



*High Seas Alliance*  
*Overview of Recommendations for IGC2*

The second session of the Intergovernmental Conference (IGC2) will provide a critical opportunity to address the President's Aid to Negotiations toward developing text for a new legally binding instrument (Agreement) under UNCLOS for the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction (ABNJ). This briefing sets out some key issues for the [High Seas Alliance](#) relating to marine protected areas (MPAs) including marine reserves, environmental impact assessments (EIAs), and cross-cutting issues. More detail can be found in the attached appendices reflecting textual suggestions on the President's Aid to Negotiations.

It is clear that the status quo and business as usual have not served the ocean adequately; relying upon existing frameworks will not suffice. For this reason, the High Seas Alliance urges that the new Agreement establish a global body to establish and manage MPAs and oversee EIAs in ABNJ. The problems are global and the solutions must be equally global.

***I. Area-based Management Tools and MPAs***

The new Agreement should:

- establish a process to, establish, effectively manage and enforce a global ecologically representative network of large-scale marine protected areas in waters beyond national jurisdiction. Such a process should enable the creation of no-take marine reserves, which are the single most effective means of reversing ocean biodiversity loss, safeguarding food security, restoring marine ecosystems and increasing their resilience in the face of devastating threats related to climate change and ocean acidification.
- enable the international community to meet important commitments, such as establishing a representative network of MPAs and protecting 30% of the ocean by 2030; and
- lay out a process to establish MPAs, including marine reserves as follows:

**Proposal:** Candidate MPAs should be submitted by a State Party(ies), with the possibility for NGOs to co-sponsor. Proposals should include, at a minimum, location, boundaries, conservation objectives, primary elements of a management plan, and possible conservation measures identifying activities that are restricted, prohibited, or managed in the area. States Parties and competent regional and sectoral organisations should also be able to propose protected areas, including those that have been previously designated under regional or sectoral agreements.

**Consultation:** A time-bound, transparent and inclusive process should integrate views from all stakeholders, including civil society, and incorporate an assessment by a scientific committee.

**Decision-making:** The decision-making body under the new Agreement (such as a Conference of the Parties (COP)), should adopt conservation objectives for a particular area and the measures needed to meet those objectives, based on the outcome of the consultation process and recommendations from the scientific body. Areas should be established for an indefinite period of time to ensure the long-term

conservation of marine biodiversity and ecosystem services and functions, and to enable them to serve as long term reference areas for science. Provision should be made for majority voting if there is no consensus on any decision.

**Implementation:** The Agreement's parties will have the primary responsibility for implementing agreed MPA measures for their nationals, vessels, and activities under their jurisdiction and control. In addition, the Secretariat of the new instrument should inform relevant regional or sectoral bodies of the new MPA, its boundaries, objectives, management and monitoring measures, and call on the members of such bodies to adhere to all measures established for the MPA. Parties should commit to use their best efforts to ensure the adoption of complementary measures by competent regional or sectoral bodies of which they are members. There should be provisions to encourage non-Parties to cooperate.

**Monitoring:** Parties should be obligated to monitor MPAs to ensure conservation measures they are meeting the objectives of the MPA and to identify violations and cases of non-compliance.

**Report and Review:** The Agreement should include provisions for obligating Parties, and requesting relevant regional or sectoral bodies, to report back annually on the implementation and effectiveness of conservation measures in achieving the objectives of the protected areas. This should include mechanisms for considering new information and for adjusting conservation measures in response to the new information.

**Compliance, Enforcement and Dispute Settlement:** The Agreement should incorporate provisions to ensure (i) compliance through investigation, recommendations, a compliance committee mechanism and other measures; (ii) enforcement by the flag State and nationality to deter violations; and (iii) effective, accessible, rapid and cost-effective dispute settlement provisions.

## *II. Environmental Impact Assessments and Strategic Environmental Assessment*

**Cumulative impacts:** All EIAs need to consider cumulative effects, including impacts resulting from climate change, ocean acidification and related effects.

**Global Standards:** The new agreement should establish global standards and minimum requirements for EIAs, including for those prepared by parties pursuant to their obligations under existing regional or sectoral agreements or arrangements. The standards and minimum requirements in the new Agreement should be sufficiently detailed to ensure a baseline level of consistency and rigor across sectors and regions.

**Collection of site specific information:** Impact prediction should be based on site specific surveys, as there is very little scientific information on vulnerable or significant species, habitats or other features in most areas of ABNJ.

**Decision making:** The new agreement should establish a standard for post-assessment decision making, such as that in UNGA Resolution 61/105 and FAO's Guidelines on bottom fishing, which requires that any activities assessed to have significant adverse effects be managed to avoid such effects or not allowed to proceed.

**Backstop:** The agreement should include a "backstop" to help prevent manifestly inadequate EIAs or flag of convenience EIAs, whereby any State may request the scientific committee to review and make recommendations on: (i) a decision by a State not to prepare an EIA on a proposed project; (ii) the extent to which an EIA prepared for a particular project comports with the requirements of the Agreement; and/or (iii) whether the decision to move ahead with a proposed project, and under what conditions, comports with the requirements and objectives of the Agreement and other obligations under the Convention, as well as what additional measures or conditions might be required.

**Threshold:** All activities that may have more than minor or transitory effects in ABNJ should be assessed. This assessment should be carried out based on the impacts of the activity, regardless of where

the activity is conducted, given that many activities conducted within national jurisdiction could have major effects on ABNJ. A list should not be used; rather, a threshold approach should be used to screen activities that require EIAs.

**SEAs:** The agreement should include an obligation to conduct strategic environmental assessments (SEAs) for plans and programs that may have more than a minor or transitory effect on ABNJ as well as an ability for the bodies under the Agreement to carry them out where necessary.

### ***III. Cross-cutting Issues***

**Institutional arrangements:** At a minimum, and without bias towards nomenclature, the treaty should include: a decision-making body, such as a Conference of Parties; a body that provides scientific advice; a body responsible for ensuring compliance; and a Secretariat.

**Relationship to the Convention and other instruments:** the Agreement should facilitate greater cooperation and coordination among the existing constellation of ocean governance organizations, implement general principles enshrined in UNCLOS, and carry out work that is mutually supportive of other instruments.

**“Not undermining”** should be interpreted as “not undermining *the effectiveness of* existing relevant legal instruments and frameworks” consistently with the existing use of that term in the Fish Stocks Agreement.

Finally, the HSA looks forward to the development of other cross-cutting sections that are not in the current Aid to Negotiations, but will be critical to the success of the Agreement. Specifically, we urge that sections on responsibility and liability, dispute settlement, and funding of the Agreement will be developed as soon as possible. We also hope that the Preambular elements ultimately adopted highlight both the urgency for ocean protection as well as the high ambition of the Agreement.

## Appendix I

### The following represent some of HSA's Specific Suggestions on the Aid to Negotiations

**Definitions:**[1] It is proposed to modify the definitions as follows:

(15) "Area Based Management Tool" is "a management measure applicable in a specified area beyond national jurisdiction designed to achieve defined objectives."

(16) "Marine protected area" means a geographically defined marine area which is designated under this instrument where human activities are regulated, managed or prohibited to achieve specific conservation objectives with the primary aim of the long-term comprehensive protection of biodiversity and ecological integrity" including seasonally changing areas and migratory corridors.

(17): OPTION I: "Cumulative impacts" means the effects of an activity when added to the effects of other past, present and reasonably foreseeable future activities and effects, including climate change, ocean acidification and related impacts, regardless of whether a State Party exercises jurisdiction or control over those activities and effects. Rationale: Important to include environmental impacts such as climate change, whether or not they arise from sectoral activities.

(18) OPTION I: "Strategic environmental assessment" means evaluation of the likely effects of plans, programs and measures on ABNJ, taking into account inter-related socioeconomic, cultural and human health impacts (drawing on Kiev Protocol).

**Environmental impact assessment (EIA) (II.1.19):** Suggest define as "EIA means a process to evaluate the environmental impacts, including cumulative impacts, of a proposed activity." Rationale: Need to clarify that EIAs must assess cumulative impacts and all relevant effects.

### III. Conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

#### General principles and approaches

We recommend to avoid duplication and to ensure consistency, that principles and approaches are included in one article rather than within each element/heading.

#### 4. Measures such as area-based management tools, including marine protected areas

##### 4.1 Objectives of area-based management tools, including marine protected areas

1. Area-based management tools, including marine protected areas **and fully protected marine reserves**, shall be established to contribute to the objective of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, **including through protection and restoration of marine biological diversity.**

## Appendix II. Environmental Impact Assessment and SEAs

**Obligation to prepare an EIA: when the activity will have effects on ABNJ vs. when the activity is conducted in ABNJ (effects vs activity based) (III.5.1) (1) OPTION I:** States Parties shall assess the potential effects of planned activities under their jurisdiction or control in, **or with effects in**, areas beyond national jurisdiction in accordance with their obligation under articles 204 to 206 of the Convention. Rationale: All transboundary impacts must be caught, particularly when impact on shared resources (ABNJ). States should not be permitted to cause harm to ABNJ by carrying out activities at or near their jurisdictional boundaries.

**Relationship to other instruments, frameworks and bodies (III.5.2):** 4) Option II:

(a) the provisions of this Part constitute global standards and minimum requirements for environmental impact assessments for ABNJ.

(b) all other instruments and frameworks and relevant global, regional and sectoral bodies with a mandate in relation to marine biodiversity of [ABNJ] shall conform to the strict environmental impact assessment standards set forth in paragraph. Reason: The instrument should set out baseline requirements for all EIAs prepared for activities in or affecting ABNJ in order to ensure a basic level of consistency and rigor across regional and sectoral bodies.

**4. Threshold: EIA required for activities with more than a minor or transitory impact. (III.5.3):** III.5.3

Activities for which an EIA is required:

**OPTION III:** When States Parties have reasonable grounds for believing that planned activities under their jurisdiction or control are likely to have more than a minor or transitory effect on the marine environment, they shall assess the potential effects of such activities on the marine environment, **in accordance with Part...** Rationale: Minor or transitory as a test has stood the test of time in Madrid Protocol for ABNJ, and captures temporal aspect.

**List of Activities (5.3):** **OPTION IV:** *No text.* Rationale: A list will take time to be negotiated and would be difficult to update. A threshold approach is appropriate, particularly for new and emerging activities.

**Cumulative effects assessment (III.5.3):** *1. Option 1: No text.* Rationale: should go into definition.

**Consideration and Review of Reports:** (5.4: Option III (h)): New Option C: Any State may request the body set forth in Part [...] to review an EIA and provide recommendations on revisions needed to ensure the EIA comports with the requirements of this instrument. The review and recommendations of the body set forth in Part [...] shall be transmitted to the relevant State, the COP and the public. Rationale: The additional language proposed provides will help ensure the rigor and consistency of EIAs throughout ABNJ and avoid forum shopping that results in “EIAs of convenience.”

**i. Decision making (5.4: Option III (i)):** i. Decision making

i. **OPTION A:** Where a planned activity is under the jurisdiction and control of a State Party, that State shall be responsible for determining whether the planned activity may proceed; **provided that any other State may request the scientific committee established under Part [...] to review the decision to proceed with the project and provide recommendations on whether and under what conditions the project may proceed in a manner consistent with the terms and objectives of this agreement. The review and any recommendations made by the scientific committee shall be made publicly available immediately.** Rationale: The additional language proposed provides a safeguard against projects that could cause significant deleterious effects to the marine environment in ABNJ or that are otherwise not consistent with the objectives of the agreement.

The new agreement should establish a standard for post-assessment decision making, such as that in Resolution 61/105 and FAO’s Guidelines on bottom fishing: that if it is assessed that proposed activities will have significant adverse effects, the activity will be managed to avoid such effects or not allowed to proceed.

**1.7 Strategic Environmental Assessments:** Option I: (a) Each Party shall ensure that a strategic environmental assessment is carried out for plans and programmes under their jurisdiction or control, **which may** affect areas beyond national jurisdiction, which meet the threshold/criteria established in paragraph []

(b) The Conference of the Parties may carry out a strategic environmental assessment where necessary to achieve the objectives of the agreement.

Rationale: The instrument should provide a general obligation to conduct SEAs where plans and programmes may affect ABNJ, as well as power to the Instrument to carry out an SEA.