

Protecting the Deep Seas

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Secretary-General Kofi Annan, in Mauritius for the Small Island Developing States (SIDS) International Meeting, told a meeting on Reefs, Island Communities and Protected Areas on January 13² that *“For too long, the world acted as if the oceans were somehow a realm apart – as areas owned by noone, 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,”* Annan concluded. *“What we need is high-level political commitment for marine conservation and protected areas. I assure you that the United Nations system shares your strong devotion to this effort. If at one time what happened on and beneath the seas was “out of sight, out of mind”, that can no longer be the case. Let us work together: to protect the oceans and coastal zones; to help small islands survive and prosper; and to ensure that all people enjoy a sustainable future.”*

These problems about which the Secretary-General spoke are not limited to tropical coral reefs. Having over-exploited coastal marine resources, new technologies have enabled humankind to begin to exploit the marine resources of the deep sea. So today, those resources now face profound pressures. The deep sea is one of the last frontiers on the planet and until a short time ago, it was assumed that there was little life in its cold, dark waters, which cover more than half the world's surface. Scientists are only now beginning to understand the diversity, significance and vulnerability of deep-sea biodiversity and ecosystems, and recognise it as a major global reservoir of the earth's biodiversity, comparable to that of tropical rainforests and shallow water coral reefs. Estimates of the numbers of species inhabiting the deep ocean range between 500,000 and 10 million, and there are an estimated 100,000 or more seamounts - underwater islands that rise 1,000 meters or higher from the seabed.

The high-level political commitment called for by the Secretary-General is crucial to protect the deep sea. Rich in plankton and cold water corals, seamounts are among the world's greatest marine biological treasures, attracting a vast array of marine life. From coral reefs to sponge ecosystems and microscopic bacteria, fish species and the birds that rely on them to large marine mammals, such as dolphins and whales, seamounts are home to an abundance of life. However, seamounts and the life they support are being destroyed at an alarming rate by deep sea bottom trawling - a fishing practice that is being compared to clearcutting rainforests, with trawled seamounts comprising 95% bare rocks compared with 10% for untrawled seamounts. Studies have shown that undisturbed seamounts support almost 50% more species than fished ones.

As coastal States, and as States highly dependent on the oceans for their survival, SIDS have a significant interest in protecting these underwater islands of diversity. Seamounts provide feeding as well as spawning grounds for a myriad of fish species, including some that have migrated across wide ocean areas and are the economic lifelines for many SIDS.

The fish caught by high seas bottom trawlers is destined for the dinner plates of northern consumers. It does not ensure food security for millions of people around the world but rather destroys deep sea

¹The author is an adviser to Greenpeace International, a member of the Deep Sea Conservation Coalition. The advice of Karen Sacks of Greenpeace International and Vanessa Goad of the Deep Sea Conservation Coalition is gratefully acknowledged. Any errors are those of the author.

² Port Louis, Mauritius, 13 January 2005 - Secretary-General's remarks at meeting organized by the Seychelles and the United Kingdom, "Reefs, Island Communities and Protected Areas -- Committing to the Future" At <http://www.un.org/apps/sg/sgstats.asp?nid=1257>.

life, drives species to extinction before they have even been discovered and threatens the livelihoods of those dependent on the oceans.

Coastal states have sovereign rights to explore and exploit sedentary species on their continental shelf,³ the sedentary living resources in the deep sea beyond the continental shelf are regarded under international law as part of the common heritage of humankind⁴ and the right to fish in international waters is subject to an obligation on States to conserve marine life and biodiversity and to co-operate for the protection of the high seas⁵ and for the conservation and sustainable use of biodiversity.⁶

Under the Convention on Biological Diversity, States have an international obligation to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction,⁷ yet 1,136 deep-sea scientists have declared⁸ that “scientific studies around the world have shown that trawling is devastating to corals and sponges”. Benefit sharing and access to genetic resources are fundamental objectives of the CBD⁹ and developing countries have a significant interest in deep sea marine resources, which high seas bottom trawling is destroying before they have even been discovered.

International concern at the damage to biodiversity caused by bottom trawling has been mounting. The Parties to the CBD in February 2004 called on the United Nations General Assembly (UNGA) to address the impacts of destructive practices impacting on deep-sea ecosystems.¹⁰ Referring to marine areas beyond the limits of national jurisdiction that have seamounts, hydrothermal vents, cold-water corals and other vulnerable ecosystems and features, the Parties urged the UNGA to: “*Urgently take the necessary short-term, medium-term and long-term measures to eliminate/avoid destructive practices, consistent with international law, on a scientific basis, including the application of precaution, for example, on a case by case basis, interim prohibition of destructive practices adversely impacting the marine biological diversity associated with the areas.*”

This rather convoluted, but nevertheless insistent, call was examined by the United Nations Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS), the report¹¹ of

³ United Nations Convention on the Law of the Sea, Article 1. Signed at Montego Bay, Jamaica, 10 December 1982, entered into force 16 November 1994, UN Doc. A/CONF.62/122 (1982), 21 I.L.M. 1261 (1982) (Law of the Sea Convention), at http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm, articles 68 and 77(4).

⁴ Article 136 of the Law of the Sea Convention. See C. Hyslop, “Two major challenges to the creation of Non-Jurisdictional Marine Protected Areas: Freedom of the High Seas Doctrine and the Common Heritage of Mankind Principle,” <http://www.utas.edu.au/government/APSA/CHislopfinal.pdf>, 15.

⁵ Law of the Sea Convention articles 117, 118.

⁶ The Convention on Biological Diversity *signed* at Rio de Janeiro on 5 June 1992, *entered into force* 29 December 1993, 31 ILM (1992). Text at <http://www.biodiv.org/doc/legal/cbd-en.pdf> (CBD) Article 5.

⁷ CBD Article 3.

⁸ Deep-sea Coral Statement, Scientists’ statement on protecting the world’s deep-sea coral and sponge ecosystems, at http://www.mcbi.org/DSC_statement/sign.htm.

⁹ CBD Article 1

¹⁰ Decision VII/5 of the 2004 Conference of the Parties to the CBD, Marine and coastal biological diversity, Review of the programme of work on marine and coastal biodiversity, at <http://www.biodiv.org/convention/result.aspx?id=7742>.

¹¹ 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: Letter dated 29 June 2004 from the Co-Chairpersons of the Consultative Process addressed to the President of the General Assembly, A/59/122 (1 July 2004), at http://www.un.org/Depts/los/consultative_process/consultative_process.htm#A/59/122.

which to the General Assembly acknowledged that “[i]t was generally agreed that high seas bottom trawling was harmful to deep-sea marine biodiversity and had adverse effects on vulnerable marine ecosystems, such as seamounts and cold and deep water corals. The need for improved governance of deep-sea fisheries resources and better protection of deep-sea vulnerable marine ecosystems and associated biodiversity was underlined.” However, despite acknowledging the damage being done, UNICPOLOS fell short of recommending a moratorium on the practice as States could not reach consensus: consensus was blocked by some of the States which engage in the practice.¹²

The General Assembly in November 2004 did not, therefore, impose a moratorium on high seas bottom trawling. Its Oceans resolution,¹³ however, did call upon States and international organizations to urgently take action to address, in accordance with international law, destructive practices that have adverse impacts on marine biodiversity and ecosystems, including seamounts, hydrothermal vents and cold-water corals. It also created an Open-ended Informal Working Group to study issues related to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction.¹⁴

In its Sustainable Fisheries resolution,¹⁵ the General Assembly called upon States to take action urgently, and consider on a case-by-case basis, and on a scientific basis, including the application of the precautionary approach, the interim prohibition of destructive fishing practices, including bottom-trawling that has adverse impacts on vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold-water corals located beyond national jurisdiction, until such time as appropriate conservation and management measures have been adopted in accordance with international law. It also called upon regional fisheries management organizations (RFMOs) with competence to regulate bottom fisheries to urgently adopt measures to address the impacts of these destructive fishing practices, and called upon members of those without such competence to expand the competence of the RFMO, and called for new RFMOs to be established where none exist.¹⁶ A review on progress within two years was agreed¹⁷ to follow a report by the Secretary-General.¹⁸

But will this package be enough to address the destruction by deep sea bottom trawling, or is it too little, too late? History does not bode well for the trust placed in RFMOs, and the strong statements of concern have yet to be translated to the high-level political commitment called for by the Secretary-General.¹⁹ The coverage of RFMOs is very patchy, and even where RFMOs do have competence, measures addressing bottom trawling are extremely limited. Gaps in coverage by

¹² Gianni has identified the eleven nations catching about 95% of the reported high seas bottom-trawl catch in 2001 as Spain, Russia, Portugal, Norway, Estonia, Denmark/Faroe Islands, Japan, Lithuania, Iceland, New Zealand and Latvia. European Union (EU) countries took approximately 60% of the high seas bottom trawl catch, 40% of which was caught by Spain. See Matthew Gianni, “High Seas Bottom Trawl Fisheries and their Impacts on the Biodiversity of Vulnerable Deep-Sea Ecosystems,” report prepared for IUCN, WWF and NRDC, 4, (referred to as “Gianni”) at <http://www.iucn.org/themes/marine/pdf/MattGianni-CBDCOP7-Impact-HS-BottomFisheries-Complete.pdf>.

¹³ UN General Assembly resolution 59/24 on oceans and the Law of the Sea, 10 November 2004, at http://www.un.org/Depts/los/general_assembly/general_assembly_resolutions.htm. Paragraph 70.

¹⁴ GA Resolution 59/24, paragraphs 73-76

¹⁵ UN General Assembly resolution 59/25 on sustainable fisheries, 10 November 2004, at http://www.un.org/Depts/los/general_assembly/general_assembly_resolutions.htm, paragraph 66.

¹⁶ GA Resolution 59/35, paragraphs 67-69.

¹⁷ GA Resolution 59/34, paragraphs 71.

¹⁸ GA Resolution 59/34, paragraphs 70.

¹⁹ See Deep Sea Conservation Coalition “A Net with holes: the regional fisheries management system.” available at <http://www.savethehighseas.org/publications.cfm>.

RFMOs include the southeast Pacific Ocean for all fish stocks, and the south-west Atlantic, south-east Pacific, west-central Pacific, Indian Ocean and the Caribbean for straddling fish stocks and discrete high seas fish stocks. Filling these gaps will take time. Negotiations for a RFMO for the Southwest Indian Ocean that began in 2001 are still ongoing some four years later.²⁰ To believe that RFMOs for these areas will be created and then will formulate and implement effective measures, all in a realistic timeframe, when bottom trawling is estimated to devastate an area twice the size of the United States each year,²¹ defies belief.

Without an international moratorium or similar broad-based measure, even if RFMOs were to implement appropriate conservation and management measures to address bottom trawling, without widespread coverage by RFMOs and without widespread adherence to RFMOs, the effect of such measures are likely to be patchy at best. Not only would RFMOs need to be in place to cover all fished areas, but there would need to be universal or at least widespread adherence by fishing States. Measures would need to be implemented and enforced by RFMOs, for which there would need to be effective coordination among RFMOs, between RFMOs and States and between States, while States must implement the measures and take enforcement monitoring and enforcement action themselves. None of this is likely to happen without high-level political commitment of which the Secretary-General spoke, embodied in a General Assembly resolution.

More progress was made in the World Conservation Congress at its 3rd Session in Bangkok last November, where the calls upon RFMOs were renewed but this time were coupled with a call for a moratorium by the General Assembly pending the development of a high seas regime next year for areas covered by RFMOs and the following year for areas not covered by RFMOs.²²

The Secretary-General's warning of the profound pressures on the common heritage of humankind is a wake up call to the international community. Both the expressed strong devotion of the United Nations, and the support of the international community, is essential to prevent the continued extinction of countless species and the consequent irreversible harm to marine resources worldwide.

²⁰ See Third Intergovernmental Consultation on the Establishment of the South West Indian Ocean Fisheries Commission <http://www.fao.org/fi/meetings/safr/swio/2004/default.asp>.

²¹ Press briefing by Deep Sea Conservation Coalition 7 June 2004, at http://www.searounds.org/OtherWebsites/2004/DSCC_6_Jul_2004.pdf.

²² The World Conservation Congress 3rd Session in Bangkok, Thailand, 17-25 November, 2004, Resolution on the protection of seamounts, deep sea corals and other vulnerable deep sea habitats from destructive fishing practices, including bottom trawling, on the high seas.