



Briefing for the Fourth International Meeting on the Establishment of the South Pacific Regional fisheries Management Organisation

This paper addresses some textual issues following the adoption of interim measures to protect marine biodiversity from high seas bottom trawling at the third meeting in Renaca, Chile. The Chair is to be commended for producing a revision which both incorporates and takes on board suggestions made at the third meeting, and which is visionary and forward-thinking.

The negotiation of the South Pacific RFMO represents an opportunity to 'get it right' and avoid the mistakes that other RFMOs have made in the past. The SP RFMO must be given the mandate, functional ability and resources to address the broader ecological impacts of fishing activities on the world's oceans, and must focus on management based on the ecosystem and precautionary approaches, rather than the failed single-species management approach.

An essential component of this approach is the establishment of a network of representative marine reserves. In addition, strong monitoring, compliance and surveillance measures must be implemented to avoid saddling the South Pacific RFMO with many of the same problems from IUU fishing which threaten the sustainability of fish stocks in other marine regions.

The Ecosystem Approach

A separate DSCC briefing paper, "The Mandate for and the Implementation of the Ecosystem Approach" details the international mandate for and the implementation of the ecosystem approach. The elements of these are summarized here. In short, the SPRFMO is required to implement the ecosystem approach by a series of previously agreed hard and soft law instruments. Implementation of the ecosystem approach as called for in the objective does not mean that the SP RFMO will be managing all activities in the area with a possible impact on the environment. It does mean, however, that all environmental factors must be taken into account when managing fisheries. That is both a crucial distinction and a crucial step. The Johannesburg Plan of Implementation (JPOI) requires the application of the ecosystem approach by 2010.¹ This followed the same imperative in the Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem and in Decision 5/6 of the Conference of Parties to the Convention on Biological Diversity (CBD).

Last year's UN General Assembly Sustainable Fisheries Resolution² followed a lengthy discussion on ecosystem approaches at the 7th Informal Consultative

¹ World Summit on Sustainable Development, Johannesburg Plan of Implementation, A/Conf.199/20, (JPOI), para. 29, and see paras. 31 and 64.

² 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

Process³ in New York and includes many important paragraphs on the ecosystem approach. In OP 70, the UNGA resolution

Urges further efforts by RFMOs, as a matter of priority, in accordance with international law, to strengthen and modernize their mandates and the measures adopted by such organizations or arrangements, to implement modern approaches to fisheries management as reflected in the Agreement and other relevant international instruments relying on the best scientific information available and application of the precautionary approach, and incorporating 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.

The very recent report of an independent panel to develop a model for improved governance by regional fisheries management organisations, *Recommended Best Practices for Regional Fisheries Management Organisations*⁴ 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 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.”⁵

Finally, the FAO Technical Guidelines⁶ provide support for the implementation of the FAO Code of Conduct for Responsible Fisheries and its call for protection of aquatic ecosystems.

These are very clear references and a clear mandate for the ecosystem approach to be expressly incorporated in the convention of the SP RFMO.

Marine Protected Areas

The WSSD JPOI called for the development of representative networks of marine protected areas (MPAs) by 2012.⁷ A recent FAO Workshop⁸ examined the role of marine protected areas in fisheries management. Participants observed that

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>.

³ Seventh Meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, held in New York from 12 to 16 June 2006.

⁴ Michael Lodge, David Anderson, Gordon 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/.

⁵ Ibid., page 21.

⁶ 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.

⁷ 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

“WSSD made a policy commitment to MPAs, but not explicitly as a fishery management tool. However, given the widespread acceptance of the concept of an ecosystem approach, which recognizes the importance of habitat and biodiversity, robustness to uncertainty, and the human dimension of fisheries, **it should be expected that fisheries management will increasingly apply a diverse set of management tools, including MPAs.**”⁹

The FAO Report concludes that MPAs have a number of advantages, including that they:¹⁰

- are intended to contribute to achieving conservation and sustainability objectives of fisheries management, while contributing to biodiversity and habitat conservation (with intended or unintended social and economic consequences);
- would afford fishery resources a higher degree of protection within the geographic boundaries of the MPA than the resource is afforded elsewhere within the geographic range of the fishery management unit;
- are usually expected to have resource conservation and sustainability benefits, other ecological benefits, and/or social benefits, beyond the boundaries of the MPA.

In addition, as noted in the MPA report,¹¹

- MPAs can protect components of ecosystems that are not protected by other forms of fisheries management,
- can be more effectively enforced than alternative forms of fisheries management, and
- they are more robust in the face of social and ecological change, and resource assessment uncertainty.

Applying a diversity of fishery management tools, including MPAs, is likely to be more precautionary than overly depending on any one tool.¹² As was highlighted in the JPOI,¹³ networks of MPAs not just single MPAs, are important.¹⁴

periods, proper coastal land use and watershed planning and the integration of marine and coastal areas management into key sectors.”

⁸ 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>.

⁹ FAO MPA Workshop para 2. Emphasis added.

¹⁰ Summaries from FAO MPA Workshop para 5.

¹¹ FAO MPA Workshop para. 14.

¹² Ibid.

¹³ See JPOI para. 32 (c) calling for representative networks.

¹⁴ For instance, it was noted at the FAO MPA workshop that networks may serve to:

- account for dispersal of early life history stages of fishery resources or movement of later life stages;
- conserve and sustain multiple species of fishery resources which typically have different distributions and patterns of dispersal;

Given new uncertainties and ecological changes likely to develop in the marine environment as a result of climate change, the importance of establishing MPAs as fisheries management tools becomes even more imperative.

For these reasons, the FAO MPA workshop recommended that¹⁵ “RFMOs should consider MPAs as a fishery management tool to the extent they are an effective way to achieve conservation and sustainability objectives, and fulfill mandates and policy agreements.” With respect to the high seas, the FAO Report concluded that:¹⁶

MPAs on the high seas could address deep sea resources and communities, for example on seamounts and oceanic ridges, pelagic resources and communities, or both. High degrees of endemism in deep sea communities and the vulnerability of some deep sea stocks and species require particular consideration for fisheries and conservation of biodiversity.

DSCC Comments on the Second Proposal from the Chair

An ecosystem approach, with the precautionary principle at its core, must underpin the management of fisheries in the South Pacific Ocean. The proposed implementation of the ecosystem approach in the Objective in Article 2 of the Chair’s Revision 2, the improved references in the Principles in Article 3, the definition in Article 1(f) and the references in Article 17(1) and Article 18(1) are therefore all important advances to the text.

Specific Comments and Suggestions on the Text

Some specific comments and suggestions on the Revision 2 text, based on the above principles, follow.

Article 3 Conservation and Management Principles

Paragraph (h) should read:

Biodiversity in the marine environment 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;

Article 7 Functions of the Commission

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

- (c) develop, approve and monitor responsible fisheries management plans for target fisheries and associated or dependent species;*
- (k) develop, adopt and implement conservation and management measures including the establishment of marine protected areas, the adoption of spatial*

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- afford protection to diverse types of habitat and/or ecosystem types;
 - affect distributional aspects of social benefits and costs;
 - enhance effectiveness of governance; and
 - improve learning through sharing experiences.

FAO MPA Workshop, para. 7.

¹⁵ FAO MPA Workshop, para. 21.

¹⁶ FAO Workshop, para. 23(j).

and temporal closures, and other measures to achieve the objective of this Agreement.

Article 9 Scientific Committee

It is important to ensure that assessments 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.

DSCC recommends that 'other environmental impacts' be added to Article 9.2 so 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”

It also seems advisable specifically to 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

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 14 Decision-Making

A 3/4 majority may be unduly onerous. DSCC suggests a 2/3 majority.

DSCC recommends that no opt-out provisions 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 17 Conservation and Management Measures

We note Article 21 *Marine Environment* has been deleted, and para 17 (e) inserted. Article 17 contains the operative provisions states must implement in developing and agreeing to specific conservation and management measures and is an important article.

The proposed new chapeau now incorporates the precautionary and ecosystem approaches, but the Commission needs to adopt measures not just for ‘associated or dependent species’ but, as earlier provided in what was Article 21, measures for the protection of the marine ecosystems in which target fisheries and associated and dependent species occur. The chapeau could read:

“The Commission shall adopt conservation and management measures for target fisheries,[including] new target fisheries, associated or dependent species, [and protection of the marine ecosystems in which target fisheries and associated and dependent species occur, consistent with the ecosystem approach]”

In paragraph 1(d), it is important to set specific time periods for restoration. A ‘reasonable period of time’ is effectively meaningless. We suggest:

“(d) ensure that in the event specific biological reference points are exceeded, Contracting Parties,[within time periods set by the Commission or, if there are no time periods set,] without delay, take action to restore the target fishery to a level above those reference points within [the time period set by the Commission, or, if there is no such time period], a reasonable period of time.”

In the new paragraph (e), we suggest adding after ‘the marine ecosystems’ the words ‘species and biodiversity in the area’. This will ensure the Commission has the ability to adopt measures to protect species and biodiversity, as well as marine ecosystems, which are distinct.

Protecting habitats of special concern (FSA Art 6.3.d) and the obligation to “protect biodiversity in the marine environment” (FSA 5(g)) also need to be added.

UN FSA Article 6.2¹⁷ is key and needs to be added to Article 17, even though it is referenced in the current Article 3.

We suggest that para. (e) should be amended to now read: (with our suggested additions in italics and brackets):

- (e) “protect the marine ecosystems [, *species and biodiversity in the area*] in which fisheries and associated or dependent species occur, including through: spatial or temporal closures of fisheries; [*protecting habitats of special concern; the conservation of associated and dependent species and species belonging to the same ecosystem;*] the regulation of fishing methods and gear-types used, including the prohibition of certain gear-types; the minimisation of pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species and impacts on associated or dependent species, in particular threatened species, through measures including the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;”

We also suggest an additional paragraph:¹⁸

(f) “The establishment of marine protected areas, including the closure of areas to fishing activities and other activities, where necessary in co-operation with the

¹⁷ FSA Art. 6(2): States shall be more 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.

¹⁸ We note also the language from CCAMLR Article IX.2.g: “*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.*”

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.”

This suggestion¹⁹ 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. Article 17(2), on emergency measures, should also apply in situations where fishing presents a threat to a marine ecosystem

We suggest:

“In addition, the Commission shall adopt measures to be applied on an emergency basis where fishing presents a significant threat to [a marine ecosystem or species or to biodiversity or] threat to the sustainability of fishery resources or when a natural phenomenon has a significant adverse impact on the status of fishery resources [or a marine ecosystem or species or biodiversity] to ensure that fishing does not exacerbate such threat or adverse impact. Measures taken on an emergency basis shall be temporary and shall be based on the best scientific evidence available, applying the precautionary and ecosystem approaches.”

Finally, to capture FSA Article 6(2), we suggest a new paragraph 3:

3. The Commission and Contracting Parties shall be more 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.

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

We suggest adding ‘and marine ecosystems’ to paragraph k, in line with the ecosystem approach:

k. 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 a target fishery at the time of the entry into force of this Agreement shall be opened as a target fishery only when the Commission has adopted preliminary conservation and management measures in respect of that fishery resource, and any associated or dependent species,] applying the precautionary and ecosystem approaches.”

¹⁹ Ref 2006 Oceans Resolution para. 97.

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:

*“(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 requirements adopted by the Commission;”*

We also suggest that flag States should be required to take appropriate action, as well as investigate and report on actions taken. Paragraph (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 amendment requires unanimity, and the Convention may never be amended. 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].”

CONCLUSION

This briefing canvassed the benefits of the ecosystem approach and marine protected areas, and emphasises the need to implement the ecosystem approach in the Objectives, as the Chair's Revision 2 does. It also emphasises the benefits of marine protected areas for marine ecosystems and fisheries. These benefits have been recognised by the scientific community and policy makers alike. The imperative to establish a global network of marine protected areas as part of the application of the precautionary principle and ecosystem approach and as a fisheries management tool is widely accepted. It is now time to ensure that the new SPRFMO takes those fine words and begins to put them to work on the water as a model of the way that RFMOs will work in the future. Textual suggestions to bring such a model into effect are contained in this briefing. We look forward to their inclusion in the text, followed by the swift adoption and the ratification and entry into force of a strong agreement that effectively protects marine life in the South Pacific at the same time as it ensures healthy fisheries for now and the future.