

**UNICP and the conservation of deep-sea biodiversity in areas beyond national jurisdiction: a civil society perspective on the effectiveness of the UNICP process.**

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**United Nations Open-ended Informal Consultative  
Process on Oceans and the Law of the Sea  
Tenth meeting, 17-19 June 2009**

**Implementation of the outcomes of the Consultative Process, including a review of its achievements and shortcomings in its first nine meetings**

***Segment 2: Outcomes of the Consultative Process and their implementation***

Thank-you Co-Chairs for the opportunity to make this presentation.

The Deep Sea Conservation Coalition (DSCC) is a coalition of over 60 organizations worldwide concerned with the conservation and protection of marine biodiversity in areas beyond national jurisdiction, in particular the impact of bottom fishing in the deep-sea.<sup>1</sup>

The focus of my presentation will be a summary of the history of the debate at the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICP) on the issue of bottom fishing on the high seas – an issue which has been discussed and debated at many of the previous nine meetings of UNICP – and the extent to which the debate has informed the negotiation of resolutions by the General Assembly and those resolutions implemented.

The issue of deep-sea biodiversity was raised at the very first meeting of UNICP in 2000. In an intervention at UNICP-1, the Australian delegation reported on the results of scientific expeditions exploring the biodiversity of seamounts in the Tasman Sea and Southwest Pacific Ocean. These expeditions found high levels of biodiversity associated with seamounts in the region. At UNICP-2, IUCN and WWF held a side event at which they presented a report on the biology and ecological importance of seamounts to deep-sea ecosystems and species.<sup>2</sup>

The issue was first formally debated at UNICP-3 in 2002. The debate was prompted by concerns over the impact of human activities on seamount and cold-water coral ecosystems, particularly as a result of bottom trawling. Amongst the recommendations of UNICP-3<sup>3</sup> to

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<sup>1</sup> Deep Sea Conservation Coalition website at [www.savethehighseas.org](http://www.savethehighseas.org)

<sup>2</sup> WWF/IUCN (2001). The status of natural resources on the high-seas. WWF/IUCN, Gland, Switzerland.

<sup>3</sup> Report on the work of the United Nations Open-ended Informal Consultative Process established by the General Assembly in its resolution 54/33 in order to facilitate the annual review by the Assembly of developments in ocean affairs at its third meeting. A/57/80. 2 July 2002. Part A: Issues to be suggested, and elements to be proposed, to the General Assembly; Paragraph 20.

the General Assembly was the following, incorporated into the 2002 oceans and law of the sea resolution, A/Res/57/141, paragraph 56, as follows:

*The General Assembly*

“Encourages relevant international organizations, including the Food and Agriculture Organization of the United Nations, the International Hydrographic Organization, the International Maritime Organization, the International Seabed Authority, the United Nations Environment Programme, the World Meteorological Organization, the secretariat of the Convention on Biological Diversity and the United Nations Secretariat (Division for Ocean Affairs and the Law of the Sea), consider urgently ways to integrate and improve, on a scientific basis, the management of risks to marine biodiversity of seamounts and certain other underwater features within the framework of the Convention;”

The adoption of General Assembly resolution 57/141 in 2002 spurred a series of international initiatives by scientists, NGOs, intergovernmental organizations and others over the following two years which fed back into meetings of the UNICP and subsequent UN General Assembly negotiations. Amongst these were:

- The UN FAO, New Zealand, Australia and others co-sponsored the conference Deep Sea 2003;
- Two statements of concern by scientists (September 2003 and February 2004 - the latter with over 1,600 signatures), both of which called on the UN General Assembly to declare a moratorium on bottom trawl fishing on the high seas;
- Concerned NGOs began working together on the issue which ultimately led to the formation of the Deep Sea Conservation Coalition in 2004;
- IUCN, WWF, NRDC, and Conservation International released a report in 2004: *High seas bottom trawl fisheries and their impacts on the biodiversity of vulnerable deep-sea ecosystems: options for international action*; <sup>4</sup>
- The Seventh Conference of Parties to the Convention on Biological Diversity adopted Decision VII/5 in February 2004 which, in paragraph 61, stated as follows:

“Calls upon the United Nations General Assembly and other relevant international and regional organizations... to urgently take the necessary short-term, medium-term and long-term measures to eliminate/avoid destructive practices... for example, consideration on a case by case basis, of interim prohibition of destructive practices adversely impacting the marine biological diversity associated with...” seamounts, cold-water corals and other vulnerable deep-sea ecosystems.

It is also worth mentioning that the UNICP debate also contributed to actions in respect of areas within national jurisdiction. As one example, the European Commission in 2004 issued a proposal to close the seamount areas within the EEZs to bottom trawl fishing around the Azores, Canary and Madeira Islands in the Atlantic. Amongst the reasons given in the Explanatory Memorandum in the proposal were concerns raised at UNICP meetings, cited as follows: “Deep-water habitats are also being dealt with within the United Nations informal consultative process on oceans and the law of the sea

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<sup>4</sup> Gianni, M (2004), *High seas bottom trawl fisheries and their impacts on the biodiversity of vulnerable deep-sea ecosystems: options for international action*. Gland, Switzerland, International Union for the Conservation of Nature (IUCN).

(UNICPOLOS) as vulnerable habitats requiring special protection.”<sup>5</sup> The European Commission proposal was subsequently adopted as a regulation by the European Union.

The issue was again formally debated by UNICP-5 in 2004 resulting in a set of recommendations to the UN General Assembly calling for actions by States and RFMOs to, among other things, “urgently address the impact of deep sea bottom trawling on vulnerable marine ecosystems”, consider “the interim prohibition of destructive practices”, and to review the effectiveness of actions taken by States and RMOs in 2006.<sup>6</sup>

The recommendations were incorporated into UN General Assembly resolution A/Res/59/25, paragraphs 66-71, which called for:

- Urgent action to protect vulnerable marine ecosystems from destructive fishing practices, including bottom trawl fishing, in areas beyond national jurisdiction;
- The establishment of RFMO/As in areas of the high seas where deep-sea bottom fishing occurs and is unregulated;
- A report from the UN Secretary General in 2006 on progress in the implementation of the resolution; and
- A review by the UN General Assembly in 2006 of the effectiveness of the measures called for in resolution 59/25.

Throughout the period between 2003 and 2006, the UNICP continued to debate this issue through a series of panel presentations by scientists including Les Watling, Boris Worm, Callum Roberts and Daniel Pauly; panel presentations by IUCN, Greenpeace, NRDC, and the Deep Sea Conservation Coalition; and panel presentations by industry representatives including the International Coalition of Fisheries Associations and the Spanish Federation of Fisheries Organizations (Federación Española de Organizaciones Pesqueras). In addition, a number of side events on the topic of high seas bottom fishing were held at UNICP meetings during the same period and there were numerous interventions by NGOs and States on the subject. This prompted a lively and dynamic debate of the issue at the Fourth through Seventh meetings of UNICP and ultimately provided for an informed debate and negotiations at the UN General Assembly in respect of the resolutions adopted 2004 and 2006.

Between 2004 and 2006, States and RFMO/As began taking a series of actions in response to General Assembly resolution 54/25, including the following:

- Negotiations to establish new RFMOs to manage high seas bottom fisheries were initiated by Australia, New Zealand and Chile in the South Pacific (February 2006), and by Japan, the Republic of Korea, the Russian Federation and the United States in the North Pacific (August 2006);

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<sup>5</sup> COMMISSION OF THE EUROPEAN COMMUNITIES: Proposal for a COUNCIL REGULATION amending Regulation (EC) No 850/98 as regards the protection of deep-water coral reefs from the effects of trawling in certain areas of the Atlantic Ocean. Brussels 3.2.2004, COM(2004) 58 final.

<sup>6</sup> Report on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its fifth meeting. A/59/122. 1 July 2004. Part A: Agreed recommendations to be suggested to the General Assembly for consideration under its agenda item entitled “Oceans and the law of the sea”; Paragraph 6.

- Regional fisheries management organizations - NEAFC, NAFO, SEAFO and the GFCM - took the first steps to begin closing areas to bottom fisheries on the high seas to protect vulnerable marine ecosystems;
- The negotiation of the South Indian Ocean Fisheries Agreement (SIOFA) was concluded in 2006 (although, unfortunately, SIOFA has not yet entered into force);
- Recommendations regarding the regulation of bottom fishing on the high seas were adopted by the 2005 Meeting of the UN FAO Committee on Fisheries and the UN Fish Stocks Agreement Review Conference in May 2006.

However, in spite of the call for action in the 2004 General Assembly resolution, by 2006 little progress had been made to actually protect deep-sea ecosystems in areas beyond national jurisdiction from the harmful impacts of bottom fishing, as was reflected in the special report of the UN Secretary General in 2006.<sup>7</sup> As a result, this issue was the subject of lively debate again at UNICP-7 in 2006 although UNICP-7 did not make any recommendations to the UN General Assembly on bottom fishing that year.<sup>8</sup> Nonetheless, the issue of bottom fishing in areas beyond national jurisdiction was the subject of a review and extensive negotiation by the UN General Assembly in 2006 which benefited from the debate at UNICP-7. The result was an agreement by high seas bottom fishing nations, both individually and through RFMOs, to take a series of specific actions to prevent “significant adverse impacts” to vulnerable marine ecosystems from bottom fisheries in areas beyond national jurisdiction. This agreement was contained in paragraphs 80-91 of UN General Assembly resolution 61/105, adopted by consensus in December 2006. Specifically the resolution committed nations which authorize their vessels to engage in bottom fisheries on the high seas to take a series of actions, outlined in paragraph 83 of resolution 61/105, summarized as follows:

- Conduct impact assessments of individual high seas bottom fisheries to ensure that “significant” adverse impacts on vulnerable marine ecosystems (VMEs) would be prevented or else not authorize bottom fishing to proceed;
- Close areas of the high seas where VMEs are known or *likely* to occur to bottom fishing unless bottom fisheries can be managed in these areas to prevent significant adverse impacts on VMEs;
- Ensure the long-term sustainability of deep-sea fish stocks;
- Require fishing vessels to move out of an area of the high seas where ‘unexpected’ encounters with VMEs occur.

The resolution further called on States to publicize lists of vessels authorized to fish on the high seas, as well as the measures that have been adopted and implemented pursuant to the resolution. The resolution set deadlines of 31 December 2007 and 31 December 2008 after

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<sup>7</sup> The 2006 Report of the Secretary General concluded, in paragraph 204, that “Some States have undertaken, or are in the process of undertaking extensive efforts to protect some fishery habitat areas within their national jurisdiction, in particular through the establishment of protected areas. However, this is not the case on the high seas, though deep-sea habitats in these areas are extremely vulnerable and require protection.” Report of the Secretary-General *Impacts of fishing on vulnerable marine ecosystems: actions taken by States and regional fisheries management organizations and arrangements to give effect to paragraphs 66 to 69 of General Assembly resolution 59/25 on sustainable fisheries, regarding the impacts of fishing on vulnerable marine ecosystems*. A/61/154. 14 July 2006.

<sup>8</sup> A number of countries argued at the time that UNICP-7 should not make recommendations in regard to bottom fishing given that a) the UN Secretary General’s report on the implementation of resolution 59/25 had not yet been issued at that point (it was issued only in July 2006), and b) did not wish to preempt the conclusions of the UN General Assembly review of the implementation of the high seas bottom fisheries provisions of resolution 59/25 scheduled for the 61<sup>st</sup> session of the General Assembly.

which States and RFMOs would prohibit bottom fisheries on the high seas unless or until the provisions of the resolution were implemented. The General Assembly further recommended a program of work by the UN FAO to assist States in the implementation of the resolution and agreed that it would review progress on the implementation of the resolution at its 64<sup>th</sup> Session in 2009.

Since then a number of States and RFMOs have adopted measures to implement the resolution and take further actions to protect VMEs. These include in brief:

- CCAMLR, NAFO, NEAFC, and SEAFO have adopted a number of additional measures to regulate high seas bottom fisheries including some additional closed areas and/or fishing gear restrictions;
- Interim measures for the management of high seas bottom fisheries were adopted by the Northwest Pacific and South Pacific RFMO negotiating processes pending the conclusion of the negotiations to establish RFMOs in these regions;
- The European Union promulgated regulations for high seas bottom fisheries conducted by vessels under the jurisdiction of EU member States in areas of the high seas where no RFMO nor RFMO negotiating process currently exists (e.g. Southwest Atlantic).

In addition, a set of International Guidelines for the management of Deep-Sea Fisheries in the High Seas were negotiated and adopted in 2008 under the auspices of the UN FAO to, *inter alia*, further define and agree to criteria for the conduct of impact assessments of high seas bottom fisheries, identification of VMEs and determinations of “significant adverse impacts”.<sup>9</sup> The FAO also agreed to a work program on deep-sea fisheries, an element of which was the publication, in March 2009, of a global review of high seas bottom fisheries which includes estimates of catch and numbers of bottom fishing vessels per high seas region, the ex-vessel value of the catch in high seas bottom fisheries and the flag States involved.<sup>10</sup>

Representatives of the DSCC and its member organizations have participated in most of the RFMO and RFMO negotiating processes relevant to the implementation of resolution 61/105 since 2006. On the basis of this experience, the DSCC has provided a detailed review of the implementation of the bottom fisheries provisions of General Assembly resolution 61/105 in its submission to the UN Secretary General in May of this year.<sup>11</sup> In sum, in spite of the steps taken by States and RFMOs since 2006, the measures adopted by flag States and RFMOs have fallen far short of the commitment made by high seas bottom fishing nations to implement the resolution. In particular,

- Most high seas bottom fisheries have not been subject to impact assessments;

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<sup>9</sup> UN FAO International Guidelines for the Management of Deep-Sea Fisheries in the High Seas. <http://www.southpacificrfmo.org/assets/6th-Meeting-October-2008-Canberra/DW-Subgroup-VI/SPRFMO6-SWG-INF01-FAO-Deepwater-Guidelines-Final-Sep20.pdf>

<sup>10</sup> Bensch, A., Gianni M., Greboval D., Sanders J.S., Hjort A. *World Wide Review of Bottom Fisheries in the High Seas*. Food and Agriculture Organization of the United Nations. Rome, 2009. <http://www.fao.org/docrep/011/i0540e/i0540e00.htm>

<sup>11</sup> Review of the implementation of the provisions of UN GENERAL ASSEMBLY resolution 61/105 related to the management of high seas bottom fisheries. Submission to the United Nations Division for Ocean Affairs and the Law of the Sea. May 2009. <http://www.savethehighseas.org/DOALOS.cfm>

- Where assessments have been conducted, few have been conducted consistent with the UN FAO Guidelines and none have been conclusive as to whether significant adverse impacts would or would not occur;
- Although some area closures have been adopted by RFMO/As, most high seas areas at fishable depths where VMES are known or are likely to occur remain open to bottom fisheries with few or no constraints;
- The long-term sustainability of few, if any, deep-sea fish stocks has been ensured - in most high seas bottom fisheries, basic information on the catch and biological characteristics of target and non-target deep-sea fish stocks is insufficient to even determine long-term sustainable levels of fishing; in those fisheries where such information exists, most of the fish stocks are recognized to be overexploited or depleted and, in some cases, threatened with extinction (i.e. gulper sharks in the Northeast Atlantic);
- “Move-on” rules have been adopted by most RFMOs and flag States; however, the threshold or levels which trigger the rule are so high in many cases as to render rule of limited, if any, value in protecting VMES.

In our view, the UN General Assembly has unfinished business to contend with during the upcoming 64<sup>th</sup> Session and the UN GA review later this year of the implementation of the bottom fishing provisions (paragraphs 80-91) of resolution 61/105. Although paragraphs 83-86 of resolution 61/105 have been poorly implemented to date (and in some regions such as the South Indian Ocean not at all), most, if not all, States whose vessels have previously engaged in high seas bottom fishing appear to have continued to authorize bottom fisheries on the high seas in 2009. This presents a significant challenge to the UN General Assembly and calls into question the commitment of high seas bottom fishing nations to implement the resolution. In the DSCC’s view, nations which have not fully implemented the provisions of paragraphs 83-86 of resolution 61/105 should suspend the authorization to their flagged vessels to engage in bottom fishing on the high seas. In addition:

- The burden of proof of no harm has to be high given the fragility and vulnerability of deep-sea ecosystems and fish species, particularly in the case of bottom trawling;
- Where no impact assessments have been conducted, or where impact assessments have been conducted but have not resulted in a clear determination of no significant adverse impacts, then no fishing should be authorized either by States or RFMOs;
- All nations and RFMOs authorizing bottom fishing on the high seas should be fully transparent with regard to their impact assessments, vessels authorized to fish, and the measures they have adopted to manage the high seas bottom fisheries in order to allow all nations with an interest in the conservation of marine biodiversity in areas beyond national jurisdiction to review the effectiveness of the measures taken by high seas fishing nations;
- The UN General Assembly should consider calling for sanctions against those nations which fail to effectively implement the high seas bottom fishing provisions of resolution 61/105.

To conclude, the DSCC believes that the UNICP process has proved successful in providing a forum for a vigorous and informed debate of the issue of high seas bottom fishing and its impacts on vulnerable marine ecosystems over the past ten years. We don’t mean to suggest that all actions taken internationally to protect deep-sea ecosystems from the harmful impacts of bottom fishing were done exclusively as a result of the UNICP but we would emphasize that the UNICP process has effectively informed the UN General Assembly negotiations and

subsequent the subsequent General Assembly resolutions have been the main drivers for international action thus far on this issue by States and RFMOs. However, the General Assembly must continue to play an active role.

In addition to bottom fishing and the protection of VMEs, a number of other issues of importance to civil society organizations have been debated at one or more of the previous sessions of the UNICP. These include the problem of flags of convenience, ocean noise, the plight of sea turtles in the North Pacific Ocean and elsewhere, and the conservation of shark species. In addition, the UNICP is an important forum for new and emerging issues and will almost certainly have to debate the threat posed by ocean acidification at some point soon.

We would agree with G.77 that sustainable development is fundamental to the effective conservation of the oceans and central to the discussions at future meetings of the UNICP, and we would argue that sustainable development in regard to the use of the oceans is not possible without sustainable utilization of marine resources and the protection and preservation of the marine environment. We are also of the view that there are gaps in the implementation of UNCLOS and that the UNICP provides a useful forum for raising these issues. In this regard, the DSCC has supported the proposal by the European Union, made at previous sessions of the UNICP, for a new implementing agreement of UNCLOS for high seas biodiversity conservation. A number of member organizations of the DSCC and others have also called for a review of the implementation of the provisions of UNCLOS with respect to flag State obligations and responsibilities. The role of the UNICP should be to debate, promote and recommend the establishment of effective mechanisms to deal with these issues, including formal negotiating processes where necessary. In this regard, we would note that the UN General Assembly working group on marine biological diversity beyond areas of national jurisdiction largely evolved from a recognition during UNICP debates that a more formal approach is necessary. Our hope is that this working group will further progress high seas governance issues – through, for example, serving as the means to establish a process to allow for the establishment of representative networks of MPAs on the high seas to implement the WSSD goal, an equitable access and benefit sharing regime for the conservation and sustainable utilization of marine genetic resources in areas beyond national jurisdiction, and to address the problem of persistent flag State non-compliance with basic obligations under Article 92 and other provisions of the Law of the Sea Convention.

Finally, the world looks to the General Assembly for leadership, particularly in the governance of the high seas of the world's oceans – the global oceans commons. You, the participants in this meeting of UNICP and the States you represent, are the General Assembly. The UNICP is an important global forum for bringing issues of public and civil society interest before the UN General Assembly and having them debated effectively and the UNICP discussions must be directly linked to the General Assembly negotiations on fisheries and oceans and the law of the sea. Speaking for myself, I find it a privilege to have been able to participate in the discussions and debate at all of the meetings of the UNICP over the past ten years; meetings which ultimately helped shape the decisions and recommendations of the UN General Assembly to the international community as a whole.

Thank-you