Freedom *for* the Seas: Now and for the Future

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Defending our oceans

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image Greenpeace and an independent NASA-funded scientist completed measurements of melt lakes on the Greenland Ice Sheet that show its vulnerability to warming temperatures. The measurements are the last scheduled activity as the Greenpeace ship Arctic Sunrise wraps up its two-month expedition to document the impacts of climate change on Greenland's ice sheet and glaciers.

Greenpeace Proposals to Revolutionise High Seas Oceans Governance

It is clearer today than ever before that the threats to ocean life are growing and beyond the capacity of any one nation to address alone. While in the past, we primarily spoke of overfishing or destructive fishing and their impacts on ocean life, today, climate change and its impacts on marine life must also loom large in the minds of oceans decision makers. According to a series of reports released throughout 2007 by the Intergovernmental Panel on Climate Change (IPCC)[1], the increase in globally observed temperatures is very likely due to human activities and sea levels will continue to rise for centuries even if greenhouse gas emissions are stabilised. Coastal communities and Small Island States are already feeling the impacts of climate change. And from the coastal seas to the deepest waters, the combined and possibly synergistic effects of climate change and overfishing are already having an impact and could possibly spell disaster for our oceans' marine life and the vast number of people who depend on it for their survival.

All around the world, fisheries are collapsing and marine ecosystems are undergoing fundamental shifts - the consequence of the woefully inadequate management regimes currently in place. In particular, the high seas are being plundered on a vast scale and with alarming speed, creating one of the biggest unseen and potentially irreversible environmental disasters of our time. Vast legal gaps together with the lack of political will are leading to the widespread destruction of marine life across the high seas. To stop this destruction the current presumptions in favour of freedom of the high seas and the freedom to fish[2] must be replaced by ones that entrench the concept of freedom for the seas: Where the ecosystem approach and precautionary principle are considered as the fundamental core of all oceans management. Those who want to undertake activities on the high seas must prove that they will not harm marine life in these international waters before they are given access, so that the protection of marine ecosystems is the underlying principle that guides the future management of the high seas.

In recent years, our understanding of the diverse and unique nature of deep sea life has expanded, as has the technology capable of destroying it, making it difficult to control what occurs on the vast expanses of our largely unregulated high seas. New and emerging activities and fishing methods that were once inconceivable are now threatening the future of deep sea biodiversity, as they have done in the case of coastal and pelagic species. We now know that the oceans' bounties are not inexhaustible, but vulnerable, complex and finite. Destructive and unsustainable fishing practices, such as bottom-trawling, as well as illegal, unregulated and unreported (IUU) fishing, mining and scientific and commercial exploration of deep-sea areas are all threatening these vulnerable habitats.

The high seas are currently open to fishing by anyone interested in doing so, with only minimal flag state controls. Even in those areas where there are some management controls, patchy regulation and weak enforcement mean that prohibited activities often continue unabated.

Instead of working to ensure clean and healthy oceans for the future, the current high seas oceans governance regime rewards pirate fishers and those who plunder the oceans. It encourages the fishing industry to go looking for new species to replace those that have been overfished: Going deeper and further south in the search for fish to supply to consumers in industrialized and northern countries. Under the current regime, rich countries and distant water fishing nations are benefiting at the expense of our oceans and the many coastal communities of the global South who are directly dependent on healthy oceans for their food security and livelihoods.

The UN Convention on the Law of the Sea (UNCLOS) does more than simply offer States the right to use our oceans. It also requires that States fulfill numerous duties: To "cooperate with other States in taking such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas" (Article 117), and "… to protect and preserve the marine environment" (Art. 192). Yet, industrial-scale destructive fishing practices on the high seas continue unchallenged and undermine the duties of States to individually and collectively protect and preserve the marine environment of this global commons. As a result, our fish stocks and ocean biodiversity are in serious jeopardy. And time is running out.

There must be a shift from the current management regime away from serving fishing and industrial interests towards a comprehensive ecosystem based management regime with the precautionary principle at its core. The high seas particularly suffer from this 'Wild West' mentality. Anyone who has the money, the technology and the inclination can go and take whatever they want, with very few regulations to ensure sustainability or equity. The few regulations that are in place are diluted even further by weak enforcement.

The time has passed for a half-hearted approach to conserving what is left of the biodiversity and resources of the world's oceans at the cost and to the detriment of all countries and all peoples. Clearly, the legal system governing the high seas has not kept pace with the rapid expansion of human activities and impacts. Only bold, innovative, visionary and decisive action has any chance of preventing the massive and irreversible destruction of the biodiversity of our oceans. Only such visionary and decisive action can ensure freedom for our seas in the 21st Century.

The following concrete proposals would fundamentally change the ways that human activities on the oceans are managed and would ensure free, clean and healthy oceans for the future:

Greenpeace Proposals to Revolutionise High Seas Oceans Governance

1. The creation of a global network of marine reserves on the high seas. Marine reserves are highly protected areas that are off-limits to all extractive and destructive uses, including fishing. A global network of marine reserves would provide the insurance policy needed against uncertainty in decision making processes, protecting marine biodiversity in places and times they most need it. It would build resilience in the marine ecosystem, and flexibility in the midst of future unknowns (i.e., climate change impacts), allowing ocean biodiversity in targeted areas to replenish and flourish. In order to be fully effective, these areas should cover 40% of the high seas and be of sufficient scale to ensure the integrity and functioning of high seas ecosystems. The network should protect the whole range of high seas ecosystems as well as areas that are biologically rich or particularly vulnerable to present or possible future human impacts, such as fishing or seabed mining. Creating a global network of marine reserves is the single most effective tool for protecting the marine environment including deep sea ecosystems, and would provide the vital underpinning for implementing the ecosystem approach.

2. Immediate action, led by industrialised countries, to keep global mean temperature rise below 2°C. In Bali, December 2007, the world agreed on a vital next phase of global negotiations to deliver a strengthened Kyoto Protocol in 2009[3]. Discussions at the UN General Assembly should focus on how we can deliver on the Bali Mandate, including through developed countries emission reductions commitments of at least 30% by 2020, and by at least 80% in 2050.

3. The immediate implementation of UN General Assembly Resolution on Sustainable Fisheries (A/Res 61/105) which calls on States and Regional Fisheries Management Organizations (RFMOs) to take immediate action to sustainably manage fish stocks and protect vulnerable marine ecosystems (VMEs) from the adverse impacts of bottom-trawling on the high seas.

4. The UN General Assembly should adopt a resolution establishing a moratorium on high seas bottom-trawling to protect deep sea biodiversity of the high seas by all States, if the UN's review in 2009 concludes that RFMOs and States have failed to implement Resolution 61/105 (as described above). This interim measure would provide scientists with the time to assess the range and extent of this biodiversity, and politicians with the space to fully implement 61/105 as well as negotiate longer-term measures that would ensure that bottom trawling on the high seas is effectively regulated and sustainably and equitably managed.

5. The UN General Assembly should convene a negotiating conference to develop a new implementing agreement under UNCLOS to address the current gaps in oceans governance and ensure the long-term conservation and sustainable management of living marine species, ecosystems and biological diversity, the protection and preservation of the marine environment, and the fair and equitable sharing of the benefits arising out of the utilisation marine genetic resources in areas beyond national jurisdiction. Such an agreement would build on the existing framework of UNCLOS, and integrate best practices and norms found in other international and regional agreements, with the application of the ecosystem approach and the precautionary principle at its core.

6. All extractive activities should be halted in high seas areas where there are no management regimes in place (most of the high seas), effectively creating large-scale marine reserves until such time as:

   a. An internationally representative panel of scientists had been provided the time and resources to use an ecosystem-based management and precautionary paradigm to assess what is out there, identify key areas, and

      i. designate a global network of high seas marine reserves (expanses of oceans where extractive industries such as fishing and mining, as well as disposal activities, are prohibited):

      ii. identify areas that could be opened to extractive practices, but would require prior environmental impact assessments in such areas based on Articles 5 and 6 (ecosystem-based and precautionary approach) of the United Nations Fish Stocks Agreement (FSA), that would place the burden of proof on these industries to show that their planned activities will not harm the marine environment, and that they will bear the costs (under a strict liability regime) for any harm done;

   b. The benefits of any extractive activities in such areas would be shared on an equitable basis and managed through, for example, a fund that could be set up to monitor and enforce regulations adopted to ensure the sustainable and equitable management and benefit sharing of such resources. This would include active representation of State and non-State actors in a transparent and accountable manner;

   c. These activities could not be conducted until policy makers had the opportunity to develop legally binding measures, including clear sanctions against violating states, in order to regulate such activities.

7. Ratification and implementation of the United Nations Agreement on Straddling and Highly Migratory Fish Stocks (1995) (FSA) by all coastal and distant water fishing States.

image Red Fish from the Eastern princess II, approximately a 4 to 5 ton catch. The Eastern Princess is bottom trawling within EEZ (Canadian 200 Mile zone) for Red Fish (Sebastes Marinus) at approx depths of 350 meters. Greenpeace has been documenting and protesting the high seas bottom trawl fleets in the Northwest Atlantic.

8 Application of the FSA to discrete high seas fish stocks.

9 Regional Fisheries Management Organisations (RFMOs) need a major overhaul (see p.6 for more details). Those that have not adopted the ecosystem approach and precautionary principle to fisheries management as directed in Articles 5 and 6 of the FSA, should be given two years by the United Nations General Assembly to do so, or face the closure of the fisheries under their jurisdiction until this has been achieved.

10 The international fishing fleet at national, regional and international levels needs to be substantially reduced to deal with the realities of the threats to ocean life today. Incentives must be developed to reduce such capacity. Harmful subsidies to the fishing industry must be removed.

Legally binding measures to regulate industrial fishing on the high seas could include:

1 The establishment of a central monitoring, control and compliance authority for all vessels active on the high seas that would be funded by dues paid by States according to the number of vessels authorised to undertake extractive activities on the high seas. Dues paid by vessels licensed to fish in such waters could fund compliance, monitoring and enforcement. This would deter such vessels from 'turning a blind eye' to their illegal, unregulated and unreported (IUU) counterparts, as these fishers would actually be costing them money.

2 Establishment of a single, centralised, compatible Vessel Monitoring System (VMS) for all vessels licensed to fish on the high seas to enable States to distinguish between vessels authorised to fish on the high seas or an Exclusive Economic Zone (EEZ). Vessels unable to provide VMS data for any part of their voyage would not be permitted to land their catch. Such a system would be operated by the centralised compliance authority, which would report to all States on infractions by any vessels in the system, and permit any States participating in the system to take punitive actions against such vessels in their respective jurisdictions.

3 "Redlisting" of fishing vessels and companies that breach conservation measures, i.e.: deny fishing vessels, and their owners/operators the authorisation to fish by any method and for any species on the high seas.

4 Adopting national legislation that requires a 'genuine link' made between the flag-State and vessels carrying their flags, and that makes it illegal for nationals to reflag vessels to avoid compliance. Such legislation should include the right for a State to legally sanction vessels, their owners and operators, as well as redlisting those that have reflagged vessels or attempted to do so.

5 Closing ports to non-complying fishing vessels and to vessels flying the flags of non-complying States.

6 Intensive in-port vessel inspections with the right to sanction such vessels provided by intergovernmental port state enforcement agreements.

7 Outlawing transshipment at sea of any species that could be caught on the high seas.

8 Closing markets to fish and fish products that do not carry credible certification establishing that the fish and fish products caught on the high seas were derived from licensed fishing operations. Using established international trade regulations (such as CITES listings) to regulate trade in species that are already under threat.

9 Harmonising and adopting national laws and regulations to implement international measures to control nationals engaged in all activities undertaken on the high seas, including fishing or owning or operating vessels fishing in areas beyond national jurisdiction. These should include prior notification to States by nationals of their proposed activities, along with requirements for environmental impact assessments for such activities.

10 Exchanging, pooling and publicising information on vessels and companies involved in high seas fishing, including the operators, captains, beneficial owners of vessels, and those providing banking, insurance and other services to them.

11 Requiring that information on vessels and companies interested in engaging in high seas fishing be provided to the central monitoring, compliance and enforcement authority in a standard international format, before authorisation to access these fisheries is given. Where vessels or companies have been 'redlisted' by the authorities, permission to fish will not be granted.

12 Requiring under domestic law, that prior to any vessel being granted the flag of a State, the information stated above is submitted to the central compliance authority. A prerequisite for 'flagging' will then be the confirmation by the central authority that the vessel, its owners and operators, have not contravened any international or national regulations.

13 Cooperation among coastal states and those 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.

RFMOs: Regularly Failing to Manage our Oceans

The most common mechanism for 'managing' high seas fisheries is through Regional Fisheries Management Organisations (RFMOs), but it has been widely acknowledged in intergovernmental fora that RFMOs are failing in their mandate (both the UN Food and Agricultural Organisation (FAO) and the High Seas Task Force have recently recommended that RFMOs undergo performance reviews on an urgent basis).[4] Although the 1995 UN Fish Stocks Agreement (FSA) designated RFMOs as the primary mechanism for managing and conserving high seas straddling and highly migratory fish stocks (with FSA Articles 5 and 6 being the legal cornerstones for applying the ecosystem approach and precautionary principle to fisheries management), States have consistently failed to use RFMOs to implement their specific obligations under these Articles. As recommended in the Chatham House Report[5], RFMOs should have a transparent allocation process apart from the decision-making process that determines total allowable catch. They also seem to have severe problems addressing the loss of sharks, albatrosses, marine turtles and other species impacted by fishing activities in their waters. Another problem is that the FSA covers only straddling and highly migratory fish stocks,[6] and the management of discrete high seas stocks, such as orange roughy, is not covered under the FSA. Most RFMOs operate behind closed doors; they need to have transparent decision-making processes as well as make their data publicly available.

Beyond the intrinsic institutional problems inherent in RFMOs, an additional problem is that most of the high seas are not covered by RFMOs, and accordingly, most of the world's fish stocks remain unregulated. In the last two years, a number of RFMOs have been or are in the process of being established, including, the South Pacific RFMO for discrete high seas and straddling fish stocks, the North Pacific RFMO, and the South Indian Ocean Fisheries Agreement (SIOFA). Still, these RFMOs are in their infancy and not yet operational; significant gaps in RFMO coverage remain. As discussed above, even, for those areas that are regulated, RFMOs have had a very disappointing track record in effectively managing their fisheries or applying ecosystem-based fisheries management.

RFMOs must be fundamentally changed to operate as Regional Oceans Management Organisations (ROMOs) so that they can effectively implement the ecosystem approach as mandated by the FSA. As ROMOs, they must be given the functional ability and capacity as well as mandate to address the broader ecological impacts of human activities on the world's oceans. Since such change will take time, it is essential that the international community recognises RFMOs as a single, limited tool that could be effective in short to medium-term oceans governance. The international community cannot wait around hoping for this change while marine biodiversity suffers. The RFMOs must adopt and implement uniform conservation and management measures and incorporate the ecosystem approach in their decision-making processes now in order to stop the destruction of high seas biodiversity while medium and long-term measures are developed and implemented.

image The New Zealand deep sea trawler 'West Bay' does a fast turn after hauling its catch from international waters in the Tasman Sea. Greenpeace is tracking progress by RFMOs with competence to manage bottom fishing activities in implementing conservation measures to prevent adverse impacts on vulnerable marine ecosystems from bottom trawling, as mandated by the UN General Assembly.

Footnotes

1 International Panel on Climate Change, Fourth Assessment Report, 17 November 2007, at http://www.ipcc.ch/ipccreports/ar4-syr.htm.

2 This presumption is based on Articles 87(e) and 116 of the LOSC.

3 For a summary of the Bali outcomes, compare: http://www.greenpeace.org/raw/content/international/press/reports/the-bali-decisions.pdf

4 M. Lodge, et.al., *Recommended Best Practices for Regional Fisheries Management Organizations*, Chatham House, Royal Institute of International Affairs 2007 [hereinafter Chatham House Report] at http://www.chathamhouse.org/uk/research/eedp/current_projects/rfmo/

5 *Id*.

6 See Fish Stocks Agreement Articles 2 and 3.

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Greenpeace is an independent global campaigning organisation that acts to change attitudes and behaviour, to protect and conserve the environment and to promote peace.

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