



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

**October 2008**

25 September, 2008

**Introduction**

The Deep Sea Conservation Coalition (DSCC) respectfully submits this briefing for the Sixth International Meeting on the establishment of the South Pacific RFMO (SPRFMO) that will be held in Canberra on October 6-10, 2008.

This draft firstly discusses some developments relating to bottom trawling that have taken place since the Guayaquil meeting. It then addresses the changes in Revision 4 of the Chair's text. It does so with a particular emphasis on the conservation and management measures in Article 18. It then discusses the implementation of interim measures, the northern boundary, the ecosystem approach and marine protected areas.

Of course, we are negotiating against the background of UN GA resolution 61/105,<sup>1</sup> which called on RFMOs to incorporate both the precautionary and ecosystem approach into their text, as well as laying down specific requirements for protecting vulnerable marine ecosystems from bottom trawling and other forms of bottom fishing. We recall the emphasis we placed in Guayaquil: we must ensure that we avoid the mistakes that other RFMOs have made in the past, in text as well as in implementation on the water. SPRFMO must be given the mandate, functional ability and resources to address the broader ecological impacts of fishing activities on the world's oceans, must incorporate management based on the ecosystem and precautionary approaches rather than the failed single-species management approach and must ensure that all participants act in good faith rather than in narrow and short term self interest. Again, these components must be reflected in both implementation of the measures as well as in the fishing activities by all participants.

**The Ecosystem Approach**

For the record, we again draw attention to the separate DSCC briefing paper, "The Mandate for and the Implementation of the Ecosystem Approach", which details the international mandate for and the implementation of the ecosystem approach, as is mandated by the 2006 UN General Assembly Sustainable Fisheries Resolution,<sup>2</sup> the Johannesburg Plan of Implementation (JPOI),<sup>3</sup> the Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem and Decision 5/6 of the Conference of Parties to the Convention on Biological Diversity (CBD), the FAO Technical Guidelines<sup>4</sup> and the independent panel to develop a model for improved governance by regional fisheries management organisations, *Recommended Best Practices for Regional Fisheries Management Organisations*<sup>5</sup> which expressly states that:

The current best practice is for the RFMO to have explicit, overarching objectives that address the full range of outcomes and management approaches in hard and soft law agreements relating to sustainable fishing. The objectives explicitly include ...use of the best available science and the application of the precautionary approach and the ecosystem approach in decision-making.<sup>6</sup>

While most of these elements are still captured in Revision 4, some amendments to the new Article 18 resulting from the consolidation of Articles 17 and 18 and Annex A to Rev. 4 need to be made, and Revision 4 requires the inclusions of the suggestions set forth in this briefing.

### **Implementation of UN GA 61/105 and the Interim Measures agreed in May 2007**

The Interim Measures require that all participants that are engaging or intend to engage in bottom trawling in the area after September 2007 must formulate and implement adequate management measures to avoid significant adverse impacts on vulnerable marine ecosystems (VMEs). Paragraph 6 of the Interim Measures details some of the requirements. The Interim Measures, like UN GA 61/105, call for assessments of the impacts of individual bottom fishing activities wherever they occur, regardless of whether they occur in area that have been previously fished lightly, moderately or heavily. Under paragraph 6 of the Interim Measures, where VMEs are known or likely to occur, areas must be closed to bottom fishing unless an assessment has been undertaken in accordance with paragraphs 11 and 12, and measures have been established to prevent significant adverse impacts (SAIs) on VMEs and the long term sustainability of deep sea fish stocks, or it has been determined that there will not be SAIs.<sup>7</sup>

These provisions of the Interim measures have been all but ignored to date. This is a matter of serious concern to the Deep Sea Conservation Coalition.

OP 86 of UNGA resolution 61/105, “Calls upon flag States to either adopt **and implement** measures in accordance with paragraph 83, mutatis mutandis, or cease to authorize fishing vessels flying their flag to conduct bottom fisheries in areas beyond national jurisdiction where there is no regional fisheries management organization or arrangement with the competence to regulate such fisheries or interim measures in accordance with paragraph 85, until measures are taken in accordance with paragraph 83 or 85.” In simple terms, this means that if the Interim Measures under the resolution are not implemented, flag States concerned must cease authorising their vessels to conduct bottom fisheries on the high seas.

### **FAO Guidelines for deep-sea fisheries in the high seas**

The International Guidelines for the Management of Deep Sea Fisheries in the High Seas<sup>8</sup> were agreed and adopted in August by the FAO, as called for in UN GA resolution 61/105 and endorsed by the UN FAO Committee on Fisheries in 2007. Some relevant extracts follow.

#### **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);
- 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.

### **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.”

The DSCC recommends that all of these elements of the UN FAO Guidelines be endorsed by the Science Working Group and the Sixth International Meeting on the Establishment of the South Pacific Regional Fisheries Management Organisation, and serve as the basis for the assessment of impacts and management of high seas bottom fisheries by States whose vessels and nationals may engage in such fisheries in the region.

### **Defining the footprint of high seas bottom fisheries**

The DSCC would like to reiterate its 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 allows for the provision 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 (a 20 minute by 20 minute block of ocean space) surrounding the area. The end result is that 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 DSCC recommends that the method for delineating the footprint of high seas bottom trawling 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 want to remind delegates of IUCN’s valuable interventions in Guayaquil. They pointed out to us that we must take a holistic approach to managing, and that UN GA resolution 61/105 OP 70 urged RFMOs to modernize their mandates, to implement modern approaches to fisheries management, and 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*.”

IUCN also reminded us that the “FAO Expert Consultation recommended that as a part of EAF, 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. These tools could contribute to precautionary management and, if appropriately implemented, provide some level of protection for biodiversity and habitats and fish stocks.”

CCAMLR<sup>9</sup> 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.” And lest there be any doubt, the Fish Stocks Agreement Article 5 requires States to “(g) protect biodiversity in the marine environment.”

We again note that the WSSD JPOI called for the development of representative networks of marine protected areas (MPAs) by 2012.<sup>10</sup> Marine protected areas<sup>11</sup> 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.<sup>12</sup> A diversity of fishery management tools need to be in the management toolbox, including MPAs<sup>13</sup> and specifically networks of MPAs.<sup>14</sup> Marine reserves,<sup>15</sup> a type of MPA, ensure the highest level of protection for the entire marine environment. Permanent closure of some areas is absolutely fundamental to the long-term protection of the ocean.

In the case of bottom fisheries on the high seas of the South Pacific region, MPAs can not be used as substitutes for, but should complement, effective impact assessments of all bottom fishing activities and the establishment of regulations to prevent significant adverse impacts to VMEs wherever bottom fishing is permitted to occur.

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 vulnerable marine ecosystems 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 through fishing as well as the physical impacts of bottom fishing gear (and would require stringent controls on other disruptive activities such as mining, cable laying, and extractive activities established through appropriate mechanisms). In summary, the effective implementation FAO Guidelines for the Management of Deep-sea Fisheries in the High Seas 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.

We refer to earlier comments about MPAs made in our briefing to the Guayaquil meeting.<sup>16</sup> 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. We suggest some language in the Annex to this briefing.

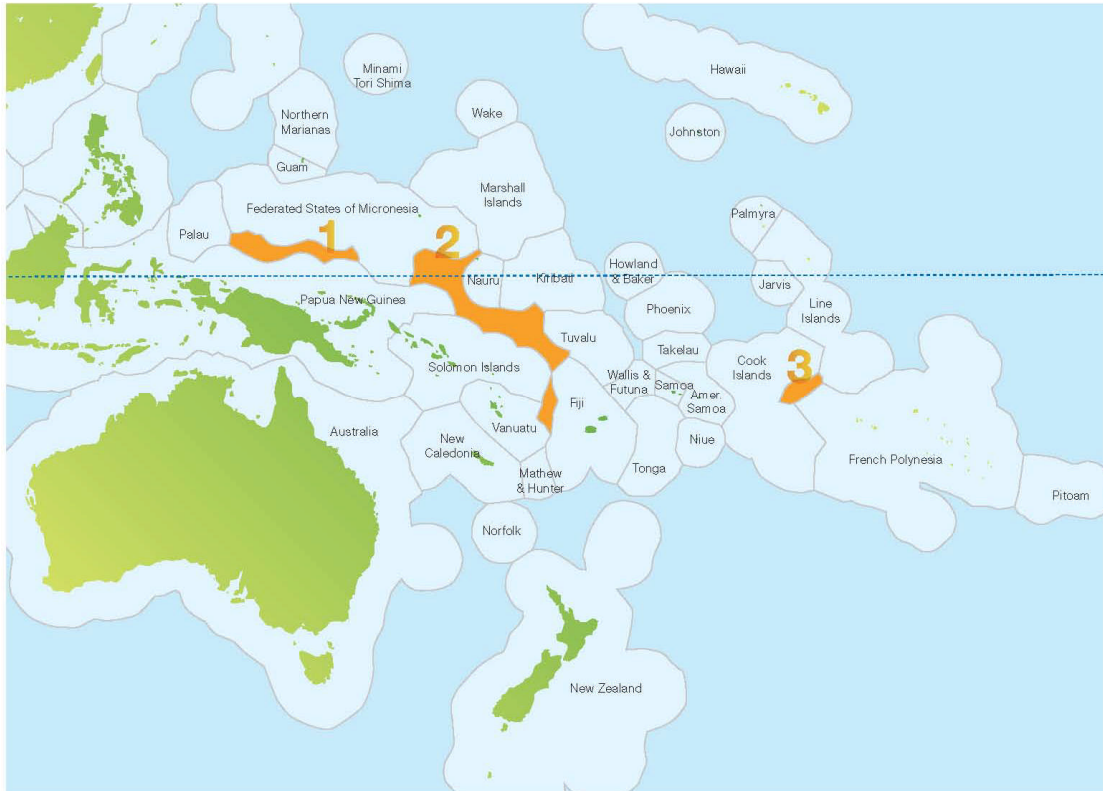
## **The Northern Boundary**

DSCC welcomes the workshop that took place in Guayaquil and constructive discussions that took place there and continues to urge States to formulate a position on the northern boundary. We hope that all participants can participate in future discussions. 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.

A key recommendation from the Pacific Leaders' Declaration on Deep-Sea Bottom Trawling to protect biodiversity in the high seas<sup>17</sup> is the possible inclusion of the high seas areas in the tropical Pacific within the area covered by the SPRFMO. 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.”<sup>18</sup> It is therefore important to decide how to treat these high seas areas.

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

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



Map © Greenpeace

### **DSCC COMMENTS ON THE FOURTH PROPOSAL FROM THE CHAIR**

The following are specific comments and suggestions on the Revision 4 text, based on the above principles.

#### **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 above about the northern boundary.

#### **Article 10 Scientific Committee**

We are pleased to see the new reference to VMEs, the likely impacts of fishing on them and the need to prevent significant adverse impacts on them.

#### **Article 14 Budget**

We are pleased to see the amendments replacing the equal fee with a variable fee. This will assist participation especially by PICs.

### **Article 15 Decision-Making**

We continue to suggest a 2/3 majority rather than a 3/4 majority, which may be unduly onerous. It is extremely important that measures be adopted; we have seen considerable difficulties in this area in RFMOs in recent times, such in International Commission for the Conservation of Atlantic Tunas (ICCAT).

DSCC also recommends that opt-out provisions not be permitted. If they are permitted, then this adds to the need for fisheries to be closed until opened.

### **Article 18 Conservation and Management Measures**

Paragraph 2(c) is unchanged from Annex A, but as with Rev. 3, 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:

*2. (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];*

The addition of the reference to VMEs in paragraph (d) is a valuable addition and should be retained.

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(f):

*(f) “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,

*(f) 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:

*“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,<sup>19</sup> 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:

*(e) 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 18 pertains to establishment of total allowable catch or total allowable fishing effort of target fisheries.

We note with concern that the following language has been deleted since Rev.2, as it was with Rev. 3, 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 paragraph 18.5(c), it may be necessary to be clear that conservation and management measures can be applied in one or both of the national jurisdictional waters. The insertion of the word ‘part of all of ‘ [the range] may be useful.

For paragraph 18.6, concerning emergency measures, it is essential to refer to the precautionary approach. The final sentence could be amended to read ‘Measures taken on an emergency basis shall be temporary and shall be based on the best scientific evidence available *taking into account the precautionary approach*’.

With respect to establishment of a total allowable catch:, 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.

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 19 Participation in Target Fisheries**

For paragraph 1, we suggest to add control over nationals to ‘(c) demonstrated capacity and willingness to exercise effective flag State, 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 flag State control over fishing vessels [and nationals involved directly or indirectly in the fishery]’*

Also, there needs to be a specific reference to IUU activities. If there are no applicable measures, but a would-be applicant, through nationals or vessels, has been engaged in IUU fishing or other fishing that has been harming the fishery or the environment, that should be taken into account.

This could be covered in (c), but as written it is restricted to when the Commission has established a TAC. It may take time to do so.

Also, a poor record with other areas or other RFMOs should be a factor. We suggest:

We suggest rewording paragraph 19.1(e) to read:

*“(e) past and present fishing patterns, practices and catches in [or outside] the Convention Area).*

We suggest that decisions on participation in paragraph 2 should be taken by a 2/3 majority if consensus fails. This is essential, as one or more Members may block consensus.

### **Article 20 Development of New Fishery Resources**

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 Party must maintain, as well as implement, a VMS system, so it would read:

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

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

For subparagraph 23.1(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]; all of the transhipped fish or fish products derived from fishery resources will be landed at a Contracting Party port; and 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.

### **Article 24 Port State Duties**

We are mindful of the FAO Technical Consultation on Port State measures last June and the next meeting schedules for January 2009.

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

*[4. Parties and the Commission shall 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.

*[4. 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 25 Market-Related Measures**

The addition in paragraph 25.3 to ‘and thereby facilitate the identification of any such fish or fish products’ 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. 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 take measures, in accordance with international law, to improve the transparency of their markets to allow the traceability of fish or fish products derived from resources and thereby facilitate the identification of any such fish or fish products[including those] not caught in a manner consistent with the conservation and management measures adopted by the Commission.]*

### **Article 35 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 35(2) should read:

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

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



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**October 2008**

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## Endnotes

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<sup>1</sup> United Nations General Assembly Resolution A/RES/61/105 (8 December 2006), Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments. Available at [http://www.un.org/Depts/los/general\\_assembly/general\\_assembly\\_resolutions.htm](http://www.un.org/Depts/los/general_assembly/general_assembly_resolutions.htm).

<sup>2</sup> A/RES/61/105 - Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments, at [http://www.un.org/depts/los/general\\_assembly/general\\_assembly\\_resolutions.htm](http://www.un.org/depts/los/general_assembly/general_assembly_resolutions.htm) and <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/61/105&Lang=E>.

<sup>3</sup> World Summit on Sustainable Development, Johannesburg Plan of Implementation, A/Conf.199/20, (JPOI), para. 29, and see paras. 31 and 64.

<sup>4</sup> FAO Technical Guidelines for Responsible Fisheries 4, Supplement 2, Fisheries Management: The ecosystem approach to fisheries (2003), (“FAO Guidelines”), para. 10, at [http://www.fao.org/documents/pub\\_dett.asp?lang=en&pub\\_id=127549](http://www.fao.org/documents/pub_dett.asp?lang=en&pub_id=127549).

<sup>5</sup> 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](http://www.chathamhouse.org.uk/research/eedp/current_projects/rfmo).

<sup>6</sup> Op.cit, page 21.

<sup>7</sup> 6. In respect of areas where vulnerable marine ecosystems are known to occur or are likely to occur based on the best available scientific information, close such areas to bottom fishing unless, **based on an assessment undertaken in accordance with paragraphs 11 and 12 below**, conservation and management measures have been established to prevent significant adverse impacts on vulnerable marine ecosystems and the long-term sustainability of deep sea fish stocks or it has been determined that such bottom fishing will not have significant adverse impacts on vulnerable marine ecosystems or the long term sustainability of deep sea fish stocks.

Paragraph 11 requires Participants to:

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

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

<sup>8</sup> Draft International Guidelines for the Management of Deep-Sea Fisheries in the High Seas (including amendments) from the first session of the Technical Consultation), (September 2008) at [ftp://ftp.fao.org/FI/DOCUMENT/tc-dsf/2008\\_2nd/2\\_1e.pdf](ftp://ftp.fao.org/FI/DOCUMENT/tc-dsf/2008_2nd/2_1e.pdf).

<sup>9</sup> Article IX.2(g)

<sup>10</sup> JPOI para. 32(c) reads: “(c) Develop and facilitate the use of diverse approaches and tools, including the ecosystem approach, the elimination of destructive fishing practices, the establishment of marine protected areas consistent with international law and based on scientific information, including representative networks by 2012 and time/area closures for the protection of nursery grounds and periods, proper coastal land use and watershed planning and the integration of marine and coastal areas management into key sectors.”

<sup>11</sup> See FAO, FAO Fisheries Report No. 825, “Report and Documentation of the Expert Workshop on Marine Protected Areas and Fisheries Management: Review of Issues and Considerations,” 12-14 June 2006, (“FAO MPA Workshop”), FIEP/R825 (En), GCP./INT/942/JPN, at <ftp://ftp.fao.org/docrep/fao/010/a1061e/a1061e00.pdf>.

<sup>12</sup> FAO MPA Workshop para. 14.

<sup>13</sup> *Id.*

<sup>14</sup> See JPOI para. 32 (c) calling for representative networks.

<sup>15</sup> Marine reserves are highly protected areas that are off limits to all extractive and destructive uses, including fishing.

<sup>16</sup> SP RFMO Document SP/5/INF3, at <http://www.southpacificrfmo.org/assets/Fifth%20International%20Meeting%20March%202008/dscc%20briefing%20SPRFMO%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.

<sup>17</sup> Thirty-Seventh Pacific Islands Forum, Nadi, Fiji, 24 – 25 October 2006, Forum Communiqué, at <http://www.forumsec.org/resources/article/files/2006%20Communique.pdf>.

<sup>18</sup> Consistently with the Nadi Declaration, the Western Micronesian summit on March 22 agreed to support the interim prohibition on bottom trawling and to advocate this commitment at appropriate national, regional and international forums, to protect fisheries and marine diversity. Western Micronesian Chief Executives Summit, Saipan, March 20-22, 2007, Joint Communiqué. The communiqué was issued by the Commonwealth of the Northern Mariana Islands, the Territory of Guam, the State of Yap, within the Federated States of Micronesia, and the Republic of Palau.

<sup>19</sup> Ref 2006 Oceans Resolution para. 97.