

FREEDOM FOR THE SEAS, FOR NOW & FOR THE FUTURE

GREENPEACE PROPOSALS TO REVOLUTIONISE
HIGH SEAS OCEANS GOVERNANCE

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Current high seas oceans management is fundamentally flawed. It 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 stop the destruction of high seas biodiversity, the current presumptions in favour of freedom of the high seas and the freedom to fish¹ must be reversed. Instead, the international waters of the high seas must be viewed as marine reserves with potential users having to prove that they will not harm the ecosystem before they are given access to it. The current presumptions must be replaced by ones that entrench the concept of freedom *for* the seas: where the ecosystem approach and precautionary principle are considered as the fundamental core of all oceans management.



The high seas are currently open to fishing by anyone interested in doing so with only minimal flag state controls. Even in those areas where there are some management controls, patchy regulation and weak enforcement mean that such activities often continue unabated. The focus is the interests of rich countries and distant water fishing nations at the expense of our oceans and the many coastal communities of the global South who are directly dependent on healthy oceans for their food security and livelihoods.

Instead of working to ensure clean and healthy oceans for the future, the current high seas oceans governance regime simply allows the fishing industry to go looking for new species to replace those that have been overfished: going deeper and further south in the search for fish to supply to consumers. Such actions threaten the sustainability of marine life across the world's oceans.

The Law of the Sea Convention does more than simply offer states the right to use our oceans. It also requires that States fulfill numerous duties:

to "co-operate with other States in taking such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas" (Article 117), and "... to protect and preserve the marine environment" (Art. 192). Industrial-scale destructive fishing practices on the high seas are undermining the duties of states to individually and collectively protect and preserve the marine environment of this global commons.

This has got to stop.

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While many States have recognised the problems facing our oceans, very few are willing to expend the political capital needed to shift the current management regime away from serving fishing and industrial interests and towards a comprehensive ecosystem based management regime with the precautionary principle at its core. The high seas particularly suffer from this 'Wild West' mentality. Anyone who has the money, the technology and the inclination can go and take whatever they want, with very few regulations to ensure sustainability or equity. Those few regulations that are in place are diluted even further by weak enforcement.

In January 2005, UN Secretary-General Kofi Annan stated,² "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."

The time has passed for a leisurely approach to conserving what is left of the biodiversity and resources of the world's oceans at the cost and to the detriment of all countries and all peoples. Only bold, innovative, visionary and decisive action has any chance of preventing the massive and irreversible destruction of the biodiversity of our oceans. Only such visionary and decisive action can ensure freedom for our seas in the 21st Century.

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

Greenpeace proposals to revolutionise high seas oceans governance

1. The immediate adoption of a United Nations General Assembly Resolution establishing a moratorium on high seas bottom trawl fishing to protect deep sea biodiversity by all states. This interim measure would provide scientists with the time to assess the range and extent of this biodiversity, and politicians with the space to negotiate longer-term measures that would ensure that bottom trawling on the high seas can be effectively regulated and sustainably and equitably managed.
2. In high seas areas where there are no management regimes in place (most of the high seas), all extractive activities should be halted – effectively creating large-scale marine reserves until such time as:
 - a) an internationally representative panel of scientists had been provided the time and resources to use an ecosystem-based management and precautionary paradigm to assess what is out there, identify key areas, and
 - i designate a global network of high seas marine reserves (expanses of oceans where extractive industries such as fishing and mining, as well as disposal activities, are prohibited):
 - ii identify areas that could be opened to extractive practices, but would require prior environmental impact assessments in such areas based on Articles 5 & 6 (ecosystem-based and precautionary approach) of the United Nations Fish Stocks Agreement (FSA), that would place the burden of proof on these industries to show that their planned activities will not harm the marine environment, and that they will bear the costs (under a strict liability regime) for any harm done;
 - b) The benefits of any extractive activities in such areas would be shared on an equitable basis and managed through, for example, a fund that could be set up to monitor and enforce regulations adopted to ensure the sustainable and equitable management and benefit sharing of such resources. This would include active representation of State and non-State actors in a transparent and accountable manner;
 - c) These activities could not be conducted until policy makers had the opportunity to develop legally binding measures, including clear sanctions against violating states, in order to regulate such activities.
3. Ratification and implementation of the United Nations Agreement on Straddling and Highly Migratory Fish Stocks (1995) by all coastal and distant water fishing states.
4. The application of the FSA to discrete high seas fish stocks.
5. Regional Fisheries Management Organisations (RFMOs) that have not adopted the ecosystem approach and precautionary principle to fisheries management as directed in Articles 5 and 6 of the FSA, should be given 2 years by the United Nations General Assembly to do so, or face the closure of the fisheries under their jurisdiction until this has been achieved.
6. Through UN processes (including the informal ad-hoc working group on oceans governance, and the Convention on Biological Diversity), gain international recognition that the biodiversity of the deep-seabed is part of the common heritage of humankind and that access to as well as any benefits that accrue from the 'harvesting' of such genetic resources must be sustainably managed and equitably shared among all nations.
7. A substantial reduction in the capacity of the international fishing fleet at national, regional and international levels. Incentives must be developed to reduce such capacity.
8. Harmful subsidies to the fishing industry must be removed.

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

1. The establishment of a central monitoring, control and compliance authority for all vessels active on the high seas that would be funded by dues paid by States according to the number of vessels authorised to undertake extractive activities on the high seas. Dues paid by vessels licensed to fish in such waters could fund compliance, monitoring and enforcement. This would deter such vessels from 'turning a blind eye' to their illegal, unregulated and unreported (IUU) counterparts, as these fishers would actually be costing them money.
2. Establishment of a single, centralised, compatible Vessel Monitoring System (VMS) for all vessels licensed to fish on the high seas to enable states to distinguish between vessels authorised to fish on the high seas or an Exclusive Economic Zone (EEZ). Vessels unable to provide VMS data for any part of their voyage would not be permitted to land their catch. Such a system would be operated by the centralised compliance authority, which would report to all states on infractions by any vessels in the system, and permit any states participating in the system to take punitive actions against such vessels in their respective jurisdictions.
3. "Redlisting" of fishing vessels and companies that breach conservation measures, i.e.: deny fishing vessels, and their owners/operators the authorisation to fish by any method and for any species on the high seas.
4. Adopting national legislation that requires a 'genuine link' between the flag-state and vessels carrying their flags, and making it illegal for nationals to reflag vessels to avoid compliance. Such legislation should include the right for a State to legally sanction vessels, their owners and operators, as well as redlisting those that have reflagged vessels or attempted to do so.
5. Closing ports to non-complying fishing vessels and to vessels flying the flags of non-complying states.
6. Intensive in-port vessel inspections with the right to sanction such vessels provided by intergovernmental port state enforcement agreements.
7. Outlawing transshipment at sea of any species that could be caught on the high seas.
8. Closing markets to fish and fish products which do not carry credible certification establishing that the fish and fish products caught on the high seas were derived from licensed fishing operations. Using established international trade regulations (such as CITES listings) to regulate trade in species that are already under threat.
9. Harmonising and adopting national laws and regulations to implement international measures to control nationals engaged in, fishing or owning or operating vessels fishing in areas beyond national jurisdiction.



10. Exchanging, pooling and publicising information on vessels and companies involved in high seas fishing, including the operators, captains, beneficial owners of vessels, and those providing banking, insurance and other services to them.
11. Requiring that information on vessels and companies interested in engaging in high seas fishing be provided to the central monitoring, compliance and enforcement authority in a standard international format, before authorisation to access these fisheries is given. Where vessels or companies have been 'redlisted' by the authorities, permission to fish will not be granted.
12. Requiring under domestic law, that prior to any vessel being granted the flag of a state, the information stated above is submitted to the central compliance authority. A prerequisite for 'flagging' will then be the confirmation by the central authority that the vessel, its owners and operators, have not contravened any international or national regulations.
13. Cooperation among coastal states and those participating in relevant regional management arrangements to ensure that all states have sufficient capacity to manage and control their coastal and EEZ fisheries to ensure compliance with national regulations and international obligations.



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RFMOs: Regularly Failing to Manage our Oceans

The most common mechanism for 'managing' high seas fisheries is through Regional Fisheries Management Organisations (RFMOs). RFMOs enable States involved in particular high seas fisheries to negotiate and co-operate on fisheries management issues. The UN Secretary-General recently reported³ the gaps in RFMO coverage as: the south-east 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 stocks⁴. In other words, most of the high seas are not covered by RFMOs, and therefore most of the world's fish stocks remain unregulated. Furthermore, for those areas that are regulated, RFMOs have had a very disappointing track record in effectively managing their fisheries or applying ecosystem-based fisheries management. They also seem to have severe problems addressing the loss of sharks, albatrosses, marine turtles and other species impacted by fishing activities in their waters.

The 1995 UN Fish Stocks Agreement (FSA) mandated RFMOs as the primary mechanism for managing and conserving high seas straddling and highly migratory fish stocks. FSA Articles 5 and 6 are the legal cornerstones for applying the ecosystem approach and precautionary principle to fisheries management. Yet states consistently fail to use RFMOs to implement the specific obligations they have under these Articles to manage fisheries in such a manner. The FSA covers only straddling and highly migratory fish stocks⁵. The management of discrete high seas stocks, such as orange roughy, is not covered by the FSA.

Regional Fisheries Management Organisations must be fundamentally changed so that they can effectively implement the ecosystem approach as mandated by the FSA. As *Regional Ecosystem Management Organisations* (REMOs), they must be given the functional ability and capacity as well as mandate to address the broader ecological impacts of human activities on the world's oceans. Since such change will take time, it is essential that the international community recognise RFMOs as a single, limited tool that could be effective in medium to long-term oceans governance. The international community cannot wait around hoping for this change while marine biodiversity suffers. Action must be taken now. Urgent interim measures, such as a moratorium on high seas bottom trawling must be put in place to stop the destruction of high seas biodiversity while medium and long-term measures are developed and implemented.

- 1 | This presumption is based on Articles 87(e) and 116 of the LOSC.
- 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>.
- 3 | UN Report A/59/298. See also Advance and unedited reporting material on oceans and the law of the sea (addendum to the Report of the Secretary-General, A/59/62/Add.1) at http://www.un.org/depts/los/general_assembly/documents/addendum04.pdf.
- 4 | UN Report A/59/298, page 35.
- 5 | See Fish Stocks Agreement Articles 2 and 3.