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UN "High Seas Treaty" – Looking at the Potential Implications on Ships

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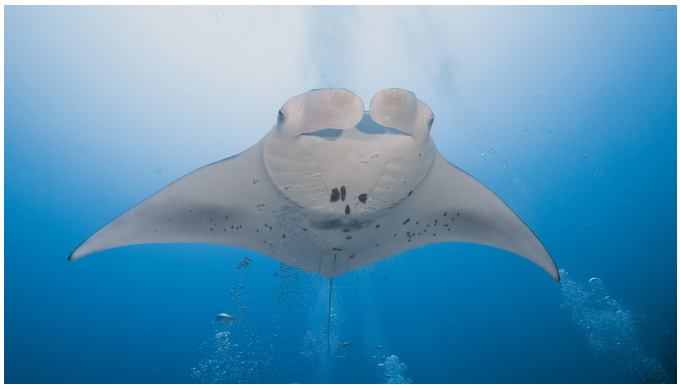
The United Nations "High Seas Treaty" is an international agreement aimed at regulating the use and exploitation of the world's oceans beyond the limits of national jurisdiction. The treaty, first proposed in 2004, aims to provide a framework for the conservation and sustainable use of marine biodiversity in these areas and to prevent or mitigate the environmental damage caused by human activities.

The Marine Biodiversity of Areas Beyond National Jurisdiction (BBJN) treaty's text was finally agreed upon by delegates on 04 March 2023, following intense debate and discussion among various stakeholders, including governments, scientists, environmentalists, and the shipping industry. Subsequently, it has the potential to significantly impact the way ships operate on the high seas, which cover more than two-thirds of the world's oceans.

Now that the UN High Seas Treaty text has been agreed upon, the focus will shift towards ratification and implementation of the treaty by member states. The next steps will involve the individual states ratifying the treaty through their domestic legislative processes. The treaty shall enter into force once a minimum of 60 states have completed this process. Once a treaty is ratified, the member states must then implement its provisions into their domestic legal systems, involving changes to existing laws, regulations, and policies. The process of ratification and implementation can take time, and the treaty's success now depends on the commitment of the member states to adhere to its principles and comply with its provisions.



Under the treaty's terms, ships will be required to adhere to stricter regulations when operating on the high seas. These regulations include provisions to prevent overfishing and to protect marine biodiversity. In addition, the treaty calls for creating marine protected areas and establishing measures to mitigate the impact of climate change on the high seas.

We will explore how the treaty could affect ships concerning ten key treaty provisions below.

Marine Protected Areas (MPAs)

One of the treaty's key provisions is establishing a framework for creating marine protected areas (MPAs) on the high seas, which competent authorities will designate based on scientific and ecological criteria. These MPAs will serve as a tool for the conservation and sustainable use of marine biodiversity by protecting habitats, ecosystems, and species from human activities such as fishing, shipping, oil and gas exploration, deep-sea mining, etc.

Ships operating in or near MPAs on the high seas will be subject to specific regulations and restrictions designed to minimise their impact on the marine environment. These regulations could include speed limits, routing

Genetic Resources

Genetic resources are the biological material of value for scientific research, conservation, and commercial use, and the high seas are a vast and largely unexplored frontier for genetic resources. Subsequently, there is a framework for managing and conserving genetic resources to recognise that these are part of the common heritage of humankind and should be shared equitably for the benefit of all nations.

States must cooperate to conserve and sustainably manage the genetic resources found within the high seas by sharing information and technology, building capacity, and developing best practices for their sustainable use. Furthermore, the regime and legal framework for

requirements, or using specific technologies and prohibitions on certain activities. By restricting human activities in these areas, the treaty seeks to minimise the risk of damage or disruption to sensitive marine ecosystems and habitats and to promote the recovery of depleted fish stocks.

The creation of MPAs on the high seas will significantly impact shipping activities. Ships passing through or near MPAs may be required to alter their course or speed to avoid damaging sensitive habitats or disturbing marine wildlife. The treaty provides for developing international guidelines and standards for ship routing in and around MPAs, to ensure that ships take precautionary and environmentally responsible approaches to their activities on the high seas.

Ships will also need to take additional measures to protect the marine environment when operating in or near MPAs. For example, vessels engaged in fishing activities may be required to use more selective fishing gear or avoid areas where vulnerable species are known to occur. Shipping companies may also be required to adopt best practices to reduce air and water pollution, minimise waste, and prevent accidental spills or discharges of harmful substances.

The restrictions could increase the cost of shipping and may also result in longer transit times and delays. Furthermore, the designation of MPAs could also lead to new regulations governing the discharge of waste, ballast water, and other pollutants by ships operating in these areas requiring ships to install additional equipment or modify their existing systems to comply with these regulations, which could also add to their operational costs.

In addition to MPAs, the treaty establishes a process for identifying and protecting vulnerable marine ecosystems (VMEs). VMEs are areas of the ocean where certain species, such as deep-sea corals and sponges, are particularly vulnerable to human activities. As a result, ships operating in or near VMEs will need to take extra care to avoid damaging these ecosystems, including avoiding anchoring or trawling in the area and using technologies that minimise the impact on the seafloor.

The establishment of MPAs on the high seas will also have implications for shipowners and operators concerning liability, as they may face increased risks of environmental damage or accidents, which could result in claims. The treaty seeks to address these concerns by encouraging the development of international liability and compensation regimes for ecological damage caused by accessing genetic resources have been done on the principle of the fair and equitable sharing of benefits, ensuring that any commercial use of these resources benefits both the country of origin and the wider international community.

Ships operating on the high seas are subject to the provisions on genetic resources requiring them to take measures to avoid or minimise any adverse impact, including implementing environmental impact assessments and developing best practices for sustainable shipping.

Capacity-Building and Technology Transfer

In recognising the need for capacity-building and technology transfer to enable developing countries to participate fully in the conservation and sustainable management of the high seas, the treaty has emphasised their importance through incorporation to support their effective implementation. Subsequently, it requires states to cooperate in programs on training, education, and knowledge transfer activities.

As a critical part of the managing and conserving process of the high seas, shipping companies will need to support developing countries' capacity-building and technology transfer programmes through their participation in sharing information and knowledge.

Fishing

Overfishing and unsustainable fishing practices are major threats to the world's oceans' health. The treaty recognises the need to conserve and manage fish stocks within the high seas and to ensure their sustainable use by establishing a framework for conserving and managing these resources based on the best available scientific information and ensuring that fishing activities are conducted sustainably and responsibly.

The treaty requires states to cooperate in collecting and sharing information on the status of fish stocks and the impact of fishing activities on the marine ecosystem. Furthermore, it establishes measures to regulate fishing activities within the high seas, including adopting

shipping activities on the high seas.

Environmental Impact Assessments (EIAs)

Another provision of the treaty is the requirement to conduct Environmental Impact Assessments (EIAs) before engaging in any activities within the high seas. The purpose of the EIA requirement is to ensure that engaging in activities on the high seas considers the potential impact of their activities on the marine environment and to help decision-makers identify and mitigate any adverse environmental effects that may result from the activity. The EIA requirement will apply to all activities undertaken by ships on the high seas, including but not limited to fishing, deep-sea mining, oil and gas exploration, scientific research, and shipping.

The EIA content must consider the activity's potential impact on marine biodiversity, including ecosystems, habitats, and species. The EIA must also consider a range of other factors, such as the type and scope of the activity, the location and characteristics of the high seas area where the activity will take place, and its potential impact on the marine environment. The design of the comprehensive approach is to ensure that ships consider all possible environmental effects of their activities on the high seas and take measures to prevent or mitigate negative impacts.

The EIA process will involve a series of steps, including scoping, baseline studies, impact analysis, identification of mitigation measures, and monitoring and evaluation. International guidelines and standards will guide the process and be subject to review and approval by competent authorities, ensuring the process is transparent, consistent, and of high quality.

Suppose the EIA indicates that the activity is likely to have a significant negative impact on the marine environment. In that case, the ship may be required to modify or cancel the activity or take mitigation steps to reduce the impact, such as using less harmful fishing gear, avoiding sensitive areas, or minimising noise pollution, which ensures that ships take a more proactive approach to environmental management and are held accountable for any negative impacts of their activities on the high seas.

Ships will also be required to monitor and report on the implementation and effectiveness of the mitigation conservation and management measures, such as quotas, catch limits, and closed areas. It also requires states to implement and collaborate on these measures to ensure the sustainable use of fish stocks and the long-term health of the marine ecosystem.

Ships engaged in fishing activities on the high seas must comply with these conservation and management measures to ensure that fishing activities are sustainable and responsible and that the long-term health and productivity of fish stocks are maintained. They must also adhere to sustainable and responsible fishing principles, including using selective fishing gear, avoiding bycatch and discards, and adopting measures to protect vulnerable marine ecosystems.

Marine Pollution

Marine pollution is a significant threat to the health of the world's oceans caused by various human activities, including shipping. The treaty recognises the need to prevent, reduce and control pollution on the high seas. Accordingly, it has established a framework for cooperation between states to encourage the development and the implementation of measures to prevent, control, investigate and enforce pollution incidents. Furthermore, it acknowledges the need for awareness campaigns to promote consultation, participation and input of the public and non-governmental organisations on marine pollution prevention and control measures.

Ships engaged in international trade must comply with the provisions related to marine pollution by adopting all the mandatory measures to prevent, reduce and control pollution, including the discharge of pollutants into the sea. It also requires ships to carry and maintain records of the use and disposal of pollutants and to report any pollution incidents to the appropriate authorities. Furthermore, states must ensure that ships flying their flag comply with these provisions.

The high seas are estimated to contain as much as 51 trillion microplastic particles, and this pollution poses a significant threat to marine life. Therefore, there are provisions aimed at reducing plastic pollution and single-use plastics. Subsequently, ships will be required to find alternatives to single-use plastics, such as reusable containers and utensils, to reduce the amount of plastic waste they generate.

measures identified in the EIA to ensure that the activity does not significantly impact the marine environment establishing that ships are constantly monitoring the impact of their actions on the high seas and are taking steps to ensure that their activities are sustainable and do not harm marine biodiversity.

The treaty also contains provisions which promote the safe and environmentally sound recycling of ships to help address the problem of shipbreaking in countries with lax environmental and safety standards.

A combination of compliance and enforcement measures will ensure EIA requirements are met, including inspections of ships engaged in activities on the high seas, penalties or fines for non-compliance, and other measures. In addition, ships will be held accountable for any negative environmental impacts of their high seas activities to incentivise compliance.

Liability

Recognising that ships operating on the high seas can pose significant environmental risks, including pollution and damage to sensitive marine ecosystems, the treaty establishes liability rules to ensure that ship owners are held responsible for any damage caused by their vessels.

Ships operating on the high seas must maintain insurance or other financial security to cover liability for damage to the marine environment. In addition, the basis of the liability regime is established on the principle of strict liability, meaning that ship owners are liable for any damage caused by their vessels, regardless of whether they were at fault.

The compulsory insurance system requires a ship's insurance cover to be done by a recognised insurance provider or to demonstrate sufficient financial security to cover their liability. This system ensures that ship owners have the financial resources to pay for any damage caused by their vessels. It also provides a mechanism for compensating victims of marine pollution and other environmental damage.

In addition to these liability rules, a system of enforcement measures is in place to ensure that ships comply with their obligations under the treaty, including inspection and monitoring of ships and penalties for non-compliance.

Dispute Settlement

The treaty recognises the importance of resolving disputes related to the interpretation or application of the treaty in a timely and effective manner. Therefore, dispute settlement is essential to ensuring the effective implementation of the provisions related to protecting and preserving the marine environment.

The establishment of a dispute settlement mechanism provides for the settlement of disputes related to the interpretation or application of the treaty. It is based on the principle of peaceful settlement of disputes in international law, intending to be a flexible and efficient process through negotiations, mediation, conciliation, arbitration or means of peaceful settlement of disputes.

Furthermore, to hear and settle disputes a tribunal composed of independent experts in the field of international law and the protection of the marine environment will be set up. The tribunal will have the authority to hear and settle disputes related to the treaty's interpretation or application and issue binding decisions.

Subsequently, ships engaged in international trade may be subjected to the dispute settlement mechanism and the binding decisions of the tribunal.

Scientific Research

Scientific research plays a crucial role in understanding and managing the complex ecosystems of the high seas. Therefore, the treaty encourages states to promote and facilitate scientific research on the high seas, improving our knowledge of the marine environment, and informing decision-making on the sustainable use of marine resources.

In promoting the importance of international cooperation in scientific research on the high seas, states are encouraged to share data, information, and expertise and coordinate their research activities to maximise the scientific value of their efforts. Furthermore, the treaty provides for developing international standards and guidelines for scientific research on the high seas to ensure that research conduct is consistent and scientifically rigorous.

Ships operating on the high seas play a critical role in supporting scientific research by providing platforms for research activities and equipment, transporting scientific personnel and supplies, and collecting data on the marine environment. Under the treaty, ships engaged in scientific research on the high seas must follow established guidelines and procedures to ensure that their activities are conducted safely and have minimal impact on the marine environment. These guidelines may include requirements for collecting and managing data, using specialised equipment, and adopting best practices to minimise pollution and other environmental impacts.

Furthermore, ships operating on the high seas may also benefit from scientific research by receiving valuable data and information to support their operations. For example, the collected ocean currents and weather patterns data can optimise shipping routes and reduce fuel consumption. At the same time, information on marine biodiversity can assist them in the development of sustainable fisheries practices.

Compliance and Enforcement

Compliance and enforcement are critical to the treaty, ensuring that ships operating on the high seas comply with

established rules and regulations. These measures include the establishment of a system for monitoring and assessing compliance, as well as the development of guidelines and best practices for sustainable shipping on the high seas.

The treaty also encourages states to cooperate with each other to promote compliance with the provisions involving sharing information on best practices, providing technical assistance to developing countries, and collaborating on enforcement measures.

Ships operating on the high seas may face significant penalties for non-compliance, including fines, revocation of licenses or permits, and even criminal sanctions in some cases. In addition, ship owners may also be held liable for any damage caused by their vessels under the strict liability regime established.

Overall, the UN "High Seas Treaty" has the potential to significantly impact the shipping industry, particularly in creating new marine protected areas and imposing new regulations governing certain activities on the high seas. However, it also contains provisions that could benefit the industry, such as promoting safe and environmentally sound ship recycling, and recognising the importance of scientific research and monitoring on the high seas.

As the treaty moves closer to implementation, it will be necessary for the shipping industry to engage in the process and work with governments and other stakeholders to ensure that its interests are considered. This may involve investing in new technologies or practices to reduce the environmental impact of shipping activities and engaging in advocacy efforts to shape the implementation of the treaty.

Ultimately, the success will depend on the cooperation and collaboration of all stakeholders, including the shipping industry. Working together will ensure that the high seas are protected for future generations, and the shipping industry can continue to play a vital role in global trade and commerce while minimising its impact on the marine environment.