

Recommendations of the Deep Sea Conservation Coalition

To the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (ICP)

UN Headquarters, New York; June 20-24, 2011

This is an important ICP, focused on progress to date and gaps in the implementation of the outcomes of the major summits on sustainable development, as well as new and emerging challenges. This meeting will be a significant opportunity for States to ensure that a strong outcome is sent to the United Nations General Assembly (UNGA) and the UN Conference on Sustainable Development (UNCSD) to ensure that agreements on key oceans issues are made, especially with regard to high seas governance.

The UNCSD scheduled to take place in Brazil in 2012 will mark the 20th anniversary of the 1992 United Nations Conference on Environment and Development (UNCED) and the adoption of Agenda 21 - a comprehensive plan of action for sustainable development to be taken globally, nationally and locally. It also marks the 10th anniversary of the 2002 World Summit on Sustainable Development (WSSD).

As noted in Chapter 17 of Agenda 21, "the marine environment - including the oceans and all seas and adjacent coastal areas - forms an integrated whole that is an essential component of the global life-support system and a positive asset that presents opportunities for sustainable development". The high seas, or those parts of the ocean beyond national jurisdiction compose 64% of the world's marine area, and 50% of the surface area of our planet. Yet ocean governance is fragmented and measures established by existing institutions to tackle gaps and inadequacies in ocean governance have not been broadly and effectively implemented.

Chapter 17 of Agenda 21 recognized the danger posed by both habitat destruction and destructive fisheries. States made commitments to a) the preservation of rare or fragile ecosystems, as well as habitats and other ecologically sensitive areas (17.74), and b) the identification and protection of marine ecosystems exhibiting high levels of biodiversity and productivity, as well as other critical habitat areas, with priority being accorded to coral reef systems (17.85(a)).

The Johannesburg Programme of Implementation (JPOI) from the WSSD explicitly called for the elimination of destructive fishing practices (para. 32(c)) and highlighted the importance of maintaining the productivity and biodiversity of important and vulnerable marine and coastal areas, including in areas within and beyond national jurisdiction (para. 32(a)).

However, it was not until 2006 that the UNGA laid down exactly how vulnerable marine ecosystems (VMEs) should be protected. Resolution 61/105 set out specific tasks that must be carried out, including prior assessments, implementing the 'move-on' rule, putting into place conservation and management measures to ensure that there are no significant adverse impacts on VMEs, and protecting deep sea fish stocks.

These agreements were not enough to protect either VMEs or deep sea stocks. An assessment carried out by the Deep Sea Conservation Coalition (DSCC) in 2009 showed that implementation of resolution 61/105 was falling far short. Thus in 2009 the UNGA adopted resolution 64/72. This resolution made it very clear that not only should the requirements of resolution 61/105 be implemented, but that States should not authorize their vessels to fish when assessments are not carried out or other required measures, including the protection of deep sea stocks, are not implemented.

2011 is a critical year for the conservation and sustainable use of biodiversity in the deep ocean. The UNGA, for the first time ever, will conduct an open review of regional and national actions to protect deep-sea species and ecosystems beyond national jurisdiction from the harmful impacts of bottom fishing. The review will specifically assess the extent to which the UNGA resolutions have been implemented by high seas fishing States and regional fisheries management organizations / arrangements (RFMO/As) with a view to making further recommendations. The review (which will be preceded by a two-day workshop on September 15 and 16) represents an accounting by the high seas fishing States – including Australia, China, the members of the European Union, Iceland, Japan, New Zealand, Russian Federation and South Korea – to the global community on how well they have lived up to their obligations to protect and conserve that area of the ocean that belongs to all humanity.

The DSCC, through its member organizations, has participated in negotiations to implement the UN resolutions on bottom fishing around the world over the past five years. Based on direct experience and a review of various actions taken in response to the UN resolutions on bottom fishing, the DSCC has prepared a report, the main findings of which will be presented at a side event on Wednesday, June 22 at 1:15. The report's findings include:

- 1) While progress has been made in identifying and protecting some vulnerable marine ecosystems as called for in 61/105 and 64/72, the efforts taken to date are far from comprehensive;
- 2) The assessments of fishing activities called for in both resolutions have not been completed for the majority of bottom fisheries; and
- 3) Deep-sea fisheries for many species remain unregulated, contrary to explicit language calling for such regulation in both resolutions.

Based on this review, the DSCC concludes that high seas fishing States are, with few exceptions, failing to live up to the provisions of UNGA resolutions 61/105 and 64/72. As a result, deep-sea species continue to be increasingly overexploited and vulnerable marine ecosystems lost.

The DSCC calls on States fishing in areas where the UN resolutions have not been fully implemented to cease bottom fishing, as is required by resolution 64/72, until effective measures consistent with the resolutions have been adopted and effectively implemented, including required impact assessments.

The discussions held at ICP will be key to achieving a strong ocean outcome from UNCSD. The DSCC proposed the following recommendations to the recent the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction (BBNJ) to ensure that States honour commitments made under the UNGA resolutions 61/105 and 64/72, and in keeping with targets set under previous Earth Summits. DSCC proposes to ICP that these recommendations should be carried forward to Rio+20 as well:

- 1) Adopt shared principles for managing and conserving biodiversity in areas beyond national jurisdiction (i.e. the high seas and deep seabed) to minimize the impact of human activities. Most of these principles are already contained in several international instruments and agreements and therefore have been recognized as important by States party to those. They should include the application of the precautionary principle and the ecosystem approach.
- 2) Agree on a mandate to require prior environmental impact assessments, including cumulative assessments, for human activities which may cause a significant adverse impact on biodiversity in the deep sea areas of the high seas;
- 3) Agree on a mandate to ensure the urgent establishment of an ecologically representative network of effectively managed and well connected marine protected areas and no-take marine reserves in areas beyond national jurisdiction;
- 4) Call on States and the competent organizations to cooperate to identify and protect ecologically or biologically significant areas through a range of conservation and management measures to prevent significant adverse impacts, including impact assessments, bycatch avoidance, vessel discharge restrictions, and the establishment of marine protected areas and no-take marine reserves;
- 5) Fully implement the provisions of UNGA resolution 61/105 (2006), paragraphs 83-87, and as further elaborated in UNGA resolution 64/72 (2009), on deep-sea bottom fishing in the high seas; and
- 6) Ensure that a process such as an intergovernmental conference is established with the objective of establishing a new implementing agreement under the auspices of the UN for the conservation and preservation of the marine environment and the equitable benefit

sharing of marine genetic resources in areas beyond national jurisdiction to address governance gaps in the high seas, including mechanisms for international oversight to ensure that regional organizations, including RFMOs, have the competence to effectively protect biodiversity in the high seas, and in fact do so.

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