

Ten Steps to Marine Protection

Greenpeace's recommendations on the identification, designation, management and enforcement of marine protected areas and marine reserves in areas beyond national jurisdiction under the new UN Ocean Agreement

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The negotiations currently underway towards a new Ocean Agreement under UNCLOS, provide a historic opportunity to set in place the legal framework for the conservation and sustainable use of marine life in areas beyond national jurisdiction (ABNJ).

Specifically on **Marine Protected Areas (MPAs)**, the new Agreement should define a process to identify, designate, effectively manage and enforce a global ecologically representative network of large-scale areas in waters beyond national jurisdiction. Such a process should give special consideration to the creation of no-take **marine reserves**, which science tells us are needed to **reverse ocean biodiversity loss, safeguard food security, restore marine ecosystems and increase their resilience** against the devastating impacts of climate change and ocean acidification.¹ Fully protected marine reserves are also considered the **most cost-effective option** in terms of management, monitoring and enforcement compared to other types of MPAs².

The new Agreement should pave the way for governments to meet long-standing commitments, such as **establishing a representative network of MPAs and protecting 10% of coastal and marine areas by 2020**³. Governments' failure to act in the past decades, especially in regards to areas beyond national jurisdiction, is a cause of great concern for the future of our oceans. Increasingly scientists warn us that the current level of protection on the high seas – much less than 1% in 2016 – is a far cry from what is needed to end the ocean crisis.⁴ As a response, most recently, the 2014 **World Parks Congress** called for at least 30% of the ocean to be set-aside as no-take areas.⁵

There is no way around it – just like with climate change - **bold political action is needed to end the ocean crisis and avoid tipping points that will cause ecological, economic and humanitarian devastation.**

Below are Greenpeace's recommendations for a 10 step process to identify, designate, manage and enforce MPAs, including no-take marine reserves, in ABNJ under the new UN Ocean Agreement.

¹ E.g. B. O'Leary, Callum Roberts and al. Effective Coverage Targets for Ocean Protection at <http://onlinelibrary.wiley.com/doi/10.1111/conl.12247/epdf>

² Natalie, C.B., Adams, V., Pressey, R.L. (2009). Marine protected area management costs: an analysis of options for the Coral Sea.

³ See Johannesburg Programme of Action (JPOI); CBD Aichi target 11; Sustainable Development Goal 14

⁴ E.g., O-Leary and Roberts above.

⁵ http://cmsdata.iucn.org/downloads/promise_of_sydney_theme_marine.pdf

Starting Point: Duty to cooperate

- The new Agreement should specify the duty of States under international law to cooperate to protect and preserve the marine environment⁶
- The new Agreement should include a duty to cooperate to establish a network of ecologically representative, well connected and effectively managed MPAs, including marine reserves in ABNJ. Current and long-standing commitments regarding marine protection should be the starting point for the level of ambition set by the Agreement.

Step 1: Identification

- The identification of potential protected areas should be based on agreed **scientific criteria**, such as those developed for the identification of ecologically or biologically significant areas (**EBSAs**) and vulnerable marine ecosystems (**VMEs**) with a view to avoiding duplication.
- Protected areas should not be identified in isolation but as part of a **global representative network**. A Scientific Body under the Agreement could be mandated by States to undertake a global review and identify candidates for an ecologically representative global network of MPAs and reserves.

Step 2: Proposal

- Any Party should be able to submit an MPA proposal. The Scientific Body under the Agreement could also be mandated to propose protected areas. Stakeholders, including civil society and scientific bodies should also be able to submit proposals.
- The MPA proposal should be based on the **best available scientific information, follow an ecosystem approach and the precautionary principle**, and should at a minimum include the following elements:
 - Spatial boundaries
 - An assessment of activities being carried out in the area and a description of the impacts on the ecosystem and/or any of its components, including cumulative impacts of activities, climate change and ocean acidification
 - Conservation objectives, including the necessary level of protection⁷
 - A broad management plan (i.e., what needs to be done to achieve the conservation objectives in broad strokes)
 - A broad monitoring plan
- Parties and/or competent regional and global organisations should also be able to **propose existing protected areas** that have been designated under regional or global agreements. These areas would need to comply with the relevant criteria and the proposal should include all the above elements.

Step 3: Consultation

- Upon submission, the Scientific Body of the Agreement and other scientific bodies, relevant regional and global organisations and stakeholders, including civil society, should be invited to **submit views and recommendations on the proposal, including what specific management measures** would be required to meet the conservation objectives of the proposed site.

⁶ E.g., UNCLOS Articles 197.

⁷ See IUCN Protected Areas Categories <http://www.iucn.org/theme/protected-areas/about/categories>

- **There might be areas where no competent regional or global body exists to recommend measures** to address the impacts of some or all the activities in the proposed site. In these cases, the new Agreement, guided by the precautionary principle, should proceed to identify specific measures to meet the conservation objectives of the area, based on the information on cumulative impacts provided by the proponents, and the consultation process described above.
- The consultation process should lead to a **detailed management plan**, which should include the necessary conservation and management measures for the proposed site.
- The consultation should also define a **monitoring/research plan** and provide the tools for future monitoring and review of implementation, including the effectiveness of conservation and management measures in regards to the conservation objectives of the protected area.
- During the consultation period, States **should refrain from authorising or permitting activities under their jurisdiction or control that might undermine the proposed protected area.**⁸

Step 4: Designation

- The decision making body of the new Agreement would **adopt the protected area including its boundaries, conservation objectives, detailed management and monitoring plan**, by majority voting if there is no consensus⁹.
- The designation of the protected site should be for an indefinite period to ensure the long-term conservation of marine biodiversity and ecosystem services and functions, and serve as reference areas for science. The conservation and management plan and measures may be adjusted to reflect the status of the area based on a review process.

Step 5: Conservation & Management

- **Parties have the primary responsibility** to implement the agreed conservation and management measures for nationals, vessels, and activities under their jurisdiction and control.
- Upon designation, the new Agreement should **inform relevant regional or global bodies** of the new MPA, its boundaries, objectives, management and monitoring plan and **call on their members to take the necessary action** with regards to activities under their competence **within a set period of time**.
- Parties shall **commit to use their best efforts to ensure the adoption of necessary measures** by competent regional or global bodies they are members to.
- Parties shall also, individually or collectively, **request non-Contracting Parties** whose activities, vessels or nationals operate in the protected areas **to become Parties** to the Agreement **or to cooperate fully** in the implementation of conservation and management measures adopted by the Agreement¹⁰.
- Nothing should prevent **Parties** from implementing **more stringent conservation measures** in relation to their nationals, vessels, and activities under their jurisdiction and control.
- Further, nothing should prevent competent **regional or global bodies from implementing more stringent conservation measures** with respect to activities or areas under their competence.

⁸ See SPRFMO, Art. 22 and CMM 2.03 on Bottom Fishing, para 8.

⁹ See Charter of the United Nations, Art.18. SPRFMO, Art.16

¹⁰ See SPRFMO Art. 32.3

Step 6: Monitoring

- The new Agreement should set up a mechanism for a **global Monitoring, Control and Surveillance (MCS)** system for ABNJ to ensure that protected areas are meeting their objectives and to identify violations by vessels as well as cases of non-compliance. This mechanism should facilitate information sharing and joint operations between existing MCS systems.
- The implementation of **the scientific monitoring could be delegated** to appropriate regional bodies when possible as long as they meet the standards set by the new Agreement.
- In order to ensure equal monitoring standards for all protected areas across regions and facilitate their implementation by Parties, in particular developing States, the new Agreement should provide for a scientific, technical, financial and capacity building mechanism to underpin the global monitoring system.

Step 7: Report and Review

- **Parties and relevant regional or global bodies should report back annually** on the implementation of conservation and management measures. These reports should be made public¹¹.
- **A regular review process** should call the scientific body established under the new Agreement, all relevant regional or global bodies and stakeholders, including civil society, to send their views regarding the effectiveness of the protected areas, their conservation and management plans and progress made in reaching their objectives.
- The review process should **publish a progress report and identify any shortcomings** by Parties, non-Parties, and regional or global bodies, affecting the effectiveness of the measures adopted by the Agreement.

Step 8: Compliance

- **The new Agreement should establish a Compliance Committee.** Following the outcome of the review process, and/or whenever a Party or a non-Party fails to adopt and implement effective management measures to achieve the conservation objectives of the protected area, Parties and stakeholders, including civil society, should be able to submit a report of non-compliance.
- When a **Party or a non-Party** is identified to have failed to discharge its obligations under the new Agreement or, in the case of non-Parties, under international law to co-operate on the protection and preservation of the marine environment¹², by not taking measures or exercising effective control to ensure that it does not engage in any activity that undermines the effectiveness of the Agreement's conservation measures, **the compliance committee should make recommendations**¹³ on ways to rectify their acts or omissions.
- The non-complying Party and non-Party should be notified and offered a reasonable time to rectify its actions or omissions.
- When necessary, the new Agreement should adopt measures to **facilitate compliance** (e.g. technical assistance and capacity building) based on recommendations from the compliance committee.

¹¹ As in UNGA 61/105 and OSPAR recommendation 2012/01, Art. 5.1.

¹² UNCLOS Articles 197

¹³ As in UNGA 61/105, Para 91.

- If the Party or non-Party in question continues to undermine the effectiveness of the protected area, and/or if the ecosystem or any of its components under protection is under serious threat, the Parties to the Agreement should **adopt appropriate responsive measures**¹⁴. The responsive measures should be designed to ensure that the conservation objectives of the area are met.

Step 9: Enforcement

- Parties should be primarily responsible for the enforcement of protected areas and their management plans and should not **authorise or undertake any activities that might be contrary to the conservation objectives of the area**¹⁵.

To this end, all Parties shall:

- **Duly investigate and as necessary prosecute any violation** of management plans, measures and conservation objectives of the protected area by vessels, activities, and nationals under their jurisdiction and control;
- Make the violation of the provisions of the new Agreement, including of the conservation objectives and management plans of protected areas, **an offence under national legislation and adopt sanctions adequate** in severity to discourage such violations¹⁶.
- Take measures consistent with international law **to deter any activities, vessels and nationals under the jurisdiction or control of non-Parties** that undermine the effective implementation of this Agreement.

Step 10: Dispute Settlement

- **The new Agreement should set up a streamlined dispute settlement mechanism** to resolve disputes rising from the implementation of the agreement expeditiously
- The mechanisms should be accessible, rapid, transparent and cost-effective.

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¹⁴ Vis a vis Parties, see e.g., Kuala Lumpur Protocol on Liability, Art 5(4) and SPRFMO, 20(5) on emergency measures. Vis a vis both Parties and non Parties, see e.g., ICCAT Res. [03- 15] concerning trade measures. See also SPRFMO, Art. 27 (2) on monitoring, compliance and enforcement.

¹⁵ As in BARCON, SPA Protocol, Art. 8(3).

¹⁶ See e.g., FAO Compliance agreement and EU IUU Regulation, ITLOS Case No.21, advisory opinion on the request submitted by the Sub/Regional Fisheries Commission (SRFC), 2015.