

# ESG Matters

## The High Seas Treaty

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ESG - Global

- ◆ A deal on the conservation and sustainable use of biodiversity of marine areas beyond national jurisdiction has been reached
- ◆ The treaty is key to achieving the global target of 30% marine protected areas by 2030, as agreed to at biodiversity COP15
- ◆ We think the pact shows solid global efforts towards biodiversity conservation; final text is pending adoption

**“The ship has reached the shore”:** After years of negotiations, UN Member States have finally agreed the High Seas Treaty (HST) under the UN Convention on the Law of the Sea (UNCLOS), aiming to conserve the marine biodiversity of areas beyond national jurisdiction (ABNJ, commonly called the high seas). The treaty fills the gaps in the 30-year old UNCLOS by addressing the set-up of marine protected areas (MPAs), benefit sharing of marine genetic resources (MGRs), the transfer of marine technology, and the specifications for the environmental impact assessment of deep sea activities, such as exploration and mining on the high seas.

**Key to the 30x30 target:** The high seas comprise two-thirds of the world's ocean. In order to achieve the global target of protecting 30% of marine areas by 2030, at least 24% of the high seas should be designated as protected areas<sup>1</sup>. Currently, nearly 99% are unprotected or unregulated. The High Seas Treaty provides a legal mechanism to set up MPAs (despite the unspecified level of protection). For example, we think the activities of distant-water fishing fleets would be limited by MPAs, affecting fish catch and trade in some economies, e.g. Mainland China (Fig. 3).

**Solidifying ocean governance:** Akin to the Conference on Biological Diversity, a Conference of Parties (COP) to the HST will be established and will meet regularly to monitor the progress of biodiversity conservation on the high seas and the treaty implementation. As the International Seabed Authority (ISA) expects to finalise the Mining Code for the Deep Sea in July, we think international ocean governance will be stronger than ever. Countries are responsible for and authorised to manage marine areas, which would streamline and balance marine conservation and development in the future.

**Job not yet complete:** The text of the treaty will be formally adopted in a further intergovernmental conference at a date to be announced. The details of some sticky issues, such as modalities for the sharing of monetary benefits from the application of MGRs and area-based management tools, will be decided in the later Conference of the Parties (COP) meeting. In addition to the text adoption, we think investors should look out for the discussion of the regulatory framework for deep sea mining in July. The framework should define the viability of mining on the seabed, which is rich of metals for battery manufacturing, e.g. nickel.

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## Background of the High Seas Treaty

The High Seas Treaty aims to fill the gap between the Convention on Biological Diversity (CBD) and the UN Convention on the Law of the Sea (UNCLOS). It covers all parts of the seas that are not included in the exclusive economic zone or the territorial seas of a State, and the seabed beyond the limits of national jurisdiction.

Adopted in 1994, the UNCLOS is designed to regulate all aspects of the uses of the ocean, including exclusive economic zones and areas beyond national jurisdiction. However, it does not address marine biodiversity well. For example, the sharing of benefits associated with MGRs or area-based management tools, such as MPAs, were not well-defined or mentioned explicitly in the Convention.

With an aim to elaborate the conservation and sustainable use of marine biodiversity of areas beyond national jurisdiction in the UNCLOS, the first session of the High Seas Treaty negotiation was convened in 2018.

## Highlights of the High Seas Treaty

### Institutional arrangement of the treaty

A Conference of the Parties (COP) and a Scientific and Technical Body (STB) are established under the High Seas Treaty. The COP will meet regularly to monitor, access and review the implementation and the provision of the HST. The regularity will be determined by the COP. The STB will provide recommendations to the COP with relevant scientific and technical expertise.

The implementation of the HST shall be funded through a new mechanism that shall include the following:

- ◆ A voluntary trust fund established by the COP
- ◆ A special fund contributed by developed Parties and private entities
- ◆ The Global Environment Facility trust fund

### Sharing of the benefits from activities with respect to MGRs

The benefit sharing of MGRs was the stickiest topic throughout the treaty negotiations. Developed and developing countries were divided on this aspect.

The HST establishes a special fund that aims to channel capital from developed economies to developing economies. Developed Parties shall make annual contributions to the special fund. The rate of the annual contribution would be decided by the COP along with the modalities for the sharing of monetary benefits.

We think investors should watch the development of the modalities as it may include payments or contributions related to the commercialisation of products derived from MGRs. In this case, we think the pharmaceutical, cosmetics and food industries might be affected at some point as marine biotechnology is widely used in research and development of new products.

**Figure 1: Example of benefits arising from the use of MGRs on the high seas**

| Monetary benefits  | Non-monetary benefits  |
|--|--|
| Annual contribution by developed Parties to the special fund | Access to sample collection and digital sequence information |
|  | Transfer of marine technology                                |
|  | Capacity building  |
|  | Technical and scientific cooperation                         |

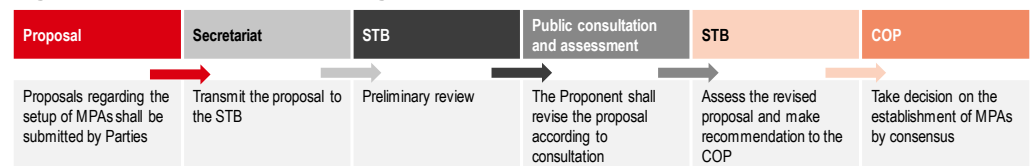
Source: HST, HSBC

### Area-based management tools

Comprising two-thirds of the global ocean, at least 24% of the high seas should be protected to reach the global 30x30 target<sup>1</sup>. In light of this, the HST lists a process of setting up MPAs on the high seas (Figure 2).

We think the guidance and framework for the setting up of MPAs should be beneficial to the biodiversity headline target. However, the HST does not stipulate any threshold or criteria for MPAs, such as bottom trawling bans or the restriction of high-speed vessels. The conservation measures will be drafted by the MPA proponents. We think that might weaken the effectiveness of MPAs for marine conservation.

**Figure 2: Process of establishing MPAs**



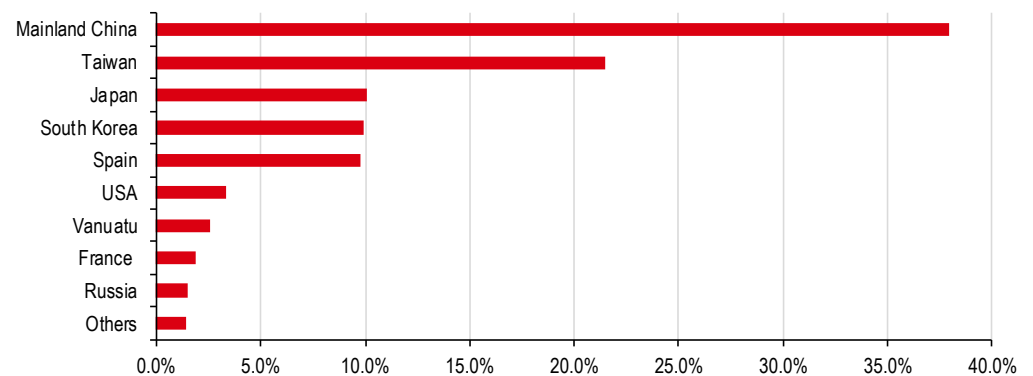
Source: HST, HSBC

### Box 1: Distant-water fishing

Distant-water fishing (DWF) is a common practice of the fishing industry. DWF fleets usually operate on the high seas that are far from territorial waters and exclusive economic zones of their origin countries. Given loose conservation rules on the high seas, DWF is often linked to illegal, unreported and unregulated (IUU) fishing, with negative impacts on the marine environment.

With the adoption of the High Seas Treaty, we expect to see an increase in marine protected areas (MPAs) on the high seas, which could limit or even restrict commercial fishing activities in those areas. We think global production, supply chains and the trading volume of fish products could be affected. With tightening environmental rules and the phasing out of IUU fishing subsidies<sup>2</sup>, there should be more incentives for the fishing industry to shift operations to aquaculture, in our view. The OCED and the UN Food and Agriculture Organization estimates that production from aquaculture is expected to surpass capture fisheries by 2027<sup>3</sup>.

**Figure 3: Proportion of global fishing effort by distant-water fishing fleets (2016-17)**



Source: Stimson Center<sup>4</sup>, Global Fishing Watch, HSBC

<sup>1</sup> Visalli et al., (2020), Data-driven approach for highlighting priority areas for protection in marine areas beyond national jurisdiction

<sup>2</sup> The Guardian, First WTO deal on fishing subsidies hailed as historic despite 'big holes', 21 June 2022

<sup>3</sup> OECD/FAO, OECD-FAO Agricultural Outlook OECD Agriculture statistics (database)

<sup>4</sup> Stimson Center, Shining a Light: The Need, 1 November 2019

### Environmental Impact Assessment

The HST requires the Parties to conduct environmental impact assessments (EIA) when the planned activities on the high seas (such as deep sea exploration) may have negative or unknown effects on the marine environment. In the EIA report, the project coordinating Party has to provide a description of: 1) the **planned activities**; 2) **potential impacts**; 3) **prevention, mitigation and management measures**; 4) the consideration of **reasonable alternative** to the planned activity; and 5) **follow-up actions**.

The STB shall review and may make comments for the final EIA report. However, the STB is not responsible for determining whether the project may proceed but the “Party under whose jurisdiction or control a planned activity falls”. In our view, the regulation on the activities authorisation process is not vigorous enough as the decision-making process does not involve an independent third party. A self-regulatory practice may reduce the robustness of the rules.

### What to look out for

The text of the High Seas Treaty will be formally adopted at a further intergovernmental conference at a date to be announced. The historic agreement shows that global efforts towards protecting marine biodiversity have not been overshadowed by geopolitical tension. We expect to see more financial support from developed economies and international collaboration in the near future.

The details of the HST implementation will be determined at the Conference of Parties, which should convene its first meeting within a year after the entry into force of the HST (once 60 countries have ratified it). Additionally, investors should keep an eye on the meeting of the International Seabed Authority in **July**, which is expected to finalise the **regulatory framework for deep sea mining**.

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