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BLACK HOLES IN DEEP OCEAN SPACE:

CLOSING THE LEGAL VOIDS IN HIGH SEAS BIODIVERSITY PROTECTION

05

"The law of the sea seemed to unite humanism, the attempt to build a human law and order, and romanticism, the love of nature and of the oceans as part of nature. It offered a starting point for a new philosophy – an "ecological worldview" – and a new economic theory – sustainable development, the economics of the common heritage."

Elizabeth Mann Borgese, in Freedom for the Seas in the 21st Century (1993)

1. Ocean space: the final frontier - filling the void in deep ocean regulation

The current piecemeal approach and voluntary measures for the conservation of high seas biodiversity are simply insufficient to ensure that states take action to effectively protect the unknown treasures of the open ocean. In addition to the short-term measures identified below (see Box 1), it is necessary to revise the current oceans governance system in order to achieve the conservation objectives of the United Nations Convention on the Law of the Sea (UNCLOS) and the Convention on Biological Diversity (CBD) in the medium to long-term.

Building on the existing provisions and set within the broad framework of UNCLOS, any revised regime should principally:

* provide a clear mandate and legal duty to protect biodiversity on the high seas, based on ecosystem-based management and the precautionary principle;
* promote co-ordination and harmonisation between relevant international and regional instruments;
* clarify the rules governing access to and the sharing of benefits derived from high seas genetic resources;
* provide adequate implementation tools, including a mandate to establish and manage marine reserves in areas beyond the limits of national jurisdiction;
* establish an effective centralised monitoring, control and surveillance mechanism for human activities on the high seas.

Modelled on the 1995 UNFSA, a new implementing agreement under the auspices of UNCLOS should be drawn up to address these five principle objectives through a list of detailed provisions.

The new implementing agreement would elaborate on and provide for the implementation of existing provisions of UNCLOS Part XII on the Protection and Preservation of the Marine Environment and Parts VII and XI concerning the high seas and the sea-bed, subsoil and ocean floor beyond areas of national jurisdiction (the Area), obliging states to take specific measures to protect biodiversity.

The advantages of using UNCLOS rather than the CBD or other agreements as the legal basis for such an agreement are:

* UNCLOS is regarded as the framework agreement that delimits ocean areas and details state rights and duties in the high seas and the 'Area';
* UNCLOS's broad remit already covers most or all activities which impact on marine biodiversity, including, for example, emerging activities such as bioprospecting, noise pollution and the introduction of alien species;
* UNCLOS provides a binding dispute settlement mechanism.

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Such an Agreement would not require any amendment to the text of the Convention. It would further be consistent with Article 22(2) of the CBD, which already obliges contracting parties to implement the Convention

"with respect to the marine environment consistently with the rights and obligations of States under the Law of the Sea."

In addition to the more general objectives mentioned above, the new implementing agreement must include a list of detailed provisions as summarised below (see Box 2).

BOX 1: Short-term conservation measures

Without immediate action to protect marine biodiversity from the most acute pressures, many of the deep secrets of our oceans will be lost before we can secure their long-term protection. Short-term measures that the international community must take now are:

* A UN General Assembly moratorium on high seas bottom trawling is the only feasible short-term measure that can ensure that states meet their obligations under the CBD, UNCLOS, the WSSD Programme of Implementation and the UNFSA to effectively conserve the benthic marine environment;
* The establishment of a centralised monitoring, control and surveillance authority to regulate the activities of high seas fishing vessels;
* The definition of the term 'genuine link' for fishing vessels;
* A prohibition on all at-sea transhipments of fish and fish products.


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BOX 2: Provisions of a new implementing agreement under UNCLOS

A new UNCLOS implementing agreement on the conservation of marine biodiversity in areas beyond national jurisdiction should:

* recognise the high seas as an area of scientific value for peaceful purposes, as well as a natural reserve that is part of the common heritage of humankind;
* lay down the general principles of the precautionary and ecosystem approach as the core components for the conservation of marine biodiversity on the high seas;
* consolidate existing provisions, such as those included in the UN Fish Stocks Agreement, the IMO framework etc, and bring them into the context of biodiversity protection;
* prohibit highly destructive practices in areas beyond the limits of national jurisdiction;
* give a clear mandate for the identification, selection, establishment and management of high seas marine reserves;
* identify ecological and practical criteria and guidelines for the establishment of high seas marine reserves;
* oblige the establishment of a management plan for marine reserves;
* oblige states to establish regional environmental management organisations in high seas areas to regulate human activities in specific regions of interest;
* require prior environmental impact assessment (EIA) and approval for all activities planned to occur on the high seas;
* require that all high seas fisheries are managed in a responsible and sustainable manner, and based on the ecosystem approach and precautionary principle as stipulated in the UNFSA and FAO Code of Conduct for Responsible Fisheries;
* build on existing inventories to develop a list of priority areas for biodiversity protection;
* establish a centralised monitoring, control and surveillance agency with a register and database of all high seas fishing vessels;
* encourage information and knowledge sharing on high seas biodiversity through the creation of a central list of high seas species available to all;
* establish a secretariat and a scientific committee in order to carry out the terms of the agreement;
* support shared and collaborative scientific research for the identification of areas and species of special concern;
* secure long-term funding for the management and enforcement of marine reserves as well as sustainable oceans management across the high seas;
* set a timetable for review of implementation of the agreement.

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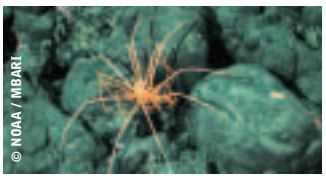
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2. There are more maps of the moon than the deep ocean: Charting the way towards comprehensive regulation for the conservation of high seas biodiversity

The international waters of the high seas are our common heritage. Most of the resources of this global commons are non-renewable. The high seas must therefore be considered off limits to extractive and disposal activities unless and until it can be shown that these activities do not cause harm to the surrounding environment. The protection of marine biodiversity on the high seas requires a collective approach and a clear political commitment from all states.

A new UNCLOS implementing agreement needs to fill the gaping void in the current regime for the protection of marine biodiversity by establishing a strong institutional framework for high seas biodiversity protection. Building on existing structures and, where necessary, reforming or creating new bodies, co-ordination, co-operation and compliance with existing provisions must be improved. It must also be flexible to allow for potential future activities to be brought into the regulatory framework. Particularly important is the consideration of implementing tools and enforcement mechanisms.

The implementing agreement should further provide a clear mandate for the establishment and protection of high seas marine reserves as well as the tools necessary to enforce reserves and other high seas conservation measures. To this end it must put in place an effective monitoring, surveillance and control system for all high seas fishing vessels, including a mandate to protect the integrity of high seas marine reserves.

Unless the international community agrees to act on its commitments to protect the marine environment, future generations will be denied the chance to experience or enjoy the benefits of this last remaining global commons. Short-term interim measures must be taken to protect the deep-sea from its current most serious threats – particularly destructive practices such as high seas bottom trawling. But if nation-states are serious about protecting the marine biodiversity of the high seas, then negotiations must start now for a new UNCLOS implementing agreement that can ensure that the duties to protect and conserve high seas biodiversity are spelled out for all states, and that the pressures being faced by this final frontier that is the common heritage of all humankind, can be sustainably and equitably managed for now and for the future.

3. Freedom for the Seas in the 21st Century

When Hugo Grotius expressed the notion of Freedom of the Seas – *mare liberum* – in 1609, fishing was done with wooden sailboats and it was presumed that the oceans were limitless and inexhaustible. Most of the world's oceans were too far, too deep, too rough, too cold or too dangerous to fish. In practice, this meant that fishing was only possible in the 10-12% of the world's oceans that are now viewed as coastal waters. In other words, almost 90% of the oceans were no-fishing zones: de facto marine reserves. Today, with the increase in technological and industrial efficiency, fishing vessels are able to fish from the Arctic to the Antarctic and to depths of 2.5 km. With the ever increasing evidence of collapsing fish stocks, it is clear that the oceans' resources are not infinite and as a result of human activities, are diminishing at an alarming rate. The marine safe-havens of Grotius' day no longer exist, and the oceans are no longer boundless.

The evidence is irrefutable: current high seas oceans management is creating the biggest unseen and potentially irreversible environmental disaster of our time. Marine biodiversity is being unsustainably plundered because of legal gaps and the lack of political will to change the status quo. To stop the destruction of high seas biodiversity, the current presumptions in favour of freedom of the high seas and the freedom to fish must be reversed.

The challenges facing our oceans in the 21st Century require that the primacy of the concept of "Freedom for the Seas" (*Libertas Mari*) be restored. The international community must act now on its commitments to protect the marine environment, so that future generations have the freedom to enjoy the benefits of this last remaining global commons sustainably and equitably. In order to ensure that our oceans are not taken further down the destructive path of overexploitation, immediate action must be taken to transform outdated policies and do away with false presumptions.

Almost four decades ago, Arvid Pardo the UN Ambassador for Malta, developed the concept of the common heritage of humankind in relation to ocean resources. In 1967, Pardo limited his explanation of this concept to the seabed, ocean floor and subsoil thereof, which was later encapsulated in Article 136 of the Law of the Sea Convention and led to the creation of the International Seabed Authority. However, Pardo expanded on the notion of the common heritage of humankind in his 1971 'Draft Oceans Space Treaty' in which he stated that all ocean space beyond national jurisdiction was the common heritage of humankind. He recognised that the economic potential of the deep-sea extended beyond mineral extraction to the exploitation of marine living resources, and that the development of new technologies would enable this to occur in the near future. Pardo argued that all ocean space beyond areas of national jurisdiction – through the water column to the seabed – must be managed in such a way as to ensure that its resources are viewed as the common heritage of humankind and its benefits sustainably and equitably shared.

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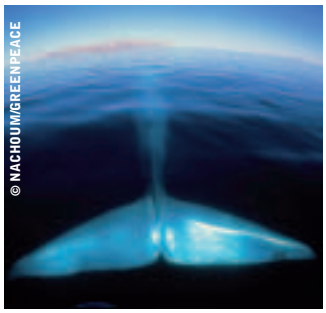

The time has come for decision-makers to revisit Pardo's proposal by closing the gaps in oceans governance to ensure that the wealth of biodiversity residing in the international waters of the high seas is secured for the benefit of future generations and the planet as a whole.

4. The Deep Blue: exploring ocean space

From its sparkling surface to the darkest crevasses of the depths below, the sea holds its secrets closely. But, we are gradually learning that the seabed of the open ocean as well as the cold dark waters of the deep-sea, teem with life. Much of this diversity is concentrated on and around large undersea mountains, hydrothermal vents, cold seeps and other underwater features that act as oases in the otherwise monotonous flats of the abyss. The biodiversity found on many of these deep-sea features is as rich - and some believe richer - than that found in the ancient rainforests of the terrestrial world.

Many of the species of the deep-sea remain unknown and probably endemic to specific locations – meaning they are not found anywhere else on the planet. Scientists estimate that they have properly surveyed less than one tenth of 1% of these deep-sea habitats. They believe that species numbers 'vary between 500,000 and 10 million.'[1] These same scientists report that in recent years, around 2000 new marine species have been discovered annually - an average of 5 per day[2], with species diversity thought to be as high as 1,000 per square metre in the Indo-Pacific Ocean.[3]

The deep-sea typically supports marine life that is particularly sensitive to disturbance. Many of the species are delicate and slow growing – such as cold water corals that can live for thousands of years. Fish such as orange roughy outlive humans, reaching an age of over 120 years, and do not mature or reproduce until they are 20-30 years old. Crabs, basket stars, prawns and octopi live within the habitats provided by delicate sponge gardens and coral forests, forming a complex and fragile web of marine life. Unfortunately, the abundance of life associated with these habitats has attracted human attention mostly for exploitative rather than exploratory reasons.

Industrial fishing vessels such as deep-sea bottom trawlers are laying waste to these oases of the deep, extracting an estimated 170,000 – 215,000 metric tonnes of fish each year at a value of around $300-$400 million per annum.[4] In just one sweep, a single bottom trawl can leave an area of seamount almost devoid of life. Bottom trawling is one of the most destructive fishing practices ever developed and is presently the largest immediate threat to deep-sea biodiversity on the high seas.

Bottom trawling is not the only activity that impacts on the deep blue. Scientists and corporate entities are increasingly interested in the genetic specialisations of deep-sea organisms living under conditions of extreme pressure, temperature and toxicity. The study and harnessing of these genetic resources for possible pharmaceutical or industrial applications is known as "bioprospecting". Already several valuable products have been created as a result of these discoveries, and there is growing recognition of the potential of deep-sea genes to advance human welfare. Emerging activities such as deep-sea bioprospecting, are developing at the cutting edge of science and outside any regulatory framework. The cumulative impacts of trial extraction and the potential for industrial-scale harvesting of deep-sea organisms poses a real threat to the protection of deep-sea biodiversity and its sustainable and equitable use.[5]

Evidence is also emerging that indirect threats from climate change, invasive species and ocean noise may also have significant impacts on ocean biodiversity. A recent report by the Royal Society, the UK's national academy of science, suggests that if global emissions of carbon dioxide from human activities continue to rise at current rates, the average pH of the oceans could fall by 0.5 units - equivalent to a rate of change one hundred times that of past millennia. The magnitude and scale of this change is enormous and biological effects are inevitable. Calcifying organisms such as corals which rely on calcium carbonate to generate supporting life structures, are thought to be most at risk.[6] Other known consequences of climate change are increased storm surges and wave activity, an increase in sea temperatures and ultimately, a shift in ocean currents.

"For too long, the world acted as if the oceans were somehow a realm apart – as areas owned by no-one, free for all, with little need for care or management. The Law of the Sea Convention and other landmark legal instruments have brought important progress over the past two decades in protecting fisheries and marine ecosystems. But this common heritage of all humankind continues to face profound pressures."

Secretary-General Kofi Annan, at the meeting of the Seychelles and the United Kingdom "Reefs, Island Communities and Protected Areas — Committing to the Future" (2004)

5. Existing mechanisms for governing the high seas

The unsustainable plundering of marine biodiversity is largely due to legal gaps (see Box 1) in the current oceans governance regime, as well as the lack of political will by states to fundamentally change the status quo in favour of an integrated and comprehensive management regime that will ensure the future health and vitality of our oceans. Current principles that favour freedom of the high seas and the freedom to fish must be replaced by ones that entrench the concept of freedom for the seas - with the ecosystem approach and precautionary principle forming the core of all oceans management decision-making.

UNCLOS and the CBD provide the international legal framework governing the protection of the marine environment. However, there is no overarching legally binding agreement that effectively and comprehensively addresses the protection of biodiversity on the high seas, and is able to effectively implement the relevant provisions contained in these conventions. A brief summary of some of the key elements of these conventions vis-a-vis biodiversity conservation follows.

5.1. UNCLOS While UNCLOS offers states the right to use our oceans as well as the duty to conserve them, it fails to provide explicit tools for the implementation of environmental protection provisions. One exception is the obligation for states to cooperate in determining the total allowable catch for living resources being exploited on the high seas (Article 119). In addition, fisheries management measures for straddling and highly migratory stocks are further elaborated in the UN Fish Stocks Agreement (UNFSA). However, to date this agreement does not apply to discrete deep-sea stocks, and thus leaves a huge gap in the international management regime for a number of deep-sea fisheries.

BOX 3: Gaps in governance of high seas biodiversity

* No formal recognition of the need to protect biodiversity on the high seas and no mechanism with a mandate to do so;
* No mandate for the protection of areas on the high seas for conservation purposes;
* No conservation enforcement mechanism and competent enforcement body;
* No framework for access to and benefit sharing of living marine resources on the high seas;
* Insufficient geographic coverage and lack of competent fisheries management;
* Emerging activities, such as bioprospecting, remain outside the regulatory framework;
* Lack of regulation of ocean noise and its potential impacts on marine life;
* No regulation of discrete deep-sea fish stocks.

5.2. CBD In addition to responsible fisheries management, an important tool to help comprehensively protect marine biodiversity is the establishment of a global network of marine reserves. The UN Millennium Project calls for 10% of the oceans to be covered by marine reserves in the short- to medium-term, with a long-term goal of 30%. In 2004, echoing pledges taken at the World Summit on Sustainable Development (WSSD), the CBD's 7th Conference of the Parties (CoP 7) committed to the establishment of a global network of marine protected areas by 2012 (Decision VII/28). According to Decision VII/5, such a network should be composed of:

"comprehensive, effectively managed, and ecologically representative national and regional systems of protected areas that collectively ... contribute to achieving the three objectives of the Convention and the 2010 target to significantly reduce the current rate of biodiversity loss".

The CBD is the primary instrument providing direction to states for the establishment of marine protected areas and marine reserves in waters under their jurisdiction. The CBD further holds states responsible for the regulation of activities and processes within and beyond the limits of national jurisdiction, irrespective of where their impact may be felt, provided they occur under the control of a Contracting Party.[7] This obliges Parties to apply the Convention to all its activities either in the EEZ or on the high seas, and acknowledges the need for protective measures in areas beyond national jurisdiction. It does not, however, oblige states to take collective measures to protect the high seas.

BOX 4: Greenpeace definition of Marine Reserves

Marine reserves are one type of Marine Protected Area. In terms of protecting the marine environment, they offer the highest level of protection - much like national parks in the sea. They are closed to all extractive uses, such as fishing and mining, as well as to industrial and disposal activities. Greenpeace calls for a network of large-scale marine reserves to cover around 40% of the ocean surface. Within these areas there may be core zones where no human activities are allowed, for instance areas that act as scientific reference areas or areas where there are particularly sensitive habitats or species.

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5.3. Regional Fisheries Management Organisations Articles 5 and 6 of the UNFSA require the application of the ecosystem and precautionary approach to fisheries through the mechanism of Regional Fisheries Management Organisations (RFMOs). Of the 30 RFMOs mandated under the UNFSA to regulate and protect straddling or highly migratory stocks, only five are competent to manage all or most of the living marine resources falling within their regulatory areas. The mandate of the others is limited to cover certain specific species, such as tunas. Almost all of the existing RFMOs fail to explicitly provide for the application of the ecosystem approach or precautionary principle in fisheries management. Only the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and the Southeast Atlantic Fisheries Organisation (SEAFO) are specifically mandated in their constitutional agreements to implement the ecosystem approach to fisheries management. SEAFO has yet to adopt and implement any measures applying this approach to its convention area. Even CCAMLR, with its proactive mandate and conservation measures, struggles to deal with the scourge of illegal, unregulated and unreported (IUU) fishing by flag-of-convenience vessels, non-parties, and in some cases its own parties, who fail to abide by its rules.

In both its 2002 and 2004 review of the state of the world's fisheries, the FAO noted this lack of an explicit mandate in RFMOs for ecosystem-based fisheries management. The review suggests that extending the number of RFMOs with a mandate to adopt an ecosystem approach, as well as forging closer links between environmental and fisheries organisations, will facilitate better and more effective implementation.[8]

Further analysis by Greenpeace has identified a list of shortcomings in the constitutional commitment of RFMOs to the ecosystem and precautionary approach (see Box 5). Fundamental change and reform of RFMOs is urgently needed if they are to adapt to the governance challenges of this century. These must go hand in hand with innovative developments in high seas oceans management if the oceans governance challenges of today and the future are to be met.

Even if RFMO management was adequate to protect high seas biodiversity, the limited geographical coverage of RFMOs with the competence to regulate deep-sea fisheries and their impacts on the benthic environment, leaves approximately three-quarters of the high seas completely unregulated. The UN Secretary-General recently reported the gaps in coverage as being the southeast Pacific Ocean for all fish stocks, and the southwest Atlantic, south-east Pacific, west-central Pacific, Indian Ocean and the Caribbean for straddling fish stocks and discrete high seas fish stocks.[9]

BOX 5: Institutional weaknesses of RFMOs

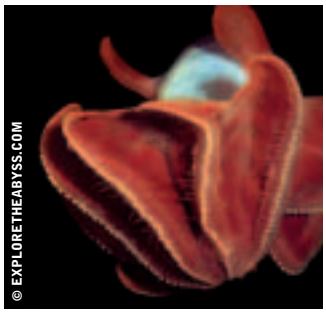
* Decision-making is often weak and driven by a need to reach consensus rather than based on ecological or scientific grounds. The small number of states party to RFMOs and the possibility of opting out of decisions by lodging a reservation further weakens decision making;
* Many RFMOs are not required by their constitutions to apply the precautionary approach or ecosystem approach to fisheries, so scientific advice and uncertainties are not adequately translated into the decision-making process;
* Member States fail to take action against non-Members and Members acting in breach of agreed measures. Member States may continue to issue licenses to vessels that have breached RFMO provisions;
* Constitutional and institutional incapacity means many RFMOs have a single species focus and do not account for impacts on associated and dependent species;
* Lack of international direction and inadequate co-ordination among RFMOs weakens their ability to tackle IUU fishing.

In addition to the provisions of UNCLOS, the UNFSA and related instruments, and the CBD, there are also a number of voluntary, species-specific or sectoral agreements that collectively set out a piecemeal governance structure for managing human activities on the high seas.

The FAO's 1995 Code of Conduct for Responsible Fisheries and 2001 International Plan of Action (IPOA) to prevent, deter and eliminate IUU fishing attempt to address some of these issues. Although these agreements apply to all fishing activities, including those fisheries not covered by the UNFSA (i.e. discrete stocks), both the Code of Conduct and IPOA-IUU are voluntary agreements and therefore lack the weight and the 'teeth' (i.e. ability to impose sanctions for violations) of legally binding agreements. Their ineffectiveness is compounded by the lack of the necessary political commitment by states to achieve implementation.

The Convention on Migratory Species (CMS) sets up a framework of protection for certain species groups such as cetaceans, seals, sea turtles and sea birds. The International Whaling Commission (IWC) has continued to uphold a politically fragile moratorium on commercial whaling since 1982, despite a year-on-year struggle to maintain support for such a measure. However, more positively, the IWC has succeeded in designating two whale sanctuaries in high seas areas.[10]

As for the significant proportion of high seas biodiversity that is sedentary, i.e. living on and/or attached to the sea floor, the regulatory system is considerably weaker. Whereas coastal states have the right and obligation to control the exploitation of such 'living resources' on their continental shelf and margin, or up to a distance of 200 nautical miles from the coast (whichever is



furthest), the responsibility for the conservation and management of sedentary species in areas beyond the continental shelf, and thus in most areas of the high seas, remains unclear under UNCLOS. Their exploitation is thus unregulated. This leaves another huge vacuum in the protection of such species, many of which are currently of most interest to bioprospectors. UNCLOS further contains no explicit provisions regulating the use or equitable benefit sharing of genetic resources derived from marine organisms living in either the water column or seabed of the high seas.

5.4. Shipping The International Maritime Organisation (IMO), established in 1958 under the UN umbrella, regulates all activities related to shipping and, as part of its mandate, introduces environmental protection measures to address pollution and other adverse effects from shipping. Although its mandate does not explicitly cover biodiversity protection, the IMO has established a number of relevant instruments including the International Convention for the Prevention of Pollution from Ships (as modified by the MARPOL Protocol 73/78), the International Convention on the Control of Harmful Anti-fouling Systems on Ships (not yet in force) and the International Convention for the Control and Management of Ships' Ballast Water and Sediments (not yet in force).

The IMO regime provides the possibility to define certain sea areas as "special areas" and Particularly Sensitive Sea Areas (PSSA), which are provided with a higher level of protection than other areas of the sea.[11] The control of maritime activities in PSSAs is designed to give permanent protection and can include routing measures, strict application of MARPOL discharge and equipment requirements for ships, such as oil tankers; and installation of Vessel Traffic Services (VTS). Far too often, however, provisions to control the impacts of the shipping sector are still initiated reactively and in the face of disasters, or designed to protect near shore waters of greatest interest to coastal states.

1 | The Census of Diversity of Abyssal Marine Life (CeDAMar) http://www.cedamar.org/

2 | O'Dor, R. (2004) A Census of Marine Life, BioScience; February 2004 / Vol. 54 No. 2 http://www.coreocean.org/iDuneDownload.dll?GetFile?AppID=141&FileID=258535&Anchor=&ext=.pdf

3 | United Nations University Institute for Advanced Studies (UNU-IAS, 2005) Bioprospecting of Genetic Resources in the Deep Seabed: Scientific, Legal and Policy Aspects

4 | Figures based on 2001 FAO figures; from Gianni, M. (2004) High-seas bottom fisheries and their impact on the biodiversity of vulnerable deep-seas ecosystems: options for international action. IUCN.

5 | United Nations University Institute for Advanced Studies (UNU-IAS, 2005) Bioprospecting of Genetic Resources in the Deep Seabed: Scientific, Legal and Policy Aspects

6 | The Royal Society (2005) Ocean Acidification due to increasing atmospheric carbon dioxide. June 2005, London

7 | Article 4 of CBD Text of the Convention

8 | The State of World Fisheries and Aquaculture 2002 (SOFIA 2002), FAO & The State of World Fisheries and Aquaculture (SOFIA) 2004, http://www.fao.org/sof/sofia/index_en.htm

9 | Report of the Secretary General, Oceans and the Law of the Sea, 59th Session, http://daccessdds.un.org/doc/UNDOC/GEN/N04/464/58/PDF/N0446458.pdf?OpenElement

10 | The Indian Ocean Sanctuary and the Southern Ocean Sanctuary.

11 | Resolution A.927(22); Guidelines for the Designation of Special Areas under MARPOL73/78 and Guidelines for the Identification and Designation of Particularly Sensitive Sea Areas.

5.5. Black Holes in ocean space: legal voids hindering effective high seas biodiversity governance In summary, the existing regulatory system clearly does not cover biodiversity protection on the high seas explicitly and comprehensively (see Box 3). More worrying, is that even in areas where commitments exist, there is little sanction against non-compliance. Partly to blame for this lack of compliance is the limited membership of states to international agreements, as well as a lack of political will amongst the signatories to such agreements to secure the long-term well-being of ocean life over short-term self-interest. Further shortcomings include:

* insufficient co-ordination between and among the different relevant instruments;
* the lack of clear rules governing access to and the sharing of benefits derived from high seas genetic resources;
* a lack of adequate implementation tools such as a mandate to establish marine reserves (no-take zones) in areas beyond the limits of national jurisdiction; and
* inadequate monitoring, control and surveillance of extractive and potentially polluting activities, particularly fishing, on the high seas.

6. Conclusion

The United Nations Law of the Sea Convention (UNCLOS) provides the fundamental framework – the constitution – for global oceans governance. To date, the Agreements in Part XI of UNCLOS regarding seabed mining and the United Nations Fish Stocks Agreement have implemented a number of the key principles contained within UNCLOS. Greenpeace believes that the time is ripe for a third UNCLOS implementing agreement – a comprehensive, legally binding agreement which will implement the UNCLOS provisions relating to the duties of states to cooperate in the protection of the marine environment of the high seas. In addition to harmonising institutional mandates and improving coordination, this implementing agreement would facilitate the establishment of a global network of high seas marine reserves. It would further establish an "Interpol for the oceans" – a centralised monitoring, control and enforcement agency. These components are essential to ensure that the living resources of the high seas global commons are sustainably and equitably managed for now and for the future.

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