



January 29, 2024

## Implementing Agreements Under the United Nations Convention on the Law of the Sea (UNCLOS)

For over 40 years, Congress has deliberated, to varying degrees, the potential pros and cons of the 1982 United Nations (U.N.) Convention on the Law of the Sea (UNCLOS) as it pertains to U.S. ocean policy and interests. UNCLOS established a comprehensive international legal framework to govern activities related to the global ocean and often is referred to as the *constitution of the oceans*. The United States is not a party to UNCLOS, but related U.S. law largely comports with its provisions. In addition, the United States has historically considered portions of UNCLOS to reflect *customary international law* binding the conduct of states even in the absence of a treaty.

UNCLOS divides the ocean into maritime zones and describes the basic rights and obligations of states therein. During the negotiation of UNCLOS, some states objected to some of these rights, in particular the treatment of seabed minerals in areas beyond national jurisdiction. After the adoption of UNCLOS, some stakeholders worked to modernize, elaborate, and operationalize the conservation and management of certain marine resources (e.g., highly migratory fish stocks). In response to objections or calls to build on the legal framework, the U.N. General Assembly (UNGA) adopted three implementing agreements under the UNCLOS rubric. This In Focus provides context for these implementation agreements and their relationship to UNCLOS. In addition, the In Focus describes which of these agreements the United States has ratified or has the option to ratify in the absence of U.S. accession to UNCLOS. The three implementing agreements are as follows:

- Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea (commonly known as the 1994 Agreement)
- 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 (commonly known as the 1995 U.N. Fish Stocks Agreement [UNFSA])
- Agreement Under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (commonly known as the Biodiversity Beyond National Jurisdiction [BBNJ] Agreement or the High Seas Treaty)

### U.S. Objections to UNCLOS

In 1982, UNGA adopted UNCLOS (**Table 1**). At that time, the United States and some other industrialized nations did

not sign UNCLOS or announced they could not ratify it without changes to Part XI of UNCLOS, which deals with deep-seabed resources in areas beyond national jurisdiction. In addition to objections over the treatment of deep-seabed resources (i.e., minerals), the United States also objected to UNCLOS provisions on technology transfers and compulsory dispute resolution.

### 1994 Agreement

In 1994, UNGA adopted the 1994 Agreement, which amended UNCLOS Part XI by removing many of the provisions objectionable to certain industrialized nations. In addition, the 1994 Agreement provided that the 1994 Agreement and UNCLOS shall be interpreted and applied together as a single document. After the adoption of the 1994 Agreement, UNCLOS received the necessary number of signatories to enter into force (**Table 1**).

UNCLOS established the International Seabed Authority (ISA), which regulates all seabed mineral-related activities in areas beyond national jurisdiction. The ISA came into existence with the adoption of the 1994 Agreement, which made changes to the deep-seabed mining regime under UNCLOS. The ISA became fully operational as an autonomous international organization in 1996. The United States participates as an observer state in the ISA but has no vote in the ISA Assembly or Council and cannot apply for or obtain a contract or license for seabed mining activities. For the United States to participate as a member of the ISA, it would have to become party to UNCLOS and the 1994 Agreement, requiring Senate advice and consent. For more information about seabed mining and the ISA, see CRS Report R47324, *Seabed Mining in Areas Beyond National Jurisdiction: Issues for Congress*.

For the United States, UNCLOS and the 1994 Agreement are to be considered as a package. On July 29, 1994, the United States signed the 1994 Agreement (**Table 1**). In October 1994, President Clinton submitted UNCLOS and the 1994 Agreement as a package to the Senate for advice and consent to accession (Treaty Doc. 103-39). The Senate Committee on Foreign Relations held hearings on UNCLOS and the 1994 Agreement in the 108<sup>th</sup> (2003), 110<sup>th</sup> (2007), and 112<sup>th</sup> (2012) Congresses.

In the 108<sup>th</sup> Congress, the Senate Committee on Foreign Relations favorably reported and recommended that the Senate give its advice and consent to UNCLOS and the 1994 Agreement. However, the Senate did not consider UNCLOS on the floor.

In the 110<sup>th</sup> Congress, the Senate Committee on Foreign Relations held two hearings on UNCLOS. The committee

favorably reported UNCLOS on December 19, 2007, and again recommended the Senate give its advice and consent to UNCLOS and the 1994 Agreement, but the Senate did not take up these instruments. During then-Secretary of State Hillary Clinton’s confirmation hearing, then-Senator John Kerry, the committee chair, stated that UNCLOS also would be a committee priority, but the committee took no action on UNCLOS during the 111<sup>th</sup> Congress.

In the 112<sup>th</sup> Congress, the Committee on Foreign Relations held three hearings on UNCLOS but took no action to recommend that the full Senate give its advice and consent to accession to UNCLOS.

### 1995 U.N. Fish Stocks Agreement

The UNFSA implements UNCLOS provisions concerning international cooperation to ensure long-term conservation and promotion of optimum utilization of fisheries resources within areas of national jurisdiction (i.e., the 200-nautical mile *exclusive economic zones*) and on the *high seas* (i.e., international waters). While the UNFSA is based on UNCLOS provisions, a state need not be a UNCLOS party to become party to UNFSA. The United States, as a UNCLOS non-party, signed UNFSA in 1995. The Senate provided consent to ratification in 1996 (Treaty Doc. 104-24), and the United States ratified UNFSA in August 1996 (**Table 1**). For more information about UNCLOS living resources provisions and the UNFSA, see CRS Report R47744, *United Nations Convention on the Law of the Sea (UNCLOS): Living Resources Provisions*.

### Biodiversity Beyond National Jurisdiction Agreement

The BBNJ Agreement is intended to ensure conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction. UNGA adopted the BBNJ Agreement in 2023. As with UNFSA, the BBNJ Agreement is intended to implement relevant UNCLOS provisions, but a state does not need to be a UNCLOS state party to become party to

the BBNJ Agreement. The United States signed the BBNJ Agreement on September 20, 2023 (**Table 1**). The President has not transmitted the BBNJ Agreement to the Senate for advice and consent to ratification. For more information about the BBNJ Agreement, see CRS In Focus IF12283, *The Biodiversity Beyond National Jurisdiction Agreement (High Seas Treaty)*.

### Policy Considerations

In the 118<sup>th</sup> Congress, some Senators called on the Senate to give advice and consent to accession to UNCLOS and the 1994 Agreement (S.Res. 466). These Senators contend U.S. accession to UNCLOS would allow the United States to be a member of the ISA and participate in setting policies related to international seabed mining activities as global demand for critical minerals increases. In a December 7, 2023, letter to U.S. Secretary of Defense Lloyd Austin, 31 Members expressed concern over the potential pressure China is putting on the ISA to adopt regulations for the exploitation of mineral resources in areas beyond national jurisdiction, calling on the Department of Defense to work with allies to “ensure that China does not seize unfettered control of deep-sea assets.” The letter did not discuss U.S. accession to UNCLOS as a potential option that would allow the United States to formally participate in ISA policy setting decisions.

The UNFSA and BBNJ Agreement are separate agreements under UNCLOS. States can join UNCLOS without joining either one of these agreements, and states can join one or both of these two agreements without joining UNCLOS (e.g., see UNFSA in **Table 1**). Should the President transmit the BBNJ Agreement to the Senate for advice and consent to ratification, Congress may consider the obligations, if any, the BBNJ would create for the United States. In addition, Congress may determine whether new legislation would be required for U.S. implementation of the BBNJ Agreement.

**Table 1. Timeline of United Nations and United States Actions on UNCLOS and Its Implementing Agreements**

	Adopted by U.N.	Entered into Force	U.S. Signature	U.S. Accession/ Ratification	Requires U.S. Accession to UNCLOS?
UNCLOS	1982	1994	NA	No	NA
1994 Agreement	1994	1996	1994	No	Yes
UNFSA	1995	2001	1996	1996	No
BBNJ Agreement	2023	No	2023	No	No

**Source:** United Nations, “Status of Treaties, Chapter XXI: Law of the Sea,” [https://treaties.un.org/Pages/Treaties.aspx?id=21&subid=A&clang=\\_en](https://treaties.un.org/Pages/Treaties.aspx?id=21&subid=A&clang=_en).

**Notes:** NA = not applicable. U.S. accession to UNCLOS does not require U.S. signature.

Matthew C. Weed, Specialist in Foreign Policy Legislation

Caitlin Keating-Bitonti, Analyst in Natural Resources Policy

IF12578

## Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.