HIGH SEAS TREATY

FREQUENTLY ASKED QUESTIONS

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On 4 March 2023, after almost two decades of discussion, including five years of negotiations, the world's governments finalized the text of a new United Nations (UN) Treaty for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ), under the UN Law of the Sea Convention (UNCLOS). After the text was legally "scrubbed" and translated into the six official UN languages, the final Treaty text was formally adopted by Member States at the UN on 19 June 2023.

For the Treaty to become international law, it must be signed and ratified by at least 60 countries. The 60th country to ratify will trigger a 120-day countdown, after which the Treaty will enter into force.

Once it becomes law, the new High Seas Treaty can be used to address many of the governance gaps that have plagued the ocean by setting out clearer ways to conserve biodiversity in the High Seas. For example, it will enable the international community to conduct consistent environmental impact assessments (EIAs) of activities that could harm marine life and establish the first High Seas marine protected areas (MPAs).

Below is an overview of some of the key questions and answers regarding the Treaty and the process for its entry into force.

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What are the High Seas?
The High Seas are the international waters that cover over two thirds of our ocean - that is nearly 50% of the planet's surface area. This ocean area lies outside countries' national jurisdictions. It is part of a global common and is governed collectively by all nations.

Why are the High Seas important?
This global common is critical for maintaining the health of the entire ocean. Once thought to be barren and devoid of life, it is now known that the High Seas are one of the largest reservoirs of biodiversity on Earth and are a crucial component in all Earth's systems (such as the hydrosphere and biosphere) and cycles (such as carbon and water cycles), providing a multitude of ecosystem services including climate regulation. As an example, estimates of the economic value of carbon storage by the High Seas range from US$74 billion to US$222 billion per year.

What are the threats facing the High Seas?
Increasing impacts from human activity continue to negatively affect biodiversity on the High Seas. For example, fish stocks are in trouble because dwindling stocks nearer to shore drive boats further to sea for fish. Destructive fishing practices, such as bottom trawling, and illegal fishing are threatening High Seas marine life. The impacts on marine life of additional threats (e.g., noise, plastic and chemical pollution, shipping, and new and emerging activities such as seabed mining) are adding further concern, compounded by acidifying and warming waters due to the climate crisis.

Why is this High Seas Treaty such an historic win?
With this new Treaty, ocean governance will finally be updated to the 21st century for over 60% of the ocean that makes up the High Seas. Once it becomes international law, the Treaty will

give the international community a greater ability to protect the High Seas by establishing basic modern requirements for assessing and managing planned human activities that could harm High Seas life. In addition, it will finally provide a legal pathway to establish the first High Seas MPAs. This will be a key contribution to achieving the global target of at least 30% marine protection by 2030.

In addition, the Treaty:

- Ensures the fair access and sharing of benefits related to marine genetic resources (MGRs). The existence of MGRs was unknown when the UN Law of the Sea Convention (UNCLOS) was originally negotiated.
- Enhances capacity building and technology transfer (CBTT) for developing countries for marine biodiversity in areas beyond national jurisdiction.
- Establishes a Conference of Parties (CoP) and other institutional bodies, such as a Scientific and Technical Body, 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 on key measures if consensus cannot be found, with a general two-thirds vote and a three-quarters majority for decisions on establishing MPAs and issues related to MGR monetary benefit sharing.

For more information please see the High Seas Treaty factsheet.

What was specifically agreed?

AREA-BASED MANAGEMENT TOOLS (ABMTs), INCLUDING MPAs

The Treaty's CoP 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. Significantly, MPAs can be adopted by a vote when consensus cannot be reached. This prevents a single nation preventing the establishment of these important conservation areas. 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. Under the Treaty, the international community can take action in emergency situations and can, thereby, 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 to High Seas marine life. These provisions include:

- A decision-making standard that requires activities affecting High Seas biodiversity – both new activities and those conducted under existing bodies – are managed to prevent, mitigate or manage significant adverse effects.
- Greater transparency over activities that are conducted within a national jurisdiction that

may have negative impacts on the High Seas.

- More accountability for certain activities by allowing the Scientific and Technical Body established under the Treaty to review EIAs, and to question decisions taken not to prepare EIAs. This will help deter inadequate or fake EIAs.
- The formulation of standards and guidelines for EIAs in ABNJ to help harmonize and improve EIA provisions.
- The provision of support for developing nations' participation in EIAs, so that they can engage effectively in ocean governance.
- That 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 encouragement of larger scale ocean planning by enabling Strategic Environmental Assessments.

States that are 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 microbe. MGRs, as well as their digital version (Digital Sequence Information - DSI) and derivatives have attracted substantial interest from science and industry, for example to develop new drugs or cosmetics. At its heart, the MGR section of the Treaty aims to balance the freedom of marine scientific research with fair and equitable sharing of benefits through:

- Obligations for States to share both non-monetary benefits – for example, access to samples and increased scientific cooperation – as well as monetary benefits of sales of products of MGR and DSI from areas beyond national jurisdiction in the future.
- The establishment of a notification system to inform and monitor the implementation of these obligations and an access and benefit sharing mechanism to provide recommendations on the further development of the benefit sharing system.
- A requirement to submit notifications to the Clearing House Mechanism on activities with respect to MGRs and DSI before and after a vessel departs, as well as when these resources are later utilized. It will create a special type of digital tag that accompanies the information along the chain of custody to ensure transparency and monitoring.
- The improvement of the capacity of Parties, in particular developing States, for the conservation and sustainable use of areas beyond national jurisdiction.
- Providing a predictable funding stream from the get-go through the monetary benefits from the MGR section 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 to 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 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 of the Treaty.

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 and a Special Fund, funded through MGRs (annual flat fee; monetary benefit-sharing) and contributions from private enterprise, donors and the Global Environment Facility; and a Finance Committee on financial resources.

Does the new Treaty place 30% of the High Seas into protected areas?

In itself, the new Treaty does not protect 30% of the High Seas. It does, however, provide the rules and process that were previously lacking to establish MPAs on the High Seas. Once it has entered into force, 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 protected, which will be a key contribution to achieving the 30x30 global 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 neither does it exclude them. The Treaty has been agreed so that it does not "undermine" existing bodies, such as regional fisheries management organizations (RFMOs). There are several provisions that outline the relationship with these other "global, regional, subregional and sectoral bodies". While the Treaty cannot impose decisions directly on these bodies, it can provide a space and platform for these different sectoral organizations to come together to consider important High Seas areas from a cross-sectoral, cumulative perspective and, hopefully, to adopt a coordinated and coherent approach to their management. 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 MPAs. This new Treaty will, therefore, put increased political pressure on Parties to act consistently within the different bodies.

Will existing bodies responsible for regulating activities on the High Seas be affected by the new EIA provisions?

Yes and no.

There is a potential loophole that exempts further EIA obligations if existing bodies have their

own EIA regulations. This raises concerns that these assessments will not be as rigorous as the new standards developed under the Treaty. However, Parties are urged to promote the use of the EIA standards and guidelines that have been developed under the Treaty in other bodies of which they are members. This will, hopefully, help strengthen EIA provisions. There is also a request for the new Scientific and Technical Body 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 should help inject increased transparency and accountability.

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

The High Seas Treaty does not set rules and regulations for mining at sea, and it will not stop deep-sea mining from beginning in the ocean on its own. It does, however, address the conservation of marine biodiversity, including MGRs, on the seabed in areas beyond national jurisdiction. This means that there are certain obligations and procedures which countries that are Parties to both the High Seas Treaty and the International Seabed Authority (ISA) (that regulates deep-sea mining) must follow once the Treaty comes into force. Parties to the ISA and the Treaty are specifically required to promote the objectives of the Treaty when participating in ISA decision-making and 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 the EIA procedures laid out in the Treaty.

The ISA does not yet have binding regulations or standards regarding EIAs for deep-sea mining activities. Therefore, 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 be published on the High Seas Treaty clearing-house mechanism and monitoring results should be reported.

Regarding the establishment of High Seas MPAs that cover the seabed, Parties will need to promote the adoption of relevant measures within the ISA and ensure that ISA activities that take place on the High Seas are conducted consistently with the decisions adopted under the High Seas Treaty.

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.

Proposals will undergo a consultation process, during which stakeholders will have an opportunity to review and comment. The proponent will 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. Next, the CoP would decide whether or not to establish the MPA, ideally by consensus. If consensus cannot be reached, a proposal would need a three-quarters majority to be adopted. The Treaty text also provides guidelines for the implementation, monitoring and review of MPAs established.

How does the High Seas Treaty become international law?

SIGNING

The Treaty text specifies that this Agreement shall be open for signature by all States from 20 September 2023 and will remain open for signature at the UN Headquarters in New York until 20 September 2025. Once this period has past, States can join by acceding to the Agreement. Accession refers to the act whereby a State expresses its consent to be bound by an Agreement. This can take place after a Treaty has entered into force.

Signing the Treaty does not establish consent for States to be bound to the Treaty. What it does is express the willingness of the signatory State to continue the treaty-making process and for it to proceed to ratification. Signing also creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the Treaty. Following signature, countries can ratify the Agreement at any time.

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. The speed and process to ratify varies by country. In some countries, the act of ratification is simply a Leader's decree, while in others Parliamentary approval is needed. At least 60 countries need to ratify the High Seas Treaty for it to come into force. The High Seas Alliance is calling on countries to fast-track ratification so that the Treaty comes into force by 2025.

ENTRY INTO FORCE

The Treaty will come into force 120 days after the 60th country has ratified. The first meeting of the CoP will then be convened by the Secretary-General of the UN no later than one year after the entry into force of the Agreement. After that, the CoP will meet at regular intervals, the timeline of which is still to be decided.

TREATY INSTITUTIONS SET-UP: THE NEED FOR A "PREPCOM"

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 CoP, the Implementation and Compliance Committee, Access and Benefit Sharing Committee, Capacity-Building and Transfer of Marine Technology Committee and funds for finance.

To facilitate the establishment of these important institutions, the High Seas Alliance recommends that a Preparatory Commission (PrepCom), made up of country representatives, is set up to enable the High Seas Treaty to do its substantive work. PrepComs are often established after the signing of international agreements to prepare for their entry into force and to help speed up the process of getting a Treaty up and running, and functionally effectively. A PrepCom could:

- Prepare agenda for the 1st session of the CoP
- Prepare draft rules of procedure for the CoP
- Make recommendations on the budget
- Make recommendations on establishing relationships between BBNJ and IFBs
- Make recommendations with respect to the Secretariat; make studies and

recommendations on the headquarters and Secretariat

- Prepare the draft rules, regulations, procedures needed to start functions, including financial regulations.
- Prepare a final report
- Expenses could be met from the regular budget of the UN subject to UNGA approval
- Secretariat services could be provided by DOALOS

IMPLEMENTATION - IDENTIFYING AND ESTABLISHING MPAS

The High Seas support an incredible abundance of marine life, providing migratory routes for whales and sharks, and harboring remarkable ecosystems such as deep-water corals. However, only around 1% of the High Seas are protected, so we need to get started on fixing this as soon as possible. During the process of ratification among States, new High Seas MPAs can be investigated, and proposals developed so that they are ready to be voted through at the first CoP.

The High Seas Alliance has already identified eight areas that could make up the first generation of High Seas MPAs, including the Emperor Seamounts, the Sargasso Sea and the Salas y Gomez and Nazca Ridges. Learn more at https://mpa.highseasalliance.org/