



## HIGH SEAS TREATY Q & A

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On the 4<sup>th</sup> March 2023, after almost two decades of discussion, including 5 years of negotiations, the world's governments finalized a new United Nations Treaty for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ). This new Treaty addresses many of the governance gaps that have plagued the ocean, setting out clearer ways to conserve biodiversity in the High Seas.

Below is an overview of some of the key questions and answers regarding this new High Seas Treaty.

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## Why is this High Seas Treaty such a historic win?

- With this new Treaty, **Ocean governance has finally been updated to the 21st century** for over 60% of the ocean that make up the High Seas.
- It **sets up a new framework to establish High Seas marine protected areas (MPAs)**- that previously did not exist for MPAs to be established in most parts of the High Seas.
- While the agreement does not by itself protect 30% of the High Seas, it does finally provide a legal pathway to establishing High Seas MPAs. This will be a key contribution to achieving at least 30% marine protection by 2030.
- The Treaty will also give the international community as a whole a **greater say in decisions regarding activities that could harm High Seas marine biodiversity, establishing basic modern requirements for assessing and managing planned human activities** affecting marine biodiversity in this area.
- It has also agreed regulations to ensure the fair access and sharing of benefits related to marine genetic resources (MGRs), as their existence was unknown when the Law of the Sea Convention (UNCLOS) was originally negotiated.
- **Provisions were also agreed to enhance capacity building and technology transfer (CBTT) for developing countries for marine biodiversity in areas beyond national jurisdiction.**
- **It establishes a Conference of Parties (COP)** and other institutional bodies, such as a **Scientific and Technical Body**, and an **Implementation and Compliance committee** and specialized committees.
- These will act as a platform to work with existing authorities that regulate fishing, shipping and mining to advance conservation and sustainable use of High Seas marine biodiversity.
- **Provides for voting within its decision-making provisions- this is a clear win** to ensure the effectiveness of the Treaty that decisions on key measures can be voted on if consensus can not be found, with a general  $\frac{2}{3}$  vote and a  $\frac{3}{4}$  majority for decisions on establishing MPAs and issues related to MGR monetary benefit sharing.

## What was agreed specifically on:

### AREA-BASED MANAGEMENT TOOLS (ABMTs) INCLUDING MPAs

- The Conference of Parties is **empowered to establish MPAs** in the High Seas and associated management measures with the goal of establishing a connected network of High Seas MPAs. This includes the development of a new body to consider a MPA management plan.
- **MPAs can be adopted by a vote** when consensus cannot be reached. This prevents any single nation from having a veto on the establishment of these important conservation areas.
- The MPA definition confirms that **MPAs should have a \*conservation\* objective** and further confirms that any sustainable use activities that happen within an MPA should only happen as appropriate and only as long as they are consistent with the conservation objectives.

- The Agreement **supports developing countries through capacity building and the transfer of marine technology** so that they are better empowered to develop, implement, monitor, and manage future High Seas MPAs.
- **Action can be taken in emergency situations**, to respond more swiftly to natural- and human-caused disasters.

## ENVIRONMENTAL IMPACT ASSESSMENTS (EIAs)

- New activities on the High Seas, such as large scale geoengineering proposals, High Seas aquaculture and other new activities, will be subject to **detailed public notice, consultation and comment provisions** and required to be managed to avoid significant adverse effects.
- The Treaty establishes a **decision making standard** that requires activities affecting High Seas biodiversity -- both new activities and ones conducted under existing bodies -- are managed to prevent, mitigate or manage significant adverse effects.
- The new Treaty provides for much **greater transparency** when an activity conducted within national jurisdiction may have impacts on the High Seas.
- The Treaty will help inject **more accountability** for certain activities by allowing the Scientific and Technical Body established under the Treaty to review EIAs as well as decisions not to prepare assessments. This will help deter inadequate or sham environmental assessments.
- The Treaty also requires the **formulation of standards and guidelines for EIAs** in ABNJ to help harmonize and improve EIA provisions.
- The Treaty provides **support for developing nations' participation** in environmental impact assessment, so that they can engage effectively in ocean governance.
- The EIA process will, over time, contribute to our knowledge of the ocean environment and human activity taking place there, through **information collected during assessment and monitoring of activities** that have been approved.
- The Treaty will encourage larger scale ocean planning by **enabling Strategic Environmental Assessments**.
- States party to the Treaty will have to **promote the use of EIAs and adoption and implementation of the standards and guidelines** developed by the Scientific and Technical Body in other bodies.

## MARINE GENETIC RESOURCES (MGRs)

- MGRs are the genetic material of any plant, animal or microbes. MGRs, as well as their digital version (Digital Sequence Information- DSI), and derivatives, all covered in the agreement, have attracted substantial interest from science and industry for example to develop new drugs or cosmetics.
- At its heart, the MGR section, Part II, aims **to balance the freedom of marine scientific research with fair & equitable sharing of benefits**.
- It contains **obligations for States to share** both **non-monetary** benefits - for example access to samples and increased scientific cooperation - **as well as monetary benefits for both MGRs and DSI**.
- Monetary benefit sharing will initially take the form of an **annual payment** by developed states calculated on the basis of their assessed contributions, but the COP can adopt alternative modalities, for example a payment linked directly to the value

of sales of products of MGR & DSI from areas beyond national jurisdiction, in the future.

- It also establishes a **notification system** to inform and monitor the implementation of these obligations and an access & benefit sharing mechanism to provide recommendations on the further development of the benefit sharing system.
- Parties are required to submit **notifications on activities with respect to MGRs and DSI** before and after a vessel departs as well as when these resources are later utilized to the Clearing House Mechanism. It will create a special type of digital tag that accompanies the information along the chain of custody to ensure transparency and monitoring.
- Both the non-monetary and monetary benefits are shared with the **objective to improve the capacity** of Parties, in particularly developing States, **for the conservation and sustainable use of areas beyond national jurisdiction**.
- The monetary benefits from the MGR section will provide a **predictable funding stream from the get-go** to support capacity building projects and assist developing State Parties with implementation.

#### CAPACITY BUILDING AND TECHNOLOGY TRANSFER

- The Treaty will provide **funding for capacity building and implementation**, to help developing countries implement the Treaty, encourage cooperation, develop marine science and technical capability, as well as promote access to technology on fair terms
- These include:
  - **sharing of data**
  - **research facilities and collaboration**
  - **institutional capacity**
  - **national regulatory frameworks**
  - **tools for monitoring and compliance**
  - **information dissemination and awareness-raising**
  - **respecting relevant traditional knowledge** of Indigenous Peoples and local communities
  - development and strengthening of relevant **infrastructure**, including **equipment and personnel**
  - **tools for effective monitoring, control and surveillance** of activities relevant to BBNJ.
- A **Capacity Building and Transfer of Marine Technology Committee** will be established to oversee this aspect.

#### FINANCE

- Institutions will be funded through **assessed contributions of the Parties**.
- A **mechanism for new and additional funding will also be established**.
- The COP will develop an **initial resource mobilization goal through 2030** for the special fund from all sources.
- There will also be a:
  - **Voluntary trust fund;**

- o **Special fund funded through MGR** (annual flat fee; monetary benefit-sharing) and contributions from private enterprise, donors, and the Global Environment Facility; and
- o **Finance committee on financial resources**

## Does the new High Seas Treaty place 30% of the world's international waters into protected areas by 2030?

- No, this new Treaty **does not by itself protect 30% of the High Seas**. What it does do is **provide the rules and process that were previously lacking to establish MPAs** on the High Seas.
- The Treaty **needs to be ratified by 60 countries first**, and then Parties to the Treaty will be able to make MPA proposals that will need to be adopted by the Conference of Parties to the Treaty that makes up all the countries that have ratified the agreement.
- As the High Seas make up two thirds of the Ocean, it is important to ensure large areas are also protected, which will be a key contribution to achieving the 30x30 target.

## Does the Treaty exclude existing bodies and activities such as fishing, mining?

- Yes and no. There is not a black and white legal answer.
- The new Treaty **does not legally bind existing bodies, but it doesn't exclude them either**.
- The Treaty has **been agreed so that it does not "undermine" existing bodies**, such as regional fisheries management organizations. There are several provisions that outline the relationship with these other "global, regional, subregional and sectoral bodies".
- While the Treaty cannot impose decisions directly onto these bodies, what it can do is **provide a space and platform for these different sectoral organizations to all come together** to think about these places from a cross-sectoral, cumulative perspective, and, hopefully, adopt a coordinated and coherent approach to the management of these important places.
- It requires countries that are party to the High Seas Treaty to endeavor to **promote the objectives of the Treaty when participating in these other bodies**. This includes promoting the adoption of relevant measures to support the establishment of marine protected areas.
- This new Treaty will therefore put increased political pressure for parties to act consistently within the different bodies.

## Can existing bodies already responsible for regulating activities (such as fishing, mining, shipping) on the High Seas carry on regardless of anything EIA-related under the Treaty?

- Yes and no.
- There is a potential loophole that exempts further Environmental Impact Assessment (EIA) obligations if existing bodies have their own EIA regulations. This raises concerns that these assessments will not be as rigorous as the standards developed under the Treaty.
- Also, in the section in the new Treaty that talks about the relationship between this Agreement and EIA processes within other bodies, **Parties are urged to promote the use of EIA standards and guidelines that have been developed under the Treaty in other bodies that they are members of.** This will hopefully help strengthen EIA provisions.
- There is also a request for the Scientific and Technical Body that will be set up under this new Treaty to work with other bodies to help harmonize and improve EIA standards.
- Furthermore, there are also provisions that **require greater transparency**, including that EIA reports conducted under another body be published through a “clearing-house mechanism”- which is an information exchange portal. This will hopefully help inject increased transparency and with it, accountability.

## Does this Treaty set new rules and regulations for mining at sea?

- This new Treaty **does not set rules and regulations for mining** at sea. It will also not on its own stop deep-sea mining from beginning in the ocean.
- This new Treaty **does however cover the conservation of marine biodiversity, including marine genetic resources, on the seabed** in areas beyond national jurisdiction. This means that there are also certain obligations and procedures that countries that will be party to both the High Seas Treaty and the International Seabed Authority (ISA) (that regulates deep-sea mining in that area) need to follow once the Treaty comes into force:
- They are specifically **required to promote the objectives of the Treaty when participating in International Seabed Authority (ISA) decision-making**, and parties to the ISA and the Treaty are required to cooperate with the High Seas Treaty.
- With respect to deep-sea mining, just like other activities that fall under an existing body, **Parties would need to ensure that the ISA follows EIA procedures laid out in the Treaty.**
- As the ISA does not yet have binding regulations or standards regarding EIAs for deep-sea mining activities, **Parties will be required to cooperate and coordinate within the ISA to ensure that EIAs are carried out consistently with the High Seas Treaty.**

- There will also be a **greater level of transparency** required- for example, EIAs for ISA should also be published on the High Seas Treaty clearing-house mechanism and monitoring results should also be reported.
- Regarding establishing MPAs under the new High Seas Treaty that cover the seabed, parties will need to **promote the adoption of relevant measures** within the ISA, and ensure that their ISA activities that take place on the High Seas are conducted consistently with the decisions adopted under the High Seas Agreement.

## How will High Seas MPAs be set up?

- A state or group of **states will submit a proposal for an MPA**. The agreement sets out key information that will need to be included in that proposal—including an identification of the area to be protected, the threats it faces, and a draft management plan with proposed management measures.
- That proposal will then undergo a **consultation process**—where stakeholders will have an opportunity to review and comment on the proposal.
- The proponent will then **consider the input** received during the consultation process and may revise the proposal if appropriate.
- The **Scientific and Technical Body would then review** and assess the MPA proposal and provide a recommendation to the decision-making body.
- And then the **COP would decide** whether or not to establish the MPA, ideally by consensus. If that can't be found, proposals need a  $\frac{3}{4}$  majority to be adopted.
- The text also provides **guidelines for implementation, monitoring, and review** of MPAs established.

## What's next for the High Seas Treaty?

### Adoption

- The first and most important and urgent thing to do is for all parties to the UN to **adopt the Treaty text**.
- This is a formality – lawyers will first “scrub” the text and then it will be translated into the 6 official UN languages, for it to be adopted by the States.

### Ratification

- Ratification is essentially when nations formally consent to the new international law, and this often entails ensuring that their national laws are consistent with it.
- **60 countries need to ratify** the High Seas Treaty for it to come into force.
- The **High Ambition Coalition of 52 nations should take the lead** with ratification and ensure we can bring it into force by the next United Nations Ocean Conference in June 2025 in Nice, France, which France is already signaling is a good ambition.

### Institutional set up

- The High Seas Treaty will fill a huge hole in our ability to govern and protect biodiversity beyond national jurisdiction, but it will require some important **institutional arrangements that need to be set up**, including the Secretariat, the

Scientific and Technical Body, the Conference Of Parties (COP), the Implementation and Compliance Committee, and funds for finance.

### Identifying and proposing MPAs

- The High Seas support an incredible abundance of marine life, providing migratory routes for whales and sharks, and harbouring remarkable ecosystems such as deep-water corals, but only 1% of the High Seas are protected, so we need to get started on fixing this as soon as possible.
- While ratification is confirmed among states, **new High Seas MPAs can be investigated and proposals developed** so that they are ready for the first COP to be voted on.
- The High Seas Alliance has already identified 8 areas that could make up the first generation of MPAs including **Emperor Seamounts, Sargasso Sea and Salas y Gomez and Nazca Ridges**. Learn more at <https://mpa.highseasalliance.org/>