

# 10 Principles for High Seas Governance

The ocean is a unique, extraordinary and vital element of our planet, covering more than 70 per cent of its surface. It sustains life on Earth by generating oxygen, absorbing carbon dioxide from the atmosphere, regulating climate and temperature and providing a substantial portion of the global population with food and livelihood. It provides medicine, energy, transport routes amongst many other services and has been a nexus for various cultures.

National jurisdiction over resources has been extended generally to 200 nautical miles in the sea, leaving about 60 per cent of the open ocean and deep seabed as areas beyond national jurisdiction—commonly referred to as the “high seas”. Long considered important only for its fishes, we are now discovering that these areas of the oceans contain some of the richest biodiversity on the planet. This high seas biodiversity is under increasing threat from many sources, including irresponsible fishing and shipping activities, pollution and habitat degradation and now climate change.

While the United Nations Convention on the Law of the Sea (UNCLOS) sets out the overall legal framework for activities in the oceans and seas, it does not provide a comprehensive policy and enforceable management framework to govern the high seas. The patchy laws that exist are largely based on 17<sup>th</sup> century principles of open access, often without acknowledging many of the environmental principles recognised in UNCLOS or those that have been long applied for land and atmosphere and even for outer space.

As a result, beyond national jurisdiction, many human activities remain unregulated or poorly managed, ecosystem considerations are seldom taken into account and scientific information is often ignored.

Experience in managing ocean resources has provided many lessons that need to be put into practice. Critical policy issues to improve high seas governance are ready to be addressed and practical steps can be taken to improve biodiversity conservation. Many of the past limitations in monitoring and enforcement of ocean governance regimes have been overcome by technological advances, but the political will to commit resources to this task is still lacking. A good start has been made, but more needs to be done.

We stand at a critical time – the ocean governance system must evolve and the following modern principles applied to improve high seas management and ensure sustainable development of the world’s oceans.

## 1. **Conditional freedom of activity on the high seas**

The time of treating the high seas as “open to all without conditions” is over. Our high seas resources have proven to be exhaustible, thus access and use need to be regulated. There is a need to implement and enforce international law, in particular the United Nations Convention on the Law of the Sea (UNCLOS), and to condition the enjoyment of high seas freedoms upon the implementation of the Convention’s duties. Access to the high seas should be twinned with responsibility and accountability, assured through comprehensive governance that includes effective regulation, monitoring, sanctioning and enforcement.

## **2. Protection and preservation of the marine environment**

As reflected in the United Nations Convention on the Law of the Sea, States have accepted the obligation to protect and preserve the marine environment. However, this obligation remains largely unimplemented with respect to the high seas. Pressure on high seas resources is increasing, in particular with climate change impacts. This makes it more urgent to deliver on this obligation as elaborated in the targets and commitments adopted at the World Summit on Sustainable Development. This includes halting biodiversity loss and maintaining the productivity and biodiversity of important and vulnerable marine areas within and beyond national jurisdiction

## **3. International cooperation**

Conservation of biodiversity and sustainable exploitation of natural resources beyond national jurisdiction cannot be effective unless countries act together. For conservation and management measures to be effectively implemented, coordination is essential across and within sectors, States and regions. Institutional mechanisms for ensuring such cooperation are required. The current model that is based on sectoral and regional management organizations and agreements needs to be reformed and new mechanisms created to fill gaps in order to better manage ocean ecosystems and to ensure the conservation and sustainable and equitable use of all high seas resources.

## **4. Science-based approach to management**

Management decisions should be based on the best available science and not on the lobbying of a powerful few. Further scientific research on high seas ecosystems and resources is required to underpin ecologically sustainable resource use, to inform the adaptive application of conservation measures, and to enhance the development of criteria for monitoring their effectiveness. Independent structures should be established so that scientific advice is not diluted for political purposes.

## **5. Precautionary approach**

The knowledge base for managing the high seas is arguably weaker than for other ecosystems, but this should not be used as ground for lack of action. Adaptive management allows decision-making to respond to changes and inherent levels of uncertainty.

In high seas governance, more than any other place, the precautionary approach should be standard practice. Environmental assessment requirements and the precautionary approach should be operationalised and implemented for all high seas activities and should be used as a globally applicable default mechanism for existing, emerging and new activities on the high seas. This will require placing the burden of proof on those who argue that an activity will not cause significant harm to show that this is so, and make the responsible parties liable for environmental harm.

## **6. Ecosystem approach**

As was recognized by the United Nations General Assembly more than thirty five years ago, "the problems of ocean space are closely interrelated and need to be considered as a whole". There is a strong need to consider the bigger picture, to give meaning to ecosystem management by moving away from the sectoral- and species-based approaches from which ocean and high seas governance systems have long suffered, and considering the cumulative impacts of different sectors on ocean ecosystem services.

Ecosystem approaches need to be further refined and made operational. Large scale marine spatial planning and networks of marine protected areas and other area-based management measures for biodiversity conservation purposes, should be integral parts of an ecosystem approach to fisheries and oceans management. The high seas offer the ideal place to implement ecosystem management with fewer political boundaries and fewer stakeholders.

## **7. Sustainable and equitable use**

Using ocean resources in areas beyond national jurisdiction requires a balance between the rights and interests of individual users and those of the international community. Management of high seas resources should result in such resources being used in a sustainable manner to maintain the biological diversity to meet the needs of present and future generations. There is a need to reduce gross over-capacity and overcapitalisation of fishing fleets often based on disproportionate subsidies and to discriminate against harmful practices and perverse incentives, especially destructive practices that adversely impact biodiversity beyond national jurisdiction.

There is also a strong need to promote and foster international cooperation and the development, adoption, and transfer of environmentally-sound technologies, on an equitable and mutually acceptable basis. Particular attention should be given to benefits to and the interests of developing countries.

## **8. Public availability of information**

Information on the oceans and use of high seas resources, in particular data from users, scientific observations and research results, should be exchanged and made freely and publicly available. Scientific information should also be made available in a way that could be understood by the public. Widespread popular support and increasing public awareness about ocean resources and those who benefit from them are critical to ensuring that conservation and management efforts are successful and sustainable.

## **9. Transparent and open decision-making**

Societies are demanding more effective management of fisheries and marine ecosystems and there is an urgent need to ensure greater transparency and increased participation by stakeholders in managing high seas resources. In addition, it is critical that decision-making processes are conducted in a manner that is transparent, accountable and inclusive, to minimise the likelihood of disputes and to enhance implementation. Regional and global organizations should provide observers access to all meetings and documents and should ensure meaningful participation by all interested stakeholders in the discussion and consideration of management measures.

**10. Responsibility of States as stewards of the global marine environment**

States need to bear responsibility for activities in the high seas by their own governmental agencies, by vessels under their flags, and by their nationals, both individual and corporate. States are responsible for assuring that national activities are carried out in conformity with international law and with the above-mentioned principles. The activities of ships and nationals in the high seas should require authorization and continuing supervision and monitoring by the appropriate State. In accordance with the polluter/user pays principle, States should be liable to other States and to the global community in case of damage to the high seas environment and resources caused by their vessels and nationals.