

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 recently been extended to 200 nautical miles in the sea, leaving about 60 per cent of the ocean as “high seas” and deep seabed beyond national jurisdiction. Long treated as though empty of life other than some 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 climate change. Yet, there is no comprehensive policy or management framework to govern the high seas, and the patchy laws that exist are largely based on 17th century principles of open access, ignoring many of the environmental principles that have been long applied for land and atmosphere and even for outer space.

Beyond national jurisdiction, many human activities remain unregulated, 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. 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 oceans as “open access, common pool” resources are over. Our ocean resources have proven to be exhaustible, so their use needs to be regulated. There is a need to reaffirm and enforce international law, in particular United Nations Convention on the Law of Sea (UNCLOS), and to condition the enjoyment of High Sea's freedoms upon the implementation of the convention's duties. Access to common ocean resources must be twinned with comprehensive and effective governance that includes monitoring, sanctions and enforcement.

2. **Protection and Preservation of the marine environment**

The obligation to protect and preserve the marine environment, including in areas beyond national jurisdiction, is enshrined in many legal instruments at the global and regional levels, but this obligation has largely not been met. Today, an increasing number of threats makes it urgent to ensure such protection. There is a pressing need to deliver the World Summit on Sustainable Development targets and commitments towards ensuring the sustainable development of the world ocean, including those parts that lie beyond national jurisdiction.

3. International Cooperation

Biodiversity beyond national jurisdiction cannot be protected effectively unless countries act together. For conservation and management measures to be effectively implemented, coordination is essential across sectors and States. Institutional mechanisms for ensuring such cooperation are required. The current model that is based on Regional Fisheries Management Organizations and Agreements needs to be refined to truly manage the oceans and not simply to allocate scarce and overused resources. Clearly it is time for States to cooperate to expand the mandate of existing regional management organizations and agreements and to fill gaps to ensure the conservation and sustainable and equitable use of all high seas marine 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 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. Scientific knowledge, understanding and awareness of the high seas and deep seabed need to be improved rapidly by building on and going beyond the various projects and initiatives currently undertaken.

As conservation measures are applied in areas of resource use that have a commercial value, decisions relating to areas beyond national jurisdiction should also consider socio-economic information to encourage effective compliance and application of economic incentives.

5. Public availability of information

We are just starting to learn more about the biodiversity of the high seas and deep seabed. To adequately manage these resources it is critical to increase knowledge of our ocean and the impacts of resource use and to make it available to the public. Information on the use of marine resources, in particular data from users, scientific observations and research results should be exchanged and made freely available. Such information should not be kept in the jargon that is only understood by a few, but should be made available in a language that is accessible to all. 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.

6. Transparent and open decision making processes

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 and accountable to minimise the likelihood of disputes and to promote international cooperation. Regional and global organizations need to promote the meaningful participation of all interested stakeholders in decision making, provide observers access to all meetings and documents and receive advice from all interested observers.

7. 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 principle should become standard practice. Environmental assessment requirements and the precautionary approach should be operationalised 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.

8. 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 and to move away from the sectoral- and species-based approaches from which ocean governance systems have long suffered.

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, fewer stakeholders and virtually no property rights.

9. 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 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 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.

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 marine environment and resources caused by their vessels and nationals.