

Protecting The Ocean We Need Securing The Future We Want



The case for negotiating a new 'High Seas Biodiversity Agreement'



PROJETO TAMAR BRAZIL/MARINE PHOTOBANK

At the Rio+20 Summit in June 2012, governments committed to “address, on an urgent basis, the issue of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction including by taking a decision on the development of an international instrument under UNCLOS” (para. 162, *The Future We Want*).

The High Seas Alliance (HSA), on behalf of its 30 member organizations, welcomes this high level expression of political will. We stress the importance of negotiating an international High Seas Biodiversity Agreement under UNCLOS, the United Nations Convention on the Law of the Sea. This will extend legal protection to, and encourage the ecosystem-based management of, marine life on the high seas – that part of the ocean that is beyond any countries’ exclusive economic zone (EEZ) and the ocean seabed that lies beyond the jurisdiction of any one State – making up 64% of the ocean.

These areas cover nearly 50% of the surface of the Earth and include some of its most environmentally important, critically threatened and least protected ecosystems. Only an international High Seas Biodiversity Agreement can address the inadequate, highly fragmented and poorly implemented legal and institutional framework that is currently failing to protect the high seas – and therefore the entire global ocean – from the multiple threats they face in the 21st century.



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Source of life

The ocean is the cornerstone of our living planet. A functioning, healthy ocean is vital to the global biogeochemical cycles upon which all life – including human civilization – depends. The ocean is at the heart of the Earth System which links all the land, waters and atmosphere of our planet; it is central to climate regulation, the hydrological and carbon cycles, and nutrient flows.

The ocean provides the oxygen in every second breath we take, has absorbed about 30% of the CO₂ and over 80% of the additional heat we have generated since the Industrial Revolution, and supplies over 16% of the global population's intake of animal protein. In some of the world's poorest communities, fish exceeds 50% of the animal protein in the diet, including in many small island developing States (SIDS) and coastal developing countries. The ocean is also a largely untapped source of precious raw materials for medical and other uses. The full potential of its bounty is unknown, as so far only a tiny percentage of the high seas and the deep seafloor has been scientifically investigated.

While the ocean itself is priceless, the very real economic value of its services is increasingly being recognized. The UN calculates that over three billion people depend on marine and coastal biodiversity for their livelihoods, and estimates the market value of marine and coastal resources

and industries at \$3 trillion per year, or about 5% of global GDP. The World Bank estimates that 350 million jobs are directly linked to the ocean worldwide. Around 97% of the world's fishers live in developing countries, including SIDS, where fish are the single most traded food product, valued at \$25 billion a year. Fishing provides employment, can help alleviate poverty and boosts nutritional security for millions of vulnerable people, but it must be sustainable or all of these benefits are placed at risk.

Under pressure, in decline

The state of the ocean is in serious decline. Human activities – from the burning of fossil fuels to overfishing to the growing use of plastics – are subjecting the ocean to a multitude of unprecedented threats and pressures, and placing its health and humanity's future in jeopardy.

It is a very grave error to imagine that the ocean is so big, so vast that it can withstand all these pressures; or that it is so remote, so alien that its wellbeing does not affect us. The ocean acts as a giant climate change buffer, but this service is being provided at a huge cost to its chemistry and ecosystems. Rising emissions from fossil fuels are the direct cause of the three main global stressors impacting on the ocean – acidification, warming and deoxygenation. Particularly vulnerable to these multiple pressures are coral reefs – home to a quarter of all marine life – 19% of which have already been lost.



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Overfishing is also costing ocean biodiversity dearly — it has already wiped out up to 90% of the populations of some large fish species. The United Nations Food and Agriculture Organization (FAO) estimates that 85% of all remaining fish stocks are today fully exploited, overexploited, depleted, or recovering from depletion. Illegal, unreported, and unregulated (IUU) fishing is responsible for the annual loss of between 11 and 26 million tonnes of fish, out of a total world wild capture of approximately 80 million tonnes.

Every year some 15 million km² of ocean — an area bigger than Canada — is subjected to the most destructive of fishing practices: bottom-trawling. Iconic marine species are disappearing from the ocean; if current trends are not reversed, some scientists have warned that all remaining wild capture fisheries could collapse by 2050.



HARRI TAAVETTI/FLPA

Humanity is placing ocean biodiversity and services in clear and present danger. Scientists, politicians and the general public are increasingly aware of the risks; now it is time for urgent action.

Beyond the law, between the gaps

The existing framework of governance for the high seas is not fit for purpose in the 21st century. Since UNCLOS was agreed more than 30 years ago, activities such as deep sea bottom trawling and offshore oil and gas exploration have extended further and deeper, and today we are on the brink of deep sea mineral mining becoming a viable global industry. Meanwhile, under UNCLOS, there is no global framework of rules for protecting the biodiversity of the high seas — indeed, UNCLOS does not even contain the word “biodiversity”. The Law of the Sea urgently needs to extend further and deeper, to catch up with the pace of human technology and exploitation before the high seas fall victim to even greater levels of irrevocable plunder.

Just 0.79% of the high seas are marine protected areas (MPAs). Even including coastal zones and areas within EEZs, only 1.6% of the global ocean is protected, compared with 12.7% of the world’s land. There is a very long way to go if governments are to meet Aichi Biodiversity Target 11 of the Convention on Biological Diversity, which calls for at least 10% of the ocean to be covered by a network of MPAs by 2020. Scientists advise going even further, recommending that between 20-50% of the ocean be given MPA status in order to conserve viable populations of key species and allow connectivity between protected areas.

It is effectively impossible to achieve these targets without including the high seas, which is impossible under the current system of law and governance. Under UNCLOS there is no global framework that enables the establishment, implementation and monitoring of MPAs, including no-take marine reserves on the high seas. More generally, there is no global mechanism for either requiring or conducting environmental impact assessments (EIAs), and no global application of fundamental concepts such as the precautionary principle or ecosystem approach, on the high seas. Governments and companies can cause great damage to the biodiversity of the high seas, including the deep seabed, without real risk of repercussions, or even accountability.

What governance there is in areas beyond national jurisdiction today is piecemeal, fragmented and riddled with loopholes. The ocean is managed region by region and sector by sector, with no mandate for coordination between the numerous agencies, organizations and treaties involved, and vast stretches of ocean are under no protection or management at all.

Fishing on the high seas is managed by a complex array of Regional Fisheries Management Organizations (RFMOs), with highly varied levels of success, membership of only a few governments, and coverage of only limited species. RFMOs are struggling, and in many cases failing, even to protect the fish stocks under their remit, and with few notable exceptions lack the broader mandates and resources required to address other biodiversity threats or the activities of other sectors in their region.

Even in those regions that are covered by regional seas conventions (such as the Convention for the Protection of the Marine Environment of the North-East Atlantic [OSPAR] and the Barcelona Convention for the Mediterranean [BARCON]) the record for biodiversity protection





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is patchy at best, and there is little capacity to deal with emerging marine issues such as mineral extraction. While MPAs can be established under these regional conventions, the process has been painfully slow and fraught with coordination problems. In the Mediterranean, for example, no new MPAs have been established since 1999. The regional approach is also hindered by the fact that, even in regions where a convention or treaty does exist, its terms are only legally binding on the corresponding Parties, not universally to all vessels under any flag.

Ocean governance is suffering from far more than an implementation gap. Some States argue that adequate protection of the high seas could be achieved through better enforcement of existing international agreements – including Article XII of UNCLOS, the 1995 UN Fish Stocks Agreement and the UN Convention on Biological Diversity – alongside empowered RFMOs. But this approach would not solve the essential problem, which is that we lack a set of global rules to protect and monitor ocean biodiversity in areas beyond national jurisdiction – or, crucially, to establish MPAs, including no-take marine reserves. The current legal regime

on the high seas is fundamentally insufficient, leaving nearly half the surface of the planet essentially beyond the reach of international law.

Negotiating an international High Seas Biodiversity Agreement

The urgent need to protect biodiversity in areas beyond national jurisdiction has been discussed for over a decade, and political will has been steadily growing in its support. The UN General Assembly (UNGA) established the 'UN ad hoc open-ended informal Working Group to study issues related to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction' (the BBNJ Working Group) in 2004 to examine this question. It is the UNGA itself – the countries of the world – that ultimately must vote and decide how to address this critical issue.

In November 2011, Resolution A/RES/66/231 on Oceans and the Law of the Sea was adopted by the 66th Session of the UNGA. This breakthrough resolution calls for the

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initiation of a process by the General Assembly to address legal gaps in the conservation and sustainable use of marine biodiversity on the high seas, including through the possible development of a multilateral agreement under UNCLOS.

In June 2012, at the Rio+20 Summit, the proposal to go ahead with such an agreement received a great deal of support and attention. The overwhelming majority of States were firmly in favour of “the development of an international instrument under UNCLOS” aimed specifically at high seas biodiversity protection, but due to the concerns of a small minority of States, the final text of *The Future We Want* outcome document instead postponed the decision. The document does, however, acknowledge the urgent need to conserve high seas biological diversity. The ocean was highlighted as one of the top priority agenda items at Rio+20, a sign of the increasing political will to address the threats to the marine environment.

“We hope that all States will act urgently on this global issue by developing a strengthened oceans governance regime under the UN Convention on the Law of the Sea, including for the establishment of marine protected areas.” Julia Gillard, Prime Minister of Australia, statement at Rio+20

“The EU therefore supports a new implementing agreement of UNCLOS which would address both the conservation and the sustainable use of marine

biological diversity in areas beyond national jurisdiction. It should address the issues of marine protected areas and environmental impact assessments.” Maria Damanaki, European Commissioner for Maritime Affairs and Fisheries, statement at the Economic, Social and Environmental Council, Paris, 11 April 2013

In September 2012, IUCN’s Fifth World Conservation Congress adopted a resolution that called on States “to address ocean governance gaps in the protection and conservation of biodiversity in areas beyond national jurisdiction through the negotiation of a new implementing agreement under UNCLOS for the protection and conservation of high seas biodiversity” (WCC-2012-Res-074). The UN BBNJ is scheduled to discuss the need for the implementing agreement at several workshops and working group meetings in 2013 and 2014.

An international High Seas Biodiversity Agreement, which all but a handful of States are now committed to negotiating, should include the following five key elements.

- An explicit mandate for the protection, conservation and sustainable use of biodiversity in areas beyond national jurisdiction.
- Implementation tools, including mechanisms to establish and monitor MPAs, and to require and undertake EIAs, in the high seas.



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- The capacity to harmonize and coordinate between existing legal instruments and regional and intergovernmental bodies, and to ensure greater accountability and transparency.
- A mechanism for the equitable access and benefit-sharing of marine genetic resources, an issue of particular importance for developing States.
- A centralized monitoring, control and compliance system with a register of all vessels that use the high seas.

Only an international High Seas Biodiversity Agreement, most likely under UNCLOS, can provide a coherent and integrated approach in all areas beyond national jurisdiction, and provide the umbrella framework needed for the coordination of existing bodies and instruments. The urgency that was expressed at Rio+20 should drive the process of developing this agreement forward, and ensure that the Secretary General of the United Nations makes it a priority issue.

Taking action now

States should not wait for a final decision on the international High Seas Biodiversity Agreement before taking action to address the known weaknesses and gaps in the existing legal regime. Even once the UNGA votes to begin formally negotiating the agreement, this will be a complex process; the high seas cannot wait. There are many steps that government leaders can take immediately, including:

- cooperating more efficiently and transparently through existing regional arrangements, such as RFMOs and regional seas programmes, and accelerating the reform of these organizations;
- supporting initiatives to identify and describe ecologically or biologically significant areas (EBSAs) in the high seas through the Convention on Biological Diversity, and working together to enhance their protection;
- building partnerships with scientists, business leaders and civil society to develop innovative ways to enhance



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more equitable access to and share the benefits of marine genetic resources in the high seas, and create examples of good practice to help guide the development of a global framework on this issue; and

- acting decisively on the fisheries-related commitments made at Rio+20, for example by closing their ports and markets to IUU fish, taking all possible measures to maintain or restore fish stocks to maximum sustainable yield, and eliminating harmful fisheries subsidies.

The international community has recognized that the lack of protection of high seas biodiversity is a huge and urgent problem; now it is time to get to work to address it. Agreeing to an international High Seas Biodiversity Agreement is a vital step towards ensuring that the life-giving wonders and precious biodiversity of the high seas are conserved now and for the future.

For further information

Please contact: info@highseasalliance.org

