



What does ambition look like for the High Seas Treaty? December 2020

The greatest opportunity in a generation to conserve ocean life and diversity on a global scale and safeguard 2/3 of the world's ocean is happening right now. World governments are in the final stages of negotiating a new treaty under the United Nations Law of the Sea Convention (UNCLOS) - the first ever to focus on conserving and ensuring sustainable use of biodiversity of the ocean areas beyond national jurisdiction ("ABNJ"), which includes the water column or "the high seas" and the seabed below. Comprising nearly half the planet, the high seas are a true global common.

The global ocean supports a multi-trillion dollar global economy and provides billions of people with food security and jobs, yet it is staggering under increasing human pressures and the effects of climate change. Many leading scientists and world governments are supporting a call to highly and fully **protect at least 30% of our global ocean by 2030** and ensure that it is **100% sustainably managed**. Currently, only 1% of the high seas is highly and fully protected; **30% goal can only be reached through a new High Seas Treaty**.

With new and emerging threats facing the ocean every single day, **we need political leadership to reach a robust treaty at the 4th Intergovernmental negotiating conference in 2021**, that dramatically improves conservation and management of our shared global ocean commons. ***This requires political will and diplomatic outreach at the highest levels, combined with flexibility at a technical level while maintaining high ambition.***

To ensure that the Treaty goes well beyond the status quo and is worthy of the decades of effort to address ocean governance gaps, it must provide -- at a minimum -- the elements below.

Marine Protected Areas (MPAs)

Highly and fully protected, well-managed and representative networks of marine protected areas (MPAs) are the most effective tool to protect ocean life in the face of ever-increasing human activities in the ocean space and their impacts, climate change and their cumulative impacts, though currently, there is no legal mechanism to establish comprehensively protected MPAs beyond national boundaries.

- It is critical that the new Treaty itself **mandates the establishment** and effective management of **a network of representative and well-connected MPAs**, including fully protected marine reserves, following scientific recommendations.
- The Treaty should **give authority to the Conference of the Parties (CoP) to establish MPAs** and other ABMTs for conservation management, **with a management plan and concrete measures** to achieve their objectives, in order to fill the gaps created by regional or sectoral organizations undertaking disparate measures that do not address the cumulative, cross-sectoral and climate-related impacts of human activities in the high seas.
- Pending the establishment of the MPA and associated management plan and measures, the Treaty should **empower State Parties to adopt interim and emergency measures** to ensure that the objective of the area is not undercut by conflicting activities.

Environmental Impact Assessment (EIA)

Human activities in the high seas and deep seafloor are currently subject to an antiquated and inconsistent patchwork of environmental assessment and management practices. An overhaul is needed to operationalize the general EIA provisions in UNCLOS and reflect modern EIA practice.

The new Agreement must:

- Establish **uniform, modern environmental assessment and consultation requirements** for all proposed activities that may have more than a minor or transitory effect on marine biodiversity beyond national jurisdiction, regardless of where those activities are located;
- Require that activities that may affect marine biodiversity in ABNJ, regardless of where they take place, are assessed and managed to **prevent significant adverse effects**;
- Ensure that the interests of the international community as a whole are represented by:
 - Requiring **review of EIAs** by the scientific body established in the Treaty, giving the CoP **review and decision-making authority** over whether a proposed activity may proceed, and if so, under what conditions, and providing for the development of **strategic environmental assessments** by the CoP where appropriate.
 - Providing that EIAs are conducted by other regional and sectoral organizations consistent with the Treaty's standards and consultation procedures.

Marine Genetic Resources and Capacity Building and Marine Technology Transfer

Parties must recognize that the “package” of issues is not just politically linked, but mutually supportive too. It is vital that all countries can both equitably benefit from the sustainable use of marine biological diversity, but also fulfill obligations to conserve biodiversity of the high seas, through:

- A **fair and equitable access and benefit-sharing regime** for marine genetic resources; and
- An **effective funding mechanism** to enable capacity building and the transfer of marine technology for implementing the Agreement, particularly through support for oceanic sciences, monitoring and other technologies, and institutional, academic and individual capacity.

Cross-cutting Issues

Cross-cutting issues are those that affect a number of elements and are integrated throughout the new agreement.

- A key question is how the new Treaty will relate to existing sectoral, regional and international bodies. It is recognized that the Treaty should “**not undermine**” other bodies but rather complement them, since the Treaty will enhance rather than undermine the ability of relevant organizations to safeguard marine biodiversity. To overcome the status quo, negotiators should explicitly recognize that the High Seas Treaty will have its own competence for marine biodiversity in ABNJ. Accordingly, the Treaty needs to ensure that the CoP has the power to establish MPAs, make decisions regarding human activities, and address gaps and weaknesses in the existing regime.
- **No exclusions:** As a primary component of marine biodiversity, **fish must not be excluded** from the new Treaty.
- **Decision-making:** For substantive issues, the new Treaty must provide for a **voting procedure** when all good faith efforts to reach consensus have been exhausted, to ensure that one or two countries cannot hold hostage progress on an issue that is supported by an overwhelming majority of States Parties.
- **Ratification** is another critical issue that will enable the Treaty to enter into force in a timely fashion. If the number of States needed to ratify a treaty is too large, it may take many years to enter into force. It is critical that this Treaty enter into force as soon as possible, to enable the international community to meet their present and future global conservation targets.
- **Compliance and Dispute Settlement:** To ensure that the Treaty’s provisions are adequately implemented and enforced, a Compliance and Implementation Committee should be established as a subsidiary body of the CoP. Modern international treaty practice shows that these bodies can smooth implementation and solve problems and disputes before they become problematic. Effective dispute resolution processes can also resolve factual disputes, provide for non-confrontational dispute resolution and provide for Advisory Opinions from the International Tribunal for the Law of the Sea.

