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Date: May 6th, 2020

Re: Earth Law Center's recommendations to the draft text of an agreement under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction

The draft text of an agreement under the United Nations Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction arrives at a pivotal moment as a response to current environmental crises. We have a unique opportunity to shift our existing legal frameworks (that are largely anthropocentric), to ecocentric frameworks recognizing the importance of the Ocean and its interconnectedness with human livelihood and health, as well as the human responsibility to protect and respect the environment.

We must adopt an ecocentric approach moving forward with this agreement.

Anthropocentrism, with a focus on the human benefit and utility of the Ocean, its species, and constituting elements, has resulted in more than 60% of the Ocean considered as 'degraded', and the threatened extinction of more than one-third of marine mammals, sharks and fish. In order to ensure a higher quality of life for the planet and all its living beings, the international community has the responsibility to act in a way that promotes behaviour and law that protects, restores, and stabilizes the functional interdependency of the Ocean and its systems at the local, bioregional, national, and global levels.

About the organization: Earth Law Center (ELC) is a member of the United Nation's Economic and Social Council (ECOSOC) and the IUCN's World Commission on Environmental Law, as well as experts and partners of the UN Harmony with Nature Initiative. ELC is also a member of the High Seas Alliance, a Mission Blue partner and a founding member of the Global Alliance for the Rights of Nature.

Earth Law Center's (ELC) key issues and recommendations

- 1. Recognize the human responsibility to protect and restore the Ocean and demand accountability (Preamble, Art. 5 and 34).** Articles 192 and 194 of UNCLOS established the duty for all states to protect and preserve the marine environment and to prevent, reduce and control pollution. Simultaneously, coastal states are to take all measures to ensure that activities within their jurisdiction do not cause damage to other states and their environment. This includes implementing measures necessary 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. Additionally, the sovereign right of coastal states to exploit their natural resources is also limited through national environmental policies and their duty under international law to protect and preserve the marine environment. With rights to use the marine environment, the Convention sets

forth duties and obligations to conserve it (this is also the nature of rights in general; rights confer responsibilities). As a result, it is our obligation to respect and balance the interests of the marine environment with our own.

It is time we act on our ethical and moral responsibilities to take measures that promote, enhance, and safeguard a healthy and resilient Ocean. Language that could be interpreted to provide parties with an opportunity to avoid responsibility or accountability should be excluded. Every state must bear the cost of overexploitation and the polluter must bear the cost of pollution.

- 2. Require a holistic approach (Preamble, Art. 5 and 16):** The Convention must implement a holistic framework that strives to understand and respect the relationship between Nature, culture and the human dimension. The Ocean is integral to the functioning of all Earth's systems. A holistic management approach that takes into account the interconnected relationship between humans and Nature, and applies integrated ecosystem approaches, and cross-jurisdictional and cumulative impact management, is necessary to ensure a healthy and thriving high seas. All communities and ecosystems are interconnected with one another so that the wellbeing of one is dependent on all others, whether directly or indirectly. Enhancing and protecting the ocean's biodiversity requires fostering and promoting this mutual relationship.
- 3. The Ocean must be considered an "interest" under the Convention (Preamble, Art. 34 and 64):** Human activity has led to the current crisis' facing the Ocean. The rights and interests of humans have long outweighed that of the Ocean. As a result, it comes to no surprise that anthropocentric approaches to conservation have brought about little success. As stated in Greenpeace's briefing for IGC 4, "Business-as-usual is destroying our oceans: we need to transform ocean governance to future-proof the health of our oceans for generations to come." The current draft of the treaty mentions right(s) 26 times. The rights are specific to human, property (intellectual) and State rights. As stated in the draft Preamble, there is a "need [for this treaty] to respect the balance of rights, obligations and interests set forth under the Convention."

The Ocean must be considered an entity with which rights are to be balanced and interests protected in its own right rather than protecting it for the benefit it brings to human society. The Ocean should be identified as a stakeholder in this process to ensure that all decisions made in pursuit of this Treaty give due consideration to the marine environment and its health. The Treaty must acknowledge that the Ocean itself has intrinsic value and rights that must be recognized, honored, and protected. The Scientific and Technical Body established under the implementing agreement can be assigned with the task of ensuring the Oceans interests and values are represented in any decision making.

Just as humans have inherent rights to exist and live, so too do the ecosystems and species with whom we have coevolved. Countries worldwide have already begun to shift to ecocentric solutions to environmental issues by recognizing Nature and ecosystems as a legal entity. Examples include New Zealand (Whanganui River, Te Urewera National Park, Mt. Taranaki), Colombia (Atrato River and Amazon Rainforest),

India (Ganges and Yamuna Rivers, Himalayan ecosystem) and the United States (Lake Erie).

To successfully promote conservation and sustainable use of marine diversity in the High Seas, there needs to be a legal and political unity in place resonating in both national and international waters that shifts away from human rights and instead, prioritizes the interrelationship within and between ecosystems. In turn, this will facilitate conservation efforts that are more respectful of ecological and cultural diversity.

- 4. Promote Broad Protection Efforts (Art. 22):** In order to strengthen the Treaty as a tool for Ocean conservation and in particular, conservation of and sustainable use of marine biological diversity in areas beyond national jurisdiction, there is a critical need to broaden protection efforts and incorporate ecocentric values. The Ocean, along with its ecosystems, flora, fauna, and nonliving element, is one of Earth's many communities. As is observed with plastic pollution and chemical runoff from land to sea, human activities conducted in one area often unintentionally affect numerous other areas. This means that activities that take place outside the areas beyond national jurisdiction may easily impact areas within. As a result, conservation efforts must not be limited geographically. All activities that impact areas beyond national jurisdiction, both directly and indirectly, must be considered in decisionmaking.

International organizations and conventions are calling upon us to evolve our approach to conservation:

- UN Resolution 71/232 ("Harmony with Nature,") "[c]alls for holistic and integrated approaches to sustainable development, in its three dimensions, that will guide humanity to live in harmony with nature and lead efforts to restore the health and integrity of the Earth's ecosystems;"¹
- the United Nations World Charter for Nature acknowledges that "mankind is a part of nature" and that "living in harmony with nature gives man the best opportunities" for living well. Noting that "every life form ... warrant[s] respect regardless of its worth to man," the charter declares, "Nature shall be respected and its essential processes shall not be impaired." The Charter calls upon a moral code of conduct to guide human action in a way that treats other organisms with respect. Additionally, a primary function of the agreement is to recognize that man's needs can only be met "by ensuring the proper functioning of natural systems."²
- the United Nations Sustainable Development Knowledge Platform for Oceans and Seas states "[h]uman well-being cannot be achieved without the protection and conservation of the Earth's ecosystem. To maintain the quality of life that the oceans have provided to humankind, while sustaining the integrity of their ecosystems, a change will be required in how humans view, manage and use oceans, seas and marine resources."³
- the IUCN's 2017 Large Scale Marine Protected Areas Guidelines notes "[t]he key is for all players to commit to effective and equitable governance and management that seeks

¹ Available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/71/232

² World Charter for Nature, U.N. Doc. A/37/51 (1982), at: <http://www.un.org/documents/ga/res/37/a37r007.htm>.

³ Sustainable Development Knowledge Platform, United Nations, available at: <https://sustainabledevelopment.un.org/topics/oceanandseas>.

to conserve biodiversity in parallel with influencing, for the better, the economic, social and political drivers that affect ecosystem management, nature-based livelihoods, and the rights and responsibilities for nature (IUCN, 2012)."⁴ It further requires that human activities are managed holistically and the use of "a holistic management model that seeks to understand the relationship between nature, culture and the human dimension."⁵

- the National Oceanic and Atmospheric Association (NOAA) calls upon the recognition of ecological interconnectedness and complexity as crucial to managing marine ecosystems.⁶ NOAA finds holism as essential to sustainable development.⁷ In multiple reports, NOAA noted that a holistic approach is distinct from current approaches, and to achieve the needed holism, we must reject and replace "many (but not all) of the processes upon which conventional management depends."⁸
- the International Earth system expert workshop on ocean stresses and impacts concluded "[h]uman interactions with the ocean must change with the rapid adoption of a holistic approach to sustainable management of all activities that impinge marine ecosystems. This has to be part of a wider re-evaluation of the core values of human society and its relationship to the world and the resources on which we rely."⁹
- the Convention on Biological Diversity adopted a post-2020 global biodiversity framework (or strategic plan) as a stepping stone towards a vision of "living in harmony with nature" where "[b]y 2050, biodiversity is valued, conserved, restored and wisely used, maintaining ecosystem services, sustaining a healthy planet and delivering benefits essential for all people."

Adding text such as that highlighted above will help guide implementation of the Treaty in the direction necessary in order to sustainably manage human activity in the High Seas. Thank you for considering these comments, and please do not hesitate to contact us with any questions you may have.

Sincerely,



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⁴ Lewis, N., Day, J.C., Wilhelm, 'A., et. al, Large-Scale Marine Protected Areas: Guidelines for design and management. Best Practice Protected Area Guidelines Series, 2017, No. 26, Gland, Switzerland, p. 4, available at: <https://portals.iucn.org/library/node/46933>.

⁵ *Id.* at 18.

⁶ Charles W. Fowler, Andrea Belgrano, and Michele Casini, Holistic Fisheries Management: Combining Macroecology, Ecology, and Evolutionary Biology, *Marine Fisheries Review* (Scientific Publications Office, National Marine Fisheries Service, NOAA), 75 (1–2), 2013, p. 1, at: <http://aquaticcommons.org/14550/1/mfr751-21.pdf>.

⁷ *Id.* at 2.

⁸ Fowler, C. W., R. D. Redekopp, V. Vissar, and J. Oppenheimer, Pattern-based control rules for fisheries management. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-AFSC-268, 2014, p. 2, at: <https://www.afsc.noaa.gov/publications/afsc-tm/noaa-tm-afsc-268.pdf>.

⁹ Rogers, A.D. & Laffoley, D.d'A. 2011. International Earth system expert workshop on ocean stresses and impacts. Summary report. IPSO Oxford, 18 pp.