

OCEAN GOVERNANCE  
CAPACITY BUILDING  
TRAINING PROGRAM  
ONLINE WORKSHOP

# OCEAN GOVERNANCE SUMMARIES

Prepared by the World Bank Legal Vice Presidency

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Photo credit: School barracuda fish and scuba divers. Rich Carey / Shutterstock.

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This compilation was prepared by Remi Moncel, Maria Vizeu-Pinheiro, Clara Barnosky, and Philip Kariam, with contributions, reviews, and support from Christina Leb, Gamila Kassem, Margaret Young, Sam Johnson, Sophie Lin and other training partners.

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## Ocean Governance Summaries

Full Title:	United Nations Convention on the Law of the Sea (UNCLOS)
Number of Parties:	168 <sup>1</sup>
Website:	Link to the Text of the <a href="#">Convention</a>
Membership:	Open to all States, international organizations, and other entities referred to in Article 305.
Secretariat:	The Division for Ocean Affairs and the Law of the Sea (DOALOS)

### Objectives

UNCLOS sets out States' rights and responsibilities with respect to different maritime zones in order to "facilitate international communication [and] promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection, and preservation of the marine environment."<sup>2</sup> It establishes a comprehensive legal regime for seas and oceans, including rules governing all uses of the oceans and their resources. It also includes obligations for States to conserve and manage living marine resources, protect and preserve the marine environment, and promote and facilitate marine scientific research. It includes an extensive dispute settlement mechanism. UNCLOS also establishes the International Seabed Authority (ISA), which has its own Secretariat headed by a Secretary-General; the International Tribunal for the Law of the Sea; and the Commission on the Limits of the Continental Shelf. Separate implementing agreements relate to straddling fish stocks and highly migratory fish stocks and the seabed and ocean floor beyond national jurisdiction.

### Key Provisions

UNCLOS is a complex, comprehensive framework that covers numerous aspects of States' rights and obligations concerning the world's oceans. UNCLOS contains 17 parts (cumulatively containing 320 articles) and 9 annexes.

#### General Rights and Obligations

UNCLOS contains several provisions dealing with States' rights and obligations with respect to certain defined maritime zones off their coastline. A key principle is that coastal States exercise **sovereignty** over their "**territorial sea**,"<sup>3</sup> an area described as not exceeding 12 nautical miles from baselines along the low-water mark or other baseline.<sup>4</sup> Ships of all States are allowed "innocent passage" through those waters.<sup>5</sup> Coastal States may also exercise the **control necessary to prevent and punish** infringement of their customs and certain of their laws and regulations, including fiscal regulations, immigration, and sanitary laws, in their "**contiguous zone**," an area adjacent to the territorial sea which may not extend beyond 24 nautical miles from the baselines.<sup>6</sup> Archipelagic States also exercise sovereignty over "**archipelagic waters**" enclosed by archipelagic baselines drawn in accordance with the Convention,<sup>7</sup> through which ships of all States enjoy the right of innocent passage.<sup>8</sup> Moreover, all ships and aircraft of all countries are allowed "transit passage" through straits used for international navigation,<sup>9</sup> while States bordering those straits can regulate navigational and other aspects of passage.<sup>10</sup>

Another important zone established in UNCLOS is the "**exclusive economic zone**" (EEZ), beyond and adjacent to the territorial sea, which may not extend beyond 200 nautical miles from the baselines. Within the EEZ, coastal States have **sovereign rights** for the purpose of exploring and exploiting, conserving, and managing the living and non-living resources of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, as well as **jurisdiction** over the establishment and use of artificial islands, installations and structures, marine science research, and environmental protection.<sup>11</sup> However, in exercising those rights,

<sup>1</sup> As of February 2021.

<sup>2</sup> Preamble.

<sup>3</sup> Article 2.

<sup>4</sup> Article 3.

<sup>5</sup> Article 17.

<sup>6</sup> Article 33.

<sup>7</sup> Article 47, 49.

<sup>8</sup> Article 52.

<sup>9</sup> Article 38.

<sup>10</sup> Article 42.

<sup>11</sup> Articles 55-57.

coastal States must have **due regard for the rights and duties of other States**, such as freedom of navigation and overflight in the EEZ, as well as freedom to lay submarine cables and pipelines.<sup>12</sup>

Yet another zone is the “**continental shelf**,” which comprises the seabed and subsoil of the submarine areas that extend beyond the territorial sea to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.<sup>13</sup> Coastal States have **sovereign rights** over this area **for the purpose of exploring and exploiting its natural resources**, including the non-living resources of the seabed and subsoil and sedentary species in constant contact with the seabed or subsoil at the time of harvest.

All parts of the sea that are not included in the EEZ, the territorial sea, internal waters of a State, or archipelagic waters of an archipelagic State, are designated as “**high seas**.”<sup>14</sup> In the high seas, States enjoy the **freedoms of navigation, overflight, laying of pipelines and cables, constructing artificial islands and installations, scientific research, and fishing**.<sup>15</sup> However, these freedoms must be exercised with due regard for the interests of other States in their exercise of the freedom of the high seas, and with due regard for the rights under this Convention with respect to activities in the Area. States are also subject to responsibilities, such as the responsibility to adopt or cooperate with other States in adopting, and measures to manage and conserve living resources.<sup>16</sup> Furthermore, States have the general obligation to **protect the marine environment** and must adopt laws to prevent, reduce, and control marine pollution.<sup>17</sup> Where States fail to carry out these and other responsibilities, they are **liable** in accordance with international law.<sup>18</sup>

UNCLOS provides that the “**Area**,” which is defined as the seabed, ocean floor, and subsoil thereof beyond the limits of national jurisdiction, as well as its resources, are the common heritage of humankind.<sup>19</sup> Therefore, activities in the Area must be carried out for the benefit of humankind as a whole.<sup>20</sup> The legal regime governing activities in the Area is found in Part XI of UNCLOS, as modified by the 1994 Implementing Agreement.

## Dispute Settlement

States Parties are obligated to settle disputes concerning UNCLOS by peaceful means.<sup>21</sup> For that purpose, UNCLOS contains a series of dispute resolution provisions. Pursuant to the provisions for compulsory procedures entailing binding decisions, disputes can, with certain exceptions, be submitted to the **International Tribunal for the Law of the Sea**,<sup>22</sup> to the International Court of Justice, or to arbitration.<sup>23</sup> Moreover, conciliation is available and is sometimes mandated by UNCLOS.<sup>24</sup>

## Relevance to World Bank–Financed Projects

Because UNCLOS regulates activities in the world’s oceans, it is relevant to nearly any project having an impact on or involving ocean activities or governance. This includes any project with the potential to generate marine pollution or affect living marine resources, such as projects involving aquaculture activities, shipping or ports, the exploitation of non-living marine resources, or the laying of submarine cables and pipelines.

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<sup>12</sup> Articles 56 and 58.

<sup>13</sup> Article 76.

<sup>14</sup> Article 86.

<sup>15</sup> Articles 87 and 116.

<sup>16</sup> Article 117.

<sup>17</sup> Articles 192, 208-212.

<sup>18</sup> Articles 139 and 235.

<sup>19</sup> Article 136.

<sup>20</sup> Article 140.

<sup>21</sup> Article 279.

<sup>22</sup> Established under Article 186.

<sup>23</sup> Article 287.

<sup>24</sup> Article 284.

# Trade

## Ocean Governance Summaries

Full Title:	Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
Number of Parties:	183 <sup>1</sup>
Website:	Link to <a href="#">Website</a>   Link to Text of the <a href="#">Convention</a>
Membership:	Open to all States and regional economic integration organizations
Secretariat:	The United Nations Environment Programme (UNEP)

### Objectives

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) aims to protect “certain species of wild fauna and flora against over-exploitation through international trade.”<sup>2</sup> CITES requires Parties to implement its objectives through the Party’s own domestic legislation.<sup>3</sup>

### Key Provisions

The broad objective of CITES is to eliminate or restrict the trade in endangered species of wild flora or fauna. Parties control the international trade of specimens<sup>4</sup> of species through a domestic licensing system. Each Party to CITES must designate Management Authorities in charge of administering that licensing system and Scientific Authorities to advise them on the species’ statuses.<sup>5</sup> Parties to CITES shall enforce the Convention’s provisions through domestic measures, including penalizing the trade of selected species that does not conform with the Convention and providing for the confiscation or return of such species to the State of export.<sup>6</sup> In total, there are twenty-five articles and three appendices.

### Appendices

CITES categorizes species in Appendices according to the degree of protection that Parties have agreed they need.

**Appendix I** lists species threatened by extinction that may be affected by trade.<sup>7</sup> Import, export, re-export, or introduction from the sea of specimens is covered. **Such trade** requires monitoring from the Scientific Authorities and Management Authorities of both the State of import and State of export to ensure that the trade adheres to the necessary legal procedures and minimizes harm to the species.<sup>8</sup> Import and export of specimens require a permit from the Management Authority.<sup>9</sup> Import permits may only be issued if the specimen will not be used for commercial purposes and if the “import will be for purposes which are not detrimental to the survival of the species involved.”<sup>10</sup> An export permit shall only be granted when the following conditions have been met: (i) the export will not be detrimental to the survival of that species; (ii) the specimen was not obtained in contravention of the laws; and (iii) an import permit has been granted by the State of import.<sup>11</sup> If the specimen is living, both an import and an export permit require the specimen to be “prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.”<sup>12</sup>

Species listed on **Appendix II** are not necessarily threatened with extinction but may become so “unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival.”<sup>13</sup> Export permits issued from the State of export are required and shall only be granted if the specimen was legally obtained and if the export will not be detrimental to the survival of the species.<sup>14</sup> If the specimen is living, the permit will require the specimen to be

<sup>1</sup> As of February 2021.

<sup>2</sup> Preamble.

<sup>3</sup> Article VIII.

<sup>4</sup> Specimens are defined as “any animal or plant, whether alive or dead,” [and] “any readily recognizable part or derivative” of a species present on Appendix I and II, as well as any readily recognizable part or derivative of any animal species on Appendix III. It also encompasses “any readily recognizable part or derivative thereof specified in Appendices II and III in relation to “any plant species. Parts or derivatives of any animal species present on Appendix III must likewise be specified to fall under the definition of specimen in Appendices II and III. (Article 1).

<sup>5</sup> Article VIII.

<sup>6</sup> Article VIII.

<sup>7</sup> Article II.

<sup>8</sup> Article III.

<sup>9</sup> Article III.

<sup>10</sup> Article III.

<sup>11</sup> Article III.

<sup>12</sup> Article III.

<sup>13</sup> Article II.

<sup>14</sup> Article IV.

packed to minimize harm to the individual.<sup>15</sup> In contrast to Appendix I requirements, an import permit is not necessary, though the presentation of the export permit is required.<sup>16</sup>

**Appendix III** lists species that are protected by regulation in at least one Party, which has asked other CITES Parties for cooperation in that protection.<sup>17</sup> In the case of export from any State that included the species in Appendix III, an export permit issued by the Management Authority of that State is required.<sup>18</sup> In the case of export from any other State, a certificate of origin issued by its Management Authority is required.<sup>19</sup>

Amendments to the Appendices, including the addition of new species, may be made according to the procedure set forth in the Convention.<sup>20</sup>

### Exemptions and other special provisions relating to trade

CITES allows Parties to exempt certain situations from the above requirements, including, but not limited to, when specimens are in transit; when specimens were acquired prior to the CITES provisions applied to it; and where the specimen is a personal or household effect (as strictly defined by the Convention).<sup>21</sup> Other exemptions include animal species bred in captivity or plant species artificially propagated; materials used for scientific purposes; or specimens in a circus, zoo, or other travelling exhibition.<sup>22</sup> These situations are subject to special provisions and may still require a certificate or permit.<sup>23</sup>

### Relevance to World Bank–Financed Projects

CITES may be relevant to any World Bank-financed projects that concern developing trade infrastructure and/or enhancing governance and management institutions. Examples of past World Bank-financed projects that have entailed consideration of CITES are projects that aimed to enhance legal and regulatory frameworks to strengthen protections for threatened wildlife and projects that concerned capacity building for communities located in conversation areas.

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<sup>15</sup> Article III.

<sup>16</sup> Article IV.

<sup>17</sup> Article II.

<sup>18</sup> Article V.

<sup>19</sup> Article V.

<sup>20</sup> Article XV and Article XVI.

<sup>21</sup> Article VII.

<sup>22</sup> Article VII.

<sup>23</sup> Article VII.

## Ocean Governance Summaries

Full Title:	Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)
Number of Parties:	71
Website:	Link to the Text of the <a href="#">Agreement</a>
Membership:	Open to any State or separate customs territory, as may be agreed between the Parties and that State or separate customs territory
Secretariat:	None (though New Zealand is the official repository country and publishes statements on the meetings of the Commission of the <a href="#">CPTPP</a> )

### Objectives

The CPTPP is a regional FTA designed to promote economic integration and cooperation between the Parties, to open markets, increase world trade and create new economic opportunities. It recognizes values such as the importance of corporate social responsibility, environmental protection, sustainable development, labor rights, cultural diversity, the elimination of bribery and corruption, and the promotion of small and medium-sized enterprises.<sup>2</sup> While the CPTPP is open to all States, (pending agreement by the Parties) it is meant to cover trans-Pacific regional trade. Its current Parties are Australia, Canada, Japan, Mexico, New Zealand, Singapore, and Vietnam. Brunei Darussalam, Chile, and Peru are signatories and will become Parties after they complete their respective ratification process. Other countries, including the United Kingdom, have signaled interest in joining.

### Key Provisions

The CPTPP has thirty chapters and four annexes. It entered into force in December 2018 (January 2019 for Vietnam).

#### National Treatment and Market Access

The CPTPP enhances market access for goods through the commitment by all Parties to reduce or eliminate tariffs across all sectors of their economies.<sup>3</sup> The majority of CPTPP Parties' tariff lines will be duty free for originating goods, meaning that tariffs for most goods will be set to zero, and nearly all remaining tariffs will be eliminated gradually over phaseout periods that vary by Party and good. Each Party has also made a commitment to national treatment, which is the obligation to treat imported and domestically produced goods equally.

#### Trade Facilitation

The CPTPP's trade facilitation obligations commit Parties to cooperate to promote the application of and compliance with trade facilitation measures, including providing other Parties with advance notice of any administrative, legal, or regulatory changes.<sup>4</sup> These obligations are designed to help address the transaction costs associated with international trade through harmonization, modernization, simplification and standardization of customs and border procedures. They are aimed at helping trading entities to take advantage of the market access benefits provided by the CPTPP.

#### Investment

The CPTPP provides a rules-based framework governing investment relation among the Parties.<sup>5</sup> It requires Parties to accord non-discriminatory treatment to each other's investors, while at the same time preserving their ability to regulate for legitimate public policy objectives. It contains protections against discrimination; a prohibition on expropriation not for a public purpose, without due process and without compensation; protections from abusive treatment, denial of justice, and other forms of treatment below the standard of customary international law; and prohibitions on trade-distorting performance requirements such as forced technology transfer or requirements to buy local products. The CPTPP also ensures that investors can transfer investments funds into and out of the host country and appoint senior managers without regard to nationality.

<sup>1</sup> As of December 2020.

<sup>2</sup> Preamble.

<sup>3</sup> Chapter 2.

<sup>4</sup> Chapter 5.

<sup>5</sup> Chapter 9.

## Trade in Services

The CPTPP chapter on cross-border trade in services includes the core obligations found in the WTO of non-discrimination for service suppliers, both through the provision of most-favored nation and national treatment obligations.<sup>6</sup> CPTPP Parties also commit not to impose quantitative restrictions or require a specific type of legal entity or joint venture as a condition for the supply of services. The Parties accept these obligations on a “negative list basis,” meaning that their markets are fully open to service suppliers from other CPTPP Parties except where they have taken explicit reservations. Further, CPTPP Parties have agreed to ensure that all measures of general application affecting trade in services are administered in an objective and impartial manner and to encourage designated regulatory bodies to recognize the education, experience, requirements, licenses or certifications in the jurisdiction of the other Party through harmonization or mutual recognition agreements.

## Government Procurement

The government procurement obligations contained in the CPTPP build on the WTO’s government procurement rules on discrimination, transparency, and procedural fairness for covered government procurement activities.<sup>7</sup> However, the obligations apply only to procurements identified in the annexes of each Party.

## Labor

The CPTPP contains enforceable labor rights and obligations and reaffirms the Parties’ commitments to respect internationally recognized labor rights and principles and to enforce their domestic labor laws.<sup>8</sup> Parties agree to adopt and maintain the fundamental labor rights including freedom of association and the right to collective bargaining, elimination of forced labor, abolition of child labor, and elimination of discrimination in employment. CPTPP Parties also agree to enact or maintain laws governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

## Environment

The CPTPP commits Parties to maintain high standards of environmental protection and effectively enforce environmental laws, while recognizing their right to set their own environmental priorities and corresponding levels of protection.<sup>9</sup> Specific provisions on marine capture fisheries recognize that Parties may use measures to prevent trade in fish products that result from illegal, unreported, and unregulated fishing. There is also an express prohibition on subsidies for fishing that “negatively affect fish stocks that are in an overfished condition.” Other provisions require Parties to seek to operate a science-based fisheries management system, and promote the long-term conservation of sharks, marine turtles, seabirds, and marine mammals.

## Dispute Settlement

The CPPTPP contains compulsory dispute settlement mechanisms. Countries can bring legal challenges against one another for violations of the agreement (including violations of obligations in chapters such as the environmental chapter).<sup>10</sup>

## Relevance to World Bank–Financed Projects

As the CPTPP regulates a variety of aspects of trade between the Parties, it is relevant to any Bank-financed project involving the transit of goods, services, intellectual property, and investment into or between the CPTPP’s Parties. It is also relevant to projects involving “covered” government procurements, as well as those focusing on trade facilitation. Importantly, Parties to the CPTPP have taken reservations to the CPTPP’s obligations, including in sectors related to the blue economy. For example, Malaysia’s Annex I reservations provide that “foreign shipping vessels are not permitted to provide and supply domestic shipping services, maritime cabotage services and government cargo” and Vietnam’s Annex I reservations provide that “foreign investment to supply maritime passenger and freight transportation services under the national flag of Viet Nam may not be supplied except through a joint venture or the purchase of shares in a Vietnamese enterprise.”

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<sup>6</sup> Chapter 10.

<sup>7</sup> Chapter 15.

<sup>8</sup> Chapter 19.

<sup>9</sup> Chapter 20.

<sup>10</sup> Chapter 28.

# Ocean Governance Summaries

Full Title:	General Agreement on Tariffs and Trade (GATT)
Number of Parties:	164 <sup>1</sup>
Website:	Link to the <a href="#">Website</a>   Link to the Text of the <a href="#">Agreement</a>
Membership:	Open to any State or customs territory having full autonomy in the conduct of its trade policies.
Secretariat:	World Trade Organization Secretariat

## Objectives

The GATT covers international trade in goods and creates a framework for the regulation of international trade. It was designed to substantially reduce tariffs and other barriers to trade and to eliminate discriminatory treatment in international commerce.<sup>2</sup>

## Key Provisions

The GATT was negotiated in 1947 and has been modified and amended through several rounds of negotiation. The most significant was the Uruguay Round, completed in 1994, which overhauled the global trade framework and integrated the GATT into a larger system of agreements that together form the World Trade Organization. This system of agreements covers several aspects of trade, including trade in services, technical barriers to trade, sanitary and phytosanitary measures, trade-related aspects of intellectual property rights, agricultural trade, and subsidies.

### Non-Discrimination: Most-Favored Nation and National Treatment

At the center of the GATT is the principle of non-discrimination, which is incorporated through the obligations of most-favored nation (MFN) and national treatment. MFN requires that where one member grants to another member “**more favourable treatment**” (such as a reduction in the customs duty payable on imports of a particular product), it must immediately and unconditionally accord the same treatment to imports from all other members.<sup>3</sup> In other words, all members are entitled to receive the most favorable treatment given to any other member. This obligation applies to customs duties and charges of any kind connected with importing and exporting, as well as to internal taxes and charges, and to all rules by which such duties, taxes, and charges are applied. Customs unions and free trade areas, discussed below, are the major exceptions to this rule.

**National treatment** is also of fundamental importance. It provides that members must accord the products of another member treatment that is “no less favourable” than the treatment it accords to its own products.<sup>4</sup> In other words, once imports have passed the national border (and in so doing have paid whatever import duty is imposed), they must be treated no worse than domestic products, meaning that laws and regulations affecting their sale, purchase, transportation, distribution, or use must be no less favorable than for goods of national origin. Further, internal taxes or other charges on the imports must be no higher than on domestic products.<sup>5</sup>

### Tariff Bindings and Prohibition of Quotas

Members of the GATT also commit to a maximum level of import duty that they will apply to imports of specified types of goods.<sup>6</sup> These commitments, or “bindings,” are recorded in national schedules and become part of each country’s obligations under the GATT. Quantitative restrictions on imports (i.e., quotas) and exports are, in general, prohibited.<sup>7</sup>

### Customs Unions and Free Trade Areas

Customs unions and free trade areas, by their very nature, favor imports from certain countries and therefore run counter to the non-discrimination obligation of MFN discussed above. The GATT contains an exception that permits this departure if the customs union or free trade area removes duties and other restrictions affecting “substantially all” the trade among the parties to the arrangement.<sup>8</sup> Both customs unions and free trade areas involve the removal of trade barriers among their members. However, the member countries of customs unions all apply the same rates of import duty on imports from non-

<sup>1</sup> As of December 2020.

<sup>2</sup> Preamble.

<sup>3</sup> Article I.

<sup>4</sup> Article III:4.

<sup>5</sup> Article III:2.

<sup>6</sup> Article II.

<sup>7</sup> Article XI.

<sup>8</sup> Article XXIV.

members, while members of free trade areas retain their own national tariffs. These arrangements may contain detailed “rules of origin” that are used to identify products that qualify for duty-free treatment.

### Special and Differential Treatment

Under the GATT, developing countries are given special and differential (S&D) treatment, which aims to increase trade opportunities or allow for flexibility in implementing Agreements and commitments. For example, developing countries may restrict imports in certain circumstances if doing so would promote the establishment or maintenance of a particular industry or assist in cases of balance-of-payments difficulties.<sup>9</sup>

### Other Exceptions

The GATT sets out several exceptions to its rules. It allows members to take measures necessary to protect, among other things, public morals, human, animal or plant life or health, and national treasures, as well as measures relating to the conservation of exhaustible natural resources.<sup>10</sup> However, such measures must not constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, nor be a disguised restriction on international trade. The GATT also contains a security exception that allows members to take actions they deem necessary for the protection of their essential security interests.<sup>11</sup>

### Dispute Settlement

Disputes arising under the GATT are resolved according to the provisions of a separate WTO agreement called the Dispute Settlement Understanding (DSU). When a dispute arises, the DSU requires members to first enter into consultations. If consultations do not resolve the dispute, the complaining party may then request the establishment of a panel, who review the case and issue a report. The parties have an opportunity to appeal the panel report to the WTO’s Appellate Body, which issues an appellate report. Once the panel report or the appellate report is adopted, the party concerned must notify the WTO of its intentions with respect to the implementation of the recommendations contained therein. The WTO’s Dispute Settlement Body keeps the implementation under regular surveillance until the issue is resolved. It is important to emphasize that WTO remedies are generally prospective, meaning that members are required to bring their laws into compliance with panel and appellate report recommendations on a go-forward basis rather than pay compensation for past wrongs.

### Relevance to World Bank–Financed Projects

As the GATT regulates global trade in goods, it is relevant to any Bank-financed project involving the transit of goods across international borders. It is also relevant to projects focusing on export competitiveness, trade facilitation, or involving the review of national laws or regulations that may relate to, for example, taxation, sale, purchase, transportation, distribution, or use of goods. One example of a Bank-financed project that involves GATT aims to reduce costs and improve reliability in a logistics chain.

The “shrimp-turtle” case provides one illustration of how the GATT can be relevant to the blue economy. In that case,<sup>12</sup> the US sought to reduce turtle bycatch by prohibiting the import of shrimp from non-certified countries (i.e., countries that had not used a certain ‘turtle excluder device’ in the harvesting process). India, Malaysia, Pakistan, and Thailand successfully argued that the discriminatory aspect of the measure was ‘unjustifiable discrimination’ and a ‘disguised restriction on international trade’ under the chapeau of Art XX. In accepting that turtles were an ‘exhaustible natural resource’ under GATT Art XX(g), the Appellate Body drew on other international treaties. Although the US lost the case, violations of the GATT’s prohibition on quantitative restrictions (GATT Art XI) can be justified if properly implemented, including through multilateral efforts.

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<sup>9</sup> Article XVIII.

<sup>10</sup> Article XX.

<sup>11</sup> Article XXI.

<sup>12</sup> *US – Shrimp (WT/DS58)*

# Ocean Governance Summaries

Full Title:	Agreement on Subsidies and Countervailing Measures (SCM)
Number of Parties:	164 <sup>1</sup>
Website:	Link to the <a href="#">Website</a>   Link to the Text of the <a href="#">Agreement</a>
Membership:	Must be ratified by World Trade Organization Member States (States or customs territories)
Secretariat:	World Trade Organization Secretariat

## Objectives

The SCM is a World Trade Organization (WTO) agreement that governs the use of subsidies by WTO Members. It aims to regulate the provision of certain subsidies as well as the countervailing measures imposed by a WTO Member to offset injuries that may be caused by subsidies of another WTO Member.

## Key Provisions

The SCM entered into force along with the other WTO agreements on January 1, 1995. It contains detailed definitions and sets out circumstances in which subsidies are prohibited or actionable. It also sets out procedures that must be followed if a WTO Member wishes to impose countervailing duties or challenge those subsidies at the WTO.

## Subsidies

The SCM defines “subsidy” broadly as a “financial contribution” made by or at the direction of a government (or any public entity) that confers a “benefit” to the recipient.<sup>2</sup> A financial contribution includes, for example, grants, loans, and tax credits, while a benefit generally refers to placing the recipient in a position more favorable than it would be had the financial contribution been obtained in the market.

Under the SCM, there are two types of **prohibited subsidies**: (1) export subsidies, which are subsidies contingent on the recipient meeting certain export targets;<sup>3</sup> and (2) import substitution subsidies, which are subsidies contingent on the recipient using domestic goods instead of imported goods (often taking the form of local content requirements).<sup>4</sup> These types of subsidies are prohibited because they are specifically designed to distort international trade. As discussed below, prohibited subsidies can be challenged through WTO dispute settlement procedures or through domestic procedures leading to the imposition of countervailing duties.<sup>5</sup>

**Actionable subsidies** give Members the right to act either by challenging the subsidy through the WTO’s dispute settlement process or through an internal investigation that may lead to the imposition of a countervailing duty. There are two criteria for meeting the definition of an actionable subsidy. The first is that the subsidy must be “specific.” Specific subsidies are those that are available only to an enterprise, industry, group of enterprises, or group of industries.<sup>6</sup> A subsidy can be specific in law, which occurs when the granting authority or legislation explicitly limits the subsidy to certain sectors or regions, or in fact, which occurs when the subsidy is not specific on its face but operates in a specific manner.

The second criterion for an actionable subsidy is that it causes “adverse effects” to the interests of another Member.<sup>7</sup> The SCM defines adverse effects to include “serious prejudice” and “material injury.” Serious prejudice is deemed to exist in certain enumerated circumstances and “may arise” in others.<sup>8</sup> For example, it may arise where there is injury to a domestic industry in an importing country, to exporters from another country that compete with a subsidized exporter in a third market, or to exporters trying to compete in the subsidizing country’s domestic market. The determination of material injury, on the other hand, is made through a countervailing duty investigation, which considers, among other things, the volume and effect of subsidized imports on prices and their impact on domestic producers of like products.<sup>9</sup>

The SCM contains a third category of subsidies, termed **non-actionable subsidies**.<sup>10</sup> This was intended to cover subsidies that were not generally for the purpose of gaining a competitive advantage, including certain research and development and

<sup>1</sup> As of December 2020.

<sup>2</sup> Article 1.

<sup>3</sup> See illustrative list in Annex I.

<sup>4</sup> Article 3.

<sup>5</sup> Article 4.

<sup>6</sup> Article 2.

<sup>7</sup> Article 5.

<sup>8</sup> Article 6.

<sup>9</sup> Article 15.

<sup>10</sup> Article 8.

environmental subsidies. This category applied provisionally for five years ending December 31, 1999, and pursuant to Article 31 of the Agreement, could be extended by consensus of the SCM Committee. As of December 31, 1999, no such consensus had been reached.

## Countervailing Duties

Where an importing Member believes another member has provided a prohibited or actionable subsidy, it can impose countervailing duties in order to offset the harm caused by that subsidy. However, countervailing duties can only be imposed after the importing Member undertakes a detailed investigation that conforms to the rules set out in the SCM.<sup>11</sup> Generally, these rules require domestic authorities to find that: (1) there was a specific subsidy; and (2) the subsidy caused material injury to a domestic industry that produces the “like” product. If these conditions are satisfied, a countervailing duty can be imposed on like products imported from a company that received the subsidy. If the domestic procedure does not conform to the requirements of the SCM, however, the Member affected can challenge the countervailing duty through the WTO dispute settlement process.

## WTO Dispute Settlement

A second option for importing Members that believe another Member has provided a prohibited or actionable subsidy is to initiate dispute settlement procedures at the WTO. The remedy available to countries taking the WTO-route is the withdrawal of the subsidy or removal of its adverse effects. Prohibited subsidies are handled at the WTO under an accelerated timetable that establishes a specific time-period to withdraw the measure.<sup>12</sup> Further, as indicated, Members may also challenge countervailing duties imposed by other Members through the WTO if they believe they were not imposed in accordance with the SCM.

## Exemptions

Least-developed countries and developing countries with less than \$1,000 per capita GNI are exempted from the SCM’s requirements on prohibited export subsidies.<sup>13</sup> Developing countries also receive preferential treatment if their exports are subject to countervailing duty investigations. In addition, the SCM’s rules do not apply to the subsidization of agricultural products, which is governed by another WTO agreement on agriculture.<sup>14</sup>

## Relevance to World Bank–Financed Projects

The SCM may be relevant to Bank-financed projects involving government support for particular domestic industries, such as those focused on export competitiveness. Government subsidies are also prevalent in blue economy sectors. In fisheries, for example, WTO Members are negotiating to clarify and improve SCM provisions, including by prohibiting certain forms of fisheries subsidies that contribute to overcapacity and overfishing. In ship-building, a dispute between Korea and the European Communities led to a successful challenge by Korea against the European Communities.<sup>15</sup> Although the WTO panel rejected Korea’s claim that the EC measures for commercial vessels breached the SCM, it found that the EC had violated the DSU in seeking to act unilaterally (against Korea) when seeking the redress of a violation of an obligation under the WTO Agreement.

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<sup>11</sup> Articles 11-23.

<sup>12</sup> Article 4.7.

<sup>13</sup> Article 27.2.

<sup>14</sup> Articles 3.1 and 5.

<sup>15</sup> *EC – Commercial Vessels* (WT/DS301).

# Pollution

## Ocean Governance Summaries

Full Title:	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (The Basel Convention)
Number of Parties:	188 <sup>1</sup>
Website:	Link to the <a href="#">Website</a>   Link to the Text of the <a href="#">Convention</a>
Membership:	Open to all States and political and/or economic integration organizations
Secretariat:	The United Nations Environment Programme (UNEP).

### Objectives

The Basel Convention (the Convention) is the main international treaty on transboundary movements of hazardous and other wastes. The Convention aims to protect human health and the environment against the adverse effects resulting from the generation, management, transboundary movements and disposal of hazardous and other wastes.

### Key Provisions

The text of the Convention was adopted in 1989 and entered into force in 1992. Additional annexes and amendments to annexes have been added since its adoption.<sup>1</sup>The latest additions date from 2019 and became effective in 2021. The Convention is divided into twenty-nine articles and nine annexes.

#### General Rights and Obligations

The Convention regulates the transboundary movements of hazardous and other wastes applying the **Prior Informed Consent (PIC)** procedure.<sup>3</sup>The agreement directs Parties to prohibit the export of hazardous and other wastes to Parties that ban the import of such wastes or otherwise do not consent in writing to the specific import.<sup>4</sup>Transboundary shipments made without notification and consent are considered illegal.<sup>5</sup> Shipments to and from non-Parties shall not be permitted unless there is a special agreement.<sup>6</sup>

Under this Convention, States have the **right to prohibit or restrict the import or export of hazardous wastes or other wastes** for disposal. They shall **inform** the other Parties of their decision through the Secretariat.<sup>7</sup>

The Convention obliges its Parties to ensure that hazardous and other wastes are managed and disposed in an **environmentally sound manner (ESM)**. To this end, among other actions, Parties are required to take measures to (i) ensure that hazardous wastes “are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes;”<sup>8</sup> (ii) minimize the quantities that are moved across borders;<sup>9</sup> (iii) ensure the availability of adequate disposal facilities;<sup>10</sup> (iv) minimize the generation of wastes at source;<sup>11</sup> and (v) prevent import if believed that waste will not be managed in an ESM.<sup>12</sup>

#### Classification and Definition of ‘Hazardous Waste’ and ‘Other Waste’ and Subsequent Additions.

Annex I lists the wastes classified as “**hazardous**”<sup>13</sup> for the purpose of the Convention. It is also treats as “hazardous” wastes not included in Annex I but defined as, or are considered to be, hazardous wastes by the **domestic legislation** of the Party of export, import or transit.”<sup>14</sup>

Annex II of the Convention creates the category of “**other wastes**” (which primarily refers to household wastes) that are not hazardous but require special consideration and are also subject to the Conventions’ obligations.<sup>15</sup> Parties may inform the Convention Secretariat of additional wastes, other than those listed in the Convention,<sup>16</sup> that are considered or defined as hazardous wastes under their national legislation, and any

<sup>1</sup> As of December 2020. The most remarkable is the Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal was adopted in 1999 and as of December 2020 has 13 Parties.

<sup>2</sup> The latest additions date from 2019 and became effective in 2021. The Convention is divided into twenty-nine articles and nine annexes.

requirements concerning transboundary movement procedures applicable to such wastes. Radioactive wastes and wastes derived from normal operation of ships are excluded from the scope of the Basel Convention, if covered by other international instruments.<sup>17</sup>

Annexes VIII and IX were added in 1998 to provide further elaboration concerning the wastes regulated by the Convention in Annexes I and III. Since then, the Conference of the Parties has adopted various changes to Annexes I, II, II, VIII and IX. The last one was in 2019, with the insertion of three new entries to clarify the scope of **plastic waste**.<sup>18</sup> These latest amendments will become effective as of 1 January 2021.

### The Basel Ban Amendment (2019)

The “[Ban Amendment](#)” directs Parties to **prohibit** all transboundary movements of hazardous wastes covered by the Convention that are intended for **final disposal** from countries listed in Annex VII<sup>19</sup> of the Convention (mostly OECD countries) to all other countries. In addition, it directs Parties to **prohibit** all transboundary movements of hazardous wastes covered by Article 1.1(a) that are destined for **reuse, recycling or recovery operations** to States not included in Annex VII.

The “Ban Amendment” was adopted in the third meeting of the Conference of the Parties and introduces a new preambular paragraph, a new article (Article 4a) and a new Annex VII. It entered into force on 5 December 2019<sup>20</sup> (see link [here](#)).

### Dispute Settlement

States Parties shall settle disputes under the Convention by negotiation or any other peaceful means.<sup>21</sup> For that purpose, it contains a series of dispute resolution provisions. If a dispute cannot be settled by other means, it shall be submitted to the **International Court of Justice**<sup>22</sup> or to arbitration,<sup>23</sup> if the Parties to the dispute agree.

### Relevance to World Bank–Financed Projects

As the Basel Convention regulates the transboundary movements and disposal of hazardous waste and other wastes, it is relevant to any Bank-financed project involving waste transportation, generation or final disposal. Examples of current Bank-financed projects that are relevant to the Basel Convention include projects that aim to strengthen innovation and coordination around circular economy solutions as well as projects that aim to strengthen the governance of solid waste management.

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<sup>3</sup> Article 4 and Article 6.

<sup>4</sup> Article 4.1(b)-(c).

<sup>5</sup> Article 9.

<sup>6</sup> Article 4.5 and Article 11.

<sup>7</sup> Article 4.1(a) and Article 13.2(c)-(d).

<sup>8</sup> Article 2.

<sup>9</sup> Article 4.2(d).

<sup>10</sup> Article 4.2(b).

<sup>11</sup> Article 4.2(a).

<sup>12</sup> Article 4.2(g).

<sup>13</sup> Article 1(a).

<sup>14</sup> Article 1(b).

<sup>15</sup> Art. 1. 2 and Annex II.

<sup>16</sup> Article 1(b).<sup>17</sup> Article 1.3 and Article 1.4.

<sup>18</sup> Annex II- entry Y48; Annex IX entry B3210; Annex IX entry B3011.

<sup>19</sup> Parties and other States which are members of the OECD, EC, Liechtenstein.

<sup>20</sup> Additional agreements to deal with the problem of transferring the waste from developed to developing countries were developed such as regional conventions as Bamako or bilateral such as ‘Country-led Initiative’ (CLI).

<sup>21</sup> Article 20.

<sup>22</sup> Article 20.2.

<sup>23</sup> Complying conditions sets on Annex VI

## Ocean Governance Summaries

Full Title:	International Convention for the Control and Management of Ships' Ballast Water and Sediments (BMW)
Number of Parties:	81 <sup>1</sup>
Website:	Link to the <a href="#">Website</a>   Link to the Text of the <a href="#">Convention</a>
Membership:	Open to all States
Secretariat:	International Maritime Organization (IMO)

### Objectives

The International Convention for the Control and Management of Ships' Ballast Water and Sediments, also called the Ballast Water Management Convention (the BWM Convention), aims to prevent, minimize and ultimately eliminate the spread of harmful aquatic organisms and pathogens from one region to another, by establishing standards and procedures for the management and control of ships' ballast water and sediments.<sup>2</sup> It was negotiated under the authority of the International Maritime Organization (IMO) to carry out the goals of Article 196 of the United Nations Convention on the Law of the Sea regarding "accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto." Ships' ballast water and sediments have been identified as a major pathway of introduction of invasive aquatic species into new environments, with serious environmental consequences. The harm is increasing due to international maritime transport.

### Key Provisions

The BWM Convention was adopted in 2004 and entered into force in 2017. The text is divided into 22 articles and an annex with sections A to E.

#### General Rights and Obligations

The Parties to the BWM Convention undertake to give "full and complete effect" to the provisions of the Convention and its annex in order to "prevent, minimize and ultimately eliminate the transfer of Harmful Aquatic Organisms and Pathogens through the **control and management of ships' ballast water and sediments.**"<sup>3</sup> The Convention generally applies to ships entitled to fly their flag or operating under the authority of the Party.<sup>4</sup> Under the Convention, the Parties shall endeavor to (i) **co-operate** for the effective implementation and enforcement of the measures called for by the Convention<sup>5</sup>; (ii) **promote scientific and technical research**<sup>6</sup>; and (iii) provide support to Parties that request **technical assistance** to train personnel, ensure the availability of technology, and initiate joint research, among other activities.<sup>7</sup>

In addition, the BWM Convention requires parties to **develop national policies** for ballast water management in its ports and waters under its jurisdiction that accord with and promote the attainment of the objective of the Convention.<sup>8</sup> Each Party also undertakes to ensure that designated **ports and terminals** provide adequate facilities for the reception of sediments, taking in account the guidelines developed by the IMO.<sup>9</sup> The BWM Convention allows Parties to undertake control measures individually or jointly, consistent with international law, that are more stringent than those of the Convention.<sup>10</sup>

#### Survey and Certification Obligation of Ships under Flag Jurisdiction

The BWM Convention requires parties to ensure that ships flying its flag or under its authority are **surveyed and certified** for ballast water management in accordance with regulations contained in the Annex to the BMW Convention.<sup>11</sup> The certificate shall not exceed a period of five years.<sup>12</sup>

<sup>1</sup> As of December 2020.

<sup>2</sup> Article 2.

<sup>3</sup> Article 2.

<sup>4</sup> Article 3.

<sup>5</sup> Article 2.4 and Article 4.

<sup>6</sup> Article 6.

<sup>7</sup> Article 13.

<sup>8</sup> Article 4.2.

<sup>9</sup> Article 5.

<sup>10</sup> Article 2.3.

<sup>11</sup> Article 7 and Annex, Section E.

<sup>12</sup> Annex, Section E, Regulation E-5

## Right to Inspection of Ships in Ports and Offshore Terminals

The BMW Convention allows a State's officers to inspect ships in any port or offshore terminal under its jurisdiction. The inspections are limited to the verification of the certificate, the Ballast Water Record Book, and/or sampling of the ship's ballast water in accordance with IMO guidelines.<sup>13</sup> A "detailed inspection" might be carried out if further concerns arise and "the Party carrying out the inspection shall take such steps as will ensure that the ship shall not discharge Ballast Water until it can do so without presenting a threat of harm to the environment, human health, property or resources."<sup>14</sup>

## Management and Control Requirements for Ships (Annex Section B and D)

**Ship-specific Ballast Water Management Plan.** All ships are required to have on board and implement a **Ballast Water Management Plan** pre-approved by the Administration.<sup>15</sup> The plan must contain, among other elements, a description of the detailed actions to be taken to implement the Ballast Water Management requirements of the Convention.<sup>16</sup>

**Water Record Book.** All ships must have a **Ballast Water Record Book** to record operations related to ballast water, including their discharges at sea (even accidental) or reception facilities.<sup>17</sup> The book must also record when ballast water is taken on board, circulated, or treated. It shall be maintained on board for two years after the last entry, and for at least three years after that by the ship owner.

**Standards for Exchange and Disposal.** **Ballast water exchanges** must meet specific standards, such as conducting them, whenever possible, at least 200 nautical miles from the nearest land and in water at least 200 meters in depth, taking into account IMO guidelines.<sup>18</sup> The exchange shall be done with an efficiency of at least 95 percent volumetric exchange of ballast water. Also, **sediment's removal and disposal** must be executed in accordance with the ship's Ballast Water Management plan<sup>19</sup> and the standards of Regulation D-2 of the Annex, including the specified maximum microbe concentrations.

## Dispute Settlement

States shall settle disputes under the Convention by a peaceful means of their choice, such as negotiation, mediation, or arbitration.<sup>20</sup>

## Relevance to World Bank–Financed Projects

The Convention is relevant to many Bank-financed projects involving marine pollution control, improving maritime governance, transport, or marine and port infrastructure, including port facilities to treat sediments and waters. Some examples of past and current project that may involve the Convention include projects that focus on improving solid waste management services as well as strengthening and innovating surrounding circular economy solutions surrounding plastic pollution.

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<sup>13</sup> Article 9, Article 10.4, and Annex Regulation B-2.

<sup>14</sup> Article 9.

<sup>15</sup> Administration means "the Government of the State under whose authority the ship is operating." (Article 1.)

<sup>16</sup> Annex Section B-1 and Section D

<sup>17</sup> Annex Regulation B-2 and Appendix II.

<sup>18</sup> Annex Regulation B-4 and Section D.

<sup>19</sup> Annex Regulation B-5.

<sup>20</sup> Article 15.

## Ocean Governance Summaries

Full Title:	Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention & Protocol)
Number of Parties:	87 to Convention and 53 to Protocol <sup>1</sup>
Links:	<a href="#">Link to the Website</a>   Link to the Text of the <a href="#">Convention</a> & <a href="#">Protocol</a>
Membership:	Open to all States
Secretariat:	International Maritime Organization

### Objectives

The London Convention and Protocol aim to protect the marine environment from pollution caused by human activities, particularly the dumping of waste, and other matters that can harm human health or living resources and marine life, damage amenities, or interfere with other legitimate uses of the sea.<sup>2</sup> Both the Convention and Protocol provide global standards that aim to **promote the effective control** of all sources of marine pollution, and to **take all practicable steps to prevent** pollution from reaching the sea.<sup>3</sup>

### Key Provisions

The text of the London Convention was adopted in 1972 and entered into force in 1975. The Convention text is divided into twenty-two articles and three annexes. The Protocol was adopted in 1996 and entered into force in 2006. It is divided into twenty-nine articles and three annexes.

The Protocol was agreed with the desire of adopting more stringent measures to modernize the Convention and eventually replace it. Because not all Parties to the Convention are Parties to the Protocol, both remain in effect, and their requirements should therefore be read together.

### General Rights and Obligations

The Convention and Protocol establish a general obligation for Parties to promote the **effective control** of all sources of pollution.<sup>4</sup> Parties are required to control dumping from vessels and aircrafts registered or loading in its territory or flying its flag, by (i) issuing permits before allowing ships to dump, (ii) monitoring the condition of the seas; (iii) keeping records of the nature and quantity of dumping, and (iv) reporting it to the Secretariat.<sup>5</sup>

In addition, the Convention adopts a *preventive approach* to reduce pollution by establishing a general obligation for Parties to “take **all practicable steps to prevent** the pollution of the sea,”<sup>6</sup> and recognizing (in its preamble) the importance of States using “the best practicable means to **prevent** such pollution and develop products and processes which will reduce the amount of harmful wastes to be disposed of.”

The Protocol and Convention share similar principles, but the Protocol goes further. The Protocol applies the “**precautionary approach to environmental protection from dumping**” as a general obligation for the Parties,<sup>7</sup> and the **polluter pays principle**, where the polluter should bear the cost of pollution.<sup>8</sup> The Protocol also adopts a stronger *preventive approach* with respect to the prevention, reduction and, where practicable, elimination of pollution.

### Convention: Restrictive list of dumping waste - Black and grey list

The Convention adopts a gradual approach to the regulation of the dumping of waste (from prohibition to preauthorization), depending on the hazard caused to the marine environment. The Convention requires Parties to **prohibit** the dumping of any wastes or other matter into the sea unless expressly permitted by the Convention.<sup>9</sup> Annex I contained what is informally called “**black-list**”—a list of wastes or other matter whose dumping is always prohibited.<sup>10</sup> These materials and activities

<sup>1</sup> As of December 2020.

<sup>2</sup> Convention, Article I; Protocol, Article 2.

<sup>3</sup> Convention, Article I and II; and Protocol, Article 2.

<sup>4</sup> Convention, Article I.

<sup>5</sup> Convention, Article VI and VII; and Protocol, Article

<sup>6</sup> Convention, Article

<sup>7</sup> Protocol, Article 3.

<sup>8</sup> Protocol, Article 3.2.

<sup>9</sup> Convention, Article IV.1.

<sup>10</sup> Convention, Article IV.1 a.

present a high hazard to the environment, such as mercury, cadmium, persisting plastics, radioactive waste, crude oil, as well incineration of industrial waste.<sup>11</sup>

Dumping substances and materials listed in Annex II, or “**grey-list**,”<sup>12</sup> requires a **prior special permit** from a designated national authority, under strict control, and following certain criteria (listed in Annex II and III) regarding the composition of the matter, characteristics of dumping site, and method of deposit. The *grey-list* comprises waste that (i) contains significant amounts of specific listed materials such as arsenic, lead, nickel; (ii) bulky waste that might sink into the sea, being an obstacle to fishing or navigation; and (iii) non-toxic material that might become harmful due to the substantial quantities dumped.

The dumping of all other wastes not listed requires a **prior general permit**,<sup>13</sup> taking into account certain criteria established in Annex III, related to the matter, dumping method and site.

### Protocol: The Reverse List

The Protocol **prohibits all dumping** of wastes, except limited types of wastes listed in Annex 1, the so-called “**reverse list**,” which national law may authorize for dumping subject to permitting. **The substances included in Annex 1** to the Protocol are dredged material, sewage sludge, fish waste, vessels and platforms, inorganic geological material, certain bulky items and, carbon dioxide streams from carbon dioxide capture processes for sequestration. In addition, the Protocols **prohibits the incineration** of wastes at the sea,<sup>14</sup> and **export of wastes** to other countries for the purpose of dumping or incineration.<sup>15</sup> States are free to adopt regulations more restrictive than the Protocol and Convention.<sup>16</sup>

The dumping of the listed wastes mentioned above requires a **permit**. The Party must issue this permit according to the conditions and requirements established in Annex 2 of the Protocol.<sup>17</sup> A key condition is the **assessment of wastes before permitting**. This condition aims to consider alternatives to dumping, including waste prevention at source. The assessment includes a *prevention audit*, which evaluates the type and amount of wastes, details of production process, and feasibility of different waste reduction techniques. Applicants seeking a permit to dump waste shall also demonstrate previous consideration of different waste management options, including waste reuse, or recycling, and disposal outside the sea.<sup>18</sup>

The regulation on preventing the pollution from new emerging marine activities (e.g., carbon sequestration and storage, marine geoengineering etc.), was included in subsequent amendments to the Protocol.<sup>19</sup>

### Dispute Settlement

Under the Convention, Parties established the procedures for the settlement of their disputes at their first consultative meeting.<sup>20</sup> Under the Protocol, Parties shall settle disputes by negotiation or any other peaceful means.<sup>21</sup> If the dispute is not resolved, the dispute shall be settled by the Arbitral Procedure established in Annex 3 of the Protocol.

## Relevance to World Bank–Financed Projects

The London Convention and Protocol are relevant to any Bank-financed project involving solid waste disposal into the sea and applying different waste reduction techniques as well as projects that involve alleviating plastic pollution in marine environments.

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<sup>11</sup> Annex I.

<sup>12</sup> Convention, Article IV.1 b.

<sup>13</sup> Convention, Article IV 1.c.

<sup>14</sup> Protocol, Article 5.

<sup>15</sup> Protocol, Article 6.

<sup>17</sup> Protocol, Article 4.2.

<sup>18</sup> Annex II and Protocol, Article 5.

<sup>19</sup> See amendments [here](#).

<sup>20</sup> Convention, Article XI LDC I/16.

<sup>21</sup> Protocol, Article 26.

<sup>16</sup> Protocol, Article 3.4 and Convention, Article IV.3.

## Ocean Governance Summaries

Full Title:	<b>International Convention for the Prevention of Pollution from Ships (MARPOL)</b>
Number of Parties:	159 (Annexes I and II, also known as MARPOL 73/78), 149 (Annex III), 145 (Annex IV), 154 (Annex V), 98 (Annex VI) <sup>1</sup>
Website:	Link to the <a href="#">Website</a>   Link to the <a href="#">Text of the Convention</a>
Membership:	Open to all States
Secretariat:	International Maritime Organization

### Objectives

MARPOL is the main international convention covering the prevention of pollution of the marine environment by ships. It aims to prevent marine pollution from ships' release of harmful substances or effluents, both because of accidents and routine operations.

### Key Provisions

The original MARPOL Convention was signed in 1973 but did not come into force until 1983 as modified by the Protocol of 1978. The Convention and Protocol comprise Annex I. Annexes II-VI came into force between 1987 and 2005. In addition to their general clauses concerning, among other issues, application, violation and enforcement, the six Annexes cover different categories of marine pollutants.

#### Annex I: Pollution by Oil (entered into force 1983)

Annex I covers the prevention of pollution by oil from operational measures as well as from accidental discharges. It prohibits the discharge into the sea of oil or oily mixtures from ships except in limited circumstances,<sup>2</sup> and establishes "special areas" where oil discharge is subject to even more stringent requirements.<sup>3</sup> Governments must also provide reception facilities at which ships may discharge oily residues, which must meet specific requirements set out in the Annex.<sup>4</sup> The Annex sets out certain design requirements for tankers for dealing with ballast water and crude oil washing.<sup>5</sup> It also contains detailed requirements for retaining, monitoring, and filtering oil and sludge onboard tankers, and maintaining an Oil Record Book for certain ships.<sup>6</sup>

#### Annex II: Pollution by Noxious Liquid Substances in Bulk (entered into force 1987)

Annex II contains discharge criteria and measures for the control of pollution by noxious liquid substances carried in bulk. Approximately 250 listed substances can only be discharged to reception facilities up to certain concentrations and subject to conditions that vary by substance.<sup>7</sup> The categories of noxious liquid substances defined in Annex II and applicable restrictions vary based on the degree of harm to human health and marine resources.<sup>8</sup> Annex II also sets standards for the reception facilities and discharge processes at ports.<sup>9</sup>

#### Annex III: Pollution by Harmful Substances Carried by Sea in Packaged Form (entered into force 1992)

Annex III sets out regulations for the prevention of pollution by harmful substances carried by sea in packaged form. It imposes requirements regarding the packing, marking and labeling, documentation, stowage, and quantity limitations of harmful substances.<sup>10</sup> For example, all packages containing marine pollutants must be marked with a standard marine pollutant mark.<sup>11</sup> Parties are required to supplement the provisions of this Annex by issuing detailed requirements in these areas to prevent or minimize pollution by harmful substances.<sup>12</sup> The Annex defines "harmful substances" as the marine pollutants included in the International Maritime Dangerous Goods Code or which meet the criteria in the Appendix of Annex

<sup>1</sup> As of December 2020.

<sup>2</sup> Annex I, Regulation 9.

<sup>3</sup> Annex I, Regulations 10 and 11.

<sup>4</sup> Annex I, Regulation 12.

<sup>5</sup> Annex I, Regulations 13A-H.

<sup>6</sup> Annex I, Regulations 14-18.

<sup>7</sup> Annex II, Regulation 5.

<sup>8</sup> Annex II, Regulation 3.

<sup>9</sup> Annex II, Regulation 18.

<sup>10</sup> Annex III, Regulations 3-8.

<sup>11</sup> Annex III, Regulation 4.

<sup>12</sup> Annex III, Regulation 2.1.

III. The Annex prohibits jettisoning such harmful substances carried in packaged form, except where necessary for the purpose of securing the safety of the ship or saving life at sea.<sup>13</sup>

#### Annex IV: Pollution by Sewage from Ships (entered into force 2003)

Annex IV regulates sewage disposal by ships.<sup>14</sup> It generally prohibits the discharge of sewage into the sea, except when: (i) the ship is discharging comminuted and disinfected sewage using an approved system at a distance of more than three nautical miles from the nearest land, or sewage which is not comminuted or disinfected, at a distance of more than twelve nautical miles from the nearest land and with an approved rate of discharged or (ii) the ship has in operation an approved and certified sewage treatment plant and the effluent does not produce visible floating solids or cause discoloration of the surrounding water.<sup>15</sup> The Annex requires ships to be equipped with either an approved sewage treatment plant or an approved sewage comminuting and disinfecting system or a sewage holding tank.<sup>16</sup> The governments of each Party undertake to ensure the provision of adequate reception facilities at ports and terminals for the reception of sewage, without causing delay to ships.<sup>17</sup>

#### Annex V: Pollution by Garbage from Ships (entered into force 1988)

Annex V regulates the disposal of different types of garbage. It generally prohibits the discharge of all “garbage” into the sea, except as provided otherwise in the Annex.<sup>18</sup> Garbage includes all kinds of food, domestic and operational waste, all plastics, cargo residues, incinerator ashes, cooking oil, fishing gear, and animal carcasses generated during the normal operation of the ship and liable to be disposed of continuously or periodically, but does not include fresh fish and parts thereof generated as a result of fishing activities undertaken during the voyage, or as a result of aquaculture activities.<sup>19</sup> The disposal of cooking oil and “all plastics”—including synthetic ropes, synthetic fishing nets, plastic garbage bags and incinerator ashes from plastic products—is extremely restricted; these materials may never be discharged into the sea, except in emergency or accidental circumstances, such as to secure the safety of the ship and those on board or to save a life at sea.<sup>20</sup> Annex V also requires governments to ensure the provision of adequate reception facilities at ports and terminals for the reception of garbage without causing undue delay to ships.<sup>21</sup> Every ship of 12 meters in length or more and every fixed or floating platform must also display placards notifying passengers and crew of the disposal requirements of the Annex, and all ships of 100 gross tonnage or more, every ship certified to carry 15 persons or more, and every fixed or floating platform must carry a garbage management plan on board.<sup>22</sup> A garbage record book is also required of every ship of 400 gross tonnage and certain other ships.<sup>23</sup>

#### Annex VI: Air Pollution from Ships (entered into force 2005)

Annex VI regulates air pollution from ships. It sets limits on sulphur oxide (SO<sub>x</sub>) and nitrogen oxide (NO<sub>x</sub>) emissions from ship exhausts and prohibits deliberate emissions of ozone depleting substances, which include halons and chlorofluorocarbons.<sup>24</sup> It sets a cap of 0.5% m/m on the sulphur content of fuel oil used on board and calls on the monitoring of the worldwide average sulphur content of fuel.<sup>25</sup> If ships are operating in emission control areas, the sulphur content of fuel oil used on board must not exceed 0.1% m/m.<sup>26</sup> Annex VI also sets limits on emissions of nitrogen oxides from diesel engines.<sup>27</sup> It also prohibits new installations containing ozone-depleting substances and the incineration onboard ships of certain products, such as contaminated packaging materials and polychlorinated biphenyls.<sup>28</sup>

### Relevance to World Bank–Financed Projects

MARPOL is relevant to any Bank-financed project involving the use of ships, whether for shipping, exploiting marine resources, or laying of submarine cables and pipelines. It is also relevant to projects dealing with marine pollution or port construction or restoration.

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<sup>13</sup> Annex III, Regulation 8.

<sup>14</sup> The types of ships subject to Annex IV’s requirements are listed in Annex IV, Regulation 2.

<sup>15</sup> Annex IV, Regulation 11.

<sup>16</sup> Annex IV, Regulation 9.

<sup>17</sup> Annex IV, Regulation 12.

<sup>18</sup> Annex V, Regulation 3.

<sup>19</sup> Annex V, Regulation 1.

<sup>20</sup> Annex V, Regulation 3 ¶¶ 2-3.

<sup>21</sup> Annex V, Regulation 8.

<sup>22</sup> Annex V, Regulation 10.

<sup>23</sup> Annex V, Regulation 10 ¶ 3.

<sup>24</sup> Annex VI, Regulations 12-14.

<sup>25</sup> Annex VI, Regulation 14.

<sup>26</sup> Annex VI, Regulation 14.

<sup>27</sup> Annex VI, Regulation 13.

<sup>28</sup> Annex VI, Regulations 12 and 16.

## Ocean Governance Summaries

Full Titles:	United Nations Framework Convention on Climate Change (UNFCCC) & Paris Agreement
Number of Parties:	UNFCCC: 197   Paris Agreement: 196 <sup>1</sup>
Website:	Link to <a href="#">UNFCCC Website</a>   Link to <a href="#">Convention Text</a>   Link to <a href="#">Paris Agreement Text</a>
Membership:	Open to all States and regional economic integration organizations.
Secretariat:	UN Climate Change

### Objectives

The ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC, or the Convention) is the “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”<sup>2</sup>

Two other treaties were adopted to implement the Convention’s goals: the Kyoto Protocol and the Paris Agreement. The Kyoto Protocol entered into force in 2005 and, along with the Doha Amendment, established binding greenhouse gas (GHG) emission reduction targets for developed country signatories through the year 2020. The Paris Agreement entered into force in 2016 and spells out for all Parties mitigation, adaptation, and financial obligations after 2020. The Paris Agreement’s objectives include limiting the global average temperature increase to “well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.”<sup>3</sup>

### Key Provisions to the Convention

The Convention contains twenty-six articles and two annexes. It calls on all Parties to act in accordance with their “common but differentiated responsibilities and their specific national and regional development priorities.”<sup>4</sup> The Convention outlines broad commitments for all Parties, including publishing national inventories of anthropogenic emissions and promoting sustainable management and conservation practices for sinks and reservoirs such as biomass, forests, and oceans.<sup>5</sup>

Some Parties are listed in Annexes to the Convention and consequently have more stringent responsibilities. **Annex I** contains industrialized countries, which must “adopt national policies and take corresponding measures” to mitigate climate change.<sup>6</sup> **Annex II** contains industrialized and other Parties with responsibilities to provide financial resources to assist developing countries in complying with the Convention’s obligations.<sup>7</sup> The Convention established a **financial mechanism** to provide resources to developing country Parties, which has since evolved to work in tandem with the Global Environment Facility and the Green Climate Fund (GCF) in service of the Paris Agreement.<sup>8</sup>

### Key Provisions to the Paris Agreement

The Paris Agreement has twenty-nine articles. To reach its temperature goals, the Paris Agreement states its Parties “aim to reach global peaking of greenhouse gas emissions as soon as possible” and a “balance between anthropogenic emissions by sources and removals by sinks of [GHGs] in the second half of this century.”<sup>9</sup>

#### Nationally Determined Contributions and Long-Term Plans

All Parties must prepare, communicate and maintain **nationally determined contributions** (NDCs) and are encouraged to adopt long-term plans, with the recognition that developing countries may require more time before pursuing economy-wide emission reduction or limitation targets.<sup>10</sup> To achieve its NDC’s objectives, each Party must pursue domestic mitigation measures.<sup>11</sup> To **raise global ambition over time**, each Party communicates a new NDC every five years that must be more ambitious than the previous one and reflect the Party’s “highest possible ambition.”<sup>12</sup> In the intervening years, Parties may

<sup>1</sup> As of March 2021.

<sup>2</sup> UNFCCC, Article 2.

<sup>3</sup> Paris Agreement, Article 2.

<sup>4</sup> UNFCCC, Preamble and Arts. 3.1, 4.1; *see also* Paris Agreement, Art. 2.2.

<sup>5</sup> UNFCCC, Article 4.1.

<sup>6</sup> UNFCCC, Article 4.2.

<sup>7</sup> UNFCCC, Article 4.3.

<sup>8</sup> UNFCCC, Article 11 ; COP Decision 1/CP.21 ¶ 58.

<sup>9</sup> Paris Agreement, Article 4.1.

<sup>10</sup> Paris Agreement, Articles 4.2, 4.3, and 4.19.

<sup>11</sup> Paris Agreement, Article 4.2.

<sup>12</sup> Paris Agreement, Articles 3, 4.3, and 4.9.

adjust their NDCs at any time to increase their level of ambition.<sup>13</sup> In addition, a **global stocktake** will take place in 2023 and every five years thereafter to assess the Parties' collective progress and inform enhanced actions.<sup>14</sup>

## Adaptation and Loss and Damage

Adaptation is a central goal of the Paris Agreement.<sup>15</sup> All Parties must engage in adaptation planning, including formulating and implementing national adaptation plans, policies, and/or contributions. Parties should submit and periodically update an adaptation communication, which may include its priorities, needs, plans, and actions.<sup>16</sup> The Paris Agreement also recognizes the importance of addressing loss and damage arising from climate change effects.<sup>17</sup> Through the [Warsaw International Mechanism for Loss and Damage](#), Parties are encouraged to cooperate on such areas as early warning systems, emergency preparedness, and community and livelihood resilience.<sup>18</sup>

## Finance, Carbon Markets, and Other Support to Developing Countries

Like the Convention, the Paris Agreement requires developed country Parties to “provide financial resources to assist developing country Parties with respect to both mitigation and adaptation.”<sup>19</sup> It also provides that the Financial Mechanism of the Convention, including the GCF, shall serve as the financial mechanism of the Paris Agreement.<sup>20</sup>

The Paris Agreement allows emissions trading among Parties and other “cooperative approaches” to achieve their NDCs. Parties may pursue both carbon market and non-market-based approaches, provided that they promote sustainable development and ensure environmental integrity, transparency, and robust accounting.<sup>21</sup> The Paris Agreement also calls for enhanced technological and capacity-building assistance to developing countries.<sup>22</sup>

## Relevance to World Bank–Financed Projects

Because the Convention and Paris Agreement have near-universal membership, they are relevant to most World Bank–Financed projects that may affect a borrower’s release or capture of GHGs or its climate resilience. Because many NDCs involve marine issues,<sup>23</sup> including adaptation needs in coastal and marine areas, ocean warming impacts, and effects on fisheries, the Paris Agreement should be considered when undertaking marine developments or conservation efforts.

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<sup>13</sup> Paris Agreement, Article 4.11

<sup>14</sup> Paris Agreement, Article 14.

<sup>15</sup> Paris Agreement, Article 7.1.

<sup>16</sup> Paris Agreement, Article 7.9 and 7.10.

<sup>17</sup> Paris Agreement, Article 8.1.

<sup>18</sup> Paris Agreement, Article 8.2, 8.3, and 8.4.

<sup>19</sup> Paris Agreement, Article 9.1.

<sup>20</sup> Paris Agreement, Article 9.8.

<sup>21</sup> Paris Agreement, Article 6.2, 6.8.

<sup>22</sup> Paris Agreement, Articles 10 and 11.

<sup>23</sup> See, e.g., Gallo ND, Victor DG, Levin LA. 2017. ‘Ocean commitments under the Paris agreement’. *Nature Climate Change*. Volume 7. online: [https://www.researchgate.net/profile/Natalya\\_Gallo/publication/320721251\\_Ocean\\_commitments\\_under\\_the\\_Paris\\_Agreement/links/5b930e2a4585153a53050376/Ocean-commitments-under-the-Paris-Agreement.pdf](https://www.researchgate.net/profile/Natalya_Gallo/publication/320721251_Ocean_commitments_under_the_Paris_Agreement/links/5b930e2a4585153a53050376/Ocean-commitments-under-the-Paris-Agreement.pdf).

# Fisheries

## Ocean Governance Summaries

Full Title:	Code of Conduct for Responsible Fisheries
Number of Parties:	N/A - Voluntary
Links:	Link to the <a href="#">Website</a>   Link to the Text of the <a href="#">Code of Conduct</a>
Addresses :	Open to all States; regional economic integration organizations; fishing entities; subregional, regional, and global organizations (whether governmental or non-governmental); and all persons concerned with the conservation of fishery resources and management and development of fisheries
Secretariat:	The Food and Agriculture Organization of United Nations (FAO)

### Objectives

The Code of Conduct for Responsible Fisheries (the Code) is a set of voluntary guidelines that contain principles and international standards for the effective conservation, management, and development of all fisheries<sup>24</sup>, including aquaculture. Specifically, the Code aims to establish principles for responsible fisheries and fishing activities, taking into account all their relevant biological, technological, economic, social, environmental, and commercial aspects. In addition, it aims to serve as a reference framework and guidance in the formulation and implementation of national policies and international agreements. The Code also promotes cooperation, food quality and security, the trade of fisheries products in accordance with relevant laws, and protects living aquatic resources.<sup>25</sup> The Code is global in scope<sup>26</sup> and covers fishing activities in national jurisdiction and beyond.

### Key Provisions

The text of the Code was adopted by consensus in October 1995 by the twenty-eighth session of the Conference of FAO.<sup>27</sup> The Code consists of twelve articles and two annexes. Articles 1 to 5 cover the nature, objective, relationship with other international instruments, monitoring procedures, and developing countries' special requirements. Articles 6 to 12 cover the principles and other substantive provisions related to management, operation, aquaculture development, integration of fisheries into Coastal Area Management, post-harvest practices and trade, and research. Annex 1 describes the background of the origin and elaboration of the Code, and Annex 2 contains FAO Resolution 4/95, by which it was decided to adopt the Code.

#### Relationship with Other International Instruments

Article 3 notes this Code is voluntary, although it must be interpreted and applied in accordance with relevant international law rules, including the United Nations Convention on the Law of the Sea. In addition, it contains provisions that have binding effect for Parties to the respective legal instruments from which these provisions are derived, such as the [Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas](#), which according to FAO Conference resolutions 15/93<sup>28</sup> and 4/95<sup>29</sup> forms an integral part of the Code of Conduct.

#### Implementation, Monitoring and Updating

Article 4 gives FAO the role to monitor the application and implementation of the Code.

#### General Principles

The Code establishes the general principle for **all users** of living resources and **States** to conserve aquatic ecosystems.<sup>30</sup> It also recommends minimizing waste, catch of non-target species and impacts on associated or dependent.<sup>31</sup> In addition, it calls for fisheries management to promote the maintenance of the quality, diversity, and availability of the resource for present and future generations.

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<sup>24</sup> Article 1.3

<sup>25</sup> Article 2

<sup>26</sup> Article 1.2

<sup>27</sup> Resolution 4/95

<sup>28</sup> Article 1.1

<sup>29</sup> Annex 2 of the Code

<sup>30</sup> Article 6.1

<sup>31</sup> Article 6.6

Additionally, the Code contains several principles for **States**, pointing out, for example, that States should prevent overfishing and excess fishing capacity, rehabilitate population as possible and implement management measures based on the best scientific evidence available;<sup>32</sup> ensure consideration of integrated coastal zone management, uses and planning;<sup>33</sup> compliance and enforcement with conservation measures;<sup>34</sup> exercise control over authorized fishing vessels;<sup>35</sup> cooperate at all levels through fisheries management organizations to promote conservation and ensure responsible fisheries; prevent disputes;<sup>36</sup> conduct transparent decision-making process;<sup>37</sup> conduct trade in accordance with the World Trade Organization (WTO) Agreement, in particular with established in the Agreement on the [Application of Sanitary and Phytosanitary Measures](#) and the [Agreement on Technical Barriers to Trade](#);<sup>38</sup> promote education and a safe working environment, and protect the rights of fishers, especially those engaged in subsistence, small scale and artisanal fisheries;<sup>39</sup> and consider aquaculture as a mean to promote diversification of income and diet.<sup>40</sup>

The Code reflects in its provisions the precautionary approach, participatory and ecosystem-based concepts. The precautionary approach explicitly appears in several of its articles.<sup>41</sup> The Code recommends that States and regional fisheries management organizations apply it to conservation, management, and exploitation of living aquatic resources.

### Fisheries Management and Aquaculture Development

The Code provides guidance for the management of fisheries within national jurisdiction and for transboundary fish stocks, as well as for the establishment of sub-regional or regional fisheries organizations and States concerning fisheries management and fishing operations- differentiating duties among all States, flag States and port States.<sup>42</sup> The Code also highlights the relevance of recognizing the traditional practices, needs and interests of indigenous people and local fishing communities fishing communities in fisheries management.<sup>43</sup> In addition, it establishes the measures they should adopt in order to achieve the objectives of the Code. Article 9 offers a framework for the responsible development of aquaculture, including culture-based fisheries in areas under national jurisdiction and within transboundary aquatic ecosystems. The Code also offers guidance to States on how to integrate fisheries into Coastal Zone Management.<sup>44</sup> Article 11 provides guidance on appropriate measures to ensure the right of consumers to safe fish and establishes quality assurance systems. These measures should be in accordance with the principles, rights and obligations established in the WTO Agreement.

### Requirements of Developing States

States, relevant organizations, and financial institutions should give full recognition to the special circumstances of developing countries and cooperate for (i) the adoption of measures to achieve the objectives of the Code (such as financial, technology transfer, training, etc.) and (ii) address the needs of developing countries to develop their fisheries.<sup>45</sup>

### Relevance to World Bank–Financed Projects

As the Codes sets out principles and international standards for the effective conservation, management, and development of all fisheries, it should be taken into account in any Bank- financed project related to promoting sustainable and responsible fisheries or that aims to design or implement national policies and international agreements.

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<sup>32</sup> Article 6.3 and 6.4

<sup>33</sup> Article 6.9

<sup>34</sup> Article 6.10

<sup>35</sup> Article 6.11

<sup>36</sup> Article 6.12 and 6.15

<sup>37</sup> Article 6.103

<sup>38</sup> Article 6.14 and Article 11.2

<sup>39</sup> Article 6.16, 6.17 and 6.1

<sup>40</sup> Article 6.19

<sup>41</sup> Article 6.5 and 7.5

<sup>42</sup> Article 7 and Article 8

<sup>43</sup> Article 7.6.6

<sup>44</sup> Article 10

<sup>45</sup> Article 1

## Ocean Governance Summaries

Full Title:	Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement)
Number of Parties:	42 <sup>1</sup>
Links:	Link to the <a href="#">Website</a>   Link to the Text of the <a href="#">Agreement</a>
Membership:	Open to any Member or Associate Member of FAO, and to any non-member State that is a Member of the United Nations, or of any of the specialized agencies of the United Nations or of the International Atomic Energy Agency
Secretariat:	The Food and Agriculture Organization of United Nations (FAO)

### Objectives

The FAO Compliance Agreement (the Agreement) aims to enhance fishing vessel compliance on the high seas. It does so through international conservation and management measures for living marine resources by strengthening Flag States' responsibility over fishing vessels flying their flag. The Agreement also aims to prevent the practice of flagging or reflagging fishing vessels under flags of States that are unable to enforce these measures.

### Key Provisions

The Agreement's text was adopted in 1993 at the 27th Session of FAO Conference and entered into force in 2003. The Agreement consists of 16 articles. The Agreement forms an integral part of the [International Code of Conduct for Responsible Fishing](#), which establishes principles and standards for responsible fishing to prevent the practice of reflagging of vessels to avoid the application of high seas conservation and management measures determined by regional fisheries organizations. The Agreement builds on the general framework of the 1982 United Nations Convention on the Law of the Sea, which focused on the exclusive economic zone challenges, to a large extent, and disregarded the problem of high seas fishing.

#### Application (Article II)

The Agreement applies to all fishing vessels used or intended for fishing on the high seas, except vessels of less than 24 meters in length, unless that would undermine the Agreement's objective and purpose.<sup>2</sup>

#### Flag State Responsibility (Article III)

This provision identifies the following key responsibilities of flag States: (1) Flag States must **"take such measures as may be necessary to ensure"** their vessels **do not engage** in any activity that undermines the effectiveness of international conservation and management measures;<sup>3</sup> (2) Flag States **must pre-authorize** their vessels to fish on high seas;<sup>4</sup> (3) No Flag States shall authorize their vessels to be used for fishing on the high seas unless the State is satisfied that it is able **"to exercise effectively its responsibilities** under this Agreement in respect to that vessel."<sup>5</sup>

#### Records of Fishing Vessels and Exchange of information (Article IV & VI)

Parties must maintain a **record** of fishing vessels entitled to fly their flags and authorized for fishing. They must also take such measures as necessary to ensure that all such vessels are entered in the record.<sup>6</sup>

The Agreement also deals with the exchange of information, requiring Parties to submit to FAO certain information with respect to each fishing vessel entered in the record (name, previous flag, length, etc.).<sup>7</sup>

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<sup>1</sup> As of February 2021.

<sup>2</sup> Article II

<sup>3</sup> Article III.1

<sup>4</sup> Article III.2

<sup>5</sup> Article III.3

<sup>6</sup> Article IV

<sup>7</sup> Article VI

## International Cooperation (Article V)

The Agreement promotes international cooperation and the exchange of information among Parties, including evidentiary material, relating to activities of fishing vessels to assist flag States in identifying its vessels reported to have engaged in activities undermining international conservations and management measures. Also, it invites Parties to enter into cooperative agreements to promote the objective and achievement of the Agreement.

## Cooperation with Developing States (Article VII)

The Agreement recognizes an obligation of its Parties to cooperate and provide assistance to developing countries to fulfill their obligations under the Agreement.<sup>8</sup>

Parties shall settle disputes by consultation, aiming to reach a mutually satisfactory solution. If the dispute is not settled, and with the consent of all Parties to the dispute, the dispute shall be submitted to the **International Court of Justice**, to the **Tribunal for the Law of the Sea**, or to arbitration.<sup>9</sup> In case of failure to reach an agreement, Parties have an obligation to continue cooperating with a view of reaching a settlement in accordance with the conservation of living marine resources rules.

## Relevance to World Bank–Financed Projects

As the Agreement establishes obligations to countries to ensure their vessels fishing in the high sea do not engage in any activity that undermines conservation and management effectiveness, it is relevant to any Bank-financed<sup>10</sup> project aiming to build countries' capacity to improve compliance with those measures, strengthen high seas fisheries governance, and effectively manage fisheries, including by reducing illicit fishing.

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<sup>8</sup> Article VII

<sup>9</sup> Article IX

<sup>10</sup> The World Bank only engages with Member Countries and thus does not engage in financing activities outside of territorial waters.

## Ocean Governance Summaries

Full Title:	Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement)
Number of Parties:	91 <sup>1</sup>
Links:	Link to the <a href="#">Website</a>   Link to the Text of the <a href="#">Agreement</a>
Membership:	Open to all States
Secretariat:	The Division for Ocean Affairs and the Law of the Sea (DOALOS)

### Objectives

The UN Fish Stocks Agreement (the Agreement) aims to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks.<sup>2</sup> The Agreement developed a legal framework for the effective implementation of the provisions of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) related to those stocks, and establishes the governing principles for their conservation and management.<sup>3</sup>

### Key Provisions

The text of the Agreement was adopted in 1995 by the United Nations [Conference](#) on Straddling Fish Stocks and Highly Migratory Fish Stocks, and entered into force in 2001, with the purpose of facilitating the implementation of certain provisions of the 1982 United Nations Convention on the Law of the Sea concerning the conservation and management of straddling fish stocks and highly migratory fish stocks. The Agreement **applies to highly migratory fish stocks**, which travel long distances (e.g., tuna, swordfish, oceanic sharks) and occur in the high seas and countries' exclusive economic zones (EEZs); and to **straddling stocks** (e.g., cod, halibut, jack mackerel), that occur both within EEZs and in the adjacent high seas area, beyond national jurisdiction.<sup>4</sup> The Agreement applies to the conservation and sustainable use of those stocks **in areas beyond national jurisdiction, or high seas**. However, it also extends the application of certain provisions,<sup>5</sup> and the precautionary approach (explained below) to areas under national jurisdiction.

The Agreement consists of fifty articles divided into twelve parts, and two annexes.

#### General Principles (Part II)

The Agreement offers a general framework for **cooperation** between port, coastal and flag States to ensure conservation and effective management of straddling fish stocks and highly migratory fish stocks, including an **ecosystem approach**. More specifically, the Agreement establishes that States must cooperate, among others, in (i) adopting measures based on the best scientific evidence available, to ensure the long-term sustainability of such stocks and to promote the objective of their optimum utilization; (ii) adopting measures concerning other species of the same ecosystem, when necessary; (iii) assessing impacts on such stocks and others of the same ecosystem; (iv) minimizing pollution, waste, discards and overfishing; (v) protecting biodiversity; (vi) collecting and sharing data; and (vii) ensuring that there are effective mechanisms for compliance and enforcement of those measures.<sup>6</sup>

Furthermore, the Agreement establishes that the management and conservation of these stocks must be based on the **precautionary approach**. Under this approach, States shall not use the absence of adequate scientific information to postpone or fail to take conservation and management measures.<sup>7</sup>

In order to ensure the conservation and management of covered stocks in their entirety, the Agreement requires States to establish compatible measures between measures adopted for the high seas areas and those under national jurisdiction.<sup>8</sup>

<sup>1</sup> As of March 2021.

<sup>2</sup> Agreement, Article 2.

<sup>3</sup> See UNCLOS Articles 63(2) and 64.

<sup>4</sup> Agreement, Article 3; UNCLOS, Annex 1.

<sup>5</sup> Agreement, Article 6 and 7.

<sup>6</sup> Agreement, Article 5.

<sup>7</sup> Agreement, Article 6.

<sup>8</sup> Agreement, Article 7.

## The Role of Regional Fisheries Management Organizations (Part III)

The Agreement gives an important role to sub-regional and regional fisheries management organizations or RFMOs, as mechanisms of cooperation between coastal States and fishing States. For example, the Agreement provides that if an RFMO or arrangement has the competence to establish conservation and management measures for particular straddling and highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall become members of the organization, or participants in such arrangement, or apply the measures established; and if there is no such RFMO or arrangement in place, States shall cooperate to create it.<sup>9</sup> Also, the Agreement identifies roles and purposes.

## Duties of the Flag State (Part V and VI)

The Agreement strengthens the responsibility of flag States over vessels flying their flag on the high seas. It requires States to ensure that their vessels comply with sub-regional and regional conservation and management measures, and that such vessels do not engage in activities that undermine the effectiveness of such measures.<sup>10</sup> It also sets out other flag State duties related to licensing, identification, establishment of national records, monitoring, compliance and enforcement.<sup>11</sup> The agreement also creates innovative system of international cooperation in enforcement.<sup>12</sup>

## Requirements of Developing States (Part VII)

Part VII of the Agreement recognizes special requirements of developing States. It requires Parties to cooperate and provide assistance to developing States to enhance their ability to conserve and manage such stocks, develop their own fisheries for such stocks, enable participation in high seas fisheries and in sub-regional and regional fisheries management organizations and arrangements.

## Dispute Settlement (Part VIII)

States Parties are obligated to settle disputes by peaceful means. If the dispute is related to conservation and management measures, States shall make all efforts to reach an agreement and apply provisional measures while the settlement is pending. If Parties are not able to reach agreement, the dispute shall be submitted to a court or tribunal.<sup>13</sup> If the dispute is related to matters of a technical nature, the States may refer the dispute to an ad hoc expert panel.<sup>14</sup> UNCLOS procedures governing the settlement of disputes apply (mutatis mutandis) if the dispute concerns the Agreement's interpretation or application, or that of a subregional, regional or global fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which the relevant States are party.<sup>15</sup>

## Relevance to World Bank–Financed Projects

The UN Fish Stock Agreement is relevant to any Bank-financed project related to conservation and sustainable use of straddling and highly migratory fish stocks or RFMOs of particular species of such stocks. For example, one Bank-financed project that implicated the UN Fish Stock Agreement aimed to catalyze investment into sustainable management of highly migratory fish sticks spanning areas within and beyond national jurisdiction.

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<sup>9</sup> Agreement, Article 8.

<sup>10</sup> Agreement, Article 18.

<sup>11</sup> Agreement, Article 18 and 19.

<sup>12</sup> Agreement, Article 20 to 22.

<sup>13</sup> Agreement, Article 7.4 and 7.5.

<sup>14</sup> Agreement, Article 29.

<sup>15</sup> UNCLOS, Part XV; Agreement, Article 30.

## Ocean Governance Summaries

Full Title:	Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA)
Number of Parties:	68 <sup>1</sup>
Links:	Link to the <a href="#">Website</a>   Link to the Text of the <a href="#">Agreement</a>
Membership:	Open to all States and regional economic integration organizations
Secretariat:	The Food and Agriculture Organization of United Nations (FAO)

### Objectives

The Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA) aims to adopt and implement effective port measures to tackle illegal, unreported, and unregulated (IUU) fishing from vessels that seek entry or while they are in a State's port different to their flag State.<sup>2</sup> The provisions of the PSMA apply to fishing vessels seeking entry into a designated port of a State which is different from their flag State. The PSMA aims to disincentivize vessels engaged in IUU fishing activities from using ports to land their catches and subsequently reach the markets. It also includes a requirement to provide assistance to developing countries to strengthen their implementation capacity. The PSMA's ultimate objective is to ensure the long-term conservation and sustainable use of living marine resources.

### Key Provisions

The PSMA was adopted in 2009 at the thirty-sixth Session of the FAO Conference and entered into force in 2016. The PSMA consists of 37 articles, which are divided into ten parts, and five annexes. Part 1 covers general provisions; Part 2, 3 and 4, sets out actions to be taken by port States related to procedures for foreign vessels entering or using ports and subsequent inspections actions; Part 5 addresses the role of flag States; Part 6 contains requirements for developing countries; and finally, Part 7 to 10 are general final provisions, including dispute resolution.

#### Part 1. General Provisions

The PSMA establishes a general obligation for Parties to “*prevent, deter and eliminate IUU fishing through the implementation of effective port State measures.*”<sup>3</sup> The PSMA applies to foreign vessels that either seek to enter a port State or are already there, that were conducting fishing in marine areas that is IUU and to fishing-related activities to support IUU fishing.<sup>4</sup> Vessels engaged in artisanal fisheries and not suspected of being engaged with IUU activities are excluded from the PSMA.

In addition, the PSMA promotes cooperation and the exchange of information among port States and flag States, and at the national and international level, to achieve its effective implementation.<sup>5</sup> Cooperation among port and flag States is consistently and constantly mentioned in the provisions of the PSMA.

#### Part 2-4. Key Provisions for Port States when Vessels Seek Entry into Port, Using of Ports and Inspections

**Entry into and using of ports.** The PSMA sets out the obligation for port State Parties to ensure that their ports are properly designated (providing a list to FAO), publicized, and with sufficient capacity to conduct inspections.<sup>6</sup> Also, port States shall request certain information from vessels before granting access to the port in order to determine if the vessel has been engaged in IUU fishing or related activities. That information must be provided and examined in advance.<sup>7</sup>

After examining the case, a port State shall decide whether it grants or denies the entry of the vessel. Port States may allow entry just for the purpose of inspection. In case of denial, a port State must communicate its decision to the flag State and, if possible, to other relevant stakeholders.<sup>8</sup> In addition, port States shall deny the use of their ports for “landing,

<sup>1</sup> As of March 2021.

<sup>2</sup> Article 2 and 3.

<sup>3</sup> Article 2.

<sup>4</sup> Article 3.

<sup>5</sup> Article 5 and 6.

<sup>6</sup> Article 7.

<sup>7</sup> Article 8.

<sup>8</sup> Article 9.3.

transshipping, packing, and processing of fish” to vessels that have already entered the port when specific criteria are met; and subsequently communicate it to the flag State.<sup>9</sup> Denial cannot take place in case of *force majeure* or distress.

**Inspections and follow-up actions.** The PSMA requires to carry out inspections.<sup>10</sup> Port States are required to inspect a minimum number of vessels annually, in accordance with certain priority criteria, and to “seek to agree on minimum levels for inspection through RFMOs,<sup>11</sup> FAO or otherwise.”<sup>12</sup> Once the inspection is conducted, each party shall transmit the result to the flag State and other relevant key stakeholders (other States, RFMO, FAO, etc.). If there is clear evidence that the inspected vessel was engaged in IUU fishing, the port State shall take the two follow-up measures: (i) promptly notify the flag State and (ii) deny the use of its port.<sup>13</sup>

### Part 5. The Primary Responsibility of Flag States

The PSMA, in its preamble, recognizes that measures to combat IUU fishing should build on the *primary responsibility* of flag States. In this regard, the PSMA establishes several obligations for flag States to cooperate. For example, the PSMA requires flag States to ensure that their vessels cooperate in inspections conducted by port States; request inspection when having clear grounds that a vessel flying its flag is engaged in IUU; encourage vessels to use ports of States consistent with the PSMA and; inform other Parties of actions taken in respect of vessels flying its flag.<sup>14</sup>

### Part 6. Requirements of Developing States

The PSMA recognizes an obligation of Parties to cooperate and provide assistance to developing countries to enhance capacity and facilitate technical assistance for the implementation of the PSMA measures. In addition, Parties must cooperate to establish funding mechanisms to assist with the implementation of the PSMA and create ad hoc working groups to manage these mechanisms.

### Dispute Settlement

State Parties shall settle disputes by consultation, aiming to reach a mutually satisfactory solution. If a dispute is not settled, and upon all Parties’ agreement, the disputes shall be submitted to the **International Court of Justice**, to the Tribunal for the Law of the sea, or to arbitration.<sup>15</sup>

## Relevance to World Bank–Financed Projects

As the PSMA aims to prevent, deter, and eliminate IUU fishing, it is relevant to any Bank-financed project building capacity to prevent IUU fishing. Some current Bank-financed projects involving PSMA include projects that aim to sustainably increase a borrower’s wealth generation through the cultivation of fisheries and aquatic resources, as well as projects focused on strengthening national and regional governance capacity to better manage fisheries

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<sup>9</sup> Article 11.

<sup>10</sup> Article 13.

<sup>11</sup> Regional Fisheries Management Organizations.

<sup>12</sup> Article 12.

<sup>13</sup> Article 18.

<sup>14</sup> Article 21.

<sup>15</sup> Article 22.

# Conservation

## Ocean Governance Summaries

Full Title:	Convention of Biological Diversity (CBD)
Number of Parties:	196 parties <sup>1</sup>
Links:	Link to the <a href="#">Website</a>   Link to the <a href="#">Text of the Convention</a>
Membership:	Open to all States and any regional organization
Secretariat:	Secretariat of the Convention on Biological Diversity, hosted by the United Nations Environment Programme (UNEP)

### Objectives

The Convention of Biological Diversity (the Convention) has three core objectives: (i) the **conservation** of biological diversity, (ii) the **sustainable use of its components**, (iii) and the **fair and equitable sharing of the benefits** arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies.

### Key Provisions

The text of the Convention was adopted in 1992 and entered into force in 1993. The Convention consists of forty-two articles and two annexes.

#### General Provisions

The Convention established as a general principle that States have the sovereign right to exploit their own resources and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of others States or areas beyond national jurisdiction.<sup>2</sup> The obligations of Parties, subject to the rights of other States, apply : (i) to areas within the limits of their national jurisdiction, in the case of components of biological diversity); and (ii) to areas within their national jurisdiction or beyond the limits of national jurisdiction, in the case of processes and activities, regardless of where their effects occur.<sup>3</sup>

Articles 6 to 20 of the Convention translate the three core objectives into specific commitments. For example, Article 4 requires Parties —in accordance with their conditions and capabilities—to develop national strategies, plans, or programs ([NBSAPs](#)) and integrate the conservation and sustainable use of biological diversity into relevant sectoral or cross- sectoral plans, and policies.<sup>4</sup> It also contains commitments related to identification and monitoring of components of biological diversity,<sup>5</sup> in-situ and ex-situ conservation, <sup>6</sup> research and training, <sup>7</sup> education, <sup>8</sup> impact assessment, <sup>9</sup> access to genetic resources,<sup>10</sup> and transfer of technology,<sup>11</sup> and financial resources.<sup>12</sup>

#### Convention Provisions Related to Oceans

Article 2 includes in its definition of *biological diversity* an explicit reference to the marine environment. The article defines biological diversity as “the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part.” The binding commitments of the Convention are thus all relevant and applicable to marine and coastal biodiversity. In addition, Article 5 establishes that Parties shall, when possible and appropriate, cooperate in respect of areas beyond national jurisdiction for the conservation and sustainable use of biological diversity. Also, Article 22 mentions that, with respect to the marine environment, the Convention shall be implemented consistently with the rights and obligations of States under the law of the sea.

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<sup>1</sup> As of February 2021

<sup>2</sup> Article 3

<sup>3</sup> Article 4.

<sup>4</sup> Article 6.

<sup>5</sup> Article 7.

<sup>6</sup> Article 8 and 9.

<sup>7</sup> Article 12.

<sup>8</sup> Article 13.

<sup>9</sup> Article 14.

<sup>10</sup> Article 15.

<sup>11</sup> Article 16.

<sup>12</sup> Article 20.

## Global Biodiversity Framework: Aichi Targets & Other Instruments

At the 10th Conference of the Parties in October 2010 in Nagoya, Japan, the Parties to the Convention agreed on a ten-year global **Strategic Plan for Biodiversity** to combat biodiversity loss over the next decade and defined 20 concrete targets, known as the **Aichi Targets**, in order to achieve this overall objective. The Convention also has two protocols: **the Nagoya and Cartagena Protocols**, that build on the Convention and further develop its objectives and obligations. This summary highlights several instruments adopted in relation to the Convention:

**Strategic Plan for Biodiversity 2010-2020.** In 2010, Parties to the Convention adopted a ten-year framework for action by all countries and stakeholders to safeguard biodiversity and the benefits it provides to people. The Strategic Plan contains five *'Strategic Goals'*. Each Strategic Goal is converted into specific targets known as *'Aichi Targets'*. Parties agreed on translating the Goals and Targets into national biodiversity strategies and action plans (NBSAPs) within two years. National targets can be found [here](#).

**Post-2020 Global Biological Diversity Framework.** The Conference of the Parties intended to update the strategic plan at its 15th meeting in Kunming, China, in 2020. The meeting was postponed until the second quarter of 2021. In addition, a Summit on Biodiversity was held on 30 September 2020, in keeping with the mandate entrusted by Member States in General Assembly resolution 74/269 (31 March 2020).

**Aichi Biodiversity Targets.**<sup>13</sup> All Aichi Targets are relevant to marine and coastal biodiversity, with Targets 3, 6, 10 and 11 being especially relevant to oceans. Target 3 aims at eliminating phasing out or reforming incentives including subsidies (such as fisheries subsidies) that are harmful to biodiversity in order to minimize or avoid negative impacts, and develop and apply positive incentives for the conservation and sustainable use of biodiversity. Target 6 aims at managing and harvesting all fish and invertebrate stocks and aquatic plants sustainably, legally and applying ecosystem-based approaches, so that overfishing is avoided, recovery plans and measures are in place for all depleted species, fisheries have no significant adverse impacts on threatened species and vulnerable ecosystems and the impacts of fisheries on stocks, species and ecosystems are within safe ecological limits. Target 10 aims at minimizing the multiple anthropogenic pressures on coral reefs, and other vulnerable ecosystems by 2015; and Target 11 sets out that "by 2020, at least 17 per cent of terrestrial and inland water areas, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes." For updates and an assessment on the achievement of the Targets, and lessons for the development of the post-2020 framework, see the fifth edition of the flagship report [Global Biodiversity Outlook](#), (published in 2020). The report highlights the findings related to [marine and coastal biodiversity](#).

**The Sustainable Oceans Initiative (SOI).** SOI was created as a global platform to build partnerships, to help countries to achieve the targets, and to enhance capacity to conserve and sustainable use marine and coastal biodiversity in a holistic manner.<sup>14</sup>

**PROTOCOLS: Nagoya Protocol on Access and Benefit-sharing.** The Protocol on *Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization*,<sup>15</sup> aims at implementing the third objective of the Convention (*fair and equitable sharing of the benefits*). **Cartagena Protocol on Biosafety.** The agreement<sup>16</sup> aims to ensure the safe handling, transport and use of living modified organisms resulting from modern biotechnology that may have adverse effects on biological diversity.

## Relevance to World Bank–Financed Projects

The Convention is relevant to any Bank project building capacity to promote the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits.

<sup>13</sup> Unless mentioned otherwise, targets are designed to be achieved by 2020.

<sup>14</sup> For further information, find here SOI [Action Plan](#) 2015- 2020.

<sup>15</sup> The international agreement was adopted in 2010, at the 10<sup>th</sup> Conference of the Parties, and entered into force in 2014.

<sup>16</sup> The Cartagena Protocol was adopted in 2000, in force since 2003.

## Ocean Governance Summaries

Full Title:	Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
Number of Parties:	183 <sup>1</sup>
Website:	Link to <a href="#">Website</a>   Link to Text of the <a href="#">Convention</a>
Membership:	Open to all States and regional economic integration organizations
Secretariat:	The United Nations Environment Programme (UNEP)

### Objectives

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) aims to protect “certain species of wild fauna and flora against over-exploitation through international trade.”<sup>2</sup> CITES requires Parties to implement its objectives through the Party’s own domestic legislation.<sup>3</sup>

### Key Provisions

The broad objective of CITES is to eliminate or restrict the trade in endangered species of wild flora or fauna. Parties control the international trade of specimens<sup>4</sup> of species through a domestic licensing system. Each Party to CITES must designate Management Authorities in charge of administering that licensing system and Scientific Authorities to advise them on the species’ statuses.<sup>5</sup> Parties to CITES shall enforce the Convention’s provisions through domestic measures, including penalizing the trade of selected species that does not conform with the Convention and providing for the confiscation or return of such species to the State of export.<sup>6</sup> In total, there are twenty-five articles and three appendices.

### Appendices

CITES categorizes species in Appendices according to the degree of protection that Parties have agreed they need.

**Appendix I** lists species threatened by extinction that may be affected by trade.<sup>7</sup> Import, export, re-export, or introduction from the sea of specimens is covered. **Such trade** requires monitoring from the Scientific Authorities and Management Authorities of both the State of import and State of export to ensure that the trade adheres to the necessary legal procedures and minimizes harm to the species.<sup>8</sup> Import and export of specimens require a permit from the Management Authority.<sup>9</sup> Import permits may only be issued if the specimen will not be used for commercial purposes and if the “import will be for purposes which are not detrimental to the survival of the species involved.”<sup>10</sup> An export permit shall only be granted when the following conditions have been met: (i) the export will not be detrimental to the survival of that species; (ii) the specimen was not obtained in contravention of the laws; and (iii) an import permit has been granted by the State of import.<sup>11</sup> If the specimen is living, both an import and an export permit require the specimen to be “prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment.”<sup>12</sup>

Species listed on **Appendix II** are not necessarily threatened with extinction but may become so “unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival.”<sup>13</sup> Export permits issued from the State of export are required and shall only be granted if the specimen was legally obtained and if the export will not be detrimental to the survival of the species.<sup>14</sup> If the specimen is living, the permit will require the specimen to be

<sup>1</sup> As of February 2021.

<sup>2</sup> Preamble.

<sup>3</sup> Article VIII.

<sup>4</sup> Specimens are defined as “any animal or plant, whether alive or dead,” [and] “any readily recognizable part or derivative” of a species present on Appendix I and II, as well as any readily recognizable part or derivative of any animal species on Appendix II. It also encompasses any readily recognizable part or derivative thereof specified in Appendices II and III in relation to any plant species. Parts or derivatives of any animal species present on Appendix III must likewise be specified to fall under the definition of specimen in Appendices II and III. (Article 1).

<sup>5</sup> Article VIII.

<sup>6</sup> Article VIII.

<sup>7</sup> Article II.

<sup>8</sup> Article III.

<sup>9</sup> Article III.

<sup>10</sup> Article III.

<sup>11</sup> Article III.

<sup>12</sup> Article III.

<sup>13</sup> Article II.

<sup>14</sup> Article IV.

packed to minimize harm to the individual.<sup>15</sup> In contrast to Appendix I requirements, an import permit is not necessary, though the presentation of the export permit is required.<sup>16</sup>

**Appendix III** lists species that are protected by regulation in at least one Party, which has asked other CITES Parties for cooperation in that protection.<sup>17</sup> In the case of export from any State that included the species in Appendix III, an export permit issued by the Management Authority of that State is required.<sup>18</sup> In the case of export from any other State, a certificate of origin issued by its Management Authority is required.<sup>19</sup>

Amendments to the Appendices, including the addition of new species, may be made according to the procedure set forth in the Convention.<sup>20</sup>

### Exemptions and other special provisions relating to trade

CITES allows Parties to exempt certain situations from the above requirements, including, but not limited to, when specimens are in transit; when specimens were acquired prior to the CITES provisions applied to it; and where the specimen is a personal or household effect (as strictly defined by the Convention).<sup>21</sup> Other exemptions include animal species bred in captivity or plant species artificially propagated; materials used for scientific purposes; or specimens in a circus, zoo, or other travelling exhibition.<sup>22</sup> These situations are subject to special provisions and may still require a certificate or permit.<sup>23</sup>

### Relevance to World Bank–Financed Projects

CITES may be relevant to any World Bank-financed projects that concern developing trade infrastructure and/or enhancing governance and management institutions. Examples of past World Bank-financed projects that have entailed consideration of CITES are projects that aimed to enhance legal and regulatory frameworks to strengthen protections for threatened wildlife and projects that concerned capacity building for communities located in conversation areas.

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<sup>15</sup> Article III.

<sup>16</sup> Article IV.

<sup>17</sup> Article II.

<sup>18</sup> Article V.

<sup>19</sup> Article V.

<sup>20</sup> Article XV and Article XVI.

<sup>21</sup> Article VII.

<sup>22</sup> Article VII.

<sup>23</sup> Article VII.

## Ocean Governance Summaries

Full Title:	Convention on the Conservation of Migratory Species of Wild Animals (CMS)
Number of Parties:	131 <sup>1</sup>
Website:	Link to <a href="#">Website</a>   Link to Text of the <a href="#">Convention</a>
Membership:	Open to all States and regional economic integration organizations
Secretariat:	The United Nations Environment Programme (UNEP)

### Objectives

The Convention on Migratory Species (CMS) aims to conserve migratory species throughout their range, i.e., in all areas of land or water these species inhabit, stay temporarily, cross or fly over.<sup>2</sup> In particular, parties to CMS agree to “promote, cooperate in and support research relating to migratory species;” “to endeavour to provide immediate protection for migratory species;” and to endeavour to conclude Agreements relating to the conservation of one or more migratory species.<sup>3</sup> As CMS is primarily a framework convention, it lays out comprehensive guidelines for the content and implementation of any subsequent Agreements.<sup>4</sup>

### Key Provisions

CMS encourages its parties to form and effectuate regional Agreements regarding the protection of a specific species. CMS contains twenty articles and two appendices.

#### Guidance for Agreements

CMS outlines specific guidelines for Agreements between States. Most importantly, every Agreement’s object shall be to restore or maintain a migratory species to/in a favorable conservation status.<sup>5</sup> Specifically, an Agreement should identify the governed migratory species and describe its range and migration route.<sup>6</sup> These Agreements should provide for accession by all States in the species’ range and protect as many species as practicable.<sup>7</sup> An Agreement should also provide for accession to the Agreement by any other States and set out dispute resolution procedures.<sup>8</sup> Agreements may also contain mechanisms like periodic review, exchange of information provisions, coordination of research into the ecology or biology of the species, and elimination of activities that impede conservation.<sup>9</sup> Signatories to these Agreements must report them to the Secretariat.<sup>10</sup>

#### Appendices I and II

CMS maintains two Appendices of migratory species in need of protection.<sup>11</sup> Appendices I and II list the main species relevant to oceans under the categories of ‘Mamalia,’ ‘Pisces or Actinopterygii,’ ‘Chondrichthyes,’ and ‘Reptilia.’

**Appendix I** lists migratory species classified as endangered or “in danger of extinction throughout all or a significant portion of its range.”<sup>12</sup> Parties that exercise jurisdiction over a portion of a listed species range shall endeavour to conserve the species’ habitat and reduce or minimize activities or factors contributing to the species’ endangerment. Furthermore, “taking, hunting, fishing capturing, harassing, deliberate killing”<sup>13</sup> (known collectively as “taking”) of a migratory species listed on Appendix I is prohibited, subject to some exceptions.

<sup>1</sup> As of February 2021.

<sup>2</sup> Article II.

<sup>3</sup> Article II.

<sup>4</sup> Article V.

<sup>5</sup> Article V.

<sup>6</sup> Article V.

<sup>7</sup> Article V.

<sup>8</sup> Article V.

<sup>9</sup> Article V.

<sup>10</sup> Article III and IV.

<sup>11</sup> Link to [Appendices and Species List](#).

<sup>12</sup> Article III.

<sup>13</sup> Article I.

**Appendix II** lists migratory species which “have an unfavourable conservation status and which require international agreements for their conservation and management.”<sup>14</sup> Takings are not prohibited outright, though Parties are encouraged to conclude Agreements that benefit the species.<sup>15</sup>

### Agreements of relevance for marine species

Agreements of relevance for marine species include:

- 1990 Agreement on the Conservation of Seals in the Wadden Sea Area;
- 1992 Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas (ASCOBANS); and
- 2001 Agreement on the Conservation of Albatrosses and Petrels (ACAP).

In addition, nineteen memoranda of understanding, concerning specific species or groups of species, have been adopted, which may act as a first step towards the eventual conclusion of an agreement including: marine turtles of the Atlantic Coast of Africa (in effect 1 July 1999); marine turtles and their habitats of the Indian Ocean and Southeast Asia (in effect 1 September 2001); cetaceans and their habitat in the Pacific islands region (in effect 15 September 2006); dugongs and their habitats (in effect 31 October 2007); Eastern Atlantic populations of the Mediterranean monk seal (in effect 18 October 2007); and manatee and small cetaceans of Western Africa and Macronesia (in effect 3 October 2008); and migratory sharks (in effect 1 March 2010).

There are also various other action plans and initiatives addressing specific species.

### The Scientific Council

The Scientific Council’s role is to provide scientific advice and recommendations regarding research, species classification under Appendices I and II, and solutions to scientific aspects of the implementation of the CMS to any Party or Agreement. Every Party may appoint one qualified expert as a member.<sup>16</sup> The COP may also independently appoint qualified experts in a manner they deem necessary.<sup>17</sup>

### Dispute Settlement

States Parties must settle any disputes regarding the interpretation or application of the CMS through negotiation.<sup>18</sup> If the Parties cannot resolve a dispute through negotiation, they may, by mutual consent, submit the dispute to arbitration and must agree to be bound by the final decision.<sup>19</sup>

## Relevance to World Bank–Financed Projects

CMS and its progeny Agreements are aimed at protecting migratory species globally. A World Bank project may be impacted if it is conducted within the range of any listed species, especially those listed on Appendix I. In particular, CMS may impact any projects located in a migratory marine species’ range or has the potential to affect the species directly, such as in projects involving shipping routes or ports, or in projects that aim to strengthen the management of fisheries and coastal zones.

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<sup>14</sup> Article IV.

<sup>15</sup> Article IV.

<sup>16</sup> Article VIII.

<sup>17</sup> Article VIII.

<sup>18</sup> Article XIII.

<sup>19</sup> Article XIII.

# Other

# Ocean Governance Summaries

Full Title:	Sustainable Development Goals (SDGs)
Website:	Link to the <a href="#">Website</a>   Link to the <a href="#">Text of the Agenda</a>
Adopted by:	General Assembly resolution adopted by all 193 United Nations Member States.
Annual reports prepared by:	Division for Sustainable Development Goals in the United Nations Department of Economic and Social Affairs

## Objectives

The Sustainable Development Goals (SDGs) are the key principles underpinning the 2030 Agenda for Sustainable Development (2030 Agenda). The 2030 Agenda is a shared blueprint to end poverty and achieve sustainable development. The SDGs are call for “action over the next 15 years in areas of critical importance for humanity and the planet.”<sup>1</sup>

## Key Provisions

The seventeen interlinked SDGs provide a framework for States to eradicate poverty in an integrated manner.<sup>2</sup> In addition to economic development, the goals aim to preserve the planet, combat gender and economic inequality, stimulate economic advancement, promote healthy societies, and foster peace.<sup>3</sup> Each SDG has associated targets. The targets are “aspirational and global, with each Government setting its own national targets guided by the global level of ambition but taking into account national circumstances.”<sup>4</sup> Each target has between one and four indicators to measure progress towards attaining the target.<sup>5</sup> Targets fall into two categories: either “means of implementation” targets or attainable targets.<sup>6</sup> Attainable targets indicate circumstances to be accomplished—usually by the year 2020, 2025, or 2030. In contrast, means of implementation describe modes of delivery to achieve the goal and generally have no end date.<sup>7</sup>

### SDG 14 – “Life Below Water”

[SDG 14](#) recognizes that ecosystems and biochemical processes must be functioning properly for oceans and marine resources to positively contribute to human well-being. It encourages States to “conserve and sustainably use the oceans, seas and marine resources.”<sup>8</sup> It has seven attainable targets and three means of implementation targets. The seven outcome targets are:

**14.1** By 2025, **prevent and significantly reduce marine pollution** of all kinds, in particular from land-based activities, including marine debris and nutrient pollution

**14.2** By 2020, **sustainably manage and protect marine and coastal ecosystems** to avoid significant adverse impacts, including by strengthening their resilience, and take action for their restoration in order to achieve healthy and productive oceans

**14.3** **Minimize and address the impacts of ocean acidification**, including through enhanced scientific cooperation at all levels

**14.4** By 2020, effectively **regulate harvesting and end overfishing**, illegal, unreported and unregulated fishing and destructive fishing practices and implement science-based management plans, in order to restore fish stocks in the shortest time feasible, at least to levels that can produce maximum sustainable yield as determined by their biological characteristics

**14.5** By 2020, **conserve at least 10 per cent of coastal and marine areas**, consistent with national and international law and based on the best available scientific information

**14.6** By 2020, **prohibit certain forms of fisheries subsidies** which contribute to overcapacity and overfishing, **eliminate subsidies that contribute to illegal, unreported and unregulated fishing** and refrain

<sup>1</sup> Preamble.

<sup>2</sup> Preamble.

<sup>3</sup> Preamble and Declaration.

<sup>4</sup> ¶ 55.

<sup>5</sup> ¶ 75. For more information, see G.A. Res. 71/313 (Jul. 6, 2017).

<sup>6</sup> ¶ 40.

<sup>7</sup> ¶ 40.

<sup>8</sup> Goal 14.

from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation

**14.7** By 2030, **increase the economic benefits** to Small Island developing States and least developed countries from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism<sup>9</sup>

The means of implementation targets encourage States to develop scientific knowledge and increase research capacity.<sup>10</sup> States are also advised to provide increase access for small-scale fishers to markets and resources<sup>11</sup> and implement international law as reflected in UNCLOS.<sup>12</sup>

## Related SDGs

The SDGs “[map] the road to sustainable development.”<sup>13</sup> Thus, while each goal primarily concerns one topic, they overlap and interact both directly and indirectly. For example, SDG 12 aims to “ensure sustainable consumption and production patterns.”<sup>14</sup> It provides a framework for States to substantially reduce waste generation and encourage companies to adopt sustainable practices.<sup>15</sup> This goal works in tandem with SDG 14, especially where SDG 14 concerns overfishing and pollution. Similarly, both SDG 8 and SDG 10 indirectly interact with SDG 14. SDG 8 urges States to “[p]romote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.”<sup>16</sup> SDG 10 provides targets to “[r]educe inequality within and among countries.”<sup>17</sup> The principles reflected in SDG 8 and SDG 10 relate to targets developed in SDG 14, namely managing fisheries effectively and providing for increased accesses to markets for small-scale fishers. SDG 17 seeks to ‘[s]trengthen the means of implementation and revitalize the global partnership for sustainable development’, which includes finance and capacity-building.

## Relevance to World Bank–Financed Projects

The SDGs, especially SDG 14, can provide guidance for economically and environmentally sustainable projects. Projects that may be significantly affected are those that involve marine resources—such as fisheries—or ocean and coastal development projects. For example, one Bank-financed project that considered SDG 14 aimed to reduce pollution in the marine environment and improve the sustainable management of marine biodiversity.

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<sup>9</sup> Goal 14.

<sup>10</sup> Goal 14, Target 14.a.

<sup>11</sup> Goal 14, Target 14.b.

<sup>12</sup> Goal 14, Target 14.c.

<sup>13</sup> ¶ 53.

<sup>14</sup> Goal 12.

<sup>15</sup> Goal 12, Target 12.5, and Target 12.6.

<sup>16</sup> Goal 8.

<sup>17</sup> Goal 10.