



Briefing for the Second Meeting of the Commission of the South Pacific Regional Fisheries Management Organisation

Manta, January 27-January 31, 2014

Introduction and Summary

The Deep Sea Conservation Coalition (DSCC) respectfully submits this briefing for the Second Meeting of the Commission of the South Pacific RFMO (SPRFMO). In summary:

1. The Commission should ensure that any measure which replaces the interim measure on bottom fishing adopted in Reñaca in 2007 takes into account United Nations General Assembly (UNGA) [resolution 64/72](#) (2009) paragraphs 119¹ and 120,² and [resolution 66/68](#) (2011),³ as well as [resolution 61/105](#)⁴ (2006) and the 2008 United Nations Food and Agriculture Organisation (FAO) [Deep Sea Fishing Guidelines](#).⁵ This includes ensuring the sustainability of deep-sea stocks and non-target species. The proposed Australian and New Zealand measure must be consistent with these requirements.
2. The Commission should adopt a work programme which ensures that the resolutions are implemented, including not only identifying vulnerable marine ecosystems (VMEs), encounter protocols, closing areas and prior environmental impact assessments, but ensuring the sustainability of deep-sea stocks, including through stock assessments and catch limits.
3. The Commission should continue to follow up with Convention on Biological Diversity (CBD) work on ecologically or biologically significant marine areas (EBSAs), which complements current work on vulnerable marine ecosystems (VMEs).

The Proposed Bottom Fishing Measure

The Australian/New Zealand proposed measure COMM-02-07⁶ requires some amendments to be consistent with the relevant UNGA resolutions and FAO Deep Sea Guidelines.

First and foremost there is nothing in the draft measure in terms of practical requirements that will meet the objective set out in paragraph 1 (“Objective”) of COMM-02-07 to ensure the sustainability of deep-sea species, including non-target species. This is a key objective established in the UNGA resolutions and the practical actions states are committed to take to meet this objective are spelled out in considerable detail in UNGA resolution 64/72 paragraph 119(d) (such as stock assessments and rebuilding plans)⁷ and the UN FAO Guidelines for the Management of Deep-Sea Fisheries in the High Seas (FAO Guidelines). These in turn reflect fundamental and detailed obligations under international law for the management of fisheries established in Articles 5 & 6 of the the UN Fish Stocks Agreement. However, COMM-02-07 as currently drafted would only require States to “(i) limit bottom fishing catch in the Convention Area to a level that does not exceed the annual

average levels of that Member or CNCP over the period 1 January 2002 to 31 December 2006...” – paragraph 9(c.i). This measure falls well short of the commitment to take the measures outlined in paragraph 119(d) of UNGA resolution 64/72 to manage deep-sea stocks for sustainability and the obligations with respect to the conservation and management of fisheries in Articles 5 and 6 of the UN Fish Stocks Agreement.

Secondly, the proposed paragraph 21, on impacts on VMEs, merely requires the Scientific Committee to make recommendations. The Commission itself should ensure that if it is assessed that the activities would have significant adverse impacts, they are managed to prevent such impacts, or not authorised to proceed. In addition, the requirement to manage bottom fisheries to prevent significant adverse impacts should be contingent on the assessment determining that the bottom fishing *could*, not *would*, have significant adverse impacts. The precautionary approach, required in paragraphs 2, 3 and other paragraphs, means that uncertainty needs to be resolved by action, rather than inaction.

Thirdly, the proposed paragraph 9(g) which allows a Member or CNCP to exclude part of its bottom fishing footprint from the application of subparagraph (f) by dividing its footprint into areas open to bottom fishing, areas closed to bottom fishing and areas to which subparagraph (f) would apply needs to be modified to be consistent with the UNGA resolutions. We would reiterate that any areas open to bottom fishing should only be open after an impact assessment has been done and that bottom fishing is managed to prevent significant adverse impacts on VMEs in the area. Conservation measures, including a move-on rule, should apply to all areas open to bottom fishing. However, it is important that the move-on rule is not used as a substitute for, but rather a compliment to, conservation and management measures established on the basis of a prior impact assessment. A move-on rule alone is not sufficient to prevent significant adverse impacts on VMEs; at best it can only prevent further damage to VMEs after damage has already occurred.⁸

Finally, it should be clearly established that a full impact assessment is required before any exploratory fishing is permitted outside of the footprint. In this regard, we would urge SPRFMO Members to take note of the conclusions of the ICES/NAFO Joint Working Group on Deep-water Ecology: “exploratory fishing with bottom contact gear in the deep sea is unacceptable because of the long-term damage such gear does to bottom habitats” and “exploratory fishing with bottom contact gear is

unnecessary because modern data management tools and computer modeling techniques can provide a mechanism for making predictions about where vulnerable marine ecosystems are likely to be present".⁹

Background and Brief History of High Seas Bottom Fisheries and the United Nations General Assembly Resolutions

In 2006, in response to widespread concern at the impacts of high seas bottom trawling, the UNGA adopted a 'compromise' package offered by nations whose vessels deep-sea fish on the high seas through UNGA Resolution 61/105. This was adopted by consensus in December 2006. Resolution 61/105 committed nations that authorise their vessels to engage in bottom fisheries on the high seas to take a series of actions set out in Paragraph 83 of the resolution. The main action points were to:

1. Conduct **impact assessments** to determine whether bottom fishing activities would have significant adverse impacts on VMEs;
2. Ensure that, if fishing activities have significant adverse impacts, they are **managed to prevent such impacts**, or else prohibited;
3. **Close areas** of the high seas to bottom fishing where VMEs such as cold-water corals are known or likely to occur, unless fishing in these areas can be managed to prevent significant adverse impacts to such ecosystems;
4. Establish and implement protocols to require vessels to cease fishing in areas where an **encounter with VMEs** occurs during fishing activities; and
5. **Sustainably manage** the exploitation of deep-sea fish stocks.

Following this resolution, SPRFMO adopted [interim measures](#)¹⁰ in 2007 in Reñaca, Chile. The following year in 2008, a set of [International Guidelines for the Management of Deep-Sea Fisheries in the High Seas](#)¹¹ ('FAO Guidelines') was adopted under the auspices of the UN FAO to further define and agree criteria for the conduct of impact assessments of high seas bottom fisheries, identify VMEs, and then assess whether deep-sea fisheries would have "significant adverse impacts" on VMEs.

In 2009, the UNGA determined that Resolution 61/105 had not been implemented sufficiently, and adopted additional provisions in resolution 64/72.¹² This resolution

made it clear that the measures called for in Resolution 61/105 must be implemented, consistent with the FAO Guidelines prior to authorising bottom fishing on the high seas. States must ensure that vessels do not engage in bottom fishing until assessments have been carried out and, further, **must not authorize bottom fishing activities** until all required measures have been adopted and implemented. Resolution 64/72 further called for stock assessments and conservation measures to ensure **the long-term sustainability of deep-sea fish stocks**, including species impacted by deep-sea fishing which are not of commercial value (so-called non-target or bycatch species), and the rebuilding of depleted fish stocks.

In 2011, the UNGA conducted a [further review](#). The DSCC¹³ reported to the UNGA that, as a result of the interim measures adopted by SPRFMO participants, substantial and highly valuable information has become available on the bottom fisheries in the SPRMO region. The freeze of the footprint has served to temporarily protect a large area of the South Pacific from significant adverse impacts of bottom fishing. Further, the 100% observer coverage on bottom trawl vessels has helped to provide additional information on the interaction between bottom fishing and VMEs, and the prohibition on bottom gillnet fishing has been a positive development.

However, shortcomings include that:

- Impact assessments consistent with the FAO Deep Sea Guidelines had not been done where bottom fishing was permitted to occur;
- The measures adopted by the relevant flag States were not sufficient to ensure that bottom fishing was managed to prevent significant adverse impacts on VMEs, in spite of the application of a move-on rule to some areas; and
- The long-term sustainability of none of the deep-sea fish stocks and species was ensured. New Zealand reported 137 species recorded in the bottom fisheries in the SPRFMO region, of which approximately 22 were considered target species.

Following its September 2011 workshop, the UNGA adopted resolution 66/68, which calls on high seas fishing nations to take stronger actions to protect deep-sea life. It specifically called for strengthening procedures for conducting environmental impact assessments of high seas bottom fisheries. It further calls on States to **publicise** “without delay” the assessments and improve compliance with deep-sea fisheries

regulations. The new resolution calls for **more transparency** in RFMOs and for impact assessments to be made public. The DSCC is therefore pleased that the SPRFMO did, prior to this resolution, publish the [New Zealand](#)¹⁴ and [Australian](#)¹⁵ assessments. However, those assessments need to be amended and brought up to date to comply with the FAO Guidelines. In this regard, we were encouraged by the statement made by the delegation of New Zealand during the UNGA workshop in September 2011 that New Zealand intended to update its impact assessment consistent with the FAO International Guidelines.

This offers an updated means of implementation of the bottom fisheries interim measure:

"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."

Both UNGA resolutions 64/72 (2009) and 66/68 (2011) post-date this interim measure, which needs to be replaced in the light of both resolutions. These resolutions include the calls to update assessments and make assessments publicly available¹⁶ and to adopt conservation measures for deep-sea fish stocks on the basis of stock assessments and the best available scientific information, to ensure the long-term sustainability of deep sea fish stocks *and* non-target species, and the rebuilding of depleted stocks.¹⁷

The Scientific Committee

EBSAs

The report¹⁸ of the first Scientific Committee Meeting which met at La Jolla in October noted that “[p]articipants recognised the need for greater coordination

between these parallel processes to identify and protect EBSAs and VMEs in the SPRFMO Area. In particular, there is a requirement for greater coordination between spatial management planning processes that might result under the CBD and SPRFMO in response to identification of EBSAs and VMEs.” DSCC welcomes these comments and looks forward to the strengthening of links between SPRFMO and the CBD, including the suggestions that a SPRFMO representative participates in CBD meetings relating to EBSAs in the Pacific Ocean, and that participants may choose to respond to nomination of EBSAs in some way during development of SPRFMO conservation and management measures.

DSCC suggests that the 2nd Science Working Group be tasked with developing recommendations on the protection of EBSAs in the SPRFMO area.

The DSCC here observes that VMEs and EBSAs are the product of different processes. The EBSA work is not, however, in any way inconsistent with the protection of VMEs. The VME work is a product of the UNGA resolutions, particularly resolution 61/105 (2006) and 64/72 (2009), and the FAO Guidelines, and is central to the management of deep-sea bottom fishing. The EBSA work is being carried out¹⁹ under the auspices of the CBD,²⁰ and is focused on identifying areas as a scientific and technical exercise.²¹ The last meeting was held in Ecuador in August 2012 to identify regional EBSAs.²²

International governance steps responsive to the identified EBSAs, such as designating some EBSAs as marine protected areas (MPAs), have yet to be determined. It is important that SPRFMO carries on its work in identifying and protecting VMEs, to determine its response to identified EBSAs.

The Move-on Rule

Following Andrew Penney’s review of paper SC-01-09, the Scientific Committee (SC) endorsed the characteristics of effective move-on rules, including that:

- Lists of regionally specific VME indicator taxa should be identified for each fishery, using all available information on species occurrence and retention by fishing gears.
- VME taxa should be specified at a level that facilitates rapid and accurate onboard visual identification by trained observers.

- Encounter thresholds indicating evidence of a VME should be based on analyses of historical bycatch data, taking account of the different retention rates of species by each gear type. Multiple species can be used to indicate higher biodiversity.
- Once evidence of a VME is encountered using an agreed protocol, move-on areas should be closed to fishing by all demersal fishing vessels until further analysis or evidence indicates that area does not contain VMEs.
- Move-on distances and area closures should encompass the area covered by typical fishing operations using that gear type.

The SC also observed that move-on rules should be considered to be temporary measures, providing precautionary protection for areas showing evidence of VMEs until objectively planned spatial closures can be implemented to protect known and highly biodiverse VME areas.

The UNGA in 2009 had paid particular attention to encounter protocols, including definitions of what constitutes evidence of an encounter with a VME, in particular threshold levels and indicator species, based on the best available scientific information and consistent with the FAO Guidelines.²³ The DSCC considers the SWG should also focus on these encounter protocols - which define the 'move-on' parameters - since New Zealand and Australian encounter protocols are not consistent with the FAO Guidelines.²⁴

The Footprint

The SC concluded after reviewing paper SC-01-20²⁵ that:

- Alternative periods and mapping resolutions both have a substantial effect on effort maps and fished area estimates for demersal trawl fisheries in the western SPRFMO Convention Area.
- Estimates of 'fished area' generated using any mapping resolution other than actual trawl tracks substantially exaggerate the areas within footprints that have actually been impacted: 86% to 91% of a footprint mapped using 6-minute blocks is actually unfished (i.e., 9-14% of the footprint area fished) and

95% to 96% of a footprint mapped using 20-minute blocks is unfished (i.e., 4-5% of the footprint area fished).

The DSCC and suggests that the footprint be revised using an approach that identifies the footprint more precisely - on a tow by tow basis as opposed to the 20 minutes latitude by 20 minutes longitude formula originally adopted in 2007. VMS data should allow for this, particularly over the past several years.²⁶

Overall Observations

The DSCC emphasises that it is essential that SPRFMO responds to the UNGA resolutions, particularly to ensure that prior environmental impact assessments are carried out before bottom trawling is commenced and to ensure that vessels do not engage in bottom fishing until such assessments have been carried out and that the long-term sustainability of the deep-sea fish stocks, whether taken as targeted catch or bycatch, is ensured, including through stock assessments and catch limits,²⁷ consistent with the precautionary approach.

DSCC reminds members that the sustainability of deep-sea target and bycatch species is a critical component of the UNGA resolutions as well as a fundamental requirement of the UN Fish Stocks Agreement.

New and Exploratory Fisheries

The 2007 Interim Measures state that:

"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."

SPRFMO needs to transpose the interim measure into SPRFMO measures, including taking into account the additional provisions adopted by the UNGA in resolutions 64/72 (2009) and 66/68 (2011). For new and exploratory fishing, any revised measures must ensure that no fishing is undertaken until compliant impact

assessments have been carried out²⁸ and compliant measures have been adopted.²⁹ They must also comply with UNGA resolution 66/68, which called on States to:

- a) strengthen procedures both for carrying out assessments to take into account **individual, collective and cumulative impacts**, and for **making the assessments publicly available**, recognizing that doing so can support transparency and capacity building globally;
- b) establish and improve procedures to ensure that **assessments are updated** when new conditions or information so require;
- c) establish and improve procedures for **evaluating, reviewing and revising, on a regular basis, assessments** based on best available science and management measures; and
- d) establish mechanisms to **promote and enhance compliance with applicable measures** related to the protection of vulnerable marine ecosystems, adopted in accordance with international law.³⁰

To conclude, in practical terms, in order to be consistent with the UNGA resolutions, the best scientific information available and the precautionary approach the impact assessments must:

- be made public,
- take into account individual and collective impacts, as well as cumulative impacts,
- be updated when new conditions or information requires,
- be regularly evaluated, reviewed and revised, based on the best available science and management measures, and
- be required prior to the commencement of any exploratory fisheries.

¹ UNGA Resolution 64/72 (2009) paragraph 119(a) Conduct the assessments called for in paragraph 83 (a) of its resolution 61/105, consistent with the Guidelines, and to ensure that vessels do not engage in bottom fishing until such assessments have been carried out.

² UNGA resolution 64/72 paragraph 120: "Calls upon flag States, members of regional fisheries management organizations or arrangements with the competence to regulate bottom fisheries and States participating in negotiations to establish such organizations or arrangements to adopt and implement measures in accordance with paragraphs 83, 85 and 86 of its resolution 61/105, paragraph 119 of the present resolution, and international law, and consistent with the Guidelines, and not to authorize bottom fishing activities until such measures have been adopted and implemented."

³ A/RES/66/68 - 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 (to be issued).

⁴ <http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/61/105>.

⁵ FAO, International Guidelines for the Management of Deep-Sea Fisheries in the High Seas (2009). At <http://www.fao.org/docrep/011/i0816t/i0816t00.htm>.

⁶ COMM-02-07: Proposed CMM for the Management of Bottom Fishing in the SPRFMO Convention Area - Australia and New Zealand. At <http://www.southpacificrfmo.org/assets/Commission-Meeting-2nd/Comm-02-Papers/COMM-02-07-Proposed-CMM-for-the-Management-of-Bottom-Fishing-in-the-SPRFMO-Convention-Area-AU-NZ.pdf> .

⁷ Adopt conservation and management measures, including monitoring, control and surveillance measures, on the basis of stock assessments and the best available scientific information, to ensure the long-term sustainability of deep sea fish stocks and non-target species, and the rebuilding of depleted stocks, consistent with the Guidelines; and, where scientific information is uncertain, unreliable, or inadequate, ensure that conservation and management measures be established consistent with the precautionary approach, including measures to ensure that fishing effort, fishing capacity and catch limits, as appropriate, are at levels commensurate with the long-term sustainability of such stock.

⁸ The Joint ICES/NAFO Working Group on Deep-water Ecology (WGDEC) in 2010 reviewed the move-on rules adopted by the Northeast Atlantic Fisheries Commission (NEAFC) and the Northwest

Atlantic Fisheries Organization (NAFO). The Working Group concluded that “The damage caused by deep-sea bottom fishing activities to marine habitats and species, in particular VME indicators, is likely to remain unrecovered for decades to centuries. Reactionary management strategies such as the “encounter clauses” and “move-on rules” are of limited benefit to prevent significant adverse impacts because they still allow damage to occur which will gradually degrade ecosystems over time”. Report of the ICES/NAFO Joint Working Group on Deep-water Ecology (WGDEC). International Council for the Exploration of the Sea. 2010. Pg 52.
http://www.ices.dk/sites/pub/Publication%20Reports/Expert%20Group%20Report/acom/2010/WGDEC/wgdec_final_2010.pdf

⁹ Ibid page 52.

¹⁰ http://www.southpacificfmo.org/assets/3rd-Meeting-April-2007-Renaca/PlenaryIII/SPRFMO%20Interim%20Measures_Final.doc .

¹¹ <http://www.fao.org/docrep/011/i0816t/i0816t00.htm>.

¹² The key elements of the resolution are contained in paragraphs 119-120.

¹³ Unfinished Business: A Review of the Implementation of the Provisions of United Nations General Assembly Resolutions 61/105 and 64/72, Related to the Management of Bottom Fisheries in Areas Beyond National Jurisdiction (September 2011). At
http://www.savethehighseas.org/publicdocs/DSCC_review11.pdf.

¹⁴ SP-7-SWG-DW-01 <http://www.southpacificfmo.org/assets/7th-Meeting-May-2009-Lima/DW-Subgroup-VII/SP-7-SWG-DW-01-New-Zealand-Bottom-Fishery-Impact-Assessment-Posted.pdf>.

¹⁵ <http://www.southpacificfmo.org/assets/10th-SWG-and-9th-DIWG-meetings-Vanuatu/SWG-10/SWG-10-DW-01a-Australian-BFIA-Final-Report.pdf>. See DSCC comments at <http://www.southpacificfmo.org/assets/10th-SWG-and-9th-DIWG-meetings-Vanuatu/SWG-10/SWG-10-INF-03-DSCC-Comments-on-Australian-SPRFMO-assessment.pdf>.

¹⁶ UNGA resolution 66/68 paras 129, 130.

¹⁷ UNGA resolution 64/72 para 119 (d).

¹⁸ At <http://www.southpacificrfmo.org/assets/Scientific-Committee-1st-2/Report/SC-01-2013-Report-amended-16-Dec-13-a.pdf>.

¹⁹ See overview by IDDRI, "Ecologically or biologically significant marine areas (EBSAs): the identification process under the Convention on Biological Diversity (CBD) and possible ways forward. At http://www.iddri.org/Publications/Collections/Idees-pour-le-debat/WP1712_ED_EBSAs.pdf.

²⁰ See CBD Decision XI/17 (2012). Marine and coastal biodiversity: Ecologically or biologically significant marine areas. At <http://www.cbd.int/cop/cop-11/doc/2012-10-24-advanced-unedited-cop-11-decisions-en.pdf>.

²¹ CBD Decision XI/17: "6. Noting that, in accordance with decision X/29, the application of the scientific criteria for ecologically or biologically significant marine areas is a scientific and technical exercise and emphasizing that the identification of ecologically or biologically significant marine areas and the selection of conservation and management measures is a matter for States and competent intergovernmental organizations, in accordance with international law, including the United Nations Convention on the Law of the Sea, as stated in paragraph 26 of decision X/29"

²² Eastern Tropical and Temperate Pacific Regional Workshop to Facilitate the Description of Ecologically or Biologically Significant Marine Areas, from 28 to 31 August 2012, in the Galapagos Islands, Ecuador. At <http://www.cbd.int/doc/?meeting=5081>.

²³ UNGA resolution 64/72 para. 119(c)

²⁴ See DSCC Comments on the Revised Draft Bottom Fishery Impact Assessment Standard SWG-10-DW-03, 17 September 2011. DSCC noted that the threshold quantities should take into account the fact that nets are not designed to retain taxa and that significant amounts of taxa will fall through the net. The proposed method for deriving threshold weights is logically flawed, since it is based on the median of the cumulative distribution of observed bycatch weights. This is not correlated with actual VMEs much less an assessment of the impact on VMEs, and simply relies on a statistical formulation based on past fishing data, as opposed to data on the impact of fishing on VMEs. The exercise is to identify VMEs, not to facilitate a certain amount of fishing. In addition, the threshold should be based on prior assessments, including an assessment of each biogeographic region to identify VMEs and vulnerable fish species, such as sharks, including rare and endemic species. The assessments should use (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" in the (iii) "identification, description and mapping of VMEs known or likely to occur in the fishing area." (From FAO Guidelines para 47).

²⁵ Spatial analysis of Australian and New Zealand historical bottom trawl fishing effort in the Convention Area of the SPRFMO.

²⁶ For a critique of the SPRFMO approach to defining the footprint see the South Pacific section of the DSCC review in 2011 of the implementation of UNGA resolutions.

²⁷ UNGA resolution 64/72 para. 119(d)

²⁸ Following UNGA resolution 64/72 paragraph 119(a): Conduct the assessments called for in paragraph 83 (a) of its resolution 61/105, consistent with the Guidelines, and to ensure that vessels do not engage in bottom fishing until such assessments have been carried out.

²⁹ Following UNGA resolution 64/72 paragraph 120: "Calls upon flag States, members of regional fisheries management organizations or arrangements with the competence to regulate bottom fisheries and States participating in negotiations to establish such organizations or arrangements to adopt and implement measures in accordance with paragraphs 83, 85 and 86 of its resolution 61/105, paragraph 119 of the present resolution, and international law, and consistent with the Guidelines, and not to authorize bottom fishing activities until such measures have been adopted and implemented."

³⁰ Paragraph 129 of UN General Assembly document A/66/L.22 adopted by the General Assembly on 6 December 2011. To be issued as UNGA resolution 66/68
http://www.un.org/ga/search/view_doc.asp?symbol=A/66/L.22. Emphasis added.