



A legally binding instrument for conservation of marine biodiversity on the high seas

In December 2017, the UN General Assembly decided to begin formal negotiations through an intergovernmental conference to develop a new internationally legally binding instrument under the UN Convention on the Law of the Sea (UNCLOS) for the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction (ABNJ).¹ This is the first global treaty process related to the ocean in over two decades and the only one targeted specifically at the protection of marine biodiversity in ABNJ.

Bolstering UNCLOS for the 21st century

UNCLOS is recognized as the constitution for global ocean governance. However, UNCLOS lacks specific requirements needed to ensure effective implementation of its general obligations to protect the marine environment and its living resources. To address this, two 'implementing agreements' have been developed to elaborate upon UNCLOS' general requirements; one on fishing and another on seabed mining.² The new instrument (treaty) will be the third such implementing agreement.

The new treaty will establish a global framework to conserve and manage biodiversity of the high seas, which constitute almost two-thirds of the global ocean and covers nearly half of the planet. This area faces increasing threats from multiple sources, including chemical, noise and plastic pollution, overfishing and destructive fishing practices, and new and emerging uses, all of which are compounded by the effects of climate change and ocean acidification. In addition to addressing these threats, the new treaty will address marine genetic resources in ABNJ, including questions on the sharing of benefits, as well as capacity building and the transfer of marine technology.

Gaps in high seas governance

At present, there is no global mechanism to establish marine protected areas (MPAs), including fully protected reserves on the high seas, nor are there uniform requirements governing the conduct of environmental impact assessments (EIAs) and strategic environmental assessments (SEAs), under which human activities and their individual and cumulative impacts can be assessed in a comprehensive manner.

MPAs are essential tools to help maximize the resilience of the ocean in the face of climate change, ocean acidification, and increasing human activity. To date, efforts to establish MPAs on the high seas have faced huge obstacles, largely due to the lack of an MPA framework over vast areas of the high seas. Regional fisheries management organizations (RFMOs) are only able to regulate the specific fisheries within their remit and in their convention areas; they do not have the mandate to set up broader MPAs or to control other threats such as pollution, mining, or shipping to the ocean. Today, less than 1 percent of the high seas is a designated MPA.³

For those areas of the ocean that are not protected as MPAs, it is critical that the individual and cumulative impacts of human activities be assessed and managed in a way that maintains the integrity of the ocean environment. Uniform standards for EIAs and SEAs, along with a robust institutional mechanism to coordinate, oversee, and review EIAs, are essential.

In addition to MPAs and EIAs, there are other gaps in the current ocean governance regime that need to be addressed in the new treaty:

- there is no global institutional mechanism for the operationalization of modern principles of environmental management, such as the precautionary principle, ecosystem-based management, and cross-sectoral management, including global cross-sectoral monitoring, control and surveillance, and an enforcement/compliance mechanism for human activities in ABNJ;
- there is no framework for access to, and benefit sharing of, marine genetic resources in ABNJ;
- there is no framework for global coordination and cooperation among existing regional and global competent organizations; and
- the provisions in UNCLOS on technology sharing and capacity building are not adequately addressed and implementation mechanisms are needed.

The path to a treaty

UN Resolution 72/249 establishes an intergovernmental conference to negotiate the new instrument (treaty) through a series of four two-week negotiating sessions to take place at UN Headquarters. The first substantive meeting is scheduled for September 2018, with two additional sessions

in 2019, and a fourth session in the first half of 2020.

Over the next two years, governments will carefully explore and negotiate legal text on the range of options and detailed proposals on the treaty elements.

The High Seas Alliance is committed to working with States towards the adoption and ratification of a comprehensive treaty to protect the world's ocean beyond national jurisdiction.

High Seas Alliance: Who We Are

The High Seas Alliance (HSA) is a partnership of organizations aimed at building a strong common voice and constituency for the conservation of the high seas. Since 2011, our members have been working together and as individual organizations to (i) facilitate international cooperation to improve ocean governance and (ii) ensure the protection and preservation of the marine environment, including through the conservation and sustainable use of marine biodiversity in ABNJ and the establishment of high seas MPAs and marine reserves through a new legally binding treaty under UNCLOS.

FOOTNOTES

1. ABNJ include the high seas as well as the deep seabed, known as 'the Area'.
2. Namely, the Agreement Relating to the Implementation of Part XI of the Convention, which establishes 'the Area' and concerns deep seabed mining, and the 1995 UN Fish Stocks Agreement on straddling and highly migratory fish stocks.
3. One MPA has been established in Antarctica. Another has been designated in the North Atlantic but it does not address all users or fully protect the area.

