



**Briefing for the
Seventh International Meeting on the Establishment of the
South Pacific Regional Fisheries Management Organisation**

**Lima
May 18-22, 2009**

5 May, 2009

Introduction

The Deep Sea Conservation Coalition (DSCC) respectfully submits this briefing for the Seventh International Meeting on the establishment of the South Pacific RFMO (SPRFMO) that will be held in Lima on May 18-22, 2009.

This briefing outlines some developments relating to bottom trawling that have taken place since the Canberra meeting. It then discusses the implementation of interim measures, the northern boundary, the ecosystem approach and marine protected areas. It then addresses in an Annex the changes in Revision 5 of the Chair's text. It does so with a particular emphasis on the conservation and management measures in Article 19.

The footprint 'freeze' expires on 1 January next year and it is critical that assessment language and conservation and measures corresponding to the Interim Measures, UNGA resolution 61/105 and the FAO Deep Sea Guidelines are negotiated in Lima.

News and Developments

Deep-sea corals off the coast of the Hawaiian Islands have been found to be the oldest living marine organisms known to man – some being over 4,270 years old.¹ As the Lawrence Livermore Labs said, "[t]he extremely long life spans reinforce the need for further protection of deep-sea habitat."²

Another study³ has shown that small deep sea invertebrates play a key role in processes that are essential for the air, water and food we consume. The study found that sites with a higher diversity of species support much higher rates of ecosystem processes. The study shows that the loss of deep-sea species poses a severe threat to the future of the oceans, a minor loss of biodiversity can drastically the function of these ecosystems, and a species loss of 50% could lead to the collapse of ecosystems.⁴

An FAO report provides a summary of the current status of high seas bottom fisheries worldwide based on the best information available.⁵ It contains reviews of bottom fisheries in the high seas in many regions including the South Pacific. Fisheries are described in terms of fleets, catch and effort, and main species caught, with due consideration being given to the location of fishing activities. The report finds that there are significant gaps in data and information concerning target and bycatch stock status. Needs include

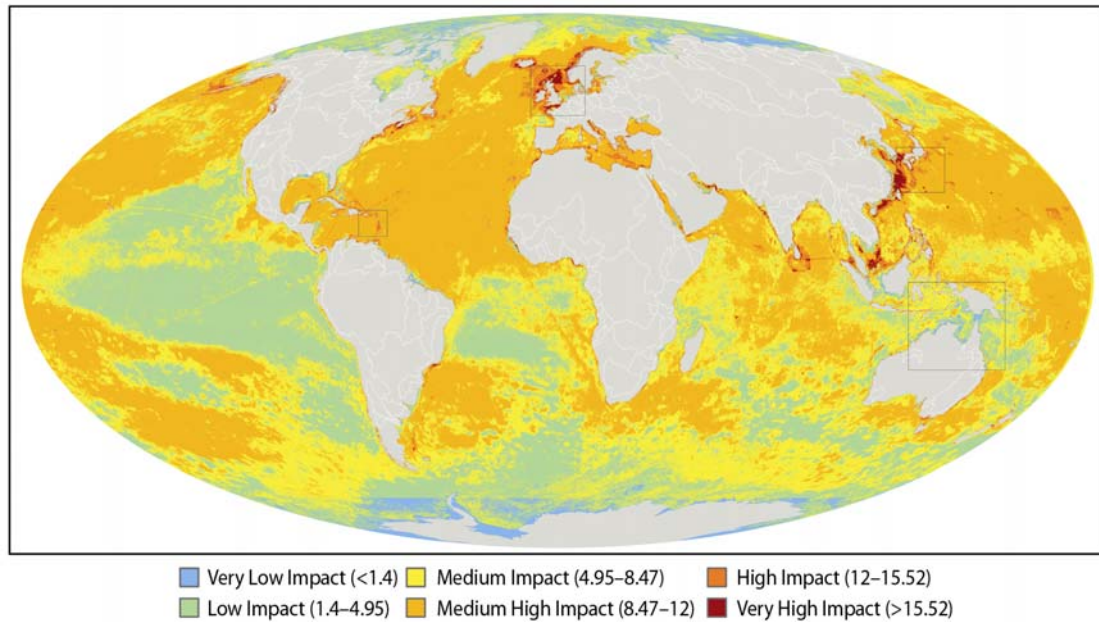
- Better reporting of high seas bottom fishing.
- Assessments of the status of target species in high seas bottom fisheries, including on the total catch and life history of target species taken.
- Assessments of the status of bycatch species, including those of non-commercial value.
- Finer scale reporting to enable a better analysis of data: e.g. more frequent reporting intervals of vessel monitoring system (VMS) data.

- Reporting to distinguish effort taking place in the EEZs vs. the high seas.
- Collection of historical and other data to improve assessment of the status of target and bycatch stocks and the overall impact of deep-sea fisheries on VMEs.

With specific reference to VMEs, needs include:

- More precise information on the location of fishing in relation to underwater features
- Better mapping of locations of VMEs on the high seas and incorporation in a single global database accessible to States and RFMOs.
- Identification of areas where VMEs are likely to occur.
- Biogeographic assessments to determine the likely extent and distribution of soft corals, sponges and other species, especially habitat-forming species, and ecosystems vulnerable to bottom fisheries in relation to seamounts, hills, knolls and rises, canyons and continental slope/margin areas of the high seas.

Overview of impacts on the Ocean



<http://www.nceas.ucsb.edu/globalmarine>

Scientists have made of the impacts that humans are having on the oceans through specific activities. The map, published in *Science*,⁶ provides a broad-scale overview of the ecological impacts of human activities on marine ecosystems. Seventeen types of human impacts, such as commercial fishing, climate change, coastal development, and pollution from shipping, were measured against different marine ecosystems. The map shows that forty-one percent of the oceans are highly impacted by human activities, including many areas beyond national jurisdiction. Only four percent is considered relatively pristine. The most critically impacted ecosystems include continental shelves and slopes, rocky reefs and seamounts among others. The area to be covered by SPRFMO is shown to be largely medium to medium-high impact, with relatively few small areas of low impact and no areas of very low impact.

2009 is an Important Year

2009 is a particularly important year. UNGA resolution 61/105⁷ provided for a review this year. SPRFMO, with other RFMOs, is thus in the international spotlight. States must report on their implementation of the resolution, and DSCC will be submitting a report on global implementation.

As of 31 December 2008, the resolution agreed by high seas fishing States requires States to prohibit their flagged fishing vessels from bottom fishing on the high seas where regulations have not been established to implement paragraphs 83 - 86 of the resolution.

To implement the Fish Stocks Agreement and the UNGA fisheries and oceans resolutions, and other instruments, SPRFMO must have the mandate, functional ability and resources to address the broader ecological impacts of fishing activities on the world's oceans, incorporating management based on the ecosystem⁸ and precautionary approaches rather than the failed single-species management approach and ensuring that all participants act in good faith rather than in narrow and short term self interest.

These components must be reflected in the implementation of the measures and in the fishing activities by all participants.

As was said by the independent panel to develop a model for improved governance by regional fisheries management organisations, *Recommended Best Practices for Regional Fisheries Management Organisations*⁹:

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 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.¹⁰

FAO Guidelines for deep-sea fisheries in the high seas

Last year saw the adoption of the FAO International Guidelines for the Management of Deep-Sea Fisheries in the High Seas. Some relevant were included in our 2008 briefing and we include them in an Annex, particularly in light of paragraph 3 of the Interim Measures, which is discussed below.

These must serve as the basis for the assessment of impacts and management of high seas bottom fisheries by States whose vessels and nationals do or may engage in such fisheries in the region.

Implementation of UN GA 61/105 and the Interim Measures and Fishing in New Areas

Paragraph 83 of resolution 61/105 commits nations whose vessels engage in high seas bottom fishing and competent RFMO/As to:

1. *Conduct impact assessments* of individual bottom fishing activities and *establish measures to prevent significant adverse impacts or else prohibit* (not authorize to proceed) high seas bottom fishing (para 83a);
2. *close areas* where vulnerable marine ecosystems (VMEs) are known or likely to occur *unless measures are in place to prevent significant adverse impacts* (para 83c);
3. *ensure the long-term sustainability* of deep-sea fish stocks (para 83b); and
4. *establish a 'move-on' rule* to ensure that bottom fishing vessels move out of an area where 'accidental' encounters with VMEs occur (para 83d).

Quite simply, unless measures are not only adopted but implemented, according to paragraphs 85 and 86, States should cease authorizing their vessels to fish in the high seas.

This year is important for another reason. Paragraph 3 of the Interim Measures requires that conservation and management measures be established before opening new regions to bottom trawling or expanding bottom trawling effort. Such measures must ensure that before an area is opened up or fishing effort is expanded:

- (1) based on an assessment to be undertaken in accordance with paragraphs 11 and 12 of the Interim Measures, either:¹¹
 - (a) significant adverse impacts (SAIs) both on vulnerable marine ecosystems (VMEs), *and* on the long-term sustainability of deep sea fish stocks, both from individual bottom fishing activities, are prevented, or else the areas are kept closed, and effort not increased; or
 - (b) determine that such fishing activities will not have SIAs.

Simply put, the benthic impact assessment standard will be critical to ensure that high seas bottom fishing prevents significant adverse impacts VMEs such as on corals, seamounts etc. To this end, it will be very important to ensure that paragraphs 18-19 and 47 (being the criteria for conducting impact assessments and determining SAIs) of the FAO Guidelines for deep-sea fisheries are fully and faithfully incorporated into the impact assessment.

Closed areas, such as MPAs, while important, can not be used as substitutes for, but should complement, effective impact assessments of individual bottom fishing activities and the closures of areas where VMEs are known or likely to occur unless VMEs are protected from significant adverse impacts of bottom fishing activities. They have a different function. The effective implementation FAO Guidelines must be complemented by the establishment of representative networks of MPAs, in order to ensure that marine biodiversity is effectively conserved and protected consistent with the provisions of the UN Fish Stocks Agreement and other relevant instruments.

Conservation and management measures such as those taken consistent with the FAO Guidelines, as discussed above, need to be supplemented by MPAs to assist with recovery of degraded ecosystems and cumulative impacts. In order to maintain seamounts, corals, sponge beds, and other VMEs in something close to their original state, or to allow the recovery of these ecosystems where they have been degraded (an issue which has not been addressed in the FAO Guidelines), they would need to be fully protected from all adverse impacts – not just “significant adverse impacts”.

This would then include the impacts of loss of fish biomass and fish species diversity through fishing, as well as the physical impacts of bottom fishing gear.

We note that the move-on rule is intended as a measure of last resort to protect VMEs, as a complement to, not a substitute for, impact assessments, identifying and closing areas where VMEs are known or likely to occur, and establishing measures to prevent significant adverse impacts to VMEs in areas where high seas bottom fishing is permitted to take place. Even where stringently applied, the move-on rule is not likely to be effective in preventing significant adverse impacts to VMEs other than in exceptional cases. Commercial bottom trawls do not retain taxa efficiently, and thus likely to be of limited value in assessing whether significant adverse impacts have occurred to VMEs.

With regard to the proposed benthic assessment standard and evidence of a VME, we want to emphasise that the simple question is: is a VME encountered? The measures put in place must identify the amounts of taxa which will themselves provide evidence of VMEs – bearing in mind that commercial bottom tows (or bottom longline sets for that matter) are unreliable methods of providing such evidence, since, for instance, material will fall out of the nets or be crushed and pass through the

net.¹² The test is one of identifying ‘evidence of an encounter.’¹³ We may never be able to tell from observer data what damage has been done. This is why bottom fishing should not occur until individual assessments have been done - most likely a benthic survey - and measures put in place.

In summary, we recommend thresholds based on what are likely to indicate a VME, and suggest that repeated encounters need to be addressed.

Applying the test ‘is a VME encountered?’ we recommend that the move-on rule is triggered upon any evidence of an encounter with coral, sponges or other vulnerable species. The area should then be subject to an impact assessment to determine whether one or more types of bottom fishing would have significant adverse impacts. Depending on the results of the impact assessments, the area could be reopened to one or more types of bottom fishing activity.

Defining the footprint of high seas bottom fisheries

As with last year, the DSCC has strong concerns in regard to the delineation of the “footprint” of existing bottom fisheries. The method to delineate the footprint as agreed by the meeting of the Science Working Group in Noumea in September 2007, being a 20 minute by 20 minute block of ocean space, means that even a single trawl tow in a particular area at any time between 2002 and 2006 results in a “footprint” of approximately 1,000 square kilometers surrounding the area. Potentially large areas of the high seas of the South Pacific that have not been previously impacted by bottom fishing are likely to have been incorporated into flag State footprints, including individual seamounts or portions of seamounts where no trawling has previously occurred and where VMEs are likely to occur.

The method for delineating the footprint of high seas bottom trawling should be based on the location of actual trawl tows in specific areas based on VMS or equivalent (e.g. logbook) data from the fisheries.

Marine Reserves and Marine Protected Areas

We again want to remind delegates of the need stated in UNGA resolution 61/105, in paragraph 70, to “[incorporate] an ecosystem approach to fisheries management *and biodiversity considerations*, where these aspects are lacking, to ensure that they effectively contribute to long term conservation and management and sustainable use of *marine living resources*.” We also note as a part of the ecosystem approach, spatial and temporal management tools, including marine protected areas (MPAs), are particularly useful in data-poor situations such as those encountered in the deep seas.¹⁴ Not only can these tools contribute to precautionary management but can provide protection for biodiversity and habitats and fish stocks. This is required since the Fish Stocks Agreement Article 5 requires States to “(g) protect biodiversity in the marine environment.”

We refer to earlier comments about MPAs made in our briefing to the Guayaquil meeting.¹⁵ 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. Marine protected areas, and specifically networks of MPAs,¹⁶ are essential as they contribute to sustainability, biodiversity and habitat conservation, protection of fishery resources, and protection of components of ecosystems that are not protected by other forms of fisheries management and have enforcement advantages.¹⁷ Marine reserves,¹⁸ 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.

The deadline of 2012, the date by which the WSSD JPOI called for the development of representative networks of marine protected areas (MPAs),¹⁹ is only 2 ½ years away.

Protected Areas in the South Pacific



Map by Greenpeace

Map 1: The highlighted areas 1, 2 and 3 are the high seas pockets. Number 1 and most of number 2 are closed to fishing from 2010 as per PNA 3rd implementing arrangement and WCPFC decision in December 2008. Area 3 and the small areas between Fiji and Vanuatu are to be addressed this year.

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.

Last May, a Third Implementing Arrangement (3IA) was agreed in Palau by the Parties to Nauru Agreement (PNA).²⁰ This agreement ensures that vessels are prevented from fishing in the named high seas pockets, enforced by conditions attached to fishing licenses granted by PNA States. This 3IA was welcomed by Leaders at the Pacific Island Forum²¹ in Niue. Last December, at the WCPFC 5th Meeting in Busan, Korea,²² in December 2008, Parties adopted measure CMM 2008-1,²³ which closed fishing in the two donut holes from 1 January 2010 for the stocks covered by the WCPFC – notably tuna, but which also agreed to consider the closure of all high seas pockets.

This shows the growing recognition of the importance of MPAs in RMFOs, particularly in the Pacific region. There is also a similar procedure being undertaken in the North Sea. In 2008, the OSPAR Commission agreed to proceed with a MPA proposal to designate parts of the Charlie Gibbs Fracture Zone (CGFZ) on the Mid-Atlantic Ridge as an MPA in the High Seas of the OSPAR Maritime Area.²⁴

These are both good examples of a recognition of the role of MPAs and of the need to consider them in the text.

As we noted last year, CCAMLR²⁵ allows “the designation of the opening and closing of areas, regions or sub-regions for purposes of scientific study or conservation, including special areas for protection and scientific study.” We suggest some language in the Annex to this briefing.

The Northern Boundary

DSCC continues to be concerned that the issue of the northern boundary is still not resolved. We again suggest extending the northern boundary to include the high seas enclaves and waters near PIF participants such as the Federated States of Micronesia, Republic of the Marshall Islands and Palau.

Delegates will be mindful of the Pacific Leaders’ Nadi Declaration on Deep-Sea Bottom Trawling,²⁶ which suggested the inclusion of the high seas areas in the tropical Pacific within the area covered by the SPRFMO.

Conclusion

As always, 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 productive discussions in Lima.

ANNEX: DSCC COMMENTS ON THE FIFTH PROPOSAL FROM THE CHAIR

The following are specific comments and suggestions on the Revision 5 text, based on the above principles. We focus mainly on changes from Version 4 to Version 5, but also highlight changes that still need to be made. We also attach a comparison in order to assist this comparison.

Preamble and Article 2 Objective

We believe that the proposed change from ‘**while** maintaining the integrity of the marine ecosystems’ to ‘and in so doing safeguarding (or, in the Objective, ‘to safeguard’) the marine ecosystems’ is based on a misapprehension of the Fish Stocks Agreement. The change suggests that it is only ‘ensuring the long-term conservation and sustainable use of fishery resources’ that is within the mandate of the RFMO, and that it is not within its mandate to maintain the integrity of the marine ecosystems.

The FSA preamble itself reads: Conscious of the need to avoid adverse impacts on the marine environment, preserve biodiversity, maintain the integrity of marine ecosystems and minimize the risk of long-term or irreversible effects of fishing operations’ and Article 5(b) requires States to ‘(g) protect biodiversity in the marine environment.’ The same Article requires States to ‘(e) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks...’

The 2006 FSA Review Conference²⁷ noted that some regional fisheries management organizations have utilized closed areas both to manage fisheries and to protect habitats and biodiversity²⁸ and specifically recommended that States individually and through RFMOs “18 (e) Develop management tools, including closed areas, marine protected areas and marine reserves and criteria for their implementation, to effectively conserve and manage straddling fish stocks, highly migratory fish stocks and high-seas discrete stocks and protect habitats, marine biodiversity and vulnerable marine ecosystems, on a case-by-case basis in accordance with the best available scientific information, the precautionary approach and international law”. There is no qualification as is implicit in the suggested SPRFMO V5 preamble change. Indeed, this is implicit in the implementation of an ecosystem-based and precautionary approach to fisheries management.²⁹

Moreover, the FAO Guidelines state in para. 11 that “[t]he main objectives of the management of DSFs are to promote responsible fisheries that provide economic opportunities *while* ensuring the conservation of marine living resources and the protection of marine biodiversity, by: i. ensuring the long-term conservation and sustainable use of marine living resources in the deep seas; and ii. preventing significant adverse impacts on VMEs. This recently agreed language too implies that the proposed change is not warranted.

Article 1 Definitions

We note the deletion of the definition of an ecosystem approach and its move to Article 3. If this is to be done, then the change from ‘while’ to ‘in so doing’ should not be made for the reasons given with respect to the similar change in the preamble.

Article 3 Conservation and Management Principles

Paragraph (i), which currently reads ‘marine ecosystems shall be protected, in particular those ecosystems which have long recovery times following disturbance’ should be amended to continue to refer to biodiversity, as it did in Rev 3 ‘so it reads

[(i) biodiversity in the marine environment shall be protected, in particular marine ecosystems which have long recovery times;]

Article 5 Area of Application

See comments made in our briefing above about the northern boundary.

Article 10 Scientific Committee

In view of the comments made above with respect to the Preamble and Objective, we suggest that the mandate of the Scientific Committee be changed to read in paragraph 2(c) “provide advice and recommendations to the Commission and its subsidiary bodies on the marine ecosystems in the Convention Area *including the impact of fishing on them* and advice and recommendations on the identification and distribution of vulnerable marine ecosystems, the likely impacts of fishing on such vulnerable marine ecosystems and measures to prevent significant adverse impacts on them.”

Article 15 Decision-Making

We are pleased to see the changes to 2/3 majority voting. We suggest that consistent wording be used in paragraph 2 i.e. ‘positive’ or ‘affirmative’.

Article 16 Implementation of Commission Decisions

As we noted last year, if opt-outs they are permitted, then this adds to the need for fisheries to be closed until opened. An objection under this Clause could allow a Party to continue fishing under objection, at least until the end of the dispute settlement procedure procedure.

Article 19 Conservation and Management Measures

As with Revs. 3 and 4, we suggest adding a reference to non-target species, should they be affected by the impacts of fishing. The provision should reference the requirements in the FAO code of Conduct to “minimise negative impacts on associated and dependent species” (e.g.7.6.9 or 6.5) so it would read:

1. (c) maintain or restore populations of [non-target and] associated and dependent species to above levels at which their reproduction may become seriously threatened [and minimise the negative impacts of fishing on those species];

As we have noted earlier, it is essential to be clear that area based management tools can be adopted. The current draft is “(d) the general or specific locations in which fishing may occur; (e) the periods in which fishing may occur.”

We remind participants of our comments above on para. 61/105 and the FAO Expert consultation mandate to protect biodiversity and marine living resources.

We have suggested a new paragraph, which could be a new paragraph 3(h):

(h) “Establish 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.”

Alternatively, following CCAMLR’s Convention,

(h) designate the opening and closing of areas, regions or sub-regions for purposes of scientific study or conservation, including special areas for protection and scientific study.

or, following IUCN suggestions at Guayaquil, the Commission could be enabled to:

“(h) apply area-based management tools, including closed areas, to ensure the conservation of representative ecosystem and habitat areas, unique areas and highly biodiverse areas.”

In any of these cases,³⁰ it must be clear that where it is necessary to control activities other than fishing, co-operation with other international organizations and States is mandated.

As we suggested prior to Rev. 3, an additional catch-all paragraph should be added:

(h or i) and any other measures necessary to give effect to this Convention.

Alternatively, this could be a new sub-paragraph to paragraph (3).

Paragraph 4 of Article 19 pertains to establishment of total allowable catch or total allowable fishing effort of target fisheries.

As we did last year, we would like to re-insert the language from Rev.2 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;*

We believe it is important to keep reference to these elements, for balance.

For Article 19.5(b), concerning emergency measures, it would be useful to refer to the precautionary approach, to make it clear that decisions taken under Article 19.5 must take the precautionary approach into account. It could read “Measures taken on an emergency basis shall be based on the best scientific evidence *available taking into account the precautionary approach*”. With respect to establishment of a total allowable catch: as we did last year, we propose that the principle is established that all fisheries in the area are closed until open. This would remove the inherent disincentive to agree to a TAC or other measures restricting fishing. If necessary a lead-in time period could be permitted to allow time for agreement. We believe that the proposed opt-out procedure in Article 16 makes this essential.

To this end, a paragraph could be added:

“No fishing for any fishery resource in any area shall be undertaken [after [1] year from entry of force of this Convention] until a total allowable catch or total allowable fishing effort has been established for that area and that fishery resource.”

Article 20 Participation in Fishing for Fishery Resources

For paragraph 1, we suggest to add control over nationals to ‘(c) demonstrated capacity and willingness to exercise effective flag State control over vessels,’ since beneficial owners may ‘game the system’ to use different flags for their IUU activities, so it would read:

‘(c) demonstrated capacity and willingness to exercise effective control over vessels and nationals involved in the fishery.’”

Article 24 Flag State Duties

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

“(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;”

There have been cases found where VMS systems have been tampered with or turned off.

For subparagraph 1(d)(ii) The modified provisions on transshipment may be seen to exclude any prohibition of transshipment. This should be addressed. This is important as transshipment at sea is a widely abused method of evading reporting and measures. Also observers must be on the transshipment vessel.

This could read:

(ii) tranship at sea only when it is not prohibited by the Commission measures, there is full observer coverage on the transshipment vessel as well as the fishing vessel,; and the transshipment is done in accordance with relevant procedures adopted by the Commission.

or

(ii) tranship at sea only when permitted by a Commission measure, when there is full observer coverage on the transshipment vessel as well as the fishing vessel; and when the transshipment is done in accordance with relevant procedures adopted by the Commission.

We are still concerned that there are no time-bound provisions on reporting in paragraph 3. This invites slippage.

Article 25 Port State Duties

We are mindful of the ongoing negotiations within the FAO on Port State measures.

We suggest adding a provision to take any agreement into account.

[2(d) Implement applicable international agreements on port State duties.]

We also suggest close co-operation with RFMOs such as WCPFC and the FFC, both with respect to data sharing and ultimately a regional verification and action repository.

[5. Parties and the Commission shall co-ordinate with other regional fisheries management organizations, fisheries agencies and regional and sub-regional arrangements to facilitate information and data sharing and mutual assistance with respect to port access and Port State duties.]

Article 26 Market-Related Measures

As we note last year, the addition in paragraph 26.3 to ‘and thereby facilitate the identification of any such fishery resources or products derived from such resources’ with the words ‘not caught in a manner consistent with the conservation and management measures adopted by the Commission’ may unduly restrict this provision. The point of catch/trade documentation schemes is not only to identify IUU fish but to identify all fish, so consumers can discriminate between IUU and non-IUU fish. If there is no marking of non-IUU fish, this makes the scheme in effect a blacklisting scheme, which is not the intent. The obvious point is that the illegally caught fish would by definition not be accompanied by documentation. This could be remedied by adding the words ‘including those’ so it would read:

“3. In implementing any appropriate market-related measures adopted by the Commission under paragraph 1, market State Contracting Parties shall use their best endeavours to take measures, in

accordance with international law, to continuously improve the transparency of their markets to allow the traceability of fishery resources or products derived from such resources and thereby facilitate the identification of any such fishery resources or products *including those* derived from such resources not caught in a manner consistent with the conservation and management measures adopted by the Commission.”

Article 36 Amendments

We continue to observe that 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 36(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.*”

Article 46 Interim Arrangements

As we did in Canberra in our ‘virtual intervention’ distributed to delegates in the Working Group, we note that we are carrying out these consultations under UNGA resolution 61-105 which laid down the framework for the interim measures, but the implications of the resolution do not stop with interim measures.

Article 46 ensures that participants will be in compliance with Operative Paragraph 83, which provides that if an RMFO has competence, it must adopt and implement compliant measures by Dec 31 2008. Paragraph 85, which relates to negotiations to establish an RFMO requires that a Participant must adopt and implement measures by Dec 2007. There is no provision for expiry or a gap in either case. The Interim Measures must be made legally binding along with the Agreement. Article 46 ensures there would be no such gap.

Some Extracts from the FAO Guidelines for Deep-Sea Fisheries in the High Seas

Significant Adverse Impacts

17. Significant adverse impacts are those that compromise ecosystem integrity (i.e. ecosystem structure or function) in a manner that: (i) impairs the ability of affected populations to replace themselves; (ii) degrades the long-term natural productivity of habitats; or (iii) 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.

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

- i. the intensity or severity of the impact at the specific site being affected;
- ii. the spatial extent of the impact relative to the availability of the habitat type affected;
- iii. the sensitivity/vulnerability of the ecosystem to the impact;
- iv. the ability of an ecosystem to recover from harm, and the rate of such recovery;
- v. the extent to which ecosystem functions may be altered by the impact; and
- vi. the timing and duration of the impact relative to the period in which a species needs the habitat during one or more life-history stages.

19. Temporary impacts are those that are limited in duration and that allow the particular ecosystem to recover over an acceptable time frame. Such time frames should be decided on a case-by-case basis and should be in the order of 5-20 years, taking into account the specific features of the populations and ecosystems.”

Identifying Vulnerable Marine Ecosystems

(42). 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:

- i. uniqueness or rarity –[...]
- ii. The functional significance of the habitat –[....]
- iii. fragility [....]
- iv. life-history traits of component species that make recovery difficult – [....]
- v. structural complexity - [....].

46. In designating an ecosystem as vulnerable, the decision should evaluate habitats and ecosystems against the criteria presented in paragraph 42, 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.

Conducting impact assessments

47. 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. 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);

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Annex 2

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



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Endnotes

¹ Using the Lab's Center for Accelerator Mass Spectrometry, LLNL researchers Tom Guilderson and Stewart Fallon used radiocarbon dating to determine the ages of *Gerardia* sp., or gold coral, and specimens of the deep-water black coral, *Leiopathes* sp. The longest lived in both species was 2,740 years and 4,270 years, respectively. See 2.3. "Extreme longevity in proteinaceous deep-sea corals". E. Brendan Roark, Thomas P. Guilderson, Robert B. Dunbar, Stewart J. Fallon, and David A. Mucciarone. PNAS 2009 : 0810875106v1-pnas.0810875106.

² See

<http://www.oceansatlas.org/servlet/CDSServlet?status=ND0zODgwNi4yMDY1ODUmNj1lbiYzMz1uZXdzJmM3PWluZm8~#koinfo/>.

³ "Exponential Decline of Deep-Sea Eco-system Functioning Linked to Benthic Biodiversity Loss" Danovaro, R. et al., (2008), *Current Biology* 18(1):1-8.

⁴ Deep-sea biodiversity conservation needed to avoid ecosystem collapse HERMES Newsletter Issue 11 Winter 2007/2008 available at: <http://www.eu-hermes.net>.

⁵ "Worldwide review of bottom fisheries in the high seas", Bensch, A.; Gianni, M.; Gréboval, D.; Sanders, J.S.; Hjort, A. FAO Fisheries and Aquaculture Technical Paper. No. 522. Rome, FAO. 2008. 145p.

⁶ Halpern, B. et al. "A Global Map of Human Impact on Marine Ecosystems" *Science* Vol 319, 5865:948 – 952. (15 February 2008). <http://www.nceas.ucsb.edu/globalmarine>

⁷ 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.

⁸ See the earlier DSCC briefing paper, "The Mandate for and the Implementation of the Ecosystem Approach", at <http://www.southpacificrfmo.org/assets/4th-Meeting-September-2007-Noumea/SP-04-Inf-3%20DSCC%20ecosystem%20approach%20brief.pdf>, 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. 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 and <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/61/105&Lang=E>. See also the , the Johannesburg Plan of Implementation (JPOI), (World Summit on Sustainable Development, Johannesburg Plan of Implementation, A/Conf.199/20,) (JPOI), para. 29, and see paras. 31 and 64, and the Johannesburg Plan of Implementation (JPOI), (World Summit on Sustainable Development, Johannesburg Plan of Implementation, A/Conf.199/20,) (JPOI), para. 29, and see paras. 31 and 64.

See also 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

⁹ Michael Lodge, David Anderson, Terje Lobach, Gordon Monroe, Keith Sainsbury, and Anna Willock *Recommended Best Practices for Regional Fisheries Management Organisations*, August 2007, at http://www.chathamhouse.org.uk/research/eedp/current_projects/rfmo.

¹⁰ Op.cit, page 21.

¹¹ The paragraph reads:

3. Starting in 2010, before opening new regions of the Area or expanding fishing effort or catch beyond existing levels, establish conservation and management measures to prevent significant adverse impacts on vulnerable marine ecosystems and the long-term sustainability of deep sea fish stocks from individual bottom fishing activities or determine that such activities will not have adverse impacts, based on an assessment undertaken in accordance with paragraphs 11 and 12 below.

¹² The IUCN paper)Alex D Rogers, Malcolm R Clark, Jason M Hall-Spencer, Kristina M Gjerde, "The Science behind the Guidelines: A Scientific Guide to the FAO Draft International Guidelines for the Management of Deep-Sea Fisheries in the High Seas and Examples of How the Guidelines may be Practically Implemented," (December 2007).) on FAO guidelines for deep-sea fisheries considered that a single haul constituting more than 5 kg of stony coral or coral rubble or 5 kg of sponge constitutes as significant by-catch indicating the presence of a VME. In the CCAMLR interim measures

for bottom longlines and pots there was agreement that 10 litre or 10 kg basket of all significant species caught in 1200m or 1000 hooks would identify a potential VME which should be closed and subject to further investigation. In terms of the Interim Measures, VMEs include cold water corals and sponge fields according to footnote 3, which then trigger a report and appropriate measures. This indicates in fact that the 50 kg and 30 kg thresholds (Table 18) are far too high. We also refer to the IUCN report (page 25). A lack of by-catch of species that comprise VMEs is not definitive evidence that they are not present in an area that is fished.

¹³ The FAO Guidelines make this clear, in paras. 67-69 and elsewhere.

¹⁴ FAO Conclusions and recommendations from the Expert Consultation on Deep-Sea Fisheries in the High Seas, Bangkok Thailand, 21-23 Nov 2006, para. 110(e), at <http://ftp.fao.org/docrep/fao/010/a1341e/a1341e.pdf>.

¹⁵ SP RFMO Document SP/5/INF3, at <http://www.southpacificrfmo.org/assets/Fifth%20International%20Meeting%20March%202008/dsc%20briefing%20SP%20RFMO%20Meeting%205%20Guayaquil.pdf>. 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.

¹⁶ See JPOI para. 32 (c) calling for representative networks.

¹⁷ 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](http://ftp.fao.org/docrep/fao/010/a1061e/a1061e00.pdf), (FAO MPA Workshop) para. 14.

¹⁸ Marine reserves are highly protected areas that are off limits to all extractive and destructive uses, including fishing.

¹⁹ 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."

²⁰ Parties to the PNA include Palau; PNG; Solomon Islands; FSM; RMI; Kiribati; Tuvalu; and Nauru.

The text of the Third Implementing Agreement is available in the Summary Report to WCPFC-5, Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, Fifth Regular Session, 8–12 December 2008, at Busan, Korea, attachment R, Appendix A, at <http://www.wcpfc.int/wcpfc5/pdf/WCPFC5%20Summary%20Report%20-%20Final.pdf>.

²¹ This is the annual meeting of the 16 Pacific Islands Forum countries: Federated States of Micronesia, Kiribati, Republic of Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, Tuvalu, Tonga, Samoa, Vanuatu, Niue, Cook Islands, Fiji, New Zealand and Australia.

²² Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, Fifth Regular Session, 8–12 December 2008, Busan, Korea

²³ Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean: Conservation and Management Measure 2008-01

²⁴ Germany has contracted the University of York (UK) to identify other ecologically significant areas that qualify to receive protective measures in the North-East Atlantic. As a result, corresponding proposals for seven areas (Northern-Mid Atlantic Ridge; Reykjanes Ridge; Rockall and Hatton Banks; and the Josephine, Milne, Altair, and Antialtair Seamounts) have been elaborated and presented to OSPAR Contracting Parties. Currently these proposals are being refined. See Voluntary report on implementation of the Programme of work on marine and coastal biological diversity –

Germany. <https://www.cbd.int/doc/world/de-nr-vmc-en.doc&ei=IFDeSfb-A4yrjAeuyukQ&usg=AFQjCNFQj6JLp5GVfWs--5kstBaewecZvQ&sig2=iYE1kIXERwVmLPOKbuPv6Q>.

²⁵ Article IX.2(g)

²⁶ Thirty-Seventh Pacific Islands Forum, Nadi, Fiji, 24 – 25 October 2006, Forum Communiqué, at <http://www.forumsec.org/resources/article/files/2006%20Communique.pdf>.

The Nadi Declaration specifically commits all members of the Pacific Islands Forum – including New Zealand and Australia “advocate for an interim prohibition on destructive fishing practices, including bottom trawling, beginning on 1 August 2007 until such measures are in place.”

²⁷ Report of the Review Conference on the 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, A/CONF.210/2006/15 (5 July 2006), at http://www.un.org/Depts/los/convention_agreements/review_conf_fish_stocks.htm.

²⁸ FSA Review Conference Para. 15.

²⁹ See paras. 18(a) (d), and 87

³⁰ Ref 2006 Oceans Resolution para. 97.