



**Briefing for the  
Fifth International Meeting on the Establishment of the  
South Pacific Regional Fisheries Management Organisation  
March 2008**

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## **Introduction**

The Deep Sea Conservation Coalition (DSCC) respectfully submits this briefing for the Fifth International Meeting on the establishment of the South Pacific RFMO (SPRFMO) that will be held in Guayaquil, Ecuador on March 10-14, 2008.

The Chair is again to be commended for producing a revision<sup>1</sup> that is visionary and forward-thinking, incorporating suggestions made during the meetings to date. In this briefing, the DSCC addresses participation in the fisheries, the implementation of interim measures, the northern boundary, the ecosystem approach and marine protected areas. This briefing concludes with a discussion of specific textual issues found in Revision 3.

The negotiation of the SPRFMO represents a crucial opportunity to ‘get it right’ and avoid the mistakes that other RFMOs have made in the past, both in text and in implementation on the water. The SPRFMO must

- (i) be given the mandate, functional ability and resources to address the broader ecological impacts of fishing activities on the world’s oceans;
- (ii) incorporate management based on the ecosystem and precautionary approaches rather than the failed single-species management approach.
- (iii) ensure that all participants act in good faith rather than in narrow and short term self interest. These components must be reflected in both implementation of the measures as well as in the fishing activities by all participants.

The SPRFMO has the opportunity to emerge as the leading model for RFMOs in the management of fisheries using *present* conservation norms. Through UN GA resolution 61/105,<sup>2</sup> the international community has recognized this and called on RFMOs to incorporate both the precautionary and ecosystem approach into their text. With that in mind, we again emphasize that an ecosystem approach, with the precautionary principle at its core, *must* underpin the management of fisheries in the South Pacific Ocean.

## **The Ecosystem Approach**

We will not repeat our comments made in the DSCC’s Noumea<sup>3</sup> briefing about the ecosystem approach, but draw attention to the separate DSCC briefing paper, “The Mandate for and the Implementation of the Ecosystem Approach”, which details the international mandate for and the implementation of the ecosystem approach, as is mandated by the 2006 UN General Assembly Sustainable Fisheries Resolution,<sup>4</sup> the Johannesburg Plan of Implementation (JPOI),<sup>5</sup> the Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem and Decision 5/6 of the Conference of Parties to the Convention on Biological Diversity (CBD), the FAO Technical Guidelines<sup>6</sup> and most recently the independent panel to develop a model for improved governance by regional fisheries management organisations, *Recommended Best Practices for Regional Fisheries Management Organisations*<sup>7</sup> which expressly states that:

*The current best practice is for the RFMO to have explicit, overarching objectives that address the full range of outcomes and management approaches in hard and soft law agreements relating*

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*to sustainable fishing. The objectives explicitly include ...use of the best available science and the application of the precautionary approach and the ecosystem approach in decision-making.<sup>8</sup>*

While these elements are in essence captured in Revision 3, it is critical that they remain there. In addition, Revision 3 requires the inclusions of the suggestions set forth in this briefing.

### **Marine Reserves and Marine Protected Areas**

In last year's Noumea briefing, the DSCC noted that the WSSD JPOI also called for the development of representative networks of marine protected areas (MPAs) by 2012.<sup>9</sup> The important role of marine protected areas in fisheries management cannot be overstated,<sup>10</sup> including contribution to sustainability, biodiversity and habitat conservation, protection of fishery resources, protection of components of ecosystems that are not protected by other forms of fisheries management and enforcement advantages.<sup>11</sup> Key is applying a diversity of fishery management tools, including MPAs,<sup>12</sup> especially given new uncertainties and ecological changes likely to develop in the marine environment as a result of climate change. Networks of MPAs,<sup>13</sup> not just single MPAs, are important, and marine reserves,<sup>14</sup> a type of MPA, ensure the highest level of protection for the entire marine environment. Permanent closure of some areas is absolutely fundamental to the long-term protection of the ocean. However, in the case of bottom fisheries on the high seas of the South Pacific region, they can not be used as substitutes for, but should complement, effective impact assessments of all bottom fishing activities and the establishment of regulations to prevent significant adverse impacts to VMEs wherever bottom fishing is permitted to occur.

Marine reserves are valuable as reference areas against which the impact of management initiatives addressed outside the designated areas can be assessed, and provide control areas and baselines for measurement of impacts. This enables scientists to obtain data that are less confounded by human activities (for instance enabling them to distinguish natural variation from fishing effects) and to acquire a greater understanding of the intrinsic processes of the ecosystems being studied.

Marine reserves also act as a form of insurance against management failure resulting in degradation of the ecosystem in non-designated areas. They may also result in enhanced catches beyond their boundaries, as the result of either the spillover of adults and juveniles across reserve boundaries or from the export of larvae or eggs from reserves to fished areas. Marine reserves have been shown to result in long-standing and often rapid increases in the abundance, diversity and productivity of marine life, especially of species that were previously exploited. Marine reserves would build resilience in the marine ecosystem, and flexibility in the midst of future unknowns, allowing ocean biodiversity in targeted areas to replenish and flourish. Creating a global network of marine reserves is the single most effective tool for protecting the marine environment including deep sea ecosystems, and would provide the vital underpinning for implementing the ecosystem approach.

### **Participation**

A fundamental problem that has plagued RFMOs and which has contributed to their serial failures over the last few decades is that States are under the misapprehension that they need to establish and increase their fishing history in the area covered by the

RFMOs, so that when it is time to allocate catch they will be in a better position to get a bigger piece of the pie. As we are all aware, the pie gets smaller and smaller by these very actions. It is in the perceived short-term interests of the participants to overfish, and they have the ability to delay conservation measures. However, real interest in the fishery can and increasingly does include an interest in protecting the fishery and the marine environment that sustains it, and States are increasingly aware of this. As we have repeatedly said, single species management is a failed paradigm, and setting TACs and establishing conservation and management measures is a far broader, deeper and more complex exercise than looking at fish stocks, catch history and allocations.

That is the reason that we called on all participants in the Noumea meeting to exercise restraint in fishing and observe the interim measures in good faith. Failure to do both of these may very well mean the failure of this RFMO, either sooner or later, to the detriment of all and of the environment. This also means we should conclude these negotiations as expeditiously as possible so we can get on with establishing conservation and management measures, allocation and monitoring, compliance and enforcement measures.

### **Implementation**

A key issue in the implementation of the Interim Measures for all participants that are engaging or intend to engage in bottom trawling in the area is the formulation and implementation of adequate management measures to avoid significant adverse impacts on vulnerable marine ecosystems (VMEs). Paragraph 6 of the Interim Measures details some of the requirements:

*6. In respect of areas where vulnerable marine ecosystems are known to occur or are likely to occur based on the best available scientific information, close such areas to bottom fishing unless, based on an assessment undertaken in accordance with paragraphs 11 and 12 below, conservation and management measures have been established to prevent significant adverse impacts on vulnerable marine ecosystems and the long-term sustainability of deep sea fish stocks or it has been determined that such bottom fishing will not have significant adverse impacts on vulnerable marine ecosystems or the long term sustainability of deep sea fish stocks.*

Paragraph 11 of the Interim Measures states that Participants resolve to:

*11. Assess, on the basis of the best available scientific information, whether individual bottom fishing activities would have significant adverse impacts on vulnerable marine ecosystems, and to ensure that if it is assessed that these activities would have significant adverse impacts, they are managed to prevent such impacts, or not authorized to proceed.*

Under paragraph 12, these assessments are to be submitted to the interim Science Working Group, for assessment and proposed management measures.

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Paragraph 6 speaks of ‘appropriate measures’ that can be adopted ‘in respect of the relevant site’, then states that ‘such sites will then be treated in accordance with paragraph 6 above.’ This means:

In respect of areas where vulnerable marine ecosystems are either

(a) known to occur or

(b) are likely to occur based on the best available scientific information,

participants **must** close such areas to bottom fishing **unless**,

based on an assessment undertaken in accordance with paragraphs 11 and 12, **either**

a. conservation and management measures have been established to prevent significant adverse impacts on vulnerable marine ecosystems and the long-term sustainability of deep sea fish stocks

**or**

b. it has been determined that such bottom fishing will not have significant adverse impacts on vulnerable marine ecosystems or the long term sustainability of deep sea fish stocks.

So: there must be an assessment in accordance with paragraphs 11 and 12 and either measures must have been established for those 2 goals or it must have been determined no SAIs on VMEs or stocks.

Measures must also prevent significant adverse impacts on the long-term sustainability of deep sea fish stocks are required under paragraph 6 of the Interim Measures. The IUCN Report, *Science Behind the Guidelines*, provides information on significant adverse effects and the identification of VMEs<sup>15</sup>.

The Interim Measures, like UN GA 61/105, call for assessments of the impacts of individual bottom fishing activities wherever they occur, regardless of whether they occur in area that have been previously fished lightly, moderately or heavily.

### **FAO International Guidelines**

The negotiation of the International Guidelines for the Management of Deep Sea Fisheries in the High Seas is currently underway under the auspices of the UN FAO, as called for in UN GA 61/105 and endorsed by the UN FAO Committee on Fisheries in 2007. The first Technical Consultation to negotiate these Guidelines took place in Rome on 4-8 February 2008 and adopted those portions of the Guidelines related to identifying VMEs, assessing significant adverse impacts, and the elements necessary to conduct a proper assessment process. These are as follows:

### **Identifying Vulnerable Marine Ecosystems and Assessing Significant Adverse Impacts**

*(37). A marine ecosystem should be classified as “vulnerable” based on the characteristics that it possesses. The following list of characteristics should be used as criteria in the identification of VMEs:*

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- i. uniqueness or rarity – an area or ecosystem that is unique or that contains rare species whose loss could not be compensated for by other similar areas. These include:*
  - a. habitats that contain endemic species;*
  - b. habitats of rare, threatened, or endangered species that occur only in discrete areas;*
  - c. Nurseries or discrete feeding, breeding, or spawning areas.]*
- ii. The functional significance of the habitat – discrete areas or habitats that are necessary for the survival, function, spawning/reproduction or recovery of fish stocks, particular life-history stages (e.g., nursery grounds or rearing areas), or of rare, threatened or endangered marine species.*
- iii. fragility – an ecosystem that is highly susceptible to degradation by anthropogenic activities.*
- iv. life-history traits of component species that make recovery difficult – Ecosystems that are characterized by populations or assemblages of species with one or more of the following characteristics:*
  - a. slow growth rates.*
  - b. late age of maturity.*
  - c. low or unpredictable recruitment.*
  - d. long-lived.*
- v. structural complexity - an ecosystem that is characterized by complex physical structures created by significant concentrations of biotic and abiotic features. In these ecosystems, ecological processes are usually highly dependent on these structured systems. Further, such ecosystems often have high diversity, which is dependent on the structuring organisms.*

*Examples of potential vulnerable species, and habitats and features are contained in Annex I.A.*

*(41.) In designating an ecosystem as vulnerable, the decision should evaluate habitats and ecosystems against the criteria presented in para 37, individually or in combination using the best available scientific and technical information. Characteristics should be weighted according to their relative contribution to an ecosystem's vulnerability.*

*(43.) Flag States and RFMO/As should conduct assessments to establish if deep-sea fishing activities are likely to produce significant adverse impacts in a given area. Such an impact assessment should address, inter alia:*

*i) the type(s) of fishing conducted or contemplated, including vessels, and gear-types, fishing areas, target and potential bycatch species, fishing effort levels and duration of fishing (harvesting plan);*

*ii) best available scientific and technical information on the current state of fishery resources, and baseline information on the ecosystems, habitats and communities in the fishing area, against which future changes are to be compared;*

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*iii) identification, description and mapping of VMEs known or likely to occur in the fishing area;*

*iv) the data and methods used to identify, describe and assess the impacts of the activity forecast the impacts of the activity; identification of gaps in knowledge, and an evaluation of uncertainties in the information presented in the assessment;*

*v) identification, description and evaluation of the occurrence, scale and duration of likely impacts, including cumulative impacts of activities covered by the assessments on VMEs and low-productivity fishery resources in the fishing area;*

*vi) risk assessment of likely impacts by the fishing operations to determine which impacts are likely to be significant adverse impacts, particularly impacts on VMEs and low-productivity fishery resources;*

*vii) the proposed mitigation and management measures to be used to prevent significant adverse impacts on VMEs and ensure long-term and sustainable utilization of low-productivity fishery resources, and the measures to be used to monitor effects of the fishing operations.*

*(44.) In conducting impact assessments, States and RFMOs/As should consider, as appropriate, the information referred to in Annex 1, as well as relevant information from similar or related fisheries, species and ecosystems. Notwithstanding paragraph 32, it should be recognised that there may be circumstances in which States may have to rely on information and data obtained only from vessels flying their flags or their own research activities when assessing DSF that takes place in areas where not RFMO/As is in place.*

### **Significant Adverse Impacts**

*(21). Significant adverse impacts are those that compromise ecosystem integrity (i.e., ecosystem structure or function) in a manner impairs the ability of affected populations to replace themselves and that degrades the long-term natural productivity of habitats, or causes on more than a temporary basis significant loss of species richness, habitat or community types. Impacts should be evaluated individually, in combination and cumulatively.*

*When determining the scale and significance of an impact, the following six factors should be considered:*

- 1. The intensity or severity of the impact at the specific site being affected;*
- 2. The spatial extent of the impact relative to the availability of the habitat type affected;*
- 3. The sensitivity/vulnerability of the ecosystem to the impact;*
- 4. The ability of an ecosystem to recover from harm, and the rate of such recovery;*
- 5. The extent to which ecosystem functions may be altered by the impact; and*
- 6. The timing and duration of the impact relative to the period in which a species needs the habitat at a specific period in time or during its life-history stages.*

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*(22.) Temporary impacts are those that are limited in duration and that allow the particular ecosystem to recover over an acceptable timeframe. Such timeframes should be decided on a case-by-case basis and should be on the order of 5-20 years, taking into account the specific features of the populations and ecosystems.*

*(22bis.) In determining whether an impact is temporary, both the duration and the frequency with which an impact is repeated should be considered. If the interval between expected disturbance of a habitat is shorter than the recovery time, the impact should be considered more than temporary.*

The DSCC recommends that these elements of the draft UN FAO Guidelines, as agreed at the UN FAO Technical Consultation 4-8 February 2008, at a minimum be endorsed by the Science Working Group and the Fifth International Meeting on the Establishment of the South Pacific Regional Fisheries Management Organisation, and serve as the basis for the management of high seas bottom fisheries by Flag States whose vessels may engage in such fisheries in the region.

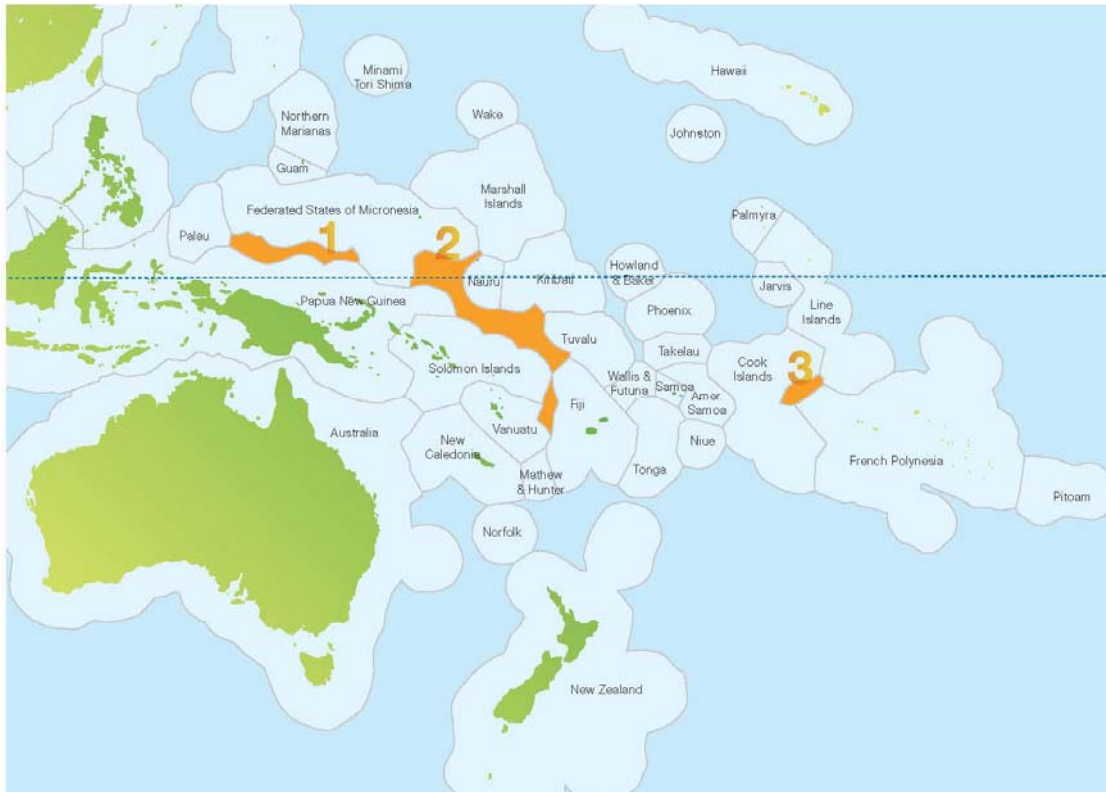
### **The Northern Boundary**

This issue has been shelved for too long. The DSCC urges States to formulate a position on the northern boundary. Since this concerns high seas fishing, one suggestion would be to extend the northern boundary to include the high seas enclaves. This would have the advantage of including neighbouring areas nearby the waters of PIF participants such as the Federated States of Micronesia, Republic of the Marshall Islands and Palau.

A key recommendation from the Pacific Leaders Declaration on Deep-Sea Bottom Trawling to protect biodiversity in the high seas<sup>16</sup> is the possible inclusion of the high seas areas in the tropical Pacific within the area covered by the SPRFMO. The Nadi Declaration has special importance for the SPRFMO meeting, as it specifically commits all members of the Pacific Islands Forum – including New Zealand and Australia - to advocate for interim conservation and management measures in areas where new RFMOs are under negotiation by 31 July 2007. In the absence of such interim measures, the Nadi Declaration calls upon PIF States to “advocate for an interim prohibition on destructive fishing practices, including bottom trawling, beginning on 1 August 2007 until such measures are in place.”<sup>17</sup> It is therefore important to decide how to treat these high seas areas.

Two distinct high seas areas exist in the Western and Central Pacific Ocean (WCPO) which are entirely bounded by the Exclusive Economic Zones (EEZs) of the surrounding island nations as shown in the map below. These “donut holes” or high seas pockets are small when compared to the areas that fall within the EEZs of some Pacific States but have great biological and ecological importance, and being in the high seas, are vulnerable to overfishing, IUU activities and other activities outside the jurisdiction of States.

The area to the north of Papua New Guinea lies across the nominal boundary between the North and South Pacific Oceans. The area is divided north to south by the Eauripik Rise, a significant seamount area. The second “donut hole” in the Western Pacific straddles the equator and is defined by the EEZs of the Federated States of Micronesia, Papua New Guinea, Solomon Islands, Tuvalu, Kiribati, Nauru the Marshall Islands and Fiji. The area contains chains of seamounts and numbers of large topographical features.



Map © Greenpeace

### DSCC Comments on the Third Proposal from the Chair

The following are specific comments and suggestions on the Revision 3 text, based on the above principles.

#### Article 3 Conservation and Management Principles

The DSCC recommends that “ecosystem approach to fisheries management” be re-inserted in paragraph (i), and recommends deleting the reference to “long recovery times” as the emphasis should be on safeguarding living marine resources, not only those with long recovery times. Paragraph (i) should therefore read:

*(i) biodiversity in the marine environment, in particular marine ecosystems which have long recovery times, shall be protected [through the application of an ecosystem approach to fisheries management taking into account the vulnerability and importance of deep sea ecosystems and the need to safeguard living marine resources].*

We also note that article 3 (2) pertaining to the precautionary approach has been deleted, though a definition has been added under Article 1(q). Nevertheless, due to the importance the precautionary approach to the objectives of the SPRFMO, we urge that the following is reinserted as follows:

*[2. The precautionary approach as described in the 1995 Agreement and the Code of Conduct shall be applied widely to the conservation and management of fishery resources in order to protect those resources and preserve the marine ecosystems in which they occur, and in particular the Contracting Parties shall:*

- (i) be more cautious when information is uncertain, unreliable or inadequate;*

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- (ii) *not use the absence of adequate scientific information as a reason for postponing or failing to take conservation and management measures;*
- (iii) *take account of best international practices regarding the application of the precautionary approach, including Annex II of the 1995 Agreement and the Code of Conduct.]*

### **Article 4 Area of Application**

See comments made above about the northern boundary.

### **Article 7 Functions of the Commission**

DSCC recommends that in (h) reinsert “monitor” so that it reads:

- (h) *adopt proposals for measures to [monitor], prevent, deter and eliminate IUU fishing;*

DSCC further recommends that the following functions be re-inserted to read:

- (n) *develop, approve and monitor responsible fisheries management plans for target fisheries and associated or dependent species;*
- (o) *develop, adopt and implement conservation and management measures including the establishment of marine protected areas, the adoption of spatial and temporal closures, and other measures to achieve the objective of this Agreement.*

### **Article 9 Scientific Committee**

Assessments must take into account other environmental impacts, both on fishery resources and on marine ecosystems, so that all necessary information can be taken into account when formulating conservation and management measures. The current wording may be too restrictive in only assessing fishery resources and the impact of fishing on the marine ecosystems.

DSCC recommends that ‘other environmental impacts’ be added to Article 9.2 so that it reads:

*“(a) plan, conduct and review such scientific assessments of fishery resources in the Area, of the marine ecosystems in the area and the impact of fishing [and of other relevant environmental impacts on the fishery resources and of the relevant marine ecosystems in the Area, taking into account the precautionary and ecosystem approaches,] as may be required by the Commission”.*

The peer review addition in the latest draft is commendable, but it is also advisable to specifically provide that the Scientific Committee can involve independent external and expert advice in its preparation of advice and recommendations to the Commission.

### **Article 11 Eastern and Western Sub-Regional Management Committees**

The DSCC has suggested that at least one or two other concerned members should be able to participate in the Sub-Regional management committees. We would also clarify the wording to make it clear that it is membership of each Committee, not of one of the two Committees, that is relevant. We would amend paragraph 4 as follows

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### *4. The membership of the Eastern and Western Sub-regional Management Committees shall be:*

- (a) the Contracting Parties situated adjacent to, or whose vessels are fishing in, that part of the Area for which the Committees respectively have responsibilities, and*
- (b) Up to two other members of the Commission which are concerned with the application of the Convention to the Area for which the Committees respectively have responsibilities. [voting provisions to be added]*

*Any Contracting Party not represented on [a] Sub-regional Management Committee may send a representative to participate in the deliberations of [the] Committee as an observer.*

### **Article 13 Budget**

As the DSCC observed in Santiago, the basic fee should not necessarily be equal, *e.g.*, for all small island developing States. The problem here is that the proposed equal basic fee may be too high for smaller participants with little or no fishery participation. This can be fixed by either deleting ‘equal’ or by making the fee a three-part fee— a standard fee, a GDP/economy fee and a ‘take’ fee. Obviously the concern here is not to discourage smaller PIFS without fishing interests from joining the RFMO.

### **Article 14 Decision-Making**

Rather than a 3/4 majority, which may be unduly onerous, the DSCC suggests a 2/3 majority.

DSCC also recommends that opt-out provisions not be permitted. At worst, in paragraph 9, the decision should be suspended only with respect to the objecting Party. Otherwise the implementation of the measure will be unduly delayed.

### **Article 15 Transparency**

The DSCC observes that the following has been added to Article 15:

*“All meetings of the Commission and its subsidiary bodies shall be public unless otherwise decided by the Commission.”*

While we welcome the express inclusion that all meetings are open, we see no reason why it should be limited in the future, and urge that “unless otherwise decided by the Commission” be deleted.

### **Article 17 Conservation and Management Measures**

Annex A now revises and consolidates Articles 17 and 18 of the previous draft text. The comments below pertain to Annex A, which contains key provisions related to both specific conservation and management measures, and the establishment of total allowable catch (TAC).

Under Annex A, Article 17(1) has deleted the following text: *“The Commission shall adopt conservation and management measures for fishery resources, associated or dependent species and the impacts of fishing on the marine system.”* The DSCC

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believes that this language should be retained, as it is important to clearly state the purpose for the conservation and management measures undertaken.

Of particular concern is that what conservation and management measures “shall” include has now been severely limited, and biological reference points “may” be included rather than “shall be included.” Article 17 in the previous draft required conservation and management measures *shall* include:

- (a) *ensure the long-term sustainability of fishery resources and to promote the objective of their responsible utilisation, taking in to account inter alia: the biological unity and other biological characteristics of the fishery; uncertainties relating to the size and productivity of the fishery; biological reference points; the condition of the fishery in relation to such biological reference points; levels and distributions of fishing mortality; the impact of fishing on non-target and associated or dependent species; the impact of fishing on the marine ecosystems in which these resources occur; and existing and predicted oceanic, and environmental conditions and socio-economic considerations;”*
- (d) *determine specific biological reference points above which the sustainability of a fishery is ensured, consistent with article 6 of the 1995 Agreement, and to ensure that when such specific biological reference points are approached, further measures are taken to ensure they are not be exceeded;*

But revised Annex A, Article 17(2)(a) now only provides “*ensure the long-term sustainability of fishery resources and to promote the objective of their responsible utilization*”. Also, under Annex A Article 17(c), “non-target” species should be included to read: *(c) maintain or restore populations of [non-target and] associated and dependent species to above levels at which their reproduction may become seriously threatened.*” Under Article 17(2), additional text should be reinserted that provides:

- (e) *and any other measures necessary to give effect to this Convention.*

Annex A, Article 17(3) provides that conservation and management measures *may* include:

- (a) *biological reference points above which the sustainability of fishery resources and associated and dependent species as well as the functionality of the marine ecosystem is ensured;”*

We also urge that an additional paragraph be included under Article 17(3):

- (h) *“The establishment of marine protected areas, including the closure of areas to fishing activities and other activities, where necessary in co-operation with the responsible international organizations and States, in recognition that such a closure may provide long term ecosystem benefits both inside and outside the Area in the interests of conserving and managing vulnerable marine ecosystems, consistent with international law and based on the best scientific information available, and the need for the development of representative networks of any such marine protected areas.”*

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This suggestion<sup>18</sup> makes it clear that MPAs are set to control fishing, but that where it is necessary to control other activities, co-operation with other international organizations and States is mandated.

Finally, to capture FSA Article 6(2), we suggest a new paragraph 8:

*3. The Commission and Contracting Parties shall be cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.*

Paragraph 4 of Article 17 now pertains to what was previously Article 18 (Establishment of total allowable catch or total allowable fishing effort of target fisheries). We note with concern that the following language has been deleted with respect to what the Commission shall take into account when determining the total allowable catch:

- (a) the objective and the conservation and management principles of this Convention;*
- (b) the conservation and management measures adopted by the Commission;*
- (c) the advice and recommendations of the Scientific Committee and Compliance Committee;*

The DSCC believes that the above text should be reinserted. Also, under paragraph 4, “regularly review” is too general, and a more specific time frame should be provided.

### **Article 18 Establishment of Total Allowable Catch or Total Allowable Fishing Effort of Target Fisheries**

We suggest adding ‘and marine ecosystems’ to paragraph 18(i), in line with the ecosystem approach:

*(i) relevant environmental factors which may have an effect upon fishery resources of the target fishery, associated or dependent species [and marine ecosystems];*

### **Article 19 Participation in Target Fisheries**

We suggest that decisions on participation should be taken by a 2/3 majority if consensus fails.

### **Article 20 Development of New Target Fisheries**

We suggest adding the words ‘applying the precautionary and ecosystem approaches’ to paragraph 1 so it reads:

*“1. A fishery resource that is not subject to fishing at the time of the entry into force of this Agreement shall be subject to fishing only when the Commission has adopted cautious preliminary conservation and management measures in respect of that fishery resource, and any associated or dependent species, [applying the precautionary and ecosystem approaches.] to protect the marine ecosystem in which that fishery resource occurs from adverse impacts of fishing activities.”*

In paragraph 2, we suggest that it is made clear that measures shall be developed according to advice from the Scientific Committee.

### **Article 23 Flag State Duties**

We suggest that paragraph 1(c) should make it clear the Commission can maintain, as well as implement, a VMS system, so it would read:

*“1(c) it develops, implements [**and maintains**] a satellite vessel monitoring system for fishing vessels flying its flag and fishing in the Area in accordance with standards and procedures adopted by the Commission;”*

The modified provisions on transshipment may be seen to exclude any prohibition of transshipment. This should be addressed.

We also suggest that flag States should be required to take appropriate action, as well as investigate and report on actions taken. Paragraph 3(d) could read:

*(d) “In accordance with measures adopted by the Commission, investigate immediately, [**take appropriate action**] and report fully [**and in a timely manner**] [**on actions**] taken in response to any alleged violation by fishing vessels flying its flag of the provisions of this Convention or any conservation and management measure adopted by the Commission. Reports on the progress of the investigation [**and actions taken**] shall be provided to the Commission at appropriate regular intervals, as well as a final report on the outcome when the investigation is completed [**or actions taken**] but no later than the next Commission meeting;*

### **Article 35 Amendments**

If consensus is required, then effectively an amendment requires unanimity, and potentially positive changes in the Convention could be blocked by an intransigent State. If there is a possibility of the RFMO being evolved, then amendment should be permitted. We propose that Article 35(2) should read:

*“2. Such proposals for amendment to this Agreement shall be adopted by consensus. [**If all efforts to reach agreement by consensus have been exhausted, such proposals shall be adopted by two-thirds of all Contracting Parties**].”*

On behalf of the DSCC, we thank you for the opportunity to comment on the revised text. Working together, we can make the SPRFMO into a new vision for high seas fisheries management. We look forward to future discussions in Guayaquil.

## **ANNEX 1.A - EXAMPLES OF POTENTIAL VULNERABLE SPECIES, AND HABITATS AND FEATURES**

Examples of vulnerable species and habitats forming species that are documented or considered sensitive and potentially vulnerable to deep-sea fisheries in the high-seas:

a. coldwater corals of various types e.g., reef builders and coral forest including: stony corals (scleractinia), alcyonaceans and gorgonians (octocorallia), black corals (antipatharia), and hydrocorals (stylasteridae),

b. sponge grounds (e.g., sponge dominated communities),

c. communities composed of dense emergent fauna where large sessile protozoans (xenophyphores) and invertebrates (e.g., hydroids and bryozoans) form an important structural component of habitat, and

d. seep and vent communities comprised of invertebrate and microbial species found nowhere else (i.e., endemic).

Examples of areas (mega-habitats) which are topographical, hydrophysical or geological features (including fragile geologic structures) known to support vulnerable species, communities, or habitats as above:

a. edges and slopes of oceanic islands and continental shelves (e.g., corals and sponges),

b. summits and flanks of seamounts, guyots, banks, knolls, and hills (e.g., corals, sponges, xenophyphores),

c. canyons and trenches (e.g., burrowed clay outcrops, corals),

d. hydrothermal vents (e.g., microbial communities and endemic invertebrates), and

e. cold seeps (e.g., mud volcanoes, microbes, hard substrates for sessile invertebrates).

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<sup>1</sup> The third revision (Revision 3) of the South Pacific RFMO (SPRFMO) draft Convention text that was distributed by the Chair on 16 January 2008 (SP/05/WP1).

<sup>2</sup> United Nations General Assembly Resolution A/RES/61/105 (8 December 2006), Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments. Available at [http://www.un.org/Depts/los/general\\_assembly/general\\_assembly\\_resolutions.htm](http://www.un.org/Depts/los/general_assembly/general_assembly_resolutions.htm).

<sup>3</sup> At <http://www.southpacificrfmo.org/assets/Fourth%20International%20Meeting/SP-04-Inf-4%20DSCC%20Briefing%20for%204th%20SPRFMO%20meeting.pdf>.

<sup>4</sup> A/RES/61/105 - Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments, at [http://www.un.org/depts/los/general\\_assembly/general\\_assembly\\_resolutions.htm](http://www.un.org/depts/los/general_assembly/general_assembly_resolutions.htm) and <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/61/105&Lang=E>.

<sup>5</sup> World Summit on Sustainable Development, Johannesburg Plan of Implementation, A/Conf.199/20, (JPOI), para. 29, and see paras. 31 and 64.

<sup>6</sup> FAO Technical Guidelines for Responsible Fisheries 4, Supplement 2, Fisheries Management: The ecosystem approach to fisheries (2003), (“FAO Guidelines”), at [http://www.fao.org/documents/pub\\_dett.asp?lang=en&pub\\_id=127549](http://www.fao.org/documents/pub_dett.asp?lang=en&pub_id=127549).

<sup>7</sup> Michael Lodge, David Anderson, Gordeon Monroe, Keith Sainsbury, Terje Lobach and Anna Willock *Recommended Best Practices for Regional Fisheries Management Organisations*, August 2007, at [http://www.chathamhouse.org.uk/research/eedp/current\\_projects/rfmo/](http://www.chathamhouse.org.uk/research/eedp/current_projects/rfmo/).

<sup>8</sup> Op.cit, page 21.

<sup>9</sup> JPOI para. 32(c) reads: “(c) Develop and facilitate the use of diverse approaches and tools, including the ecosystem approach, the elimination of destructive fishing practices, the establishment of marine protected areas consistent with international law and based on scientific information, including representative networks by 2012 and time/area closures for the protection of nursery grounds and periods, proper coastal land use and watershed planning and the integration of marine and coastal areas management into key sectors.”

<sup>10</sup> See FAO, FAO Fisheries Report No. 825, “Report and Documentation of the Expert Workshop on Marine Protected Areas and Fisheries Management: Review of Issues and Considerations,” 12-14 June 2006, (“FAO MPA Workshop”), FIEP/R825 (En), GCP./INT/942/JPN, at <ftp://ftp.fao.org/docrep/fao/010/a1061e/a1061e00.pdf>.

<sup>11</sup> FAO MPA Workshop para. 14.

<sup>12</sup> *Id.*

<sup>13</sup> See JPOI para. 32 (c) calling for representative networks.

<sup>14</sup> Marine reserves are highly protected areas that are off limits to all extractive and destructive uses, including fishing.

<sup>15</sup> Rogers A D, Clark M R, Hall-Spencer J M and Gjerde K M (2008) *The Science behind the guidelines: A scientific Guide to the FAO Draft International Guidelines (December 2007) for the Management of Deep-Sea Fisheries in the High Seas and Examples of How the Guidelines May be Practically Implemented.* IUCN 39p.

<sup>16</sup> Thirty-Seventh Pacific Islands Forum, Nadi, Fiji, 24 – 25 October 2006, Forum Communiqué, at <http://www.forumsec.org/resources/article/files/2006%20Communique.pdf>.

<sup>17</sup> Consistently with the Nadi Declaration, the Western Micronesian summit on March 22 agreed to support the interim prohibition on bottom trawling and to advocate this commitment at appropriate national, regional and international forums, to protect fisheries and marine diversity. Western

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Micronesian Chief Executives Summit, Saipan, March 20-22, 2007, Joint Communiqué. The communiqué was issued by the Commonwealth of the Northern Mariana Islands, the Territory of Guam, the State of Yap, within the Federated States of Micronesia, and the Republic of Palau.

<sup>18</sup> Ref 2006 Oceans Resolution para. 97.