

## Needed: a jump-start

**The Year of the Ocean in 1998 provides NGOs a good opportunity to make sure that the UN Agreement and the FAO Code actually take off**

**T**he UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Agreement) and the FAO's Code of Conduct for Responsible Fisheries (FAO Code), both adopted in 1995, have great potential to help reverse the world crisis in fisheries. The UN Agreement, a legally binding treaty, covers many commercially important fish populations. The FAO Code is voluntary, but covers a wide range of fisheries issues.

But will the UN Agreement and the FAO Code bring about real change? Or will they fulfil the predictions of those who argue that the environmental 'negotiation mania' of the early 1990s produced a large amount of UN documentation but few results? NGOs, which played an important part in negotiations of both the UN Agreement and the FAO Code, can help answer those questions.

The Year of the Ocean in 1998 provides a particularly good opportunity for NGO action on fisheries. At the international level, there will be many opportunities to highlight key issues—the commercial EXPO 98 in Portugal, for instance, and several FAO meetings, including a session of the subcommittee on fish trade of FAO's Committee on Fisheries (COFI), as well as consultations on issues such as the management of fisheries capacity and by-catch. However, the most important part will be to 'bring home' the UN Agreement and FAO Code at the regional and national levels, where an enormous amount of work remains to be done.

Many NGOs have begun to voice demands for change in the Year of the Ocean. Preparing in advance will help produce tangible results in 1998. An analysis of the problems that are blocking rapid and effective implementation of the UN

Agreement and the FAO Code will help identify the points for intervention where NGO action is likely to have the greatest impact. With the large number of obstacles to implementation, it will be important to select a few key goals, whose achievement will reflect lasting changes.

Priorities will vary among NGOs, but there are likely to be many shared concerns, such as encouraging governments to ratify the UN Agreement and produce plans for implementing both the Agreement and the FAO Code, including goals against which progress can be measured. With clearly defined priorities and a focused approach, NGOs can achieve much, even with limited resources.

Thus far, 39 states have signed the UN Agreement, while only 16 have ratified or acceded to it. Only when 30 states ratify or accede to the UN Agreement will it enter into force. This has to be the priority, but another concern is ensuring that the states which have the greatest impact on fisheries abide by the UN Agreement. The state of fisheries will not be improved if only countries which represent a fraction of the overall tonnage, or which land a small percentage of the overall catch, become parties to the UN Agreement. It is worth noting that many of major-catch countries are developing countries, yet much of the catch is exported to developed countries.

### **Legally binding**

The FAO Compliance Agreement designed to prevent vessel re-flagging as a means to avoid complying with rules on fisheries conservation and management, is a legally binding agreement which is complementary to the FAO Code. It has been accepted by only 10 states and entities (including the EU), yet requires that 25 states or entities accept it in order

to become legally operational. FAO has developed guidelines for implementation of the FAO Code, but there has been an unwillingness by member states to fully endorse and take action on them.

Until now, governments and industry have been able to get away with progressive sounding statements in international meetings and in the media, but the time for that should be past. It is through regional, national and local implementation that the UN Agreement and the FAO Code will be translated into practice, where their effectiveness will be measured and where provisions such as Art. 5 (g) of the UN Agreement, which requires states to protect biodiversity in the marine environment, can be given some substance.

We are at the beginning of a long process that will require much greater efforts than the negotiations of the two instruments, but time is short. The latest report from FAO on the state of world fisheries confirms that unless effective action is taken, overfishing will get worse. FAO's analysis of 200 top marine fisheries warns of a rapid increase in fishing pressure. In 1994, about 35 per cent of these fisheries were in a phase with declining landings, 25 per cent in a phase with a high level of exploitation, 40 per cent were still developing, and none of them were undeveloped. According to the FAO, even if effective management were introduced immediately for depleted fisheries, productions would only achieve gradual growth.

By-catch remains a major problem. FAO estimates that discarding could amount to around one-third of total reported annual production of marine capture fisheries, including a large proportion of juvenile fish. Coastal fish habitats are being degraded in many parts of the world. FAO notes that recovery times will be particularly long for stocks that require both a reduction in fishing effort and improved environmental conditions.

As the body that oversees matters pertaining to oceans and the law of the sea, the UN General Assembly is responsible for reviewing the UN

Agreement. The first of such reviews was conducted at its 51st and 52nd Sessions in 1996 and 1997 via reports submitted by the Secretary-General to the General Assembly.

Perhaps because the UN Agreement has not yet entered into force, there has been very little progress to report, unlike 1995, when the UN Agreement was opened for signature. The lackluster debate may also signal a sentiment amongst governments that, for the moment, merely adopting the UN Agreement was a great enough achievement.

At the most recent UNGA oceans debate in November 1997; one of the two reports which was submitted by the Secretary-General was on developments relating to the conservation and management of straddling fish stocks and highly migratory fish stocks and the status and implementation of the UN Agreement. The other was a consolidated report on the issues of large-scale pelagic drift-net fishing; unauthorized fishing in zones of national jurisdiction; and fisheries by-catch and discards.

As called for under the UN Agreement, the report on the status of implementation of the UN Agreement will be submitted biennially hereafter (with the next report to be produced at the 54th Session in 1999), alternating with the consolidated report mentioned above (which will be submitted later this year at the 53rd Session).

NGOs accredited with the Economic and Social Council are invited to submit contributions for consideration in this year's report of the Secretary-General by the end of June. While it is unfortunate that both reports will not be issued annually, these reports provide a useful lobbying tool to spotlight successes and failures of governments on key oceans issues, as well as a means by which NGOs can effectively contribute to a process which is often seen as 'beyond the reach' of NGOs.

#### **Wide-ranging reform**

Regional fisheries organizations and arrangements, including those organized under the auspices of the FAO, will have to undertake a wide-ranging reform process

to change their rules and institutional structures to make it possible for them to implement the UN Agreement and the FAO Code. This will no doubt be a time-consuming process, which makes it extremely important that the regional bodies put themselves on track for reform as soon as possible.

**I**t is now two years since the adoption of both the FAO Code and the UN Agreement and there is little practical evidence that regional organizations have recognized their role in the process of implementation of these instruments. The provisions of the UN Agreement are clearly applicable to all regional organizations. There is little hope if regional organizations continue with their business-as-usual approach of collecting, analyzing and exchanging information on stocks, and establishing management measures, while ignoring the need for better co-operation on fish stocks, assisting with monitoring and enforcement and public accountability.

Discussions in organizations, such as the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) and the General Fisheries Council for the Mediterranean (GFCM), have been very discouraging. In 1995, FAO's Committee on Fisheries discussed the role of regional fisheries bodies, emphasizing the key role they have to play. The spotlight is now on these bodies.

One of the key provisions of the UN Agreement is Article 12, which requires regional fisheries organizations and arrangements to allow non-governmental organizations (which includes fishworkers' organizations) access to meetings, subject to certain conditions. The procedures for this shall not be unduly restrictive."

Current procedures vary, but most regional fisheries organizations and arrangements apply archaic rules, allowing only very limited participation by NGOs. Changing this would have an enormous impact-increasing public scrutiny through active NGO participation would probably revolutionize the way many of these bodies operate at the moment.

The most intractable problem around which most environmental negotiations revolve concerns financing, recently the subject of much discussion at the UN General Assembly. Special Session to evaluate implementation of Agenda 21.

#### **Financial aid**

Failure to resolve the financing issue should not be allowed to impede the entry into force of the UN Agreement, either by developed or developing countries. Realistically, the issue of financial assistance will not be resolved at one or two meeting sessions, but rather through a series of evolving measures adopted

over time. Some international institutions are already exploring ways of providing assistance for fisheries conservation and management, which is a positive step.

Very little work has been done on Part vii of the UN Agreement which deals with the requirements of developing countries, in particular, the least developed countries and small island developing states. This is an area where innovative thinking from NGOs could advance implementation of the UN Agreement. Interesting provisions include Art. 26.1, which requires states to co-operate to establish special funds to assist developing countries.

The UN Agreement requires the Secretary-General to convene a conference four years after the entry into force of the UN Agreement to assess its effectiveness, and propose measures to improve the conservation and management of highly migratory and straddling fish stocks that the Agreement deals with. This will provide an opportunity to address some outstanding issues. Reviews of the UN Agreement by UNGA should prepare for the Review Conference.

The UN Agreement and the FAO Code still leave many issues unresolved. For instance, only some parts of the UN Agreement apply in areas of national jurisdiction. Hot issues, such as excess fleet capacity, inappropriate subsidies and other trade-related issues, will require further international co-operation to be resolved.

What role do institutions such as the World Trade Organization (WTO) and the Organization for Economic Cooperation and Development (OECD) have to play? Other questions that have been raised include what role regional trade forums should have and how the Agreement on Subsidies and Countervailing Measures should be applied. Developing countries, concerned about deteriorating terms of trade, are following these discussions closely.

The roles of treaties and bodies such as the Convention on Biological Diversity (CBD) and the Commission on Sustainable Development (CSD) will need clarification. The CBD might have a

contribution to make to improve fisheries conservation and management, but it is questionable whether the discussion of fisheries in the CSD adds any value, unless the CSD succeeds in defining a clear niche role.

It is not an option to allow the UN Agreement and the FAO Code to fail. Something must be done to 'jump-start' the two instruments. The Year of the Ocean in 1998 provides a great opportunity to change direction in fisheries. If the many highly effective and committed NGOs that work on fisheries take concerted action, focused on a few key priorities, they might well succeed in turning the current tide. Instead of remaining in limbo, the UN Agreement and FAO Code could become effective mechanisms for changing fisheries conservation and management globally. ♣

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