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The High Seas Treaty: A Historic Agreement To Protect International Waters



All Member States of the United Nations (UN) Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction (BBNJ) reached an agreement on March 4, 2023, regarding an international treaty governing the sustainable use and conservation of the "high seas"—areas of the ocean that lie beyond any single nation's jurisdiction. The treaty represents a culmination of nearly two decades of negotiations and meetings. It is a crucial step toward achieving the recent [UN 30x30 Agreement](#) to protect 30% of the planet's lands and oceans by 2030. This Update describes the treaty's requirements and future implications.

What Are the High Seas?

Broadly, the ocean is divided into two jurisdictional categories: (1) areas within national jurisdiction, including territorial seas and exclusive economic zones (EEZ), and (2) areas beyond national jurisdiction (the high seas). Under the 1982 UN Convention on the Law of the Sea, an EEZ is an area of the ocean stretching 200 nautical miles from a sovereign nation's coast in which the sovereign nation has special rights with respect to the exploration and use of marine resources. The high seas, on the other hand, are the parts of the ocean that are outside of any nation's EEZ. The high seas represent 40% of Earth's surface and nearly 64% of the ocean. Until the treaty, the high seas were governed by fragmented, loosely enforced rules.

The High Seas Treaty's Requirements

The new treaty establishes several new requirements aimed at protecting the biodiversity of the high seas.^[1] First, the treaty establishes seven bodies and mechanisms to aid in its objectives, including:

- A Conference of the Parties (COP), which will serve as a decision-making body.^[2]
- A "clearing-house mechanism" managed by the COP's secretariat, which will serve as a centralized, open-access platform for parties to access and provide information on various issues, including marine genetic resources, environmental impact assessments (EIAs), and the establishment of marine protected areas (MPAs).^[3]
- A Scientific and Technical Body (STB) of expert members from different geographies with multidisciplinary expertise, including traditional knowledge, nominated by parties and elected by the COP to advise it.^[4]

Second, the treaty provides a legal framework for establishing MPAs, a type of area-based management tool that limits human activity to protect marine habitats and wildlife.^[5] MPAs will offer the highest degree of protection relative to any other area-based management tool. Parties to the treaty will be able to present proposals for new area-based management tools and MPAs.^[6] The proposals will be reviewed by the scientific and technical body, and "all relevant stakeholders" are allowed to provide consultation on proposals as well.

Third, the treaty sets global standards for EIAs on planned activities under the jurisdiction or control of parties to the treaty.^[7] The treaty defines an EIA as a "process to identify and evaluate the potential impacts of an activity to inform decision-making."^[8] Importantly, cumulative impacts under the treaty include "the consequences of climate change, ocean acidification and related impacts."^[9] Under the treaty, the EIA obligation extends not only to the high seas; if a party plans an activity within its own EEZ that it thinks "may cause substantial pollution of or significant and harmful changes to the marine environment in [the high seas]" it must ensure that it conducts an EIA—either under its national process or as defined in the treaty.^[10]

Under the treaty, decisions on EIAs and determining whether they need to be conducted fall on the project proponent.^[11] This means it is up to individual nations to assess their own project and potential impacts. If a project might cause "more than a transitory effect on the marine environment," or if "the effects of the activity are unknown or poorly understood," a state must conduct an initial "screening" that is "sufficiently detailed for the Party to assess if it has reasonable grounds for believing whether the planned activity may cause substantial pollution of or significant and harmful changes to the marine environment . . ."^[12] This means providing the COP with a description of the activity in question (its purpose, duration, location, and intensity) followed by an initial analysis of potential impacts, including cumulative effects. This initial screening also must be made available to the COP and other parties via the clearing-house mechanism to allow for comment.

Finally, the treaty regulates the commercialization of marine genetics^[13] and will make research on the high seas more accessible and inclusive, especially for developing countries.^[14] Specifically, if a party plans to collect marine genetic material, it must notify the treaty's clearing-house mechanism.

Future Implications

The High Seas Treaty represents decades of negotiation and compromise, but there is still work to be done. Member States will need to reconvene to formally adopt the treaty, and it will only take legal effect once 60

members have ratified the treaty in their own countries. Once the treaty takes effect, parties can begin proposing the establishment of MPAs.

Endnotes

[\[1\] *Draft 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*](#)

[\[2\]](#) Part VI, Art. 48.

[\[3\]](#) Part VI, Art. 51.

[\[4\]](#) Part VI, Art. 49.

[\[5\]](#) Part I, Art. 1.

[\[6\]](#) Part III, Art. 17.

[\[7\]](#) Part IV, Art. 22.

[\[8\]](#) Part I, Art. 1.

[\[9\]](#) *Id.*

[\[10\]](#) Part IV, Art. 22

[\[11\]](#) *Id.*

[\[12\]](#) Part IV, Art. 24.

[\[13\]](#) Part II, Art. 9.

[\[14\]](#) Part V, Art. 42.

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