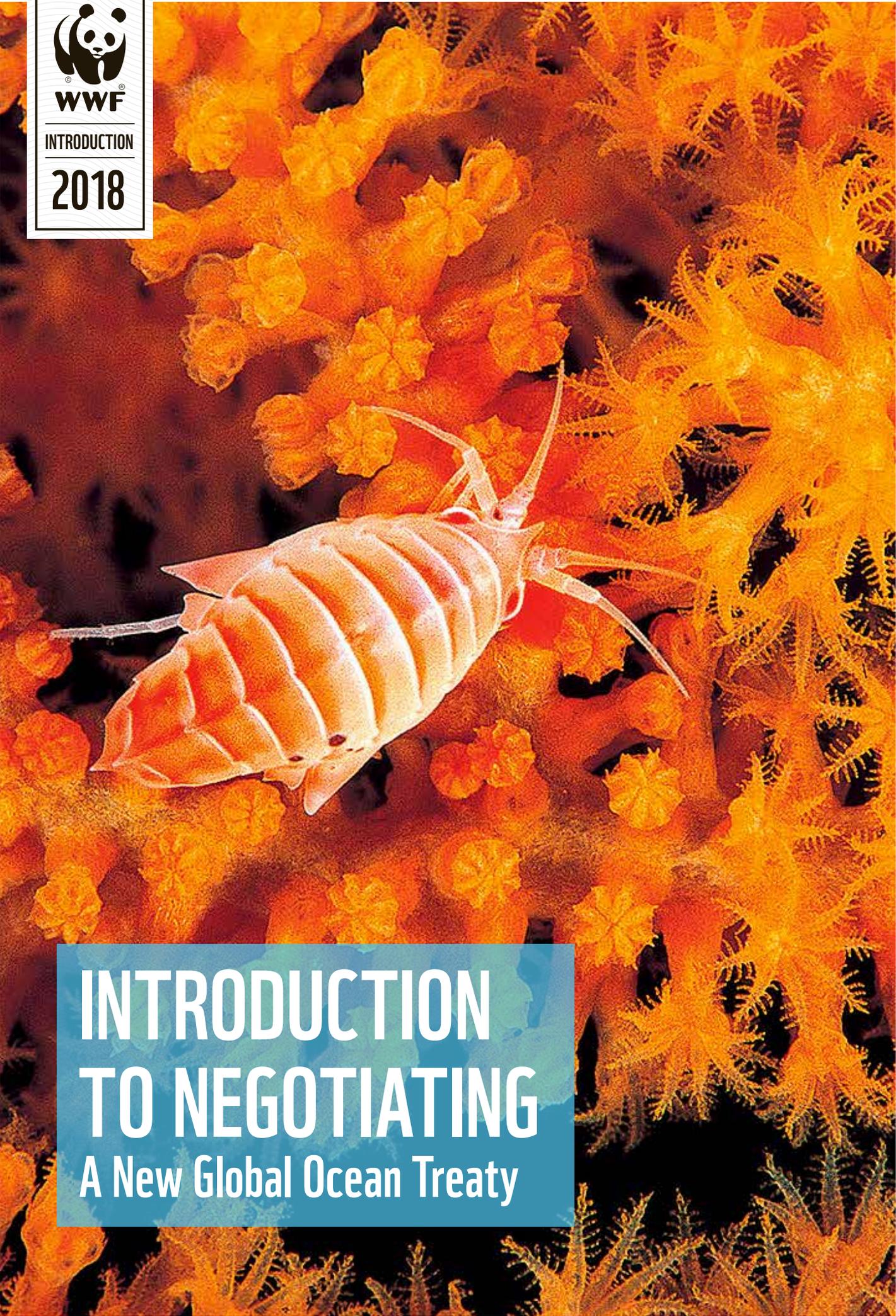




WWF

INTRODUCTION

2018

A large, detailed photograph of a pinkish-orange crustacean, possibly a scud or amphipod, resting on a bed of vibrant orange and yellow coral or seaweed. The crustacean is the central focus, shown in profile, facing right. Its body is segmented and translucent, with a prominent tail fan. The background is a dense, textured field of bright orange and yellow coral or seaweed, creating a rich, warm color palette.

INTRODUCTION TO NEGOTIATING

A New Global Ocean Treaty



Two tuvaluans girls

HALF OF OUR COMMON HOME

WWF is working to ensure marine biodiversity conservation and sustainable ocean use through a new global treaty.

The oceans beyond national jurisdiction cover almost half the planet and make up 80% of its three-dimensional living space. These vast open ocean and deep-sea environments are some of the least explored areas on the planet — and many species that live here are vulnerable to human activities. Now, governments at the United Nations are poised to negotiate a new global legally binding treaty to ensure marine biodiversity is conserved and these vast ocean areas are used sustainably.

Improving ocean governance is a powerful enabler for WWF's new oceans strategy aimed at 'Ensuring we have productive and resilient ocean ecosystems, sustain human well-being and conserve biodiversity'.

We now have a historic opportunity to improve how oceans are governed and managed across scales and uses, and how marine biodiversity is conserved, through the development of this new treaty. WWF plans to engage governments and business to ensure the new treaty is as robust and as inclusive as possible.

What's at stake?

This 'other half' of the planet of areas beyond national jurisdiction of coastal states is home to a myriad of species and many important habitats. From highly migrating tunas to long-living orange roughy, from microorganisms, deep sea corals and sponges that can hold the next discoveries for pharmaceuticals or solutions to our energy problems, to towering seamounts, huge abyssal plains criss-crossed by trenches and canyons, and fumingly hot hydrothermal vents, we know less of the open and deep ocean than we know about planet Mars.

Migratory species such as tuna, turtles and whales roam across these vast areas and into coastal and even nearshore waters where they are important resources for local fishers and tourism operators. Marine life knows no legal boundaries!

Ocean space is becoming increasingly crowded. As natural resources on land and in coastal waters become ever more depleted, the high seas and the deep seafloor are increasingly attracting the attention of industries. Although far from shore and inaccessible for most of us, the species and ecosystems here are under increasing pressure as human activities become more widespread and more intensive. This vast area is a classic victim of the tragedy of the commons.

The resulting serious decline in the status of ocean health, marine ecosystems and marine life has become increasingly clear in recent years — as have the negative consequences for ocean-based economies, especially for coastal communities dependent upon marine resources for livelihoods and food security.

"As natural resources on land and in coastal waters become ever more depleted, the high seas and the deep seafloor are increasingly attracting the attention of industries."

64% OF OUR OCEANS

LIE BEYOND ANY NATION'S JURISDICTION

Why a new treaty?

Current frameworks for protecting and sustainably using the 64% of the ocean that lies beyond any nation's jurisdiction are inadequate to ensure the level of integrated management and precaution required. New management regimes are needed to protect species and habitats while allowing for sustainable resource use.

Today, the ocean is managed via a patchwork of international agreements that each covers only a sector or a region, and none that provides a comprehensive system for protecting the marine environment, its species and habitats from harm. Some activities, such as cable laying, are not covered by any agreement or management arrangement at all.

Fortunately, the world's governments have now recognised the problem of fragmentation and gaps in how ocean space and resource management is done. The United Nations General Assembly (UNGA) has therefore launched negotiations for a new treaty to take a more holistic approach to the conservation and sustainable use of marine biodiversity in areas beyond the national jurisdiction of coastal states, while supporting all states to better manage areas and activities within their jurisdiction and control.

This treaty aims to more effectively halt and reverse decline in the health and productivity of our ocean and its ecosystems and to protecting and restoring its resilience and ecological integrity. WWF sees the emerging treaty as an important and long-awaited opportunity to establish an integrated framework to manage all existing and new activities as a whole, thus ensuring the conservation of marine ecosystems and species.

The new treaty should also help states to contribute significantly to reaching several Sustainable Development Goal (SDG) targets, including those for the Ocean SDG (14), especially target 14.c on implementing international law as reflected in the United Nations Law of the Sea Convention (UNCLOS).

“We now need a new paradigm of cooperation – based on the idea that, in areas beyond national jurisdiction, the oceans belong to everybody.”

The treaty negotiation and WWF

The first negotiating session begins in September 2018, when states will meet at the UN in New York to start negotiating the treaty text. Four two-week long meetings are scheduled between September 2018 and early 2020. WWF will engage states ahead of and during the negotiations, to advocate for the treaty to be as ambitious as possible, yet palatable enough for all states. If we feel that states are heading down a route we consider affording inadequate means for conserving and sustainably using biodiversity, WWF will speak up and constructively work to promote a best way forward.

WWF's key focus areas and expectations of the new treaty are explained below.

The oceans belong to everybody

Achieving this important commitment by the international community requires a different approach to that traditionally taken for governing and managing the ocean – as governments at the UN have been clear in saying, ‘business as usual is not an option’.

In order to ensure the ocean can be a provider of ecosystem services into the future, we need to ensure that ocean life in all its forms is conserved and used sustainably. In recognition of its importance to sustainable development, WWF seeks to have biodiversity conservation established as a legitimate ocean use, creating an overarching obligation for other uses (fishing, shipping, mining, cable laying and any other existing or new uses of the ocean) to be properly mindful.

WWF believes that this needs to be a front-and-centre consideration as governments begin development of this new treaty.

Traditionally, the duty to cooperate, as set out in UNCLOS, the Law of the Sea, was based on the understanding that the ocean beyond coastal state national jurisdiction belonged to no one. This worked well when the principal consideration was to ensure the safe passage of ship borne trade, fish resources were considered limitless and oceans too big to pollute. This old approach to cooperation between states does not serve today's ambition for conservation and sustainable use of biodiversity in an ever increasingly crowded ocean space. We now need a new paradigm of cooperation – based on the idea that, in areas beyond national jurisdiction, the oceans belong to everybody.

WWF believes that it is time for the international community, as a whole, to assert a sense of ownership in how these open ocean areas are managed and controlled to ensure marine biodiversity is effectively conserved and sustainably used. All users of ocean space and resources need to be mindful of this global interest and of the global commitments of governments in adopting SDG 14.

Institutional framework

WWF believes that strong institutions are needed to represent this sense of common ownership of the ocean in the international community, and to drive the paradigm shift we need to a new holistic oversight framework of all activities. Traditionally isolated sectoral management arrangements, for example of fishing, shipping and seabed mining, must become more mindful of government commitments to conservation and sustainable use and more sensitive to the effects of pollution, cumulative and cross-sectoral impacts and cross-jurisdictional inconsistencies.

This institutional framework needs to have a global body, a Conference of the Parties with global oversight. In the absence of any regional oversight arrangement, the global body must have reserve powers to ensure that biodiversity conservation is recognised as a legitimate ocean use and as an overarching obligation to be respected by other uses.

Enhanced cooperation

In WWF's view, existing sectoral management bodies – the International Maritime Organisation (IMO) for shipping, the International Seabed Authority (ISA) for mining, regional fisheries management organisations (RFMOs) for fishing – can retain their existing competencies to regulate 'their' use, but they need to be more mindful of other uses, especially marine biodiversity conservation, in how they exercise their competencies. This can best be done through *enhanced cooperation*.

Enhanced cooperation obliges states to cooperate, both unilaterally in controlling vessels flying their flag, and collectively in participating in sectoral management bodies. This is needed to ensure that the decisions made in these sectoral bodies implement the obligations set out in the provisions of other relevant agreements and the decisions of other relevant bodies – such as the United Nations General Assembly, and those established by the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species of Flora and Fauna (CITES), and the Convention on Migratory Species (CMS).

“Traditionally isolated sectoral management arrangements, for example of fishing, shipping and seabed mining, must become more mindful of government commitments to conservation and sustainable use and more sensitive to the effects of pollution, cumulative and cross-sectoral impacts and cross-jurisdictional inconsistencies..”



Hong Kong shipping port



A Hake Trawler with deployed Tori-Lines to scare seabirds

“Boundaries and borders between areas within and beyond the control of coastal states are often barriers to effective management, as the ocean and its food webs are connected and many species are highly mobile.”

Integrated Ocean Management

Boundaries and borders between areas within and beyond the control of coastal states are often barriers to effective management, as the ocean and its food webs are connected and many species are highly mobile. Achieving commitments to ocean health and biodiversity conservation, and to sustainable use, therefore requires an improved cross-jurisdictional and cross-sectoral approach to management that not only respects coastal state interests but also this new sense of ownership by the international community in waters beyond coastal state control.

WWF believes that the commitment to enhanced cooperation across these boundaries and borders can best be achieved through integrated ocean management (IOM) where implementation of ecosystem-based management (EBM) can ensure conservation and sustainable use of biodiversity. This approach can also address cross-sectoral and cumulative impact issues. A key area-based management tool in achieving such EBM-IOM is marine spatial planning of all activities in a given area.

That EBM includes being precautionary, insisting on transparency and facilitating participation by stakeholders, makes it most appropriate as an approach to IOM.

Regional implementation of global standards

It is WWF's view that implementation of this EBM-IOM framework can best be done by taking a 'regional implementation of global standards' approach.

'Global standards' describes the obligations and commitments set out in relevant treaties and the decisions and resolutions of relevant international bodies. It describes the sum total of what states have committed to do and which states, under 'enhanced cooperation', are expected to reflect in the decisions they make in all relevant fora.

'Regional implementation' reflects the best scale at which ecological realities and political communities of interest come together in making management decisions. We envisage that states with a real interest in the conservation and sustainable use of the biodiversity of a region would develop the cross-sectoral and cross-jurisdictional governance and management arrangements that they feel are best suited to that region under the new treaty.

Leaving no one behind

To be effective in establishing a holistic oversight framework, this new treaty needs to be 'universal'. That is to say, all states need to join and become a party to it. Wide participation by states in the treaty is important to ensure a level playing field, so that unscrupulous operators cannot choose a less responsible flag state with less stringent rules due to non-participation in the treaty. In turn, this needs the treaty, itself, to be adopted by consensus – meaning that all states are equally committed to the results of their negotiating efforts.

Likewise, if enhanced cooperation is to work well, states need to be encouraged to become parties to all other relevant agreements, so that the 'global standard' is the same for all and all states have the same obligations and commitments – again creating a level playing field. This allows for 'best practice' arrangements to be introduced and implemented. At the moment, the failure of some states to take on obligations in some agreements tend to encourage 'lowest common denominator' decision-making – with serious negative implications for conservation and sustainable use.

WWF envisages a transition from 'lowest common denominator' to 'best practice' management in implementation of this new treaty. However, we recognise that this shift will stretch the capabilities of even well-resourced states, and that it requires very substantial capacity building across a wide range of purposes, especially for developing countries. In deciding to negotiate this new treaty, the UNGA agreed that it needed to include a package of commitments, including capacity building and the transfer of marine technology, aimed at ensuring all states can more effectively contribute to achieving the conservation and sustainable use of marine biodiversity (see below). This will, in turn, contribute to achieving the 2030 Agenda for Sustainable Development.

“Wide participation by states in the treaty is important to ensure a level playing field.”

What's in the Package

The topics which government have agreed to address in the new treaty are the conservation and sustainable use of biodiversity in areas beyond national jurisdiction, including these four elements:

1. Capacity building and transfer of marine technology

The new treaty will need to set out how capacity building and transfer of marine technology will be supported at a scale which is sufficient to give practical effect to the obligations and decisions of states, not only in the new treaty, but also in the suite of other relevant agreements covered by enhanced cooperation oversight arrangements.

Recognition of the need of and opportunities for capacity building for developing states throughout the new treaty can provide guidance for contributing to implementation of relevant SDG targets, including SDG 14. This means that the capacity building framework enabled by the new treaty can also contribute towards activities within national jurisdiction. Of particular importance will be the creation of a comprehensive reporting framework so that aggregated contributions can be assessed against commitments.

2. Area-based management tools, including marine protected areas (MPAs)

WWF has already identified the critical role of marine spatial planning as an area-based management tool central to rolling out integrated ecosystem-based management. WWF believes that there needs to be an entire part of the new treaty devoted to setting out the process for establishing networks of MPAs in areas beyond national jurisdiction.

WWF envisages the new treaty developing and designating MPA networks based on conservation values and then identifying management requirements needed to address



Sperm whales socializing

threats to those values from potentially damaging uses. Where there are existing competent sectoral bodies for managing such uses (IMO for shipping, ISA for mining and RFMOs for fishing), these bodies would be expected to adopt management measures, including potential exclusion of such uses to create marine reserves or no-take zones, to ensure values identified under the new treaty are protected.

3. Environmental Impact Assessment (EIA)

The treaty also needs to have a part that establishes a framework for ensuring that a comprehensive EIA regime exists to cover all uses and activities in areas beyond national jurisdiction, and that it is appropriately integrated with equivalent coastal state EIA regimes in areas within national jurisdiction.

In taking an 'oceans belong to everyone' approach, WWF envisages that, in assessing potential impacts of activities under their control, if significant impacts are considered likely, flag states would let competent bodies be responsible for conducting assessments. The body established by the treaty, in exercising an oversight role, would have a default responsibility for assessments for uses not covered by existing competent sectoral management bodies (such as cable laying, and any new uses that emerge over time). Given the likely scale and intensity of impacts of activities, the body would also have call-in power – the power to call in and scrutinise decisions by flag states and competent bodies before they are implemented – to ensure appropriate levels of assessment are given to activities and proposals.

If an EIA regime were to be developed based on the existing 'oceans belong to no-one' approach, there is a grave risk that unscrupulous users would seek out irresponsible flag states to sanction inadequate assessments.

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4. Access and benefit sharing (ABS) for marine genetic resources (MGR)

A key ambition of developing countries is that the treaty should have a part that fills the gap whereby there is no control over access to genetic resources in areas beyond national jurisdiction. Their view is that this should be done by establishing a regime based on the ‘common heritage of mankind’ principle, like the ISA for mining. Other countries, however, want to keep existing *laissez faire* arrangements bolstered by UNCLOS provisions on freedom of marine scientific research.

WWF is proposing the development of a new *sui generis* regime based on the CBD’s ‘common concern’ principle, that would facilitate collection of genetic material, whether for research or commercial purposes. Such a regime would also establish obligations for a chain of custody to enable tracking samples from point of at-sea collection through transformations into eventual commercial products.

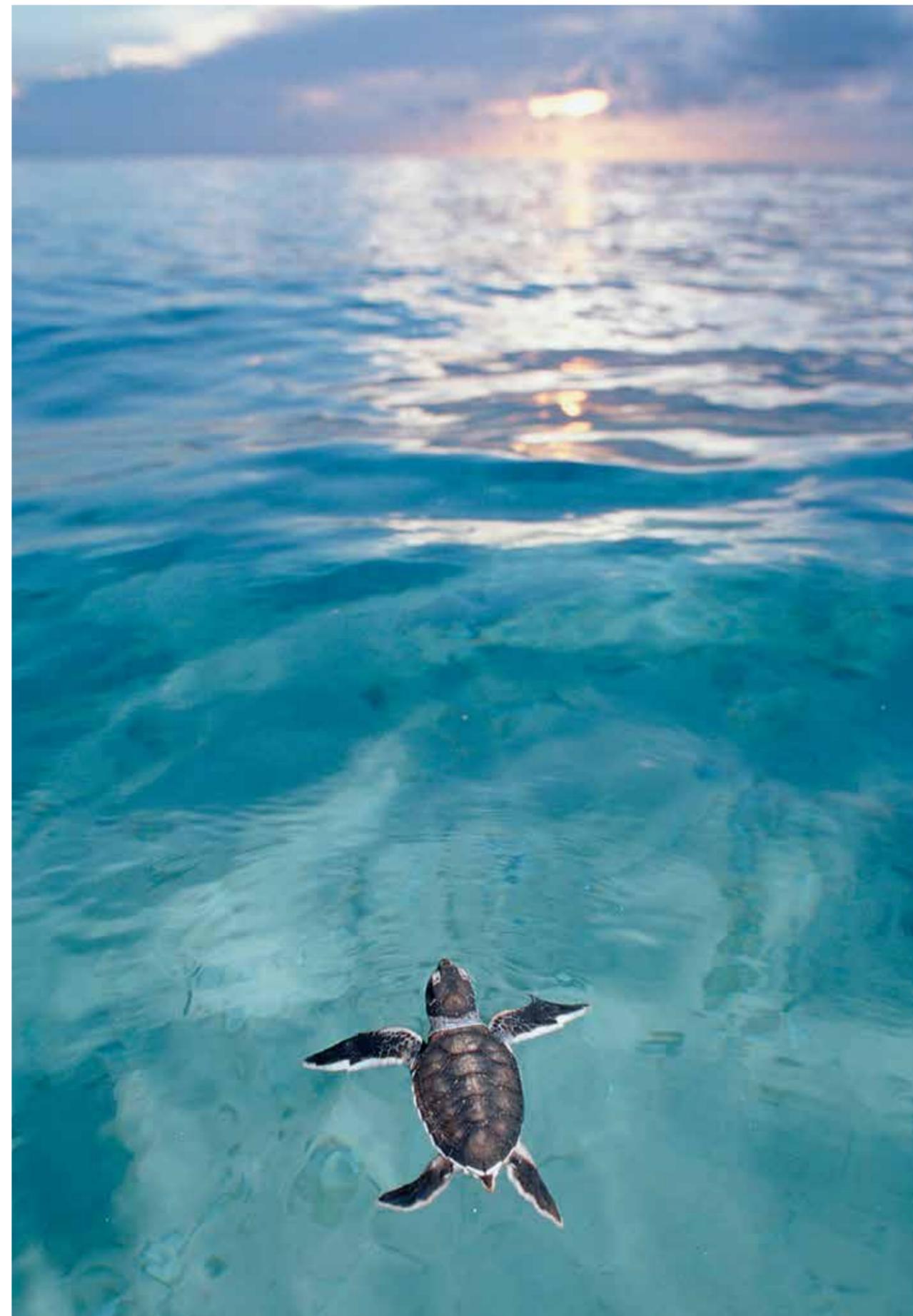
For setting any conditions on intellectual property rights, the World Intellectual Property Organisation (WIPO) would be expected to provide a forum to discuss and potentially develop an appropriate regime (as it is doing today for traditional knowledge).

As discussions on the new treaty have developed, it has become clear that any flows of benefits from an MGR access and benefit sharing regime are likely to be slow in coming, and small in scale. Additionally, the blurring of lines between research and commercial use makes access controls impractical. It has also become clear that many of the benefits which are likely to flow under a new MGR access and benefit sharing arrangement, would probably also flow under general capacity building and technology transfer arrangements. This means that a MGR access and benefit sharing is not necessarily needed to drive the flow of benefits – the SDG commitments can do that more effectively and sooner.



Funae fishermen catching skipjack tuna

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Half of Our Common Home

193

The United Nations has 193 member states and all need healthy oceans.

45%

The oceans outside national jurisdiction cover 45% of the planet.

7TH

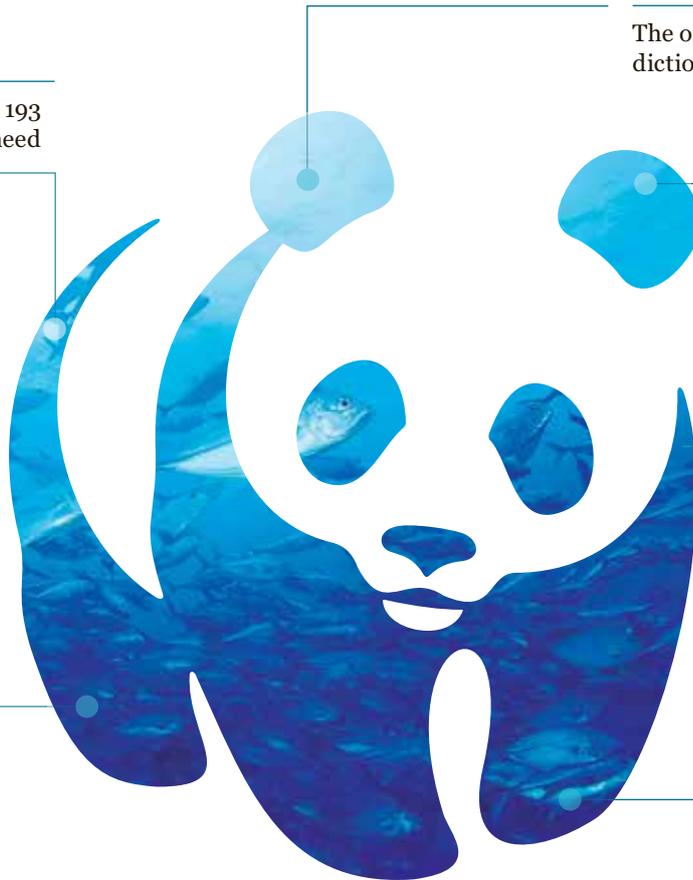
Based on the gross marine product, the Ocean is the 7th largest economy in the world.

2/3

Two-thirds of the base economic value of the oceans is produced by assets that rely on healthy ocean condition. These assets must be maintained to ensure a sustainable blue economy.

SDG 14

The new ocean treaty is essential to achieving the sustainable development goals, including the Oceans SDG 14.



Why we are here

To stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature.

www.panda.org



THE GLOBAL GOALS
For Sustainable Development

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