



RECOMMENDATIONS

February 2004

Seventh meeting of the Conference of the Parties to the Convention on Biological Diversity (COP7)

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High Seas Biodiversity Conservation

(Agenda items 18.2 and 26)

INTRODUCTION

In its decision VI/26, the 6th Conference of Parties to the Convention on Biological Diversity (CBD) adopted a target for its Strategic Plan "to achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national level as a contribution to poverty alleviation and to the benefit of all life on Earth." To achieve this target, the Parties have recognized the necessity of protecting and maintaining the diversity of genes, species, habitats, ecosystems and biomes and of directly addressing threats to biodiversity such as habitat loss, invasive species, pollution and unsustainable use.

The high seas and deep oceans comprise the largest habitat for life on Earth. The "high seas" cover an estimated 50% of the Earth's surface, 64% of the oceans' surface, and include the deep seabed "Area" (the "common heritage of mankind" as defined by the United Nations Convention on the Law of the Sea) and the water column beyond national jurisdiction. Volumetrically, the high seas and deep oceans account for more than 90% of the biologically useable volume of the planet¹.

While there is much to be done in coastal and offshore waters and on land, damage caused by growing human activities to high seas biodiversity and productivity continues to escalate, harming or destroying species and habitats and altering ecosystems faster than scientists can study them². Urgent and immediate action is required to

reduce the known risks from high seas bottom trawling and provide protection to important biodiversity areas.

At the same time, potential risks from ongoing and emerging activities that may affect high seas biodiversity and productivity must be assessed and negative impacts prevented on a precautionary basis. Such steps must be taken while stimulating scientific research to increase our understanding of oceanic processes, ecosystems and biodiversity.

The Convention on Biological Diversity can and should address the growing impact of human activities and the lack of effective international measures for the conservation and sustainable use of natural systems and biodiversity beyond national jurisdiction.

The recommendations concerning conservation of biodiversity beyond national jurisdiction from the World Summit on Sustainable Development (WSSD), the United Nations General Assembly (UNGA)³, the Eighth and Ninth meetings of the Subsidiary Body on Scientific, Technological and Technical Advice (SBSTTA), the Open-Ended Intersessional Meeting on the Multiyear Programme of Work (MYPOW) and the Fifth World Parks Congress (WPC) can help to chart a new course for the high seas.

IUCN and WWF urge the 7th Conference of Parties to:

- ✓ Adopt SBSTTA recommendations VIII/3 and IX/4 and the elaborated programme of work on marine and coastal biodiversity as reflected in UNEP/CBD/COP/7/1/Add.2, and its outcome-oriented targets (UNEP/CBD/COP/7/20/Add.5) once finalized.

Additionally, in light of the significant risks to high seas biodiversity and sustainable fisheries posed by high seas bottom trawling, IUCN and WWF urge the Conference of Parties to:

- ✓ Send a statement of concern to the UN General Assembly calling for immediate protection of seamounts, deep water corals and other biodiversity hotspots from high seas bottom trawling until these vulnerable areas can be identified and measures to protect them adopted

and enforced, including effective international management measures for bottom trawl fisheries in these areas.

Further specific suggestions are detailed below.

The Relevance of the Convention on Biological Diversity (Agenda Item 18.2)

The Convention on Biological Diversity and its Parties have a vital role to play in the conservation of oceans beyond the coastal and exclusive economic zones. The Convention recognizes that “conservation of biological diversity is a common concern of humankind”. The loss of biodiversity and unsustainable use of resources is a matter of common, global concern no matter where it occurs.

There are three primary bases under the Convention for addressing threats to high seas biodiversity:

1. In Article 3, the Parties specifically take on “the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”
2. This undertaking is enhanced by the “jurisdictional” provisions of Article 4.b, which note that, in the case of processes and activities, ... carried out under [a Party’s] jurisdiction or control, “the provisions of this Convention apply... within the area of its national jurisdiction or beyond the limits of national jurisdiction.”
3. Most important, Article 5 of the Convention requires the Parties to engage in appropriate cooperation, “directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction..., for the conservation and sustainable use of biological diversity.”

These provisions are supplemented with a specific mandate for State Parties to “implement this Convention with respect to the marine environment consistently with the rights and obligations of States

under the law of the sea.” The Jakarta Mandate on Coastal and Marine Biodiversity is an early example of the valuable role that the CBD can play in marine biodiversity conservation. It is appropriate to apply the Convention’s vision and objectives on a global basis.

Establishing Marine Protected Areas Beyond National Jurisdiction (Agenda Items 18.2 and 26)

IUCN and WWF welcome SBSTTA Recommendations VIII/3 and IX/4 for further action to develop a permanent representative network of marine and coastal protected areas (MCPAs), building upon national networks, consistent with international law, including in areas beyond national jurisdiction, as elaborated in the programme of work on marine and coastal biodiversity and the outcome-oriented targets for its implementation. This is a critical step towards implementing the call to action to protect high seas biodiversity and productivity and to establish a global system of representative MCPA networks agreed at both the World Summit on Sustainable Development (September 2002) and the United Nations General Assembly (December 2002).

As is recognized in the SBSTTA 8 recommendation to the COP7, the law of sea provides the jurisdictional framework for States’ rights and obligations with respect to high seas biodiversity conservation. The United Nations Convention on the Law of the Seas, 1982 (UNCLOS) establishes unqualified obligations to protect and preserve the marine environment and to cooperate in conserving living resources. The environmental obligations apply to all activities carried out by States, including the specific obligation to take necessary measures “to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life” (Art. 194(5)). The exercise of high seas “freedoms” such as fishing, navigation, the laying of submarine cables and pipelines, marine scientific research and construction of artificial islands and other installations are subject to the conditions laid down in UNCLOS, including the responsibility to protect and preserve the marine environment and

conserve marine living resources, as well as other rules of international law (Art. 87).

Several international agreements already provide for the establishment of marine protected areas or “special areas” beyond national jurisdiction, consistent with the UNCLOS framework⁴. These include the International Convention for the Prevention of Pollution from Ships and its Protocol (MARPOL 73/78), the Protocol on Environmental Protection to the Antarctic Treaty (1991), and the Protocol on Specially Protected Areas and Biodiversity to the Barcelona Convention for the Mediterranean (1995). Most regional fisheries agreements similarly enable the State Parties to close areas to fishing activities.

At the World Parks Congress (September, 2003), marine theme experts recognized the urgency of establishing at least five high seas marine protected areas by 2008 and encouraging the use of available mechanisms to make progress towards the goal of a system of high seas marine protected area networks by 2012 that is globally representative⁵. Representative high seas MPAs on a regional biogeographic basis are essential to protect habitats or ecosystems that are unique, special, fragile or representative including seamounts, cold water coral reefs, hydrothermal vents, and the open ocean. Similarly, ecologically coherent networks of MPAs are crucial for sustaining populations of many animals and plants, and particularly for highly mobile seabirds, marine mammals, sea turtles and fish species, safeguarding the habitats necessary to critical stages of their life cycle and migratory routes. As within coastal waters, networks help ensure that management failures and natural catastrophes inside and outside these areas do not result in irreversible biodiversity loss.

Achieving the goal of high seas biodiversity conservation will also depend on an integrated approach under which all legal instruments and management tools work toward the same ends. A framework to promote a high level of international cooperation and to coordinate and harmonize relevant international agreements would facilitate the creation of a global system of high seas MPA networks and

enhance the capacity to address the range of urgent and potential threats to high seas biodiversity and productivity.

At the World Parks Congress, technical experts from governmental agencies, non-governmental organizations and parks authorities developed a Ten Year High Seas Marine Protected Areas Strategy incorporating the high seas recommendations of the World Parks Congress Marine Theme. It further elaborates steps to develop and implement a global system of high seas MPA networks⁶. This joint IUCN, WCPA and WWF document may provide a useful starting point for the development of a long-lasting framework for high seas biodiversity conservation, management and sustainable use. It could be considered by the liaison group suggested below or by regional workshops.

IUCN and WWF urge the 7th Conference of Parties to:

- ✓ Endorse operational objectives 3.1 and 3.4 in the elaborated programme of work on marine and coastal biodiversity, which are based on SBSTTA Recommendation VIII/3.B paragraphs 18-20, recognizing the urgent need to establish marine and coastal protected areas beyond national jurisdiction consistent with international law and based on scientific information, and requesting the Executive Secretary to work with other international and regional organizations to identify appropriate mechanisms for the establishment and effective management of marine and coastal protected areas beyond national jurisdiction, including in relation to seamounts, hydrothermal vents, cold water corals and open ocean;
- ✓ Establish a liaison group to explore mechanisms and options for cooperation with other relevant organizations, States and bodies for the establishment by 2008 of at least five protected areas in areas beyond national jurisdiction including through the identification of areas for priority action, the development of criteria and guidelines for a global system and determining future research needs and priorities; and

- ✓ Urge Parties and invite other Governments to promote a global framework or approach, building on UNCLOS, the CBD the UN Fish Stocks Agreement, the Convention on Migratory Species (CMS) and other relevant agreements to facilitate the creation of a system of MPA networks that is globally representative, consistent with international law and based on scientific information, to ensure its effective management and enforcement, and to coordinate and harmonize applicable international agreements, mechanisms and authorities in accordance with modern principles of precautionary, ecosystem-based and integrated management and sound governance to enhance biodiversity conservation and sustainable use throughout the global oceans.

Halting Unsustainable Use (Agenda Items 18.2 and 26)

Goal number 6 of the Strategic Plan of Action ((UNEP/CBD/COP/7/20/Add.3 Annex 1) calls for the halting of unsustainable use of biodiversity resources. The elaborated programme of work on marine and coastal biodiversity (COP/CBD/COP/7/12/Add.2), in its section III, operational objective 2.1 on sustainable use of marine and coastal living resources, calls for the elimination of destructive fishing practices and maintaining the productivity and biodiversity of important and vulnerable marine and coastal areas, including areas within and beyond national jurisdiction. This is reinforced by the draft outcome-oriented targets (UNEP/CBD/COP/7/20/Add.5).

Significant evidence indicates that bottom trawling for deep sea species is highly destructive, unsustainable, and capable of endangering many rare marine species. As described in the joint information paper provided by the Executive Secretary in collaboration with the IUCN Global Marine Program (UNEP/CBD/COP/7/INF/25), serious gaps in knowledge and high seas governance need to be addressed before the sustainability of deep seas fisheries and the protection of vulnerable deepsea habitats and biodiversity beyond national jurisdiction can be ensured. Though the amounts and value of the current high seas bottom trawl catch is estimated to be well under one percent of the global marine fisheries

catch⁷, it is important to take the time now, before bottom trawling expands further on the high seas, to identify and protect important and vulnerable ecosystems such as seamounts and deep-water coral reefs. Application of the precautionary approach requires immediate and urgent action.

Marine theme participants at the World Parks Congress joined many leading scientific experts in calling for the United Nations General Assembly to consider a resolution for an "immediate moratorium on deep seas bottom trawling in high seas areas with seamounts, cold water coral reefs and other vulnerable areas until legally binding international conservation measures to protect these areas are in place and enforced"⁸.

In addition to high seas bottom trawling, other impacts of high seas fishing activities are also of concern. Overexploitation, bycatch, habitat destruction and ecosystem modification have been frequently highlighted as serious threats to high seas biodiversity and ecosystem processes. Many regional fisheries management organizations (RFMOs) have yet to fully implement the precautionary and biodiversity conservation principles and provisions of the 1995 FAO Code of Conduct for Responsible Fishing, the UN Fish Stocks Agreement (on straddling fish stocks and highly migratory fish stocks)⁹ and the Convention on Biological Diversity.

IUCN and WWF urge the 7th Conference of Parties to:

- ✓ Reconfirm the importance of operational objective 2.1 of the elaborated programme of work on marine and coastal biological diversity to promote ecosystem approaches to the sustainable use of marine and coastal living resources;
- ✓ Invite the Food and Agriculture Organization of the United Nations (FAO) and regional and sub regional fisheries management organizations and arrangements, and other relevant organizations to contribute to the implementation of this programme element, in particular to ensure that high seas fishing activities are regulated and managed consistently with the objectives of Convention on Biological Diversity, including

through measures to mitigate and eliminate bycatch, incidental catch and habitat/ecosystem damage and to maintain the productivity and biodiversity of important and vulnerable marine and coastal areas, including areas beyond national jurisdiction;

- ✓ Invite these organizations, based on reports by governments and other entities, to report to the 8th COP on progress made in ensuring that high seas fisheries are consistent with the objectives of the CBD;
- ✓ Reconfirm the importance of operational objective 2.2(b) of the elaborated programme on marine and coastal biodiversity, and invite Parties and other States to identify activities and processes under their jurisdiction or control which may have significant adverse impact on deep seabed ecosystems and species beyond the limits of national jurisdiction, particularly with respect to fishing activities under their jurisdiction or control;
- ✓ Send a statement to the UN General Assembly expressing the Parties' concern regarding the potentially irreversible impacts of high seas bottom trawling on deep seas biodiversity and sustainable fisheries, and requesting the General Assembly to call for immediate protection of seamounts, cold water corals and other biodiversity hotspots from high seas bottom trawling until these vulnerable areas can be identified and measures to protect them adopted and enforced, including effective international management measures for bottom trawl fisheries in these areas.

Concerning Deep Seabed Genetic Resources Beyond National Jurisdiction And Cooperation With Other Organizations, Initiatives And Conventions Related To High Seas Biodiversity Conservation (Agenda Items 18.2 And 21)

IUCN and WWF further welcome the recommendations of SBSTTA 8 on the conservation and sustainable use of deep seabed genetic resources beyond national jurisdiction (VIII/3.D). IUCN and WWF also welcome the recommendation from MYPOW (UNEP/CBD/COP/7/5/1A) on the initiation of a global partnership on biodiversity between the CBD and the major international biodiversity-related agreements to enhance synergies and improve implementation.

In addition to high seas bottom trawling, as noted above, and fishing generally, several human activities that have the potential to affect the biodiversity and productivity of the high seas and seabed beyond national jurisdiction are subject to sector-specific regulation. These include seabed mining under the International Seabed Authority and shipping under the International Maritime Organization. Others, at this stage (e.g. bioprospecting, cable-laying, open-ocean mariculture, energy projects), are subject only to the general framework of UNCLOS and the general obligations of the CBD. As human activities expand in the high seas, more detailed agreements and appropriate mechanisms may be needed to ensure that rights of access and use are consistent with obligations to protect and preserve the marine environment and conserve marine living resources under UNCLOS. Existing agreements may need updating to ensure ecosystem-based and precautionary approaches.

IUCN and WWF urge the 7th Conference of Parties to:

- ✓ Reconfirm the importance of operational objectives 2.2 (marine and coastal genetic resources) and, 6.1 (database on integrated marine and coastal management initiatives) and endorse operational objectives 4.1 (mariculture), 5.2 (alien species and genotypes) and 6.2 (effective collaboration with relevant conventions, organizations and agencies) of the elaborated programme on marine and coastal biodiversity;
- ✓ Invite sector-based organizations such as the International Maritime Organization, the International Seabed Authority, the FAO and regional fisheries organizations, together with

regional and other relevant bodies (e.g., CMS and CITES) to actively cooperate with the Executive Secretary to coordinate and develop mechanisms to enhance protection of specific areas and species and contribute to an ecosystem-based and precautionary approach to high seas biodiversity conservation, consistent with the Convention on Biological Diversity.

Adoption of the Outcome-oriented Targets for Marine and Coastal Biological Diversity (Agenda Item 26)

The draft outcome oriented targets for the implementation of the elaborated program of work on marine and coastal biodiversity, as reformulated in UNEP/CBD/COP/7/20/Add.5, provide a valuable tool for inspiring and measuring progress towards the 2010 biodiversity target. Increasing threats to marine and coastal biodiversity and productivity, and the importance of marine systems to life on the planet require urgent and immediate action. The recommended targets can encourage significant and sustained efforts to establish protected areas, halt unsustainable resource use, and provide a framework for ecosystem-based and precautionary management in areas both within and beyond national jurisdiction. As noted, some of the draft targets still require further elaboration or refinement, and indicators for monitoring progress still need to be developed. IUCN and WWF stand ready to assist as part of any liaison group that may be established to assist SBSTTA in further refinement of the targets and/or development of appropriate indicators.

IUCN and WWF urge the 7th Conference of Parties to:

- ✓ Rapidly finalize and endorse outcome-oriented targets for marine and coastal biodiversity based on those presented in UNEP/CBD/COP/7/20/Add.5.

NOTES

¹ The average depth of the oceans beyond national jurisdiction is 4000 meters, thus volumetrically the high seas and deep oceans account for more than 90% of the biologically useable volume of the planet. Young, TR., 2003. "Developing a Legal Strategy for High Seas Marine Protected Areas", in *Towards a Strategy for High Seas Marine Protected Areas, Proceedings of the IUCN, WCPA and WWF Experts Workshop on High Seas Marine Protected Areas*, 15-17 January, 2003, Malaga, Spain, (eds. Gjerde, KM and C Breide) (available at www.iucn.org/themes/marine/pdf/GjerdeBreideHSMMPA.pdf).

It should be noted, however, than many areas of the high seas, particularly in the Mediterranean, may be quite shallow and that features of the deep seas, such as seamounts and cold water coral reefs, also occur in waters under national jurisdiction.

² Risks to high seas biodiversity and productivity stem from i) fishing activities (overexploitation; bycatch; habitat destruction and ecosystem modification); ii) pollution (atmospheric fall-out; leakage of old chemical munitions and radioactive wastes; ship-generated discharges such as oil, sewage and ballast water/introduced species; noise); iii) the spread of marine debris carrying introduced marine pests; iv) military activities, v) laying and operation of submarine cables and pipelines, vi) deep sea-bed mining; vii) bioprospecting); viii) potential impacts of scientific research (e.g. ecosystem manipulation such as CO2 sequestration; damage and/or conflicting uses from research concentrated at localized sites); ix) offshore aquaculture; x) energy generation projects and xi) the impacts of climate change. Damage may be site-specific or cumulative. Together, these risks are likely to increasingly imperil deep sea as well as open ocean species, ecosystems, and processes See Baker, CM, Bett, BJ, Billett, DSM and Rogers, AD (2001). "An environmental perspective", in *The Status of Natural Resources on the High Seas*. (eds. WWF/IUCN/WCPA), WWF/IUCN, Gland, Switzerland (available at www.iucn.org/themes/marine/pubs/pubs.htm); see also *Summary Report of the Cairns High Seas Biodiversity Workshop* and *Workshop Record* from the Workshop on the Governance of High Seas Biodiversity Conservation, June 16-19, Cairns, Australia; Lack, M, Short, K and Willock, A, 2003. *Managing risk and uncertainty in deep-sea fisheries: lessons from Orange Roughy*. TRAFFIC Oceania and WWF Endangered Seas Program; and "Management Of Risks To The Biodiversity

Of Seamounts And Cold Water Coral Communities Beyond National Jurisdiction" (UNEP/CBD/COP/7/INF/25) and the references contained therein.

³ In its 2003 Resolution on Oceans and Law of the Sea, paragraphs 51 and 52, (A/58/L.19, 23 December 2003), the United Nations General Assembly:

- "Reiterates its call for urgent consideration of ways to integrate and improve, on a scientific basis, the management of risks to the marine biodiversity of seamounts, cold water coral reefs and certain other underwater features; and
- Invites the relevant global and regional bodies, in accordance with their mandate, to investigate urgently how to better address, on a scientific basis, including the application of precaution, the threats and risks to vulnerable and threatened marine ecosystems and biodiversity beyond national jurisdiction; how existing treaties and other relevant instruments can be used in this process consistent with international law, in particular with the Convention, and with the principles of an integrated ecosystem-based approach to management, including the identification of marine ecosystem types that warrant priority attention and to explore a range of potential approaches and tools for their protection and management; and requests the Secretary-General to cooperate and liaise with these bodies and to submit an addendum to his annual report to the fifty-ninth session of the General Assembly, which describes the threats and risks to such marine ecosystems and biodiversity in areas beyond national jurisdiction as well as details of any conservation and management measure in place at the global, regional, sub-regional, or national levels addressing these issues" (emphasis added).

⁴ See, e.g., Kimball, LA, 2003. "Governance of High Seas Biodiversity Conservation: A Framework for Identifying and Responding to Governance Gaps", keynote paper prepared for the Workshop on the Governance of High Seas Biodiversity Conservation, June 16-19, Cairns, Australia; Young, TR, 2003. "Developing a Legal Strategy for High Seas Marine Protected Areas", in *Towards a Strategy for High Seas Marine Protected Areas, Proceedings of the IUCN, WCPA and WWF Experts Workshop on High Seas Marine Protected Areas*, 15-17 January, 2003, Malaga, Spain, (eds. Gjerde, KM and C Breide) (available at www.iucn.org/themes/marine/pdf/GjerdeBreideHSMMPA.pdf)

⁵ Fifth World Parks Congress Recommendation 5.23, Durban, South Africa (September 2003) (iucn.org/themes/wcpa/wpc2003).

⁶ *Ten-Year High Seas Marine Protected Areas Strategy: A ten-year strategy to promote the development of a global representative system of high seas marine protected area networks*, Summary version as agreed by Marine Theme Participants at the Fifth World Parks Congress, Durban, South Africa (8-17 September 2003) (IUCN, WWF and WCPA) (available at iucn.org/themes/marine/pubs/pubs.htm).

⁷ Gianni, M, 2003. *High Seas Bottom Fisheries And Their Impact On The Biodiversity Of Vulnerable Deep-Sea Ecosystems: Preliminary Findings*, Report prepared for WWF, NRDC, and IUCN.

⁸ See e.g., Fifth World Parks Congress “Emerging Issues” Durban, South Africa (September 2003) (iucn.org/themes/wcpa/wpc2003); *Statement of concern to the United Nations General Assembly regarding the risks to seamounts, cold-water corals and other vulnerable ecosystems of the deep-sea*, signed by over 140 of the world’s leading deep-sea biologists attending the 10th Deep-Sea Biology Symposium, Institute of Marine Biology, University of Oregon, Coos Bay, 25 - 29 August 2003 and the Second International Symposium on Deep Sea Corals, Erlangen, Germany, September 2003.

⁹ The 1995 UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks was developed to implement the provisions of UNCLOS with respect to fisheries crossing national and international waters. Articles 5 and 6 call for States to, *inter alia*: (1) minimise the impact of fishing on non-target, associated and dependent species and ecosystems, (2) protect habitats of special concern, (3) apply the precautionary approach, and (4) protect biodiversity in the marine environment.