring and review continue to apply (*BBNJ Agreement*, Article 29). To support implementation of its EIA provisions, the Agreement provides for the STB to collaborate with relevant IFBs and develop EIA standards or guidelines for consideration and adoption by the COP (*BBNJ Agreement*, Articles 29 and 38).

4. Capacity-Building and the Transfer of Marine Technology (CB&TMT)

The effective management and conservation of the High Seas requires rigorous scientific knowledge, trained experts and access to advanced technology. Many developing countries face financial, scientific and technical constraints that limit their ability to participate meaningfully in ocean governance (*BBNJ Agreement*, Article 40). CB&TMT aims to bridge these gaps and provide support for the implementation of all three other pillars of the Agreement.

The support of CB&TMT includes training, technical assistance, research collaboration, data sharing, access to equipment, and joint scientific research projects (*BBNJ Agreement*, Annex II). This is complemented by a dedicated CB&TMT Committee that assesses countries' needs, monitor and review CB&TMT implementation, and recommend follow up activities to the COP (*BBNJ Agreement*, Articles 45-46). The BBNJ Agreement strengthens the approach of the UNCLOS to capacity building by creating a monitoring and review process, by establishing a dedicated committee to oversee implementation of the provisions and by establishing a funding mechanism.

Turning agreement into action

The BBNJ Preparatory Commission (PrepCom) was established by the UN General Assembly (UNGA) in April 2024 to lay the groundwork and foundation in preparation for the entry into force and the first meeting of the Conference of the Parties (COP1), which will be held in January 2027. The PrepCom held three meetings, which focused on developing recommendations and drafting decisions on the institutional and financial arrangements needed for the Agreement to deliver on its promise to protect marine biodiversity beyond national jurisdiction (High Seas Alliance 2026a, 2026b).

By the conclusion of PrepCom 3, countries had agreed on the composition and size of most subsidiary bodies, with the Finance Committee remaining unresolved. The proposed arrangements support expert-driven bodies, the establishment of ad hoc working groups and continued work between COP meetings. These provisions would help ensure that the best available science informs implementation, including the assessment and evaluation of planned activities. Negotiations also advanced arrangements for the Special Fund, terms of reference for the Voluntary Trust Fund and draft financial rules.

Countries also agreed to develop a Clearing-House Mechanism prototype before COP1 to support information sharing across the Agreement's four pillars. Progress was made on the process for selecting the Secretariat's seat, with a preference for consensus and, if necessary, a two-thirds majority vote by secret ballot. China, Chile and Belgium have put forward their proposals to host the Secretariat.

Tentative agreement was reached on holding COP meetings primarily in person, allowing virtual meetings only in exceptional cases, and beginning with annual meetings before a later transition to biennial meetings. However, parts of the COP Rules of Procedure, financial rules and institutional arrangements still require further negotiation and will be considered at COP1 (High Seas Alliance 2026b).

MALAYSIA'S NEXT STEPS

The coming COP1 is scheduled on 11 to 22 January 2027, and will mark a significant shift from institution building to effective implementation. Parties will need to adopt COP Rules of Procedure, modalities and terms of reference for subsidiary bodies, financial rules, Secretariat arrangement including its seat, Clearing-House Mechanism, among others.

On 3 September 2025, Malaysia signed the BBNJ Agreement (United Nations 2023); the next step in this process is to carry out the necessary domestic legislative changes and harmonisation before Malaysia can ratify the Agreement. Becoming a Party would allow Malaysia to participate fully in decision-making and the Agreement's implementation, while strengthening its voice in shaping the future of international ocean governance. Associate Professor Dr. Mohd Hazmi Mohd Rusli of the International Islamic University Malaysia has highlighted that ratification would also provide Malaysia, as a developing country, with greater opportunities for capacity-building, marine technology transfer, scientific cooperation and benefit-sharing from marine genetic resources. Delaying ratification could, in contrast, weaken Malaysia's environmental credibility (The Vibes 2025).

According to the Undersecretary of the Strategic Planning and International Division at the Ministry of Natural Resources and Environmental Sustainability and Malaysia's representative in the BBNJ negotiations, the country's next steps include reviewing the Agreement's requirements, continuing relevant negotiations and preparing for implementation. In preparation for and following ratification, this would involve completing the necessary legal processes, reviewing existing laws and policies, strengthening coordination among government agencies, and engaging Malaysian scientific and legal experts. Such preparation would help ensure that Malaysia's interests and biodiversity conservation priorities are effectively represented at both regional and global levels (Tan 2025).

As Malaysia moves towards ratification and implementation, the Agreement presents an opportunity for the country to strengthen its role in global ocean governance. With continued preparation, cooperation and active participation, Malaysia can help shape how the High Seas Treaty is put into practice and contribute to a more equitable and sustainable future for marine biodiversity in areas beyond national jurisdiction.

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