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Nemo's Last Hope To Return Home: The BBNJ Treaty's Crusade to Save The Oceans!

The ocean amasses an enormous amount of biodiversity, serving as the largest habitat to approximately 500,000 to 10 million marine species.¹ Yet, nations many a time act in absolute disregard for the lives of such a vast population only to chase their self-serving agendas. Under Article 136 of the United Nations Convention on the Laws of the Sea (UNCLOS), the high seas have been regarded as the 'common heritage of mankind'. Nevertheless, they are rapidly becoming the next major target region in the rat race among the nations to gather as much wealth as they can.

From ocean acidification to blue carbon, from ballast water pollution to oil spills and beyond, the high seas have been the silent sufferer for a very long time. This drew the attention of the United Nations General Assembly towards addressing the issues concerning the high seas. The formulation of the Agreement for the Conservation and Sustainable Use of Marine Biological Diversity in Areas Beyond National Jurisdiction (BBNJ Treaty). which ended at the fifth session of the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction, in 2023 was a welcoming step. The discussions at the Blue Leaders High-Level Event on Biodiversity Beyond National Jurisdiction, convened in Belgium on March 7, 2024, have further strengthened the efforts.² This treaty urges nations to safeguard the high seas

¹ *Oceans contain a wealth of biodiversity*, CONVENTION ON BIOLOGICAL DIVERSITY (Nov. 26, 2018), <https://www.cbd.int/article/biodiversityforwater-1>.

² Rohini Krishnamurthy, *Countries hope to bring BBNJ or High Seas treaty into force by 2025; only 2 have ratified it so far*, DOWN TO EARTH (Mar. 8, 2024),

against various depleting activities, including overfishing, pollution, and the impacts of climate change.

The agreement has been specifically introduced to address ocean conservation in areas beyond national jurisdiction. Currently, only 3% of the world's oceans are classified as "fully" or "highly" protected. However, the High Seas Treaty plans to increase the coverage of protected areas to 30% by the year 2030 under its initiative of '30x30'.³ Part II of the agreement establishes a framework for the equitable sharing of benefits derived from Marine Genetic Resources. The treaty aims to establish Marine Protected Areas (MPAs) through Area-based Management Tools (ABMTs) under Part III to protect, preserve, restore, and maintain biodiversity and ecosystems.

In addition to conservation efforts, the Treaty of the High Seas also advocates for supporting developing states parties, including the least developed countries, landlocked developing countries, geographically disadvantaged states, small island developing states, coastal African states, archipelagic states, and developing middle-income countries.⁴ These are the states that have historically faced disadvantages in accessing and utilising marine resources. Provisions such as these indicate that the treaty recognises the requirements as well as concerns of developing nations.

The BBNJ treaty mandates the conducting of Environmental Impact Assessments to identify loss of biological diversity and protect marine ecosystems from degradation due to the impact of climate change. For this purpose, specific thresholds and a well-defined process have been established. Through the mechanism established under Part IV of the agreement, the treaty attempts to regulate the sharing of marine research technologies while simultaneously enhancing the capabilities of nations. This intergovernmental agreement reflects a collective vision for creating a sustainable future. It upholds the application of principles of international

<https://www.downtoearth.org.in/news/environment/countries-hope-to-bring-bbnj-or-high-seas-treaty-into-force-by-2025-only-2-have-ratified-it-so-far-94909>.

³ *Marine Protected Areas (MPAs) will be key to protecting 30% of the planet by 2030*, ECONOMIST IMPACT (Apr. 14, 2023), <https://impact.economist.com/ocean/ocean-health/marine-protected-areas-mpas-will-be-key-to-protecting-30-of-the-planet-by>.

⁴ High Seas Treaty

environment law such as precautionary measures, 'the polluter-pays', utilization of the best available science and scientific information, equity, and prevention of transboundary harm.⁵

Nearly two-thirds of the ocean, termed as areas beyond national jurisdiction (ABNJ), have been brought under control through the treaty. In an attempt to accomplish several goals at once, it strives to fix challenging areas such as reducing plastics, microplastics, and coastal pollution; biodiversity preservation; and improving climate resilience. Additionally, it also plans to establish a system for resource mapping; monitoring; and promoting sustainable fishing.⁶ Developing countries stand to gain the maximum benefit, as they can overcome existing inequalities in benefit sharing. The benefits they could claim encompass access to activity information, samples, patents, publication details, and commercialization opportunities.⁷

The BBNJ treaty strives to bridge the gaps in the field of ocean governance. The irony is that after over twenty years of discussion, only two nations—Chile and Palau—have ratified a treaty having eighty-eight signatories. It remains highly ambitious, although the treaty can only enter into force 120 days after being ratified, approved or accepted by at least 60 countries, under Art. 68(1). Nonetheless, that is not the biggest challenge that the Treaty of the High Seas faces. While it talks a lot about state cooperation and equitable sharing, the extent to which nations will adhere to it, given the geo-political scenario at the moment, remains an unanswered question. The treaty is founded on the principle of common heritage, the status of which as customary international law is still a subject of deliberation. As it stands, the high seas have been lawless; the absence of a strong enforcement mechanism will only exacerbate the chaos.

As uncertainty looms over the agreement, its noble intent of protecting unique marine ecosystems offers a glimmer of hope. Another ray of sunshine is the United Nations Ocean

5 Shani Friedman, *The BBNJ Agreement – new treaty, old challenges*, CENTRE FOR INTERNATIONAL LAW (Apr. 23, 2023), <https://cil.nus.edu.sg/blogs/the-bbnj-agreement-new-treaty-old-challenges/>.

6 Courtney Johnson-Woods, *Ocean Health, Biodiversity, and the BBNJ Agreement*, RESONANCE (May 10, 2023), <https://www.resonanceglobal.com/blog/ocean-health-biodiversity-and-the-bbnj-agreement>.

7 *BBNJ Treaty*, BBNJ Treaty, <https://bbnj-mgr.fas.harvard.edu/bbnj-treaty> (last visited Mar. 24, 2024).

Conference scheduled for 2025, which will serve as a platform to further the objectives of the treaty. The realization of the immense potential of the High Seas treaty relies solely on successful treaty implementation, which can pull us out of the crises of climate change and ocean pollution. This can become a reality if nations agree to not only cooperate but also commit to safeguarding the ocean's wealth for generations to come. Only then can Nemo return to his marine ecosystem!

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