



What does ambition look like for the High Seas Treaty? 2023

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. Just recently in the Kunming-Montreal Global Biodiversity Framework the world's governments supported the target to **protect at least 30% of our global ocean by 2030**. Currently, only 1.2% of the high seas is protected; this **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 resumed 5th Intergovernmental Negotiating Conference in 2023 (20th February-3rd March)**, 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.

Area Based Management Tools (ABMTs) including 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, climate change and their cumulative impacts. Currently, there is no legal mechanism to establish comprehensively protected MPAs beyond national boundaries. To ensure a truly transformative High Seas Treaty that takes us beyond the status quo and can deliver the 30x30 target it needs to include the following:

- the **mandate to establish** and effectively manage a **network of representative and well-connected MPAs**, including fully protected marine reserves, following scientific recommendations;
- the ability to **give full authority to the Conference of the Parties (COP) to establish MPAs with a management plan and concrete measures** to achieve their objectives, without having to defer to regional or sectoral organizations with limited mandates and that undertake disparate measures that do not address the cumulative, cross-sectoral and climate-related impacts of human activities in the high seas; and
- **the possibility to empower State Parties to adopt emergency measures** to enable the COP to react quickly in emergency situations and take action to ensure that adverse impacts from

natural phenomena or human-caused disasters do not have a significant adverse effect on biodiversity in ABNJ.

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 **robust, modern environmental assessment and management requirements** for proposed activities that may have a **minor or transitory effect** or greater on marine biodiversity beyond national jurisdiction;
- require activities that may affect marine biodiversity in ABNJ, regardless of where they take place, are assessed and managed to **prevent significant adverse effects**;
- ensure the interests of the international community as a whole are represented by:
 - requiring **review of EIAs and monitoring reports** by the scientific body established in the Treaty, giving the COP **review and decision-making authority** over whether a proposed activity may proceed when anticipated effects exceed the threshold;
 - providing for the development of **strategic environmental assessments** by the COP where appropriate; and
 - **promoting the adoption of the Treaty's EIA provisions** by regional and sectoral organizations.

Marine Genetic Resources

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 including monetary benefit sharing, given its relationship to the development of scientific, technical, technological and other capabilities of developing countries; and
- flexibility towards monetary benefit sharing will likely facilitate higher ambition in other parts of the Treaty.

Capacity Building and the Transfer of Marine Technology (CBTT)

Effective implementation of the Treaty requires all countries to have the capability to implement its provisions as they seek to conserve and protect marine biodiversity, while fulfilling their international legal obligations. An ambitious Treaty should include provisions for capacity building and transfer of marine technology that ensure countries, particularly developing and small island nations, have the resources, expertise and skills to fully benefit from the treaty. This includes:

- a robust mechanism, such as a Committee, to **evaluate the effectiveness of implementation measures; monitor and review** CBTT activities; and to identify and **address capacity needs and gaps**;
- a **strong needs assessment component**, implementable at the national, regional and global levels, taking into account the challenges and vulnerabilities of all countries;
- a clear pathway for developing modalities for delivering CBTT, that would include **broad stakeholder involvement** and facilitate international partnerships; 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. They include:

- **Competence:** it is recognized that the Treaty should “not undermine” existing sectoral, regional and international 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 Conference of Parties 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 enters into force as soon as possible, to enable the international community to meet their present and future global conservation targets.
- **Robust institutional framework:** the Agreement must have effective modern bodies such as a **Conference of the Parties** able to make necessary decisions, an **Implementation and Compliance Committee** to ensure the Treaty’s provisions are adequately implemented and enforced, **flexible and effective dispute resolution** and other relevant subsidiary bodies. 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.

