

Who Owns the Sea?

By [Vanessa Baird](#)

Theme: [Environment](#), [Law and Justice](#)

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*The coming months are critical if we are going to stop the damaging free-for-all that is the current status quo and save the world's oceans for our common future. **Vanessa Baird** examines the prospects.*

There's a cartoon that oceanographer **Lisa Levin** uses in her lectures. It shows a group of women having coffee. One is saying: 'I don't know why I don't care about the bottom of the ocean, but I don't.' It's from *The New Yorker*, dated 1983, and it's safe to say it probably reflected the feeling of the vast majority of people at the time.

Whatever has happened in the intervening decades, that, at least, may have changed. It's so much easier today to feel for the seas.

We now know that the vast, once seemingly empty, body of blue is teeming with precious and precarious life. And we know much more about the human role in endangering so many of its creatures. A turtle, with a plastic straw stuck poignantly in its nostril. A baby whale, clutching to its ailing mother. A dolphin expiring from exhaustion, tangled in a fishing net.

We know the sheer colour and wondrous beauty of sea life. Bioluminescent fish that dazzle in the dark deep, where no light penetrates except the magical flashes that sea creatures themselves create. Awesome underwater mountains and kelp forests that seem like the stuff of rich fantasy.

Such images have been brought into the homes of millions by the *Blue Planet* television series, narrated by David Attenborough, providing us with an iconography of marine conservation that commands an almost sacred potency. Earlier this year, the naturalist and filmmaker achieved rock-star status, appearing, at the age of 93, at this year's Glastonbury festival in the west of England.

But, more important, he has helped turn a vast anonymous expanse into something people care about, feel connected to, might even want to save.

Law of the Sea

Who owns the sea, that body of water that covers two-thirds of the planet? Can you really draw lines on water, circumscribe it with laws?

The idea of an international law of the sea has a long history. In 1609 Dutch jurist Hugo Grotius published a treatise called 'The Freedom of the Seas or the Right which belongs to the Dutch to take part in the East Indian Trade'. The subtitle is a bit of a giveaway.

He began by saying: 'Every nation is free to travel to every other nation and to trade with it.'

In 1982, after a decade of negotiation, a new UN Convention on the Law of the Sea (UNCLOS III) came into being.

This enshrined Grotius' 'freedom of the seas' but with more detailed national rights and privileges. It extended the 'territorial sea' where a coastal state is free to set laws, regulate, and use any resource from 3 to 12 nautical miles.[1] Vessels of all nations have the right of 'innocent passage' through all such territorial waters. Fishing, polluting, weapons practice and spying are not considered 'innocent', and submarines and other underwater vehicles are required to navigate on the surface and to show their flags.

The 1982 Convention also introduced a new 200-nautical-mile Exclusive Economic Zone (EEZ), within which the coastal nation has sole exploitation rights over all natural resources. In some cases, this can be extended even further.

Most of the seas - 64 per cent of the ocean's surface - remain 'high seas' or 'areas beyond national jurisdiction', a free-for-all region.

The Convention has been signed by 167 countries and the European Union. The US has never ratified it, which is ironic given how often it uses its rhetoric when aggressively patrolling key waters to secure 'freedom of navigation'. Nor, incidentally, has Iran.

Fit for purpose?

When it was first being discussed, the Law of the Sea was welcomed by many. **Dorrik Stow**, now oceanography professor at Scotland's Heriot Watt University, recalls: 'I was very enthusiastic about it as a student. There was such a huge ocean out there that should be beneficial to humankind.'

But what followed was a resource grab of epic proportions by richer coastal nations. 'I don't think the Law of the Sea has done anything for poorer communities or landlocked nations or the world in general,' Stow now concludes.

Meanwhile, its enshrining of the 'freedom of the high seas' has in some ways enshrined lawlessness. Steven Haines, professor of international law at London's Greenwich University, says:

'Most international law in relation to the high seas is virtually unenforceable.'

He sees the international system for registering ships as a significant part of the problem.

'It doesn't work. If you talk to people who have vested interests they will say it's working fine, but that's simply not the case.'

Under UNCLOS, only flag states (the main ones being Panama, Liberia, Marshall Islands, Hong Kong and Greece) have jurisdiction over their registered ships in international waters. But they don't, or can't, effectively police their ships or what happens on them. There is no police force for the high seas and no criminal justice system that applies there.

A recent case is emblematic: a British teenager, allegedly raped on board a Panama-flagged cruise ship in international waters in the Mediterranean, was unable to obtain justice because the Spanish court in Valencia, where the ship docked, did not have the jurisdiction to try the case. Her alleged attacker was freed.

Current harms

Today many experts agree that the Law of the Sea is not fit for purpose. It has proved unable to deal with many challenges that were less apparent in the 1980s, such as modern slavery on ships, people-trafficking, piracy, overfishing, plastics pollution and climate change.

The high seas are, by and large, a zone where weak laws and poor governance allow the powerful to plunder and human rights abuses to go unchecked. Something close to anarchy prevails.

A handful of mainly rich nations exploit marine life for profit under the freedom to the high seas granted by UNCLOS. The Convention does include some duties to conserve living marine resources and protect and preserve the environment, including rare or fragile ecosystems and habitats, but these are largely ignored.

Though vast and forgiving, the seas are now in crisis, stressed to the limit by a range of human activities. For example, nearly 90 per cent of the world's marine fish stocks are now fully exploited, over-exploited or depleted, [according to the UN](#).

The extension of fishing into the high seas, and the deep seas, has put pressure on large migratory fish and marine animals: sharks, some types of tuna, whales, dolphins and turtles, are especially at risk.

Industrial fishing is the most harmful. Bottom trawling, which involves dragging a large net and heavy gear across the sea floor, is generally considered the most aggressive method, destroying fragile deep-sea habitats. Just six fishing powers – China, Taiwan, Japan, Indonesia, Spain and North Korea – account for [77 per cent](#) of the global high-seas fishing fleet.

If industrial high-seas fishing is bad for marine creatures, it's not much cop for humans either. A recent report on modern slavery at sea showed that it was 'endemic' in the Pacific, the source of most of the world's tuna. Only [4 out of 35](#) leading brands surveyed had systems in place to detect slavery in their supply chains, which are complex and opaque.

Plastics pollution in the seas is now headline news. The oceans are awash with the stuff. Most originates on land as waste which then enters the river system, before flowing into the sea – [12 million tonnes](#) a year. Much consists of single-use plastic containers and packaging.

Ocean currents carry this plastic waste over vast distances and to great depths. Spare a thought for US explorer **Victor Vescovo** who recently descended 11 kilometres to the deepest place in the ocean, the Pacific's Mariana Trench – and found a plastic bag and sweet wrappers. Spare more thoughts for all the marine creatures that are eating plastic, often mistaking it for nutritious plankton. The trouble with plastic is that although it might eventually break down into smaller particles, it lasts forever.

Human activity on land is responsible for another growing marine problem – eutrophication.

This is the creation of oxygen-depleted 'dead zones' in the sea.

Each summer, a 20,000 square-kilometre dead zone forms in the Gulf of Mexico near the Mississippi Delta. Cause of death: pig shit and artificial fertilizer from Iowa.

Yes. You read right. Two thousand kilometres up the Mississippi River is the US pig-breeding and soy and corn belt. Massive amounts of waste, including nitrates and phosphates, are produced by industrial farming methods; prodigious quantities of pig manure and artificial fertilizer are used on the crops. The chemicals contaminate the groundwater and then flow into the Mississippi-Missouri river system, which ends in the Gulf of Mexico. There, the nitrates and phosphates over-fertilize the sea, causing the formation of [oxygen-starved areas](#) devoid of life.

Scientists now know much more about the intricate relationship between the oceans and the atmosphere and what it means for climate change (see page 21). The ocean is like a gigantic sponge, explains Stow, holding 50 times more carbon and carbon dioxide than the atmosphere. It absorbs [more than a quarter](#) of the carbon dioxide produced by human activity. But all that excess carbon is leading to acidification of the seas as the CO₂ dissolves, releasing hydrogen ions, lowering the water's pH value and increasing its acidity. Called climate change's 'evil twin', acidification kills off coral reefs, which provide habitats for 25 per cent of marine species.

A healthy sea absorbs CO₂ and cools down the world, while its abundant plant-life produces much of the oxygen we need on land. It's said that we have the ocean to thank for every [second breath we take](#). We are not exactly showing our gratitude.

There are diverse ways in which we are treating the ocean badly – as a limitless dustbin for all manner of waste, chemical, nuclear, industrial, shipping, human; as a living storehouse that can be endlessly plundered without a thought for replenishment.

Future threats

We know, for example, of the lasting damage done by fossil fuel exploitation. BP's Deepwater Horizon disaster in 2010 is fresh in the memory. A ban on further oil exploration in the fragile and environmentally challenged Arctic and Antarctic should be a no-brainer.

'We should keep away from them,' says Stow, simply.

But what about the new initiatives that are increasingly seen as drivers of a future, high-tech 'blue economy'?

In July protesters gathered in Kingston, Jamaica, where the International Seabed Authority (ISA) was holding a major meeting. This body is responsible for managing the seabed and ocean floor beyond national jurisdictions and it's trying to finalize regulations for seabed mining by the end of 2020. The protesters were calling for a 20-year moratorium on deep-sea mining.

Large swathes already have been licensed to companies by the ISA for mineral exploration, many in areas of high biodiversity value. But scientists warn that mining will cause irrevocable damage to vulnerable deep ocean ecosystems which also play a key role in controlling our climate. A simulated mining operation conducted [26 years ago](#) in the sea off Peru shows biological damage enduring to this day.

The ISA has a serious conflict of interest. It is supposed to protect the seabed at the same time as enabling its exploitation. Environmentalists and some [marine scientists say](#) it is too close to the mining industry and is failing to encourage informed public debate about the risks. The company DeepGreen is [a vocal proponent](#) for deep-sea mining at the ISA and is working with shipping giant Maersk and mining transnational Glencore.

Marine bioprospecting is another controversial area. There has been a corporate rush to acquire marine patents. At present there are no clear rules governing the use of marine genetic resources and there are major issues around the access to these resources and how any resultant benefits should be distributed.



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A Global Ocean Treaty

All that might be about to change. Representatives from 190 countries are taking part in the Intergovernmental Conference on the Protection of Biodiversity Beyond National Jurisdiction (BBNJ), which at the time of writing is about to enter the third of its four rounds. It is due to complete in mid-2020 and will pave the way to a new Global Ocean Treaty.

'This is a once-in-a-generation opportunity to get ocean governance that puts conservation and sustainable use first,' says Liz Karan, senior manager for the high seas programme at Pew Charitable Trusts.

The aim is to develop an international, legally binding instrument to enable the protection of marine life and habitats [outside national jurisdiction](#).

Issues on the table include: the need for comprehensive environmental impact assessments for activities on the high seas; capacity building for management and conservation; the international sharing of benefits from marine genetic resources; and the use of area-based management tools, including marine protected areas (MPAs). The outcome will need to be radical, ambitious and properly enforced, if it is to work.

'Just asking existing institutions to do their job better will not go far enough,' says oceanographer Callum Roberts at the UK's University of York.

Those existing institutions include regional fisheries management organizations, the International Seabed Authority and the International Maritime Organization.

'There is a deep level of dysfunction at the heart of many of these organizations,' says Roberts. 'Putting them in charge of environmental protection would be a disaster. They urgently need reforms in the way they operate, as part of the Treaty. Some other body, with legal teeth and powers to sanction non-compliance with rules, must be created to co-ordinate and deliver protected areas.'

Roberts is lead author of a bold and comprehensive report [published by Greenpeace](#), which lays out a blueprint to protecting 30 per cent of the world's oceans by 2030.

We are currently achieving less than half of the 10 per cent by 2020 figure agreed under the [Convention on Biological Diversity](#).

But the report's authors say that 30 per cent is the minimum required to save the seas and that this can be achieved by creating a planet-wide network of ocean sanctuaries, making large areas of international waters off limits for fishing and extractive industries. The sanctuary network is designed to use data such as the distribution of sharks, whales, seamounts, trenches, hydrothermal vents, fishing fleets, mining claims and so forth. It takes into account wider environmental change and uncertainty and uses sea surface temperature to identify places likely to change more slowly or adapt more readily to rising temperature stress.

In the past, marine protected areas (MPAs) have been criticized for being too weak, for failing to stop over-exploitation, or for threatening the livelihoods of local traditional fishers.

'I think many of the uncertainties about how MPAs work have now been resolved by science,' says Roberts. 'We know they are powerful tools that will deliver a wide range of benefits if done well. Many people who think they will lose turn out not to when MPAs are established, often becoming supporters of protection. People are afraid of what they don't know. We should be more afraid of a future without protected areas, since protection is critical to help us mitigate the impacts of global climate change and adapt to its effects.'



Conservation takes many forms. These traditional fishers from Madagascar have switched to fishing more sustainable species. Credit: Tommy Trenchard and Aurelie Marrier D'unienville/Panos

Our sea

The oceans are our shared common heritage, but the current Law of the Sea does not deliver equity by a long chalk. In 2010 Australian philosopher **Denise Russell** wrote, with some prescience:

'A formidable force involved in the fate of the oceans favours a largely unregulated sea. This is the group of corporations that make use of the oceans in diverse ways... The Law of the Sea is now part of the problem with oceans and radical reorganization of ocean ownership is needed. Instead of a free-for-all, the high seas should be owned by the international community and regulated to ensure equity between nations and generations.'

This is the moment for the big push, to demand that our leaders agree a strong Global Ocean Treaty in 2020 with the creation of a body with enforcement powers to protect the seas, their life forms - and life on Earth.

As **David Attenborough** said at the end of his Blue Planet 2 series:

'Never before have we had such awareness of what we are doing to the planet. Never before have we had such power to do something about it.'

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Vanessa Baird lived and worked as a journalist in Peru during the tumultuous mid-1980s, and she maintains a passionate interest in South America.

Note

[1] One nautical mile is equivalent to 1.15 land miles and 1.85 kilometres.

Featured image: The rubbish that's visible near the surface is just part of the problem of ocean abuse - and planned future exploitation. Credit: Justin Hofman/Greenpeace

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