



## High Seas Alliance recommendations on ABMT provisions of the President's draft text of Nov. 27

January 2020

### I. Definition of Marine Protected Areas (Art. 1.10)

The definition of marine protected areas (MPAs) under the Agreement must be broad enough to enable the establishment of fully-protected MPAs, or marine reserves, which, according to scientists, are the most effective type of ABMTs to tackle the current biodiversity crisis, restore degraded marine ecosystems, and build ocean resilience against the impacts of multiple stressors, including climate change. Marine reserves are also the most cost-effective in terms of monitoring and management. The current draft text definition of MPA would make it very difficult to establish marine reserves, because:

1. It includes "sustainable use" within the objectives of the MPA, placing it on equal footing with "conservation." However, according to both CBD (Art.2) and IUCN, as also reflected in OSPAR or EU Habitat Directive, MPAs must be primarily conservation-focused. **The High Seas Alliance strongly recommends striking "sustainable use" from the definition of MPA.**
2. It only provides for areas to be "designated" which is only one step of the multi-layered process towards the "establishment" of an MPA;<sup>1</sup> and
3. It does not clarify that "management" also includes the possibility to prohibit activities when there is a scientific case for it.

The HSA suggests that MPAs be defined as "a geographically defined marine area **where human activities are regulated, managed or prohibited** to achieve specific [long-term biodiversity] conservation objectives."

### II. Objectives (Art. 14)

Establishing a system of MPAs, including in particular, fully protected marine reserves, should be the key objective of the Agreement in relation to ABMTs/MPAs, and it thus should be given a primary focus. In this way, the Agreement will enable the international community to meet long-standing and new global conservation targets as there is currently no global framework for delivering such a system in ABNJ. We also suggest adding language on maintaining biodiversity and ecosystems as avoiding harm is the best way to insure ocean health and build resilience.

<sup>1</sup> E.g., UN-WCMC, IUCN, WCPA et al, "Introduction to the MPA Guide" at: [https://anr.fr/fileadmin/documents/2019/Introduction\\_to\\_the\\_MPA\\_Guide\\_2019\\_web\\_single\\_pages.pdf](https://anr.fr/fileadmin/documents/2019/Introduction_to_the_MPA_Guide_2019_web_single_pages.pdf)

### **III. International cooperation & coordination (Art. 15)**

This Agreement provides the opportunity to operationalise the general duty to cooperate to protect and preserve the marine environment under UNCLOS (Art. 197) with regard to ABNJ. Article 15 should spell out that in giving effect to their duty to cooperate, States Parties shall establish a system of MPAs in ABNJ, which, according to science, is critical to ensure healthy, abundant and resilient oceans for generations to come.

### **IV. Identification of areas requiring protection (Art. 16 and 19)**

Areas to be protected should be identified by the proponents in their proposals based on the **indicative** list of criteria in the Annex, including vulnerability to climate change and ocean acidification. Identification should not require a separate decision by the CoP as Art. 19 seems to suggest, as this would add an extra and unnecessary layer to the decision-making process and significantly delay or block an MPA from being established.

### **V. Proposal (Art. 17)**

The proposal should include, *inter alia*, a description of the proposed conservation and management measures as well as the priority elements for a management plan. Following Australia's suggestion, we recommend that the management plan also describes the activities that must be managed, restricted or prohibited to meet the conservation objectives of the proposed area, although MPAs can also be established in order to safeguard biodiversity in the absence of known activities/impacts taking place in the proposed area. A fully fledged management plan with associated conservation and management measures should be adopted by the CoP at the time of the establishment of the MPA based on the outcome of the consultation process, including inputs from competent organisations, and the recommendations from the Scientific Committee.

### **VI. New interim measures (New Art. 18bis)**

The process of establishing an MPA, including management plan and associated protective measures can be time consuming. Pending the establishment of the MPA and final measures, the Agreement should empower State Parties to adopt interim and emergency measures to ensure that the objective of the area is not undercut by conflicting activities. This is in line with the EU's Habitat Directive, Article 6.2, which also applies pending the official establishment of a Natura 2000 site or SPREMO, Art. 22 on preliminary conservation and management measures.

### **VII. Decision-making and relation with existing bodies (Art. 19 and Art. 15)**

To deliver effective protection and avoid creating empty "paper parks," it is crucial that States Parties, acting via the CoP, are empowered to establish MPAs with a management plan and associated protective measures without relying on external bodies for implementation. To this end we recommend removing the lack of "relevant" bodies as a condition for State Parties to adopt measures. This would be the only way to enable the new BBNJ Agreement to establish fully protected marine reserves when necessary to achieve the objectives of the area, to effectively address existing fragmentation, and ensure coherent protection. Competent bodies will be closely involved in the development of the management plan/measures via the consultation process, providing expertise and data, so that their competence will not be

undermined, but the final decision should rest with States Parties within the CoP. This would be in line with the inherent power of States under international law to regulate their own vessels, nationals, and activities and give effect to their general duty to protect and preserve the marine environment.

To future-proof the Agreement, it is also essential to enable the CoP to establish new types of ABMTs that are not under the competence of existing organisations, such as ocean noise mitigation areas, or to complement measures adopted by other bodies so to ensure that the Agreement can deliver comprehensive and effective protection well into the future.

#### **VIII. No time-bound MPAs (Art. 17(g) and Art. 21)**

High Seas Alliance is firmly against setting arbitrary duration of MPAs, which are inherently long-term conservation tools. However, based on a review from the Scientific and Technical Body, the MPA could be amended to ensure that it is always fit to meet its objectives. One option could allow for associated protective measures to be amended or revoked when justified by science. However, we strongly discourage the automatic termination of the MPA itself, as its conservation objectives are long-term and areas can be established for scientific reference purposes.