

The Global Ocean Treaty We Need

for biodiversity and the climate

Greenpeace briefing for the second negotiating conference ([IGC2](#))

25th March- 5th April 2019

Greenpeace welcomes the [President's Aid to Negotiations](#). To make the necessary progress for the adoption of the Global Ocean Treaty We Need by 2020, negotiations during IGC2 must aim at a “zero draft” soon after the conference. Greenpeace’s submission to IGC2 offers recommendations for improved text on **Marine Protected Areas**.

The first UN [Ocean Assessment](#) stressed that, “**urgent action on a global scale is needed** to protect the world’s oceans”. Overfishing, seabed mining, pollution, coupled with the growing pressure caused by climate change and ocean acidification, are causing more damage to ocean life than ever in human history.¹ With only a fraction of oceans under protection in areas beyond national jurisdiction (ABNJ)², **marine animals and areas critical for their survival** are increasingly under threat; and so are **natural ocean carbon sinks** that help the planet mitigate against the impacts of climate change.

To halt biodiversity loss and safeguard natural carbon sinks from further degradation, the **Treaty must empower governments to collectively create global ocean sanctuaries** - highly protected marine reserves - in consultation with relevant stakeholders³. Governments must seize the historic opportunity to **adopt the Global Ocean Treaty by 2020**; by doing so they will strengthen ocean protection for decades to come.

Recommendations on President’s Aid to Negotiations Document

Definition of Marine Protected Areas (p. 5)

Aid to Negotiations: Definition under CBD, Art. 2: “Marine protected area means a geographically defined marine area which is designated **or** regulated and managed to achieve specific conservation objectives”.

Recommendation: *Requires improvement.* “Marine protected area” means a geographically defined marine area which is designated under this instrument where human **activities are regulated, managed or prohibited** to achieve long term biodiversity conservation and build ecosystem resilience.”

Rationale: The CBD definition does not seem conducive to the establishment of highly protected areas where activities may be prohibited, if necessary. It seems to further distinguish between designation and regulation (see “or”) which could allow for designated areas lacking management. According to scientists⁴, highly protected marine reserves, ocean areas free from extractive uses such as fishing and seabed mining, are the most effective tool to allow nature to recover, thrive and increase its natural resilience.⁵ Marine reserves are also the most cost-effective option in terms of management, monitoring and enforcement compared to other types of marine protected areas (MPAs).⁶ Right now, **only 0.8 %** of international waters are within highly protected reserves.⁷ According to the scientific community⁸ and the International Union for Conservation of Nature (IUCN), a representative network of highly protected areas covering **at least 30% of the world’s oceans must be established by 2030** to ensure healthy, abundant and resilient oceans.

4.1 Objectives of area-based management tools, including marine protected areas (p. 22)

Aid to Negotiations: (2) OPTION I: (e) Option A: Establishing a connected network of effective and equitably managed, ecologically representative marine protected areas

Recommendation: Strong support for an objective to deliver a global network of **effectively** and equitably managed protected areas, in particular highly protected marine reserves. Objectives should be adopted in the Treaty directly (not later, as per Option II) in order to avoid unnecessary delay.

Rationale: The multiple benefits of well designed networks of protected areas have been extensively documented⁹. There is currently no global framework for delivering such a network in ABNJ. The Treaty will enable the international community to finally meet longstanding global conservation targets.

4.3.2 Designation process (pp. 27- 28)

Proposals

Aid to Negotiations: (4) Option A: Required elements of proposals include: [...]

Option 1: A draft management plan;

Option 2: Conservation and management measures to be adopted to reach the specified objective, based on the best available scientific information.

Recommendation: Strongly support Option A and recommend a merge of Option 1&2 so that proposals include **(primary elements of) a draft management plan, including conservation measures**. In addition there should be no defined duration (“sunset clause”) for MPAs.

Rationale: A draft management plan identifying conservation measures is important to avoid **paper parks** - areas protected on paper but not at sea. Moreover, setting an end date to MPAs is not consistent with the long term conservation objective of MPAs, which can also be established as scientific reference areas. However, associated conservation measures could be **reviewed and adjusted** when needed to meet the objectives of the MPA.¹⁰

Decision-making (p. 29)

Aid to Negotiations: OPTION I:(1) The decision-making body/forum set forth in Part [...] shall take decisions on: Option A, Option 1: area-based management tools, including marine protected areas. Option 2: marine protected areas, in the light of the scientific advice or recommendations and the contributions received during the consultation and assessment process established under this Part.

Recommendation: Strong support for Option I 1), Option A, but for a decision making body in the form of a **Conference of Parties** (see below on “institutional arrangements”). Merging of Option 1&2 is needed including with the following amendment: “[...] shall take decisions on **the establishment of ABMTs, including MPAs, on the basis of the best available scientific evidence, following the consultation and assessment process set under this Part.** The establishment of the MPA **shall include the adoption of conservation measures** to meet the objective of the MPA including activities that are restricted, prohibited, or managed, as well as priority elements of a management and monitoring plan.¹¹

Rationale: Empowering Parties acting via a CoP to establish MPAs including conservation measures, following a consultation process with relevant stakeholders, including regional and sectoral bodies with competence over activities taking place in the proposed MPA, is the only way to ensure that the Treaty does not deliver a series of paper parks (see below on “implementation”).

Voting (p. 30)

Aid to Negotiations : (2) Option B: As a general rule, the decisions of the decision-making body [...] shall be taken by consensus. If all efforts to reach consensus have been exhausted, the following procedure shall apply [...].

Recommendation: Strong support for a majority decision making process following the same procedure as in UNGA Res. 72/249¹². There should also be **no special veto rights** granted to coastal states.

Rationale: A consensus based decision decision-making or the right of a coastal State to veto an MPA proposal risk leading to paralysis whereby a single government is able to block decisions. To meet longstanding global conservation goals such as the SDGs and CBD commitments¹³, protection needs to be extended to ABNJ. The Treaty must include decision-making rules that will enable rather than hinder the ability of Parties to the meet the objectives set forth by the Treaty.

4.4 Implementation (p. 30)

Aid to Negotiations: OPTION I: (1) to (6)

Recommendation: Strong support for Option I on States responsibility to implement ABMT, including MPAs, **but with the inclusion of their nationals**, in addition to vessels and activities under their jurisdiction and control.

Rationale: States Parties are primary responsible to implement MPAs & associated measures to their nationals, vessels and activities, & promote measures within competent bodies of which

they are members. Alternative options referring implementation to regional and sectoral bodies would replicate the same fragmented governance structure that is behind the failure of the current system and weaken the effective implementation of protected areas. It will also further dilute accountability between establishment of MPAs and implementation and lead to the creation of more “paper parks” with no effective protection in place. As the experience with the UN Fish Stocks Agreement¹⁴ tells us, relying on external bodies for implementation would not ensure effective action. Finally, the inherent power of States Parties to adopt stricter environmental measures for their nationals, vessels, and activities is recognised by UNCLOS¹⁵.

4.2 Relationship to measures under relevant instruments, frameworks and bodies (p. 22)

Aid to negotiations: 2) OPTION I: States parties shall promote coherence and complementarity in measures related to area-based management tools, including MPAs, through: Option A: the global overarching framework for the recognition, establishment, implementation, enforcement, monitoring and review of such measures set out in this Part. 3) Option B: Measures related to area-based management tools, including MPAs, may be established, in accordance with this Part, to complement measures designated under existing instruments and frameworks and relevant global, regional and sectoral bodies.

Recommendation: Support amended Option A: the global overarching framework for the recognition, establishment, implementation, enforcement, monitoring and review of such measures set out in this Part, **including a global network of marine protected areas.** **Strong support** for 3) Option B.

Rationale: The current regime governing ABNJ is highly fragmented and uncoordinated. With the exception of a few regions,¹⁶ there is currently no process in place to establish and implement protected areas, especially marine reserves in most ABNJ, while even in these areas the process and effectiveness varies considerably. To **design a network of protected areas** that will grant comprehensive protection from the cumulative impacts of multiple sectors and climate change, we need a global Treaty that applies equally to all ABNJ. Through the **consultation process**, the Global Ocean Treaty will overcome fragmentation by building upon the expertise and input of regional and sectoral organisations relevant to each protected area¹⁷, ensuring coherent action and avoiding conflicting uses. Through this global process, the Treaty will not “undermine” or “reduce the effectiveness” of these bodies, but add to their effectiveness by complementing the efforts of States to deliver upon their conservation obligations.¹⁸

IV. Institutional arrangements (p. 57)

Aid to negotiations: (1) OPTION I: Option A: A conference of the parties/meeting of States parties is hereby established as the decision-making body/forum for this instrument.

(2) OPTION I: The decision-making body/forum shall perform the following functions: [important text missing]

Recommendation: Strong support for Option I, Option A (**Conference of the Parties**) as the only effective option. It is also critical that (2) OPTION I: includes **“decide on the**

establishment of area based management tools, including marine protected areas elaborated under the process set forth in Part [...]".

Rationale: A **robust and adequately resourced institutional framework** ¹⁹ with decision-making, review and monitoring functions, including a Conference of the Parties, a Secretariat, a Scientific/Technical Committee, and a Compliance Committee is needed to ensure the Treaty is effectively equipped to meet its objectives.

Time to make Ocean history

Greenpeace is calling for the Global Ocean Treaty to set up a process for **establishing and effectively implementing** highly protected areas in ABNJ.²⁰ Such global process must include the following elements:

- A clear **objective** and a **duty to cooperate** to protect,²¹ maintain, and restore ocean health and resilience through a global network of marine protected areas, in particular highly protected marine reserves.
- The **identification and proposal**, also in collaboration with civil society, **of areas to be protected** by Party(ies), including the necessary conservation measures.
- **A time-bound, transparent and inclusive consultation on proposals** with all stakeholders including regional and sectoral organisations with competence over activities taking place in the areas and civil society.
- An **independent assessment** by a scientific/technical committee, resulting in recommendations to the decision-making body.
- **Global adoption** by a **Conference of the Parties (COP)** of protected areas and the necessary conservation measures to meet their objectives.
- **Obligation for Parties to implement** newly established protected areas and associated measures with respect to their nationals; vessels, and activities under their jurisdiction or control; and to apply **their best efforts** to ensure the adoption of complementary measures by regional or sectoral organizations to which they are members.
- Mechanisms to ensure regular and effective **reporting, monitoring, review** and **compliance**.
- A procedure for the **global recognition of high seas MPAs** already established under existing frameworks as long as they meet the requirements under the Treaty.

To be effective the Global Ocean Treaty must also include:

- **A robust institutional framework** ²² with decision-making, review and monitoring functions, including for instance, a Conference of the Parties, a Secretariat, a Scientific/Technical Committee, and a Compliance Committee.

- Streamlined **decision-making procedures, based on qualified majority voting**, when consensus is not possible.
- A global process for conducting **environmental impact assessments (EIAs)** of the individual and cumulative impact of human activities in ABNJ, including the effects of climate-related changes.²³
- **Clear enforcement obligations** for Parties, including to investigate and prosecute violations and adopt adequate sanctions.
- **Modern principles of ocean governance**, including the precautionary principle; ecosystem-based management; international cooperation; accountability, public participation and transparency.
- Fair rules for the access to and equitable benefit sharing from the utilisation of marine genetic resources (MGRs) in ABNJ.
- Fair rules on capacity building, transfer of marine technology and financial mechanisms to enable all States, especially developing countries, to effectively implement the new Treaty.

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Endnotes

1. World Scientists' Warning to Humanity: A Second Notice (November 2017) at <https://academic.oup.com/bioscience/article/67/12/1026/4605229>
2. Areas beyond national jurisdiction" (ABNJ) include the high seas (water column) and the seabed beyond the jurisdiction of States.
3. Specific recommendations on MPAs are available at:
4. Sciberras, M., Jenkins, S.R., Kaiser, M.J., Hawkins, S.J. & Pullin, A.S. (2013). Evaluating the biological effectiveness of fully and partially protected marine areas. *Environ. Evid.*, 2, 1–31.
5. See: <https://www.sustainablegoals.org.uk/healthy-oceans-healthy-planet/>
6. Natalie, C.B., Adams, V., Pressey, R.L. (2009). Marine protected area management costs: an analysis of options for the Coral Sea.
7. While 1.2 % of high seas are protected within MPAs. See Marine Conservation Institute's MPA Atlas at <http://www.mpatlas.org/map/mpas/>
8. B.O'Leary et al. "Effective Coverage Targets for Ocean Protection at <http://onlinelibrary.wiley.com/doi/10.1111/conl.12247/epdf> and Callum Roberts et al. 2017 at <http://doi.org/10.1073/pnas.1701262114>,
9. Laffoley, D. d'A., (ed.) 2008. Towards Networks of Marine Protected Areas. The MPA Plan of Action for IUCN's World Commission on Protected Areas. IUCN WCPA, Gland, Switzerland. 28 pp.
10. Greenpeace's "Ten Steps for Marine Protection" provides further details on the desired process for the identification, consultation, designation and implementation of Marine Protected Areas. Available at: http://www.un.org/depts/los/biodiversity/prepcom_files/greenpeace2.pdf.
11. See Conservation Measure 91-04 (2011) General framework for the establishment of CCAMLR Marine Protected Areas, at Para 3. Available at: https://www.ccamlr.org/sites/default/files/91-04_5.pdf. Following the practice in CCAMLR, the final management and monitoring plan for an MPA adopted under the Treaty, once developed and adopted by the CoP, could be annexed to the MPA, including management and administrative arrangements for achieving the specific objectives of the MPA (CMM 91-04, Para 4).
12. According to the UNGA res 72/249 that launched the intergovernmental conference, decisions on substantive matters shall be taken by a two-thirds majority of the representatives present and voting, after every effort to reach agreement by consensus has been exhausted (Para 19).
13. See Aichi target 11 (at <https://www.cbd.int/sp/targets/rationale/target-11/>) and SDG 14.5 (<https://sustainabledevelopment.un.org/sdg14>) both calling for a network of protected areas covering 10% of the ocean.
14. UNFSA is one of the existing Implementing Agreements under UNCLOS next to the Implementing Agreement on Part XI (seabed mining).
15. See e.g., UNCLOS provisions on flag State and port State jurisdiction. See also UNCLOS, Article 311.3 and UNFSA, Article 44 on the rights of Parties to conclude multilateral agreements applicable to their mutual relations, as long as they do not frustrate the objective of the Convention or affect rights of other state Parties
16. Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean 1995 (Barcelona Convention); Convention on the Conservation of Antarctic Marine Living Resources 1980 (CCAMLR); Convention for the Protection of the Marine Environment of the North- East Atlantic 1992 (OSPAR Convention); Convention for the Protection of the Natural Resources and Environment of the South Pacific Region 1986 (Nouméa Convention).
17. E.g. Regional Fisheries Management Organisations (RFMOs), Regional Seas Organisations (RSOs), the International Maritime Organization (IMO) and the International Seabed Authority (ISA)
18. For instance States, individually and through RFMOs, have a number of conservation obligations under the UNFSA (e.g. Article 5 and 6) and several UNGA resolutions (e.g., UNGA resolution 61/105) but their implementation so far has been slow and patchy. See: See also Gianni et al (2016), *How much*

longer will it take? A ten-year review of the implementation of United Nations General Assembly resolutions 61/105, 64/72 and 66/68 on the management of bottom fisheries in areas beyond national jurisdiction, Deep Sea Conservation Coalition, available at:

<http://www.savethehighseas.org/publicdocs/DSCC-Review-2016_Launch-29-July.pdf>,

19. HSA recommendations for institutional arrangements are available at:

<http://highseasalliance.org/sites/highseasalliance.org/files/Institutional-Arrangements-11-April.pdf>

20. For specific recommendations on MPAs see above at 3.

21. Where “protection” also includes prevention of damage to or degradation of the marine environment

22. HSA recommendations for institutional arrangements are available at:

<http://highseasalliance.org/sites/highseasalliance.org/files/Institutional-Arrangements-11-April.pdf>

23. HSA recommendations for EIA are available here:

http://highseasalliance.org/sites/highseasalliance.org/files/HSA-EIA-recommendations_March-2018.pdf