

**Recommendations for the third negotiating conference (IGC3)
19th–30th August, 2019**

The Global Ocean Treaty We Need for Biodiversity and the Climate

Greenpeace welcomes the timely provision by the President of a “draft text” of the Global Ocean Treaty¹ and looks forward to engaging in text negotiations at IGC3². We believe that the draft captures the progress of the negotiations so far and provides a good basis to negotiate the text of the Global Ocean Treaty by 2020. Nevertheless, the alternative text options outlined in most sections vary significantly in terms of **ambition**. Rather than improve governance, many options repeat business-as-usual and fall significantly short in their potential to change the status quo behind the ocean crisis.

The **Global Ocean Treaty offers a unique opportunity** to finally change course – and help provide a livable planet for future generations and the millions of people dependent on healthy oceans. **Governments must seize this opportunity and write a new chapter for ocean governance that holds conservation and sustainability at its centre.** This briefing outlines Greenpeace’s support for language that reflects the appropriate level of ambition, as well as our recommendations for stronger text specifically on **Marine Protected Areas (MPAs)**.

The findings of the First UN Ocean Assessment³ and the staggering rate of extinction reported by the Global Biodiversity Assessment Report⁴ – with over 1/3 of marine mammals and 1/3 of shark species under threat of extinction – underscore the urgent need for action. With currently only 0.8% of areas beyond national jurisdiction (ABNJ)⁵ effectively protected,⁶ the pressure on marine life is accelerated by the cumulative impacts of ever expanding human activities, including overfishing⁷ and deep-sea mining⁸, climate change⁹ and pollution. It is clear that relying upon existing frameworks is not enough.

¹ [Draft text of an 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 See [UN webpage for the third negotiating conference](#)

³ [United Nations World Ocean Assessment](#) 2015

⁴ [Global Assessment Report on Biodiversity and Ecosystem Services](#), IPBES 2019; [Biodiversity loss: urgent need for forest, ocean protection and dietary change](#)

⁵ “Areas beyond national jurisdiction” (ABNJ) include the high seas (water column) and the seabed beyond the jurisdiction of States.

⁶ [MPAtlas.org](#)

⁷ [Sharks Under Attack](#), Greenpeace International 2019

⁸ [In Deep Water](#), Greenpeace International 2019

⁹ [“Foundations of life” in the Arctic at risk from heating climate](#)

An ambitious Global Ocean Treaty must be adopted by **2020**. It must empower State Parties, acting collectively via a Conference of Parties, to establish a network of MPAs, including fully protected **ocean sanctuaries**, and **adopt effective measures** to meet their conservation objectives. Anything short of this ambition, especially options suggesting a piecemeal approach in the establishment of MPAs, would only produce further fragmentation in ocean governance and lead to **paper parks in ABNJ**, i.e. MPAs that are lines on a map without comprehensive protection. The IUCN World Conservation Congress¹⁰, scientists¹¹ and a growing number of governments¹² are calling for a network of ocean sanctuaries covering at least **a third of the world's oceans by 2030**. Also, the need for a large-scale network of ocean sanctuaries is being increasingly recognized by the fishing industry.¹³ To act swiftly in response to our current ocean crisis, the Global Ocean Treaty must also equip States Parties with an effective decision-making process based on a voting mechanism rather than consensus.

Recommendations on the “draft text” of the Global Ocean Treaty

[NEW TEXT] or in bold: Our recommended added language to further strengthen the treaty

~~Strikethrough~~: Language and options we recommend be removed

Not annotated: Preferred language to keep

Highlighted: Strong preference to keep

Preamble (pg. 4)

Recommendations:

[NEW TEXT]

“Deeply concerned by the outcomes of the First Global Integrated Marine Assessment, and determined to address cumulative impacts on marine biological diversity;”

“Deeply concerned over the findings of the IPCC Special Report on Global Warming of 1,5°C (SR1.5), unequivocally confirming the negative impacts of climate change and acidification on ocean ecosystems, and recognizing that both the conservation of ocean biodiversity and the sustainable use of marine resources in this context will require the development and application of tools such as area-based management tools (including marine protected areas), to improve resilience to climate change and ocean acidification, and that measures to combat the adverse impacts of climate change and ocean acidification must be in accordance with this Agreement.”

¹⁰ [Increasing marine protected area coverage for effective marine biodiversity conservation](#), WCC-2016-RES-050

¹¹ [30X30: A Blueprint for Ocean Protection](#), 2019

¹² Such as the [UK](#) and [Belgium](#)

¹³ According to director of Norwegian Fishing Vessel Owners' Association Fiskebåt, protection and use must go hand in hand, and protecting 30% of the ocean would not be a problem for food security. [NRK](#), July 2019. See also [Krill fishing companies back call to protect Antarctic Ocean](#)

“Committed to protect, and restore, the health, productivity and resilience of oceans and marine ecosystems, and to maintain their biodiversity, enabling their conservation and sustainable use for present and future generations, and to effectively apply an ecosystem approach and the precautionary principle in the management, in accordance with international law, of activities impacting on the marine environment, to deliver on all three dimensions of sustainable development.”¹⁴

“Determined to ensure the meeting of relevant targets and goals for the conservation of marine biodiversity under the Convention on Biological Diversity and other relevant Conventions, Agreements, and instruments and to accelerate our efforts in meeting those targets in ABNJ through the application of this Agreement.”

Rationale: The text of the preamble must reflect the urgency of the ocean crisis, highlighted by the findings of assessments and reports, such as, the First Global Integrated Marine Assessment, the IPCC Special Report on Global Warming of 1,5°C and the upcoming IPCC Special Report on the Ocean and Cryosphere in a Changing Climate (SROCC), and set a high level of ambition for the Agreement. The Preamble must reaffirm the determination of the international community to address the cumulative impacts from human activities, climate change, ocean acidification and pollution. It should also state the determination of States to meet global conservation targets (such as under CBD & SDGs),¹⁵ and give special consideration to the need to establish and effectively implement fully protected MPAs, also known as **ocean sanctuaries**, which according to science are the most cost-effective type of MPAs to halt biodiversity loss, ensure food security and build ocean resilience against the worst impacts of climate change and ocean acidification.

Use of terms, Article 1 (pg. 5)

Recommendations:

10. “Marine protected area” means a geographically defined marine area **where human activities are regulated, that is designated and managed or prohibited** to achieve specific [long-term biodiversity] conservation and sustainable use objectives [and that affords higher protection than the surrounding areas].

Rationale: The current definition does not reflect the full spectrum of MPAs, which include ocean sanctuaries, i.e., areas where activities may be prohibited, and not simply managed, to achieve the conservation objectives. Furthermore, MPAs are a type of ABMTs which are specifically designed to meet conservation objectives, not sustainable use (see CBD definition Art 2¹⁶ and IUCN definition¹⁷). Finally, the use of the term “designation” is insufficient. As pointed

¹⁴ From the [Future We Want](#), UNGA Res. 66/288, Para 158.

¹⁵ [Aichi target 11](#) and [SDG 14.5](#).

¹⁶ UN Convention on Biological Diversity, [Article 2](#): “Protected area” means a geographically defined area which is designated or regulated and managed to achieve specific conservation objectives.

¹⁷ [IUCN defines](#) a protected area as: A clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values.

out in the latest UNEP/WCMC's MPA Guide,¹⁸ designation is only one of the steps towards the "establishment" of an MPA.

Objectives, Article 14 (pg. 13)

Recommendations:

[NEW TEXT]

1.bis: Area-based management tools, including marine protected areas, shall be established on the basis of the best available science to the achievement of the objective of the Agreement set forth in Article 2, and the following objectives:

- (i) Establishing a network of ecologically representative marine protected areas that are connected and effectively and equitably managed;
- (ii) the protection of representative examples of marine ecosystems, biodiversity and habitats at an appropriate scale to maintain their viability and integrity in the long term;
- (iii) the protection of key ecosystem processes, habitats and species, including populations and life-history stages;
- (iv) the establishment of scientific reference areas for monitoring natural variability and long-term change or for monitoring the effects of human activities, including climate change, anthropogenic ocean noise and pollution and the cumulative effects of these stressors on marine biodiversity and on the ecosystems of which they form part;
- (v) the protection of areas vulnerable to impact by human activities, including unique, rare or highly biodiverse habitats and features;
- (vi) the protection of features critical to the function of local ecosystems;
- (vii) the protection of areas to maintain resilience or the ability to adapt to the effects of climate change;
- (viii) the maintenance of food security ~~and other socioeconomic objectives,~~
including the protection of cultural values.

Rationale: We recommend replacing the process-oriented objectives (e.g., enhancing cooperation and coordination in the use of ABMTs/MPAs or implementing effectively obligations under the Convention and other existing international) listed in Article 14, with **conservation outcome objectives**. The recommended text draws from **CCAMLR**.¹⁹ As such, we believe that areas in need of protection should be identified based on objectives, rather than criteria.

Establishing a network of MPAs, including fully protected ocean sanctuaries, should be a priority objective for this Agreement that will thus enable the international community to meet long-standing and new global targets. There is currently no global framework for delivering such a network in ABNJ.⁹

International cooperation and coordination, Article 15 (pg. 14)

¹⁸ See [Introduction to the MPA Guide](#)

¹⁹ Conservation measure 91-04 (2011), General framework for the establishment of CCAMLR Marine Protected Areas, available at: <<https://www.ccamlr.org/en/measure-91-04-2011>>.

Recommendations:**[NEW TEXT]**

“State parties shall cooperate to establish a network of marine protected areas where special measures need to be taken to conserve marine biodiversity, based on best available science and the precautionary principle in accordance with the provisions of this Part.”

Rationale: The Treaty provides a unique opportunity to operationalise the general duty to cooperate to protect the marine environment under UNCLOS Article 197 and spell out a clear and unconditional obligation for State parties to cooperate towards the establishment of a network of MPAs, including fully protected sanctuaries, acting via the Treaty. The proposed language builds on CBD, Art. 8 (*in-situ* conservation)²⁰.

Proposals, Article 17 (pg. 16)**Recommendations:**

[...]

4. **Proposals shall include** the following elements:

...
 {(f) **A description of the proposed {conservation and management measures} and primary elements of a management plan** to be adopted to achieve the specified objectives;}
 ...

Rationale: The Treaty should include list of elements that “shall” be included in the proposal in order to make it robust. A description of the proposed conservation and management measures and primary elements of a management plan to be adopted under this Agreement is essential to avoid **paper parks** – areas protected on paper but not at sea. Competent bodies will be consulted from a very early stage of the proposal, possibly even before submission, and their expertise will be fully taken into account in crafting the most effective measures to meet the objectives of the MPA. The final decision, however, will be taken by the State Parties, acting within the Conference of the Parties, taking into account the contributions received during the **inclusive, transparent and time-bound consultation** process and the recommendations from the Scientific Committee under Article 18.

Decision-making (process), Article 19 (pg. 18)**Recommendations:**

~~{1. While respecting [existing] relevant legal instruments and frameworks and relevant global, regional and sectoral bodies in the [establishment] [designation] of area based management tools, including marine protected areas, †The~~ **Conference of the Parties shall take decisions** ~~on matters related to area-based management tools, including marine protected areas, with respect to:~~

(a) Objectives, ~~criteria,~~ modalities and requirements, as provided for under articles 14, ~~16,}] [and] 17 [and 18]~~

²⁰ [UN Convention on Biological Diversity, Article 8. In-Situ Conservation](#)

[Alt. 4

(b) Proposals submitted under this Part, ~~on a case-by-case basis and~~ taking into account the scientific advice or recommendations and the contributions received during the consultation and assessment process **under Article 18**, including in relation to:

(i) ~~The identification of areas requiring protection;~~

(ii) The ~~designation~~ **[establishment]** of ~~area-based management tools, including marine protected areas, and related conservation and management measures to be adopted to achieve the specified objectives,~~ **[taking into account]** ~~recognizing~~ existing measures under relevant legal instruments and frameworks and relevant global, regional and sectoral bodies, as appropriate;

[NEW TEXT]

(iii) **the management plan and research and monitoring plan for the marine protected areas;**

(iv) **the establishment of area based management tools, other than marine protected areas, where there are no existing relevant legal instruments or frameworks or relevant global, regional and sectoral bodies;**

(v) **the establishment of measures to complement area-based management tools adopted under existing relevant legal instruments or frameworks or relevant global, regional or sectoral bodies;**

[NEW TEXT]

(c), **to recommend that State Parties to this Agreement promote the adoption of relevant measures through existing relevant legal instruments or frameworks or relevant global, regional or sectoral bodies, in accordance with their respective mandates to complement those measures adopted under (ii) and (iv).**

[delete (c), (d), and Alt 2.]

Rationale: Recommend separating the **process for the establishment of MPAs from the process for establishing other types of ABMTs**. With regard to **MPAs**, the **CoP shall have the power to establish protected areas and adopt the necessary conservation and management measures** to achieve the objectives of the area, taking into account the outcome of the consultation process and the recommendation from the Scientific Committee. This, in our view, is the only way to create fully protective and effectively managed sanctuaries and to avoid creating “paper parks”. The suggested approach is consistent with the power of States to adopt more stringent conservation measures for their vessels, nationals and activities and would not undermine the effectiveness of regional or sectoral measures, but rather complement and strengthen them. We also believe that the identification of areas requiring protection should be driven by Parties based on the objectives in this Part. Identification of sites should not require a prior CoP decision, as this would add an extra layer of decision making and delay action.

With regard to **other types of ABMTs**, we suggest that a very similar process to the one for MPAs should also apply to the establishment of cross-sectoral ABMTs (e.g. mitigation areas for underwater noise generated by different sources and activities) and/or to address new or emerging threats for which there is no competent regulatory body in place (e.g., geoengineering, offshore aquaculture, even floating cities). This is critical in order to future proof the Treaty and preserve its effectiveness well into the future. While for **single sector ABMTs** which are **under the competence of an existing body** (e.g. a Particularly Sensitive Sea Area under the IMO), the CoP shall recommend State Parties to promote measures within the relevant body, but the process towards their adoption should unfold under the relevant body. However, it is also important that the CoP is empowered to adopt measures to complement sectoral /regional action so to ensure comprehensive protection.

Decision-making (procedure)- Article 19 (pg. 18)

Recommendations:

2. As a general rule, the decisions of the Conference of the Parties referred to in paragraph 1 shall **strive for** ~~be taken by~~ consensus. **If all efforts to reach consensus have been exhausted, the procedure established in** ~~the rules of procedure adopted by the Conference~~ **Article [X] shall apply.**

Rationale: We strongly support **a majority voting decision making process.**²¹ Indeed, It is crucial that the Treaty includes decision-making rules that reflect the urgency of the ocean crisis and enable rather than hinder the ability of Parties to meet its objectives. At the same time, leaving the development of decision-making modalities to a later stage may create uncertainties and lack of action as the experience with the CBD.²²

Implementation, Article 20 (pg. 19)

Recommendations:

1. **States Parties shall ensure that activities under their jurisdiction or control** that take place in areas beyond national jurisdiction **are conducted consistently with the decisions** adopted under this Part.

2. **Nothing in this Agreement shall prevent a State Party from adopting stricter measures** with respect to its **nationals**, vessels or with regard to activities under its jurisdiction or control in addition to those adopted under this Part, in conformity with international law.

{3. **States Parties shall ensure compliance** by **nationals and** vessels flying their flags and enforcement of the measures adopted in conformity with this Part ~~[by their nationals].~~}

[...]

{5. **States Parties shall promote the adoption of measures within** ~~[existing]~~ **relevant legal**

²¹ See for instance voting procedure in UNGA Res. 72/249.

²² The CBD, Article 23.3 deferred the adoption of rules of procedures to the CoP, but a voting mechanism is still in square brackets (<https://www.cbd.int/convention/rules.shtml>, Para 40).

instruments and frameworks and relevant global, regional and sectoral bodies of which they are members to support the implementation of the conservation and management objectives of the measures adopted under this Part.}

{6. States Parties shall encourage those States that are entitled to become Parties to this Agreement, in particular those whose activities, vessels, or nationals operate in the area that is the subject of a[n] ~~established~~ ~~designated~~ area-based management tool, including a marine protected area, to adopt measures supporting the conservation and management objectives of the measures adopted and area-based management tools ~~established~~ ~~designated~~ under this Part.}

~~{7. The ~~existing~~ relevant legal instruments and frameworks and relevant global, regional or sectoral bodies are responsible for the implementation and enforcement of the conservation and management measures established by those bodies in relation to area-based management tools, including marine protected areas.}~~

{8. A State Party that is not a participant in **this Agreement** a[n] ~~existing~~ relevant legal instrument or framework, or a member of a relevant global, regional or sectoral body, and that

does not otherwise agree to apply the conservation and management measures ~~established~~ **under this Agreement** ~~designated~~ under such instruments, frameworks or bodies is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. Such State Party shall ensure that activities under its jurisdiction or control are conducted consistently with measures related to area-based management tools, including marine protected areas, ~~established~~ ~~designated~~ under **this Agreement** ~~relevant frameworks, instruments and bodies.~~

Rationale: We strongly support retaining paragraphs 1 to 6 and paragraph 8 with the following amendments. We agree that States Parties shall be primarily responsible to implement MPAs & associated measures to their vessels and activities under their jurisdiction and control, but also **to their nationals** so to include nationals financial interests that might be backing non-compliant vessels. At the same time State Parties shall also promote corresponding measures within competent bodies of which they are members.

Paragraph 7 simply states that regional and other bodies are responsible for implementing the measures they have adopted which is self evident. Any language deferring implementation to other bodies and agreements, will only further fragment the governance structure and weaken the effective implementation of protected areas. It will also further dilute accountability between establishment of MPAs and implementation. As the experience with the UN Fish Stocks Agreement tells us, relying on external bodies for implementation would not ensure effective action as there are no means for the Treaty to force them to act.²³

²³ See also Thirteenth round of Informal Consultations of States Parties to the UNFSA (New York, 22-23 May 2018), available at: http://www.un.org/depts/los/convention_agreements/ICSP13/ICSP13_final_report.pdf

Likewise, we strongly support encouraging non-Parties to the Treaty whose vessels operate in an MPA established under the Treaty to adopt measures that foster the objectives of the area. In the same vein, we recommend extending the application of paragraph 8 to non-Parties to clarify that they will not be discharged from their general obligation to cooperate under UNCLOS, but they will need to act consistently with the objectives of the MPA and associated measures established under this Treaty.

Monitoring and Review, Article 21 (pg. 20)

Recommendations:

[Alt. 1

1. States Parties, individually or collectively, shall report to the Conference of the Parties on the implementation of ~~{area-based management tools, including marine protected areas}~~ ~~[relevant elements of the decisions of the Conference on area based management tools, including marine protected areas]~~, ~~[established]~~ ~~[designated]~~ under this Part. Such reports shall be made publicly available by the secretariat.

[NEW TEXT] 1.bis The existing relevant legal instruments or frameworks, or a relevant global, regional or sectoral body shall be invited to report to the Conference of the Parties on progress towards the adoption and implementation of measures to support the objectives of area-based management tools, including marine protected areas and conservation and management measures established under this Part.

2. Area-based management tools, including **marine protected areas, [established] [designated]** under this Part, **including related conservation and management measures, shall be monitored by State Parties according to the monitoring and research plan, reported to the secretariat and periodically reviewed by the Scientific and Technical [Body] [Network].**

3. The review referred to in paragraph 2 shall assess the effectiveness of measures and the progress made in achieving their objectives and to provide advice and recommendations to the Conference of the Parties.

4. **Following the review, the Conference of the Parties shall, as necessary, take decisions on the amendment** ~~or revocation~~ of area-based management tools, including marine protected areas, including any associated conservation and management measures, on the basis of an adaptive management approach and taking into account the best available scientific information and knowledge, including traditional knowledge, the precautionary ~~{approach}~~ ~~[principle]~~ and **the need to build an ecosystem resilience approach .}**

[Delete Alt. 2 and Alt. 3.]

Rationale: We strongly support retaining Alt. 1 which includes clear reporting obligations for State Parties. We recommend adding a new Para 1 bis urging relevant organisations to report back on their progress towards the adoption and implementation of measures to support meeting the objective of the MPAs established under the Treaty. We also support clear monitoring obligations for State Parties, based on the monitoring plan, and periodical review by

the Scientific Body to assess that the MPA and associated measures are always fit to meet their objectives. Based on the recommendations from the Scientific Body, the CoP may amend the area, but we are strongly against its revocation, as the objectives of an MPA are normally long term and areas can be established to serve as scientific reference areas. For the same reasons, we are strongly against imposing an arbitrary duration for an MPA, after which the area should automatically terminated, as suggested in Alt. 2.

Provisional/Precautionary and emergency measures – to be added

Recommendation:

[NEW TEXT]

Art.18 bis:

1. Pending the decision by the Conference of the Parties with respect to the establishment of area based management tools, including marine protected areas, and related conservation and management measures and management plan, State Parties shall refrain from authorising or permitting activities under their jurisdiction or control that might undermine the objectives of the proposed area and associated measures²⁴
2. If a proposed site is under a significant threat of serious harm, the Conference of the Parties, acting upon recommendations from the Scientific Committee or in case of imminent threat, acting intersessionally, shall adopt a measure, based on the best scientific evidence and the precautionary principle, to be applied on an emergency basis.²⁵ Such measures shall be temporary and must be reconsidered for decision at the next Conference of the Parties following their adoption.

Rationale: The process of establishing an MPA, including conservation and management measures can be time consuming. Provisional and emergency measures may be needed to ensure that the objective of the area is not frustrated pending its establishment.

Conclusion

There is no time to waste. There is strong momentum to finalise the Global Ocean Treaty by **2020**. A growing movement of people, over 1,4 million people around the world²⁶, are calling for an ambitious Global Ocean Treaty that will enable the establishment of a network of fully protected sanctuaries covering at least 30% of the ocean by 2030, following scientific advice. With only two negotiation sessions left, it is vital that governments get it right. We have an historic opportunity to strengthen ocean protection for decades to come. An opportunity we cannot afford to miss, should we want to be remembered as the generation that made a difference and not as the one that failed to act.

²⁴ On a similar vein see [Habitat Directive, Article 6.2](#), which also applies pending the official establishment of a Natura 2000 site and [SPRFMO, Art. 22](#) on preliminary conservation and management measures.

²⁵ See for instance, [SPRFMO, Article 20.5](#).

²⁶ [Protect the Oceans petition online](#)

For further information please contact:

Sofia Tsenikli sofia.tsenikli@greenpeace.org

Veronica Frank veronica.frank@greenpeace.org