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Synergies between the Convention on Biological Diversity and the High Seas Treaty

Introduction

Over the past couple of years, the international community has made historic strides to advance the conservation and sustainable use of marine biodiversity. At the United Nations (UN) Convention on Biological Diversity (CBD) 15th Conference of the Parties (CoP15) in December 2022, countries agreed to a new global plan to tackle biodiversity loss; the Kunming-Montreal Global Biodiversity Framework, or KM-GBF. The plan includes an ambitious target to protect at least 30% of the ocean by 2030 (30x30). A few months later, in June 2023, UN Parties adopted the High Seas Treaty[1], which establishes a legal framework to create area-based management tools (ABMTs), including marine protected areas (MPAs) in two-thirds of the ocean that lie in areas beyond national jurisdiction (ABNJ).

The ocean is an interconnected system, from coastal waters to the deep and High Seas. Effective implementation of the CBD, its KM-GBF, the High Seas Treaty, and the Paris Agreement will form the cornerstone of global efforts to mitigate the impacts of the biodiversity and climate crises on the ocean.

This briefing outlines the synergies between the CBD, its KM-GBF, and the High Seas Treaty, emphasizing the importance of seamless coordination and complementarity between the two agreements to accelerate the effective protection of the global ocean's biodiversity.

What is the High Seas Treaty?

In March 2023, after extensive negotiations, governments finalized the Agreement under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction (also known as

[1] The High Seas Alliance (HSA) sometimes uses the term "High Seas Treaty" as a short-hand for the BBNJ Agreement. HSA acknowledges that the scope of the BBNJ Agreement encompasses all Areas beyond national jurisdiction, including the seafloor and water column. This choice of wording is intended to ease understanding for broad audiences and does not convey a prioritization among the components or principles of the BBNJ Agreement.

the biodiversity beyond national jurisdiction (BBNJ) Agreement, or High Seas Treaty)[2]. This Treaty, seen as pivotal in addressing critical global ocean governance gaps and challenges, was adopted in June 2023 and opened for signature on 20 September 2023. It will enter into force 120 days after 60 countries have ratified it. Until then, signatories to the Treaty are obliged to refrain from actions that would undermine its objectives.

The Treaty promotes the effective implementation of UNCLOS provisions related to biodiversity conservation and sustainable use and fosters the principles of international cooperation and coordination. It provides the tools to conserve and manage biodiversity in the High Seas through ABMTs, including MPAs, and more consistent environmental impact assessments (EIAs). It also promotes greater equity among nations through capacity building, marine technology transfer, financing, and fair access to and benefit sharing of marine genetic resources. Its provision to enable Parties to vote on key decisions if the process to reach a consensus has been exhausted has been hailed as a key success factor for the Agreement.

What is the CBD and its Global Biodiversity Framework?

The CBD[3], with its 196 Parties, is a key instrument for global efforts to conserve and sustainably use biodiversity on both land and sea. It applies to biodiversity in areas within national jurisdiction as well as "*processes and activities, regardless of where their effects occur, carried out under its jurisdiction or control, within the area of its national jurisdiction or beyond the limits of national jurisdiction*"[4]. Its three key objectives are: 1) to ensure the conservation of ecosystems, species, and genetic diversity; 2) to promote the sustainable use of biodiversity; and 3) to ensure the fair and equitable access and the sharing of benefits arising from the use of genetic resources.

To achieve these objectives, Parties to the CBD agreed on the KM-GBF in December 2022 and set 23 ambitious targets to protect life on Earth, including the protection of at least 30% of the world's ocean (including in areas beyond national jurisdiction) by 2030 (the 30x30 Target, or Target 3). The Framework emphasizes the rights of Indigenous Peoples and Local Communities (IPLCs), species extinction reduction, capacity building, technology transfer, mainstreaming biodiversity into policies and decisions, and closing the biodiversity finance gap. It also includes a robust Monitoring Framework[5] to ensure effective implementation and requires Parties to the CBD to develop national action plans that outline how they will implement the GBF.

Synergies between the CBD and the High Seas Treaty

The near-universal membership of 196 Parties demonstrates the CBD's importance as a global forum for States to address biodiversity challenges. It is now essential that governments work together to implement their commitments. The CBD's CoP has recognized its "*key role in supporting the work of the General Assembly*" on High Seas MPAs,

[2] https://www.un.org/bbnjagreement/en.
[3] https://www.cbd.int/.
[4] Article 4: Jurisdictional scope: https://www.cbd.int/convention/articles/default.shtml?a=cbd-04.
[5] GBF Monitoring Framework: https://www.cbd.int/gbf/related/monitoring.

providing scientific and technical information and advice[6]. The CBD Secretariat has been tasked with identifying collaboration opportunities with the High Seas Treaty, resulting in a document to inform discussions on different scientific and technical work that the CBD has undertaken[7].

Both agreements focus on the conservation and sustainable use of biodiversity. The CBD, having been in force for more than 30 years, offers a wealth of scientific and technical knowledge, tools, experience, and community of practice that will be invaluable in informing the establishment and implementation of the High Seas Treaty. Key areas of synergy include capacity building, scientific knowledge and tools, technology transfer, clearing house mechanisms, marine genetic resources, digital sequence information, and financing[8].

Furthermore, many of the GBF targets align with the High Seas Treaty's objectives. Effective implementation of these targets, both within and beyond national waters, will benefit ocean biodiversity globally. Once in force, the new High Seas Treaty will play a crucial role in achieving the GBF's goal to protect and restore nature, including accelerating the designation of High Seas MPAs, which will be critical for achieving the 30x30 target.

Relevance of CBD tools and expertise to the High Seas Treaty

The CBD has significant scientific and technical expertise and tools that are relevant to the successful implementation of the High Seas Treaty's key provisions. This includes a wealth of data and specific criteria and guidance on a number of relevant issues that will all feed into the effectiveness of the Treaty. For example:

Ecological and Biological Significant Marine Areas (EBSAs): The CBD has described 338 EBSAs[9], both within and beyond national jurisdiction. EBSAs that are in open-ocean waters and deep-sea habitats are added to a global platform hosted by the CBD Clearing-House Mechanism. Discussions are currently underway to agree on the modalities to update EBSAs, based on new information. In the future, the EBSA platform could promote coordination between the CBD and High Seas Treaty processes, particularly in contributing to the scientific underpinning of future High Seas MPA proposals and the data needed for EIAs. As a key foundation, many stakeholders and governments investigating potential High Seas MPA candidate sites are using EBSA descriptions that are similar to the criteria in Annex I of the High Seas Treaty.

Marine Protected Areas (MPAs): The CBD has adopted scientific guidance[10] for selecting areas to establish representative networks of MPAs, including in the open ocean and deep

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[6] Decision X/29, para24.
[7] Background note by CBD Secretariat, "Potential options for modalities for collaboration and cooperation with relevant global and regional organizations in the context of the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction", CBD SBSTTA26, May 2024: https://www.cbd.int/doc/c/51d1/1cd2/459ecbded368f417da1bc8a9/sbstta-26-inf-08-en.docx.
[8] See footnote 7, as well as Veiga et al. (2024) The Biodiversity Plan & the BBNJ Agreement: synergies on capacity building and transfer of marine technology. https://4post2020bd.net/wp-content/uploads/2024/06/Convergence-50-V5-240624-1-4.pdf.
[9] Ecologically or Biologically Significant Marine Areas (EBSAs); https://www.cbd.int/ebsa/.
[10] CBD Decision IX/20 Annex II Annex II: Scientific guidance for selecting areas to establish a representative network of MPAs, including in open ocean waters and deep-sea habitats: https://www.cbd.int/decision/cop/default.shtml?id=11663.

sea habitats, and for taking the initial steps[11] when developing representative networks of MPAs. The guidance is seen as the current best practice for ABNJ when developing representative networks of MPAs.

Other Effective Conservation Measures (OECMs): In recognition of the contribution that areas outside MPAs may provide towards achieving effective area-based conservation targets, the CBD CoP14 adopted a definition of OECMs and a set of criteria to identify those areas. Since then, OECMs have been integrated into the GBF's Target 3 (30x30) and could, when effectively implemented, contribute to the High Seas Treaty's conservation goals. Currently, there are ongoing discussions on whether to operationalize the existing definition of OECMs under the new Treaty.

Biodiversity-inclusive environmental impact assessments (EIAs): The CBD's voluntary guidelines on biodiversity-inclusive EIAs[12] are designed to assist national and regional authorities or international agencies when incorporating biodiversity-related considerations into key stages of their environmental assessment processes, such as screening, scoping, assessing, reporting, reviewing, decision-making, and monitoring. As part of these assessments, Parties to the CBD are advised to use the Akwé: Kon Voluntary Guidelines[13] that relate to developments that may impact sacred sites on land and water that are traditionally occupied, or used by Indigenous and Local Communities. These guidelines may be helpful in the High Seas Treaty's process to develop modern and robust standards and guidelines for EIAs.

Traditional knowledge and meaningful participation of Indigenous Peoples and Local Communities (IPLCs): The CBD recognizes the dependency of IPLCs on biodiversity, their unique and important role in conserving nature, and the role of traditional knowledge. It has established a dedicated Working Group on traditional knowledge[14]. This experience can help inform and provide valuable learnings to the High Seas Treaty process on how to build in enhanced and meaningful participation and rights of IPLC representatives in decision and policy-making processes.

Understanding and mitigating key pressures: The CBD has undertaken work on the impact of pressures on the ocean and its ecosystems and species[15], such as marine debris[16], ocean acidification[17], underwater noise[18], and geoengineering[19] (see below), as well as solutions to minimize these impacts. This can provide valuable scientific information that can be used by

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[11] CBD Decision IX/20 Annex III.
[12] CBD Voluntary guidelines in biodiversity-inclusive impact assessments: https://www.cbd.int/decision/cop?id=11042.
[13] Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or used by Indigenous and Local Communities: https://www.cbd.int/doc/publications/akwe-brochure-en.pdf.
[14] Working Group on Article 8 (j): https://www.cbd.int/convention/wg8j.shtml.
[15] Addressing pressures: https://www.cbd.int/marine/pressures.shtml.
[16] CBD Technical series No. 83, Marine Debris: Understanding, preventing and mitigating the significant adverse impacts on marine and coastal biodiversity, https://www.cbd.int/doc/publications/cbd-ts-83-en.pdf.
[17] CBD Technical series No. 75, An Updated Synthesis of the Impacts of Ocean Acidification on Marine Biodiversity, https://www.cbd.int/doc/publications/cbd-ts-75-en.pdf.
[18] CBD Technical Series No. 99, Review of the impacts of Anthropogenic Underwater Noise on Marine Biodiversity and Approaches to manage and mitigate them, https://www.cbd.int/doc/publications/cbd-ts-99-en.pdf.
[19] Climate-related geo-engineering and biodiversity, https://www.cbd.int/climate/geoengineering.

the Parties to the High Seas Treaty and its Scientific and Technical Body when assessing the environmental impacts of these proposed activities in ABNJ.

Geoengineering: The CBD has been involved in geoengineering issues (large-scale human action to deliberately manipulate environmental systems) since 2008, when it agreed to a moratorium on ocean fertilization (adding nutrients to the upper layers of the ocean to stimulate photosynthesis based on the theory it will stimulate CO_2 sequestration) "*until there is an adequate scientific basis on which to justify such activities, including assessing associated risks, and a global, transparent and effective control and regulatory mechanism is in place for these activities*".[20] In 2010, this was extended to geoengineering activities more broadly[21]. It has developed technical reports on the potential impacts of ocean fertilization[22] and geoengineering[23] on biodiversity, and Parties to the CBD are required to regularly report on any activities. Given the potentially widespread and transboundary impact of these activities on the ocean and its ecosystem services, this information and expertise will also be relevant to the High Seas Treaty, including its EIA chapter.

Clearing-House Mechanism: The CBD has years of experience in providing global information services on biodiversity to inform better scientific and technical cooperation through its three Clearing-House Mechanisms; the Clearing-House Mechanism under its Biodiversity Convention[24]; the Access and Benefit Sharing Clearing-House under the Nagoya Protocol[25]; and the Biosafety Clearing-House under the Cartagena Protocol[26]. For the latter two, the CBD Secretariat set up a pilot phase before the Protocols' respective entry into force to allow for early feedback on their operation and identify areas for improvement. This experience will be valuable for developing the modalities for the High Seas Treaty's Clearing-House Mechanism[27]. It would also ensure linkages between the existing CBD Clearing-House Mechanisms, which have data that is highly relevant to developing proposals and consultation on ABMTs and EIAs.

Marine Genetic Resources (MGRs) and Digital Sequence Information (DSI): In 2010, the CBD agreed to the Nagoya Protocol on fair access to and benefit sharing of genetic resources under national jurisdiction[28]. The experience and lessons learned from the Nagoya Protocol were critical in shaping the approach taken to the benefit-sharing of MGRs and DSI (the digital representation of genetic resources) under the High Seas Treaty. At CoP15 in 2022, the CBD decided to establish a multilateral mechanism for the benefit sharing of DSI on genetic resources[29], including monetary benefits, and it is now in the process of operationalizing this mechanism. The results of these negotiations will be taken into account in discussions about future benefit-sharing modalities under the High Seas Treaty

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[20] Decision IX/16: https://www.cbd.int/decision/cop/default.shtml?id=11659.
[21] Decision X/33: https://www.cbd.int/decision/cop?id=12299.
[22] CBD Technical series No.45, Scientific Synthesis of the Impacts of Ocean Fertilization on Marine Biodiversity, https://www.cbd.int/doc/publications/cbd-ts-45-en.pdf.
[23] CBD Technical series No. 66, Geoengineering in relation to the CBD: Technical and Regulatory Matters, https://www.cbd.int/doc/publications/cbd-ts-66-en.pdf.
[24] CBD Clearing House Mechanism: https://www.cbd.int/chm.
[25] ABS Clearing House Mechanism: https://www.cbd.int/abs/theabsch.shtml.
[26] Biosafety Clearing House Mechanism: https://bch.cbd.int/protocol/cpb_art20.shtml.
[27] Article 51 of the High Seas Treaty.
[28] The Nagoya Protocol on Access and Benefit Sharing: https://www.cbd.int/abs.
[29] Digital Sequence Information on genetic resources: https://www.cbd.int/dsi-gr.

Agreement, as many States expressed an interest in ensuring complementarity between different access and benefit-sharing instruments and the need for them to be mutually supportive of and adaptable to other instruments.[30]

Implementation: How the CBD can promote greater coordination with the High Seas Treaty

Include BBNJ in National Biodiversity Strategies and Action Plans
A key vehicle for governments to deliver the GBF's goals and targets are national implementation plans known as the National Biodiversity Strategies and Action Plans (NBSAPs)[31] that will be analyzed and assessed during CBD CoP16 and at subsequent CoPs. Recognizing the interconnectedness of the ocean, countries could include a commitment to strengthen contributions to international biodiversity initiatives and governance processes. Initially, prior to the High Seas Treaty's entry into force, this could include a commitment by CBD Parties to ratify the High Seas Treaty Agreement, to allocate resources to engage in efforts to prepare its implementation, and to highlight related capacity and technology needs.

Building partnerships: CBD's Sustainable Ocean Initiative
The CBD's Sustainable Ocean Initiative, *Global Dialogues*[32], established in 2016 and coordinated by the CBD Secretariat, is a vehicle to bring together regional seas organizations and regional fisheries bodies, UN bodies (such as the Food and Agriculture Organization and the International Maritime Organization), governments, and civil society to facilitate coordination and stronger working relationships. Its meeting in June 2024 focused on how global and regional bodies can support the implementation of both the GBF and the High Seas Treaty. This constructive contribution to building positive working relationships is to be commended and encouraged.

Mainstreaming biodiversity[33]
This refers to the process of integrating conservation and sustainable use of biodiversity into policies, strategies, and practices that rely on and have an impact on nature, such as agriculture, forestry, fisheries, fish farming, tourism, shipping, communications (underwater cables), and urban planning. This long-term strategic focus[34] of the CBD aims to ensure that biodiversity considerations are integrated into decision-making processes at all levels, from local to global, and across different sectors of society and the economy that will also have impacts on ABNJ and are crucial for reversing biodiversity decline.

Capacity Building and Transfer of Marine Technology (CBTMT)
The CBD's capacity-building priorities contained in GBF targets 19, 20, and 21 are essential for its effective implementation. In 2022, CoP15 adopted a long-term, strategic framework for capacity building and development[35] to support Parties' implementation efforts, as

[30] BBNJ Agreement, Art 14.9.
[31] National Biodiversity Strategies and Action Plans: https://www.cbd.int/nbsap.
[32] Sustainable Ocean Initiative Global Dialogues: https://www.cbd.int/soi/.
[33] Biodiversity mainstreaming: https://www.cbd.int/mainstreaming.
[34] CBD Decision 14/3: https://www.cbd.int/doc/decisions/cop-14/cop-14-dec-03-en.pdf.
[35] Long-Term Strategic Framework for Capacity-Building and Development, https://www.cbd.int/cb/strategic-framework.

determined in their NBSAPs. This strongly aligns with the CBTMT provisions of the High Seas Treaty[36]. The two fora could work together to promote support for capacity building and to increase the efficiency and impact of both investment and support systems.

Funding

The Global Environment Facility (GEF) serves as the financial mechanism for both the CBD and the new High Seas Treaty[37]. It has announced funding to support efforts to ratify the Treaty and to advance its early operationalization and implementation[38]. There is potential to create synergies that could support, for example, capacity-building efforts that also assist Parties to prepare for the High Seas Treaty's implementation, before its entry into force.

Recommendations

Given the many synergies between the High Seas Treaty and the CBD, while recognizing that they are separate processes that operate on different timelines and speeds, coordinated action would be scientifically beneficial and resource-efficient. Parties to the High Seas Treaty could leverage the CBD's wealth of knowledge, which has been collated and agreed upon over many years. Lessons learned during that process could also feed into the High Seas Treaty's Scientific and Technical Body.

Once it has entered into force, the High Seas Treaty will add new tools that ensure a greater focus on safeguarding BBNJ, thereby helping to achieve the mutual objectives of both instruments. Furthermore, the option to vote on key decisions under the High Seas Treaty when consensus cannot be reached may enable Parties to advance toward the implementation of critical measures more rapidly.

Specific recommendations to CBD Parties to support the effective implementation of the High Seas Treaty include:

- **Sign and ratify the High Seas Treaty** as soon as possible to reap the benefits of its synergies with the CBD.
- **Provisionally apply the High Seas Treaty** until it enters into force.
- **Accelerate the implementation of GBF targets**, many of which have direct impacts on biodiversity in ABNJ.
- **Integrate BBNJ-relevant actions into NBSAPs**- including a commitment and timeline to ratify the High Seas Treaty, and the allocation of resources to ensure its effective implementation, including through the identification and establishment of High Seas MPAs.
- **Support the continuation of scientific work to describe EBSAs** through the adoption of the CBD CoP16 recommendation to update the EBSA process regularly,

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[36] Veiga et al. (2024) The Biodiversity Plan & the BBNJ Agreement: synergies on capacity building and transfer of marine technology. https://4post2020bd.net/wp-content/uploads/2024/06/Convergence-50-V5-240624-1-4.pdf.

[37] GEF Council Decision 14/2023: https://www.thegef.org/sites/default/files/documents/2023-12/GEF%20Council%20Decisions%202023.pdf.

[38] Veiga et al. (2024) The Biodiversity Plan & the BBNJ Agreement: synergies on capacity building and transfer of marine technology. https://4post2020bd.net/wp-content/uploads/2024/06/Convergence-50-V5-240624-1-4.pdf.

incorporate traditional knowledge, and ensure that the data remains relevant to BBNJ activities.

- **Be aware of the interlinkages between the High Seas Treaty's provisions on MGRs and DSI** and the CBD's multilateral mechanism for the benefit sharing of DSI on genetic resources and the importance of fostering collaboration and harmonization between the two
- **Build strong relationships between the CBD and High Seas Treaty processes**, including through capacity-building workshops with governments, the CBD Sustainable Ocean Initiative, and other relevant processes.
- **Leverage the CBD's Clearing-House Mechanisms and ensure the effective sharing and streamlining of relevant data** when establishing a system for the High Seas Treaty's Clearing-House Mechanism.
- **Ensure that the high standards of IPLC involvement and the incorporation of traditional knowledge that are promoted within the CBD are similarly woven into the High Seas Treaty's processes** to ensure complementarity and more effective and impactful action.

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High Seas Alliance

The High Seas Alliance is a group of 50+ non-governmental members who work together to inspire, inform and engage the public, decision-makers and experts to support and strengthen High Seas governance and conservation.

highseasalliance.org