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**ICFA RESOLUTION ON 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 (BBNJ)**

Preface:

Resolution 72/249 (2017) adopted by the United Nations General Assembly (UNGA) convened 4 rounds of an Intergovernmental Conference (IGC) to elaborate the text of a new international legally binding instrument, the BBNJ, with a view to identify and address the regulatory gaps under the United Nations Convention on the Law of the Seas (UNCLOS) that would secure a comprehensive global regime to better address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. Although the process initiated in 2003, it was not until 2011 that, in lack of consensus for the identification of the “gaps”, a “package” of 4 subject matters were preliminarily recognized to guide the discussions, namely: a) Marine Genetic Resources (MGRs); b) Area Based Management Tools (ABMTs), particularly Marine Protected Areas (MPAs); c) Environmental Impact Assessments (EIAs), and d) Capacity Building and Transfer of Marine Technology (CB&TT).

The International Coalition of Fisheries Associations (ICFA) notes that:

The UNGA mandate clearly stated that:

“...this process and its result should not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies;...” and “...neither participation in the negotiations nor their outcome may affect the legal status of non-parties to the Convention or any other related agreements with regard to those instruments, or the legal status of parties to the Convention or any other related agreements with regard to those instruments;...”

Notwithstanding the fact that the BBNJ process is banned from amending the UNCLOS existing regime on fisheries for the high seas,¹ that is robust and coherent, the BBNJ’s negotiations have become a huge risk to the current fisheries governance system. In fact, although apparently clear, the “not undermine” wording has been claimed to be just a language “of compromise”; for some, “not undermine” means full respect of competences, while for others it enables to take actions beyond the decisions adopted by the legal instruments,

¹ See articles 118 and 119 which provide that subregional or regional fisheries organizations (RFOs) shall be competent to manage fisheries in the high seas, and are tasked to maintain or restore the resources harvested to produce their maximum sustainable yield (MSY) level as qualified by environmental and economic factors, taking into consideration the effects on the species associated with or dependent upon harvested species, with a view of maintaining or restoring such species above levels at which their reproduction can be severely damaged (ecosystem approach)

frameworks and relevant bodies and have control over the resources within the scope and mandate of those instruments, frameworks and relevant bodies, when deemed necessary by BBNJ Parties and experts. Such ambiguity can only be clarified with the explicit language deserved to avoid misinterpretations or even worst, the creation of a hierarchically superior authority over those legal instruments, frameworks and relevant bodies.

Since the beginning of the IGC rounds, fisheries knowledge and expertise have been left out of the negotiation process, leading to the biased perception that a strong and urgent intervention on fisheries is required through a comprehensive new regime that enables “Conference of the Parties” (COP) to establish a global network of Marine Protected Areas in the high seas, as well as the determination the EIAs guidelines that could be enforced for vessels (fishing vessels included) when such vessels are not subject those EIAs or when the one applicable standards to the vessels are of lower level of efficiency. On the contrary, fisheries in the high seas is strictly regulated through a wide range of instruments, frameworks and relevant bodies, including through numerous RFMOs, the UN Fish Stock Agreement and the FAO Port State Measures Agreement, among many others. The Food and Agriculture Organization of the UN (FAO) tried to fill this lack of expertise within the BBNJ negotiations through [an information package](#). While this document provides an initial tool to better inform negotiators on fisheries-related matters, only a stronger involvement of fisheries experts within the BBNJ process can lead to a truly comprehensive, evidence-based and transformative High Seas Treaty that does not undermine the powers and mandate of existing legal instruments, frameworks and relevant bodies.

No regulatory gaps have been identified for fisheries. Fisheries management is a living discipline in continuous improvement, where conservation and sustainable use are of essence; therefore, there could be implementation gaps whose attention and solution depend on execution, coordination and collaboration as embedded in UNCLOS provisions, which are fully sufficient for the effective regulation of fishing activities in the high seas.

This is the right time for the fisheries sector to share the same level of concern and participation that would strategically bring to their national negotiating teams the clarity needed for avoiding the disruption that BBNJ could bring to responsible and sustainable fisheries. It would help BBNJ to become the expected milestone in filling gaps in other areas of the use of the oceans with the view to strengthen the conservation and sustainable use of marine diversity, without affecting the solid evolution of fisheries bodies and their effectiveness.

Therefore, ICFA calls for:

- a. A stronger involvement of fisheries experts as well as a better consultation between BBNJ delegations and national representatives of Fisheries Agencies and Ministries of Fisheries in the context of the BBNJ negotiating process and future proceedings.
- b. The exclusion of fisheries from the BBNJ Agreement, as fishing activities in the high seas shall continue to be managed at the regional level in relation with the species of common interest for the contracting Parties of a given legal instrument, framework or relevant body;
- c. A BBNJ Agreement that effectively collaborates or cooperates with RFMOs in a manner that does not undermine their scope, mandate and competences. As a result, the following shall apply:
 - MPAs identified and designated in the context of the BBNJ Agreement that overlap with the coverage of an RFMO shall not regulate fishing activities.
 - EIAs shall not be required for vessels under the purview of RFMOs management measures

- RFMOs and members thereof shall always be consulted when COP or any subsidiary BBNJ body seeks to adopt any action in the area of competence of such an RFMO
- Once an RFMO has been created and it has adopted the corresponding management measures for the management of certain area in the high seas, any regulation adopted under BBNJ shall cease to be in effect.

