

PROTECTION OF HIGH SEAS

The Antarctic and Southern Ocean Coalition

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Summary

In 2002, the UN General Assembly called for urgent consideration of the risks to vulnerable deep-sea areas and biodiversity. This was reiterated by the UN General Assembly in 2003. In February 2004, the 7th Conference of the Parties to the Convention on Biological Diversity (CBD) stressed the need for rapid action to address threats to the marine biodiversity of deep-sea areas including seamounts, hydrothermal vents, cold-water corals and other vulnerable marine ecosystems and features beyond national jurisdiction. Decision 7/V of the CBD called upon the UN General Assembly, as well as other relevant international and regional organizations to take urgent measures to eliminate destructive practices including the interim prohibition of destructive practices adversely impacting the marine biological diversity associated with these areas.

Over 1000 deep-sea scientists from around the world have also released a statement calling for swift action to protect imperiled deep-sea coral and sponge ecosystems. They identified bottom trawl fishing as an especially grave threat to these communities and urged the United Nations and other international bodies to establish an immediate moratorium on bottom trawling on the high seas.

CCAMLR and its member states have a high stake in ensuring effective, sustainable and equitable governance of high seas biodiversity. CCAMLR also has considerable expertise and experience to share with the international community in with respect to the application of ecosystem-based and precautionary approach to conservation and management of marine living resources.

ASOC thus urges CCAMLR to:

- Recognize the calls for urgent action to protect vulnerable deep-sea ecosystems from the Convention on Biological Diversity and the United Nations General Assembly, and actively work to take necessary action, including consideration of establishing an immediate moratorium on bottom trawl fishing in the CCAMLR Area until the Scientific Committee has had the opportunity to assess the extent of such vulnerable biodiversity and ecosystems within the Convention Area, and the Commission has developed measures that facilitate the effective precautionary and ecosystem management of such areas;
- Recognize the Decision taken by the 7th Conference of the Parties of the Convention on Biological Diversity on the need to establish a globally representative network of marine protected areas by 2012, and request that the Scientific Committee identify specific areas to form such representative networks within the CCAMLR Convention Area for consideration at the 2005 Commission meeting.

United Nations Consideration of Deep Sea Conservation

In 2002, the UN Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS) recommended that the UN General Assembly call for urgent consideration to improve the management of risks to vulnerable deep-sea areas and biodiversity. This was subsequently endorsed by the UN General Assembly in 2002, and reiterated by both UNICPOLOS and the UN General Assembly in 2003.

In February 2004, the 7th Conference of the Parties to the Convention on Biological Diversity (CBD) responded to the call made by the UN General Assembly, stressing the need for rapid action to address threats to the marine biodiversity of deep-sea areas including seamounts, hydrothermal vents, cold water corals and other vulnerable marine ecosystems and features beyond national jurisdiction. In view of the central role played by the UN General Assembly in coordinating international action to address the threat to biodiversity on the high seas, COP-7 of the CBD called upon the UN General Assembly, as well as other relevant international and regional organizations, to:

“urgently take the necessary short-term, medium-term and long-term measures to eliminate/avoid destructive practices, consistent with international law, on a scientific basis, including the application of precaution” through, for example, on a case by case basis, the “interim prohibition of destructive practices adversely impacting the marine biological diversity associated with [these] areas....”¹

At the same time, over 1000 marine scientists from around the world released a consensus Statement calling for swift action to protect imperiled deep-sea coral and sponge ecosystems at the annual meeting of the American Association for the Advancement of Science.² They identified bottom trawling as an especially grave threat to these communities and urged the United Nations and other international bodies to establish a moratorium on bottom trawling on the high seas. This Statement was preceded by a similar statement from over one hundred scientists attending the Tenth Deep-Sea Biology Symposium in Coos Bay, Oregon USA in August 2003, and the Second International Symposium on Deep Sea Corals in Erlangen, Germany in September 2003. They too urged the UN General Assembly to adopt an immediate moratorium on bottom trawl fishing on the high seas.

The issue is back on the United Nations General Assembly’s agenda at its November meeting, when it will consider two resolutions. These resolutions are entitled “Oceans and the Law of the Sea” and “Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December, Article 182 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments” (draft working title).

The World Conservation Congress (IUCN) will also consider the issue in November 2004.

ASOC, as a member group of the broad-based Deep Sea Conservation Coalition (DSCC)¹, is urging governments to move the debate at the UNGA from discussion to action. It is time to stop talking about taking action and actually address the very real and urgent threats to deep-sea biodiversity from high-seas bottom trawling.

ASOC, the DSCC, the scientific community and several nations believe that the first step in this process is through the immediate implementation of an interim moratorium on high seas bottom trawling so as to generate breathing space for UNGA to initiate a process to develop permanent longer-term measures for comprehensively addressing the conservation and protection of deep-sea biological diversity and its equitable and sustainable use. This process would require the following steps:

- * Assessment of the deep-sea biodiversity and ecosystems, including populations of fish species, and their vulnerability to deep-sea fishing on the high seas;
- * Adoption and implementation of legally binding regimes to protect deep-sea biodiversity from bottom trawling and to conserve and manage the fisheries of the high seas consistent with UNCLOS (the UN Convention on the Law of the Sea), the UN Fish Stocks Agreement, the FAO (Food and Agriculture Organisation of the UN) Compliance Agreement, the CBD (Convention on Biological Diversity) and the FAO Code of Conduct for Responsible Fisheries; and
- * Effective implementation and enforcement of the moratorium through follow-up work on IUU (Illegal, Unreported and Unregulated) fishing.

Deep-Seas Biodiversity – the Last Great Wonder of the World

As humankind begins to explore the deep sea at depths ranging from a few hundred to thousands of metres, scientists have been surprised and astounded to discover that the deeper parts of the ocean are actually teeming with life. It had been assumed that at depths where light never penetrated and plants could not grow, life would be restricted to a few peculiar animal species. In fact, structures on the deep-ocean floor play host to an amazing array of species comparable in their abundance and diversity to those found in tropical rainforests and shallow coral reefs.

This abundance of life is primarily associated with the sandy and muddy sediments of the seabed but also with newly discovered habitats such as seamounts, cold-water coral reefs, and hydrothermal vents. Because of the extreme and isolated nature of these deep-ocean environments, many of the life forms found are believed to be unique to a particular structure or area. Seamounts are submarine mountains and hills that rise 1000 meters or more above the ocean floor. There are believed to be over 100,000 distributed across the world's oceans. While less than 1% of seamounts have

¹ The Deep Sea Conservation Coalition is an alliance of over 20 international organisations, including Marine Conservation Biology Institute, WWF, Greenpeace and Conservation International, representing millions of people from countries around the world. Visit the website www.savethehighseas.org for further information about the Coalition.

been biologically sampled, recent research indicates that seamounts have large numbers of endemic species (species that are not found anywhere else). Because of their physical characteristics and the strong localized currents that surround them, seamounts are home to a huge array of species. Much remains unknown about the distribution, abundance and dynamics of these seamount ecosystems; however, it is already clear that seamounts, and the cold-water corals they sustain, represent a major reservoir of biodiversity in the oceans. Furthermore, the scarcity of light and food in the deep ocean means that the deep-sea species that live on or around them tend to be slow growing, late maturing, low in reproductive capacity and long-lived. Many species live 30 years or more; some such as *orange roughy* can live up to 150 years, while coral structures may reach several thousands of years in age.

The Threat from Bottom Trawling

Current deep-sea bottom trawl fishing technology is particularly destructive of deep-sea habitats and species. This fishing technique uses heavy-duty gear specifically designed to drag along the ocean bottom, often with rollers and chains attached to smash and crush structures that might otherwise catch or rip the net, and inevitably smashing any of the delicate and ancient living structures that get in the way.

The accelerating spread of bottom trawling from shallower coastal continental shelves and shelf breaks out into the deep sea will inevitably drive a new wave of extinctions. Research has shown losses of 95 to 98% of coral cover as a result of this method of fishing. As one of the world's leading deep-sea scientists, Dr Frederick Grassle of Rutgers University put it:

“We know that seamounts support large pools of undiscovered species, but we cannot yet predict what is on the unstudied ones. The tragedy is that we may never know how many species become extinct before they are even identified.”

Bottom trawling also destroys the habitat of the commercially important targeted species. By penetrating and altering the topography on which delicate deep-sea corals survive, this fishing method ensures that there is little chance of such species regenerating. This destruction of the habitat around which commercially valuable species congregate in turn compromises the viability of target species in such areas, leading to the serial depletion of these fish populations, and an essentially unsustainable fishery.

Bottom trawl fishing is unregulated in extensive areas of the high seas. This represents an important gap in the governance of the world's oceans. Only a handful of Regional Fisheries Management Organizations (NAFO, CCAMLR, NEAFC, SEAFO) have authority to regulate deep-sea bottom fishing, and few have restricted bottom trawling to protect sensitive ecosystems.

Currently, bottom trawling on the high seas is still relatively limited in terms of the number of vessels, the countries involved, and the amount and value of the catch. However, faced with declining fish stocks in near shore coastal waters, fishermen are venturing farther out into previously unfished ecosystems of the deep sea. Advancing

technology now allows them to easily locate and catch fish in these formerly inaccessible areas. Trends indicate that the capacity and focus of the high seas bottom trawling industry, is expanding.

ASOC Calls for Action

As noted above, the need to address this issue has been repeatedly recognized by the UN General Assembly and the United Nations Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS). Of particular relevance are the concerns expressed in a Decision of the Conference of the Parties to the Convention on Biological Diversity (CBD) taken in February of this year:

60. *Concerned about* the serious threats to the biological diversity, *stresses* the need for rapid action to address these threats on the basis of the precautionary approach and the ecosystem approach, in marine areas beyond the limits of national jurisdiction, in particular areas with seamounts, hydrothermal vents, and cold-water corals, other vulnerable ecosystems and certain other underwater features, resulting from processes and activities in such areas;

61. *Calls upon* the **United Nations General Assembly and other relevant international and regional organizations**, within their mandate, according to their rules of procedure, **to urgently take the necessary short-term, medium-term and long-term measures to eliminate/avoid destructive practices**, consistent with international law, on scientific basis, including the application of precaution, for example, on a case by case basis, **interim prohibition of destructive practices adversely impacting the marine biological diversity associated with the areas identified in paragraph 60 above.**

62. *Recommends* Parties to also urgently take the necessary short-term, medium-term and long-term measures to respond to the loss or reduction of marine biological diversity associated with the areas identified in paragraph 60 above.²

It is now time for specific and urgent action to be taken to protect these ecosystems and provide for their equitable and sustainable use.

As a leading Regional Fisheries Management Organization, covering a huge area of the high seas, with principles based on the precautionary and ecosystem approaches, CCAMLR and its member states must act to immediately establish an interim moratorium on bottom trawl fishing in the Convention Area. Such a moratorium would provide breathing space, protecting key deep-sea biodiversity hotspots in the Convention Area while scientific assessment is undertaken and more permanent, legally enforceable regulations are developed, agreed, and applied.

² UNEP/CBD/COP/7/L.31

A High Seas Bottom Trawling Moratorium

On the high seas (beyond coastal state jurisdiction), fishers often assert a high seas 'freedom to fish' without any government controls. Some of the key commercial fish stocks they target live on or near the seabed (demersal), which has led to the use of bottom trawling, which catches the maximum amount of fish with the least fishing effort by simply dragging nets along the seafloor -- leading to the indiscriminate destruction of sea life on the deep sea floor. However, the Law of the Sea Convention requires that States work together in international waters to protect and conserve the natural resources of the high seas.

Today, there are less than a three hundred bottom trawlers active on the high seas, many of which only operate part-time in high seas bottom trawl fisheries. The relative value of these fisheries as a portion of the global catch is less than 1%, but bottom trawling is clearly recognized by deep-water scientists as the most serious current threat to the biodiversity of the deep-sea. Trends indicate that these fisheries are expanding. It is essential that the negative impacts of bottom trawling on sensitive and vulnerable deep-sea areas are confronted immediately – something that can currently be achieved with little economic and social impact – at enormous benefit to the environment and to future generations.

A moratorium on high seas bottom trawling would need to cover fishing using any bottom trawl or similar towed net designed to operate in contact with the bottom of the sea. Law-abiding and well-intentioned governments would thus be expected to impose an immediate halt on any bottom trawling on the high seas by vessels flying their flag or licensed by them, or involving their nationals, until the conditions for lifting such a moratorium, as agreed by the international community, were met.

In order to deal with any high seas bottom trawl fishing in defiance of a UNGA moratorium, law-abiding and well-intentioned governments would also be expected to take appropriate enforcement measures against 'flag of convenience' or 'flag of non compliance' states which are either unwilling or unable to impose such a moratorium on their vessels, as well as on their nationals (both companies and individuals).

Dealing with Non-Compliance

Past experience suggests that there will regrettably, but inevitably, be some states that will not fully comply with and enforce a UNGA high seas bottom-trawling moratorium. CCAMLR is well placed to share its own experiences in dealing with non-compliance, as well as to embrace further measures.

Such measures would not be substantially different from measures that have already been agreed in a variety of multilateral fora and that are already in use, in particular those contained in the UN FAO International Plan of Action on IUU fishing. Many of these are already in place and/or being considered by CCAMLR:

- Requiring VMS for all vessels licensed to fish on the high seas to enable states to distinguish between vessels fishing on the high seas from those fishing in an EEZ;
- Denying permits to fish within their EEZ to any vessel that has been engaged in high seas bottom trawl fishing and/or establishing, as a condition for a permit to fish within the EEZ, that a vessel may not engage in high seas bottom trawl fishing;
- Denying fishing vessels (and their owner/operators) breaching the moratorium the authorization to fish (by any method and for any species) on the high seas as well as in EEZs or in waters covered by regional fisheries management organizations (e.g. 'blacklist' the vessels *and* companies etc);
- Adopting legislation making it illegal for nationals to reflag vessels to avoid compliance with the moratorium;
- Closing ports to non-complying fishing vessels and to vessels flying the flag of non-complying states, and/or conducting intensive in-port inspections of fishing vessels which are suspected of non-compliance, including negotiation of intergovernmental port-state enforcement agreements, where desirable;
- Outlawing transshipment at sea of any species that could be caught by bottom trawling on the high seas;
- Closing markets to fish and fish products of the main deep species caught by bottom trawling (especially orange roughy, alfonsino, roundnose grenadier & blue ling) which do not carry credible certification that establishes that the fish and fish products were derived from licensed fishing operations in EEZ waters;
- Passing, as necessary, new laws and regulations to ensure effective control over nationals engaged in fishing, especially beyond national jurisdiction;
- Exchanging, pooling and publicizing information on vessels and companies involved in high seas bottom trawling (including the operators, captains and beneficial owners of such vessels, and those providing banking, insurance and other services to them), and allowing appropriate action to be taken;
- Cooperating with coastal states and participating in relevant regional management arrangements to ensure that all states have sufficient capacity to manage and control their coastal and EEZ fisheries to ensure compliance with national regulations and international obligations.

Scientific Assessment

CCAMLR members can use their experience in precautionary assessment to provide insights for the necessary assessment of high seas marine biodiversity. ASOC urges CCAMLR members to support a time-limited international scientific assessment initiative coordinated under the auspices of the UN General Assembly. This assessment must focus on marine biodiversity associated with seamounts, deep-sea corals and other deep-sea ecosystems and how deep-sea ecosystems relate to open ocean ecosystems. It should also provide for further identification and mapping of deep-sea biodiversity hotspots and ecotypes/bioregions, assess the viability of sustainable exploitation of deep-sea fish stocks and species on the high seas with particular reference to the impacts of such activity on associated and dependent species and related ecosystems.

Long-term Conservation and Management

As a regional management organization with competence over the high seas, CCAMLR is well placed to play a prominent role in the development of effective measures to protect deep-sea biodiversity, and conserve and manage high seas bottom fisheries. Options include, inter alia:

1. extending the 1995 UN FSA to cover all high seas fisheries, together with additional regional agreements or arrangements for unregulated deep-sea fish stocks, and ensuring that existing Regional Fisheries Management Organizations with competence over high seas bottom fisheries, such as CCAMLR, fully reflect the provisions of the international instruments noted above; or
2. a new convention on unregulated deep-sea fisheries on the high seas, together with:
 - identification of measures available to the coastal state to prevent or mitigate damage resulting from high seas bottom trawl fishing to sedentary species subject to coastal state resource rights on the continental margin beyond 200 nautical miles;
 - establishment of areas where bottom fishing activities are either strictly managed or excluded – to protect biodiversity, ensure sustainable fisheries, and/or maintain ecosystem integrity;
 - adoption of further binding international measures to eliminate the problems of illegal, unreported and unregulated high seas bottom fishing, including the strengthening of flag state and port state jurisdiction and comprehensively addressing the issue of vessels flying flags of convenience; and
 - adoption of measures that effectively provide for the equitable and sustainable use of deep-sea biodiversity as a matter of interest to all nations.

Effective Ocean Governance

There are several milestones that would represent progress towards comprehensive global oceans governance reform. ASOC urges CCAMLR and its member states to initiate a process to establish a network of representative high seas Marine Protected Areas (MPAs) within the CCAMLR region (see ASOC Priorities Paper). This would provide a useful case study for the broader establishment of MPAs and other relevant commitments made by governments in paragraphs 32 (a) and (c) of the Plan of Implementation of the 2002 Johannesburg World Summit on Sustainable Development as well as in Decision VII/5 of the Convention on Biological Diversity.³

By drawing from its own successes and difficulties, CCAMLR can assist in the review and consequent expansion of the role and mandate of existing RFMOs (including RFMO-like organizations such as itself) and creation of new RFMOs,

³ See UNEP/CBD/COP/7/L.31, paragraphs 29, 30 and 31.

where appropriate, based on the precautionary principle and ecosystem approach, so that they can more effectively regulate activities, including bottom trawling, within their areas of competency sufficient to appropriately conserve and protect vulnerable deep-sea biodiversity.

CCAMLR should also urge its member states to accede to, ratify, and fully implement all relevant existing international agreements, specifically including: UNCLOS, CBD, UN Fish Stocks Agreement, and the UN Compliance Agreement.

Conclusion

CCAMLR and its member states have a high stake in ensuring effective, sustainable and equitable governance of high seas biodiversity. CCAMLR also has considerable expertise and experience to share with the international community in with respect to the application of ecosystem-based and precautionary approach to conservation and management of marine living resources.

ASOC thus urges CCAMLR to:

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