



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

**Auckland
November 8-14, 2009**

30 October, 2009

Introduction

The Deep Sea Conservation Coalition (DSCC) respectfully submits this briefing for the Eighth International Meeting on the establishment of the South Pacific RFMO (SPRFMO) that will be held in Auckland on November 8-14, 2009.

This is an important meeting for a number of reasons.

Firstly, we hope it will be a meeting that results in agreement on a convention text. This should not just be any text that can be agreed upon – a ‘lowest common denominator’ – but a best practice, state of the art text reflecting developments in international law, policy and science to date. We have an opportunity to avoid the mistakes that other RFMOs have made in the past. SPRFMO 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.

Secondly, with respect to the ‘freeze’ on the bottom fishing footprint, the meeting should agree on new interim measures, to ensure that before opening new regions of the Area or expanding fishing effort or catch beyond existing levels, conservation and management measures are in place 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 environmental impact assessment undertaken in accordance with the Interim Measures. If they do not, then any expanded fishing risks being viewed as IUU fishing.

Thirdly, it comes just before the final review of resolution 61/105 by the General Assembly the very next week. Decisions made here will be closely watched in New York.

This briefing expands on these issues.

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

As a reminder, 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).*

As we have noted in the past, 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. Vessels conducting deep sea fishing which does not comply with resolution 61/105 should be considered IUU vessels and their vessels and catch treated accordingly.

In the Interim Measures agreed in Reñaca, participants agreed:

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.

Participants must ensure that before either (1) a new area is opened up or (2) fishing effort is expanded, they have previously **established conservation and management measures**. Such measures must ensure that:

- (1) bottom fishing is subject to an assessment to be undertaken in accordance with paragraphs 11 and 12 of the Interim Measures, and
 - (2) significant adverse impacts (SAIs) are prevented both on vulnerable marine ecosystems (VMEs), *and* on the long-term sustainability of deep sea fish stocks, both from individual bottom fishing activities, or else the areas are kept closed (paragraph 6), and/or effort not increased; or
- (b) it is determined that such new or expanded fishing activities will not have SAIs on VMEs or the long-term sustainability of deep sea fish stocks.

The bottom fishery impact assessment standard will be critical to ensure that high seas bottom fishing prevents significant adverse impacts on VMEs such as on corals, seamounts etc. To this end, it will be very important to ensure that paragraphs 18-19, 42 and 47 (being the criteria for conducting impact assessments and determining SAIs, and identifying characteristics of VMEs) of the FAO Guidelines for deep-sea fisheries are fully and faithfully incorporated into the impact assessment.

But the standard is not enough. Paragraph 3 is clear that “starting in 2010”, the measures “must be established” before new areas are opened up or effort is increased. If they are not established, then any fishing in new areas or expanded effort is IUU fishing, since it would not be fishing activities in a manner that is not consistent with or contravenes the conservation and management measures of SPRFMO, and/or conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

As we have also noted in the past, closed areas, 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 of 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 the reduction of fish biomass and loss of fish species diversity through fishing, as well as the physical impacts of bottom fishing gear.

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 bottom fishery impact 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.¹ The test is one of identifying “evidence of an encounter.”² 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

The DSCC continues to have 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.

UNGA Review of 61/105

The United Nations General Assembly will meet in the week from November 20 to finalise its review of the implementation of resolution 61/105. The DSCC has stressed to the States participating in the

review that proper implementation of the resolution has been lacking, including in particular the conduct of proper impact assessments under paragraph A of paragraph 83, the closure of VMEs under paragraph C, ensuring the long-term sustainability of deep sea fish stocks under paragraph B and the implementation of the threshold for the ‘move-on’ rule under paragraph D. DSCC is calling for a further review in 2010. DSCC is also calling for fishing to cease where measures have not been fully implemented (in particular where assessments have not been carried out etc) and where measures which have been implemented are not being complied with, as well as where measures in compliance with resolution 61/105 have not been implemented at all, such as the Indian Ocean.

Most importantly, fishing which is not compliant with resolution 61/105 is IUU fishing – whether measures have been implemented and are not complied with (illegal), activities have not been reported (unreported) or measures are not in place (unregulated). Briefly looking at the crucial paragraphs:

- a. Prior assessment:** this is the centerpiece of resolution 61/105. DSCC has proposed that the General Assembly should call on States to perform assessments consistent with paragraphs 47 (criteria for conducting impact assessments), 42 (identifying VME areas) (including the Annex), and 17-19 (determining whether significant adverse impacts would occur) of the FAO International Guidelines for the Management of Deep-sea Fisheries in the High Seas and not to authorize fishing until the assessments are complete and measures are in place to prevent SAIs.
- b. Move on rule:** the existing move on rules, including as currently implemented in the SPRFMO area, do not have adequate thresholds to protect VMEs. Any evidence of contact with VME indicator species should trigger the ‘move on’, closure and assessment of the area where the encounter occurred.
- c. Deep sea stocks:** many high seas bottom fisheries target or take as bycatch low productivity species highly vulnerable to overexploitation and depletion. DSCC is calling on States not to fish until adequate stock assessments have been done, taking into account the precautionary approach and the ecosystem approach, as well as for further guidance from FAO, UNEP, IOC, ICES etc particularly on the extent to which low productivity species can be sustainably exploited (including those caught as bycatch) and at what levels.
- d. VMEs:** We have noted that States do not have to survey the entire ocean with drop cameras. They can for instance use biogeographic information to identify areas likely to contain some types of VMEs. Biogeographic information has largely been ignored in the implementation of paragraph 83b & c – determining where VMEs are *likely* to occur. Most State and RFMO efforts have been directed to determining where VMEs do occur. DSCC has presented scientific studies at side events in the United Nations illustrating this. Countries must use all available information, including biogeographic information and predictive modeling, in establishing closed areas where VMES are likely to occur unless SAIs can be prevented. No fishing should proceed without an assessment that conforms to the FAO Guidelines.

Marine Reserves and Marine Protected Areas

We 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 that 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.³ Not only can these tools contribute to precautionary management but

can provide protection for biodiversity, 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 will not repeat our comments about MPAs which date back to the Guayaquil meeting⁴ and before, other than to observe that marine reserves would build resilience in the marine ecosystem, and flexibility in the midst of future unknowns, including impacts of climate change and ocean acidification, 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,⁵ 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.⁶ Marine reserves,⁷ 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 2006 FSA Review Conference⁸ noted that some regional fisheries management organizations have utilized closed areas both to manage fisheries and to protect habitats and biodiversity⁹ 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.” We note that there is a further Review Conference due in May 24-28 next year.

The deadline of 2012, the date by which the WSSD JPOI called for the development of representative networks of marine protected areas (MPAs),¹⁰ is only 2 years away. We have proposed language which also incorporates the terminology and criteria developed at the CBD for identifying areas in need of protection in the open ocean and deep sea. There was in late October an expert workshop in Ottawa which developed draft guidance for applying the criteria.

Protected Areas in the South Pacific



Map: The highlighted areas 1, 2 and 3 and 4 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 December 2008. The Parties to the Nauru Agreement in late October agreed to extend the protection to Areas 3 and 4.

A brief update on the Pacific high seas enclaves will be of interest. As a reminder, the two 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 marked '1' and '2' the map above were agreed to be closed to purse seine fishing by the Parties to the Nauru Agreement (PNA)¹¹ in the Third Implementing Arrangement (3-IA),¹² and endorsed by the Forum Fisheries Committee (FFC) and the Pacific Islands Forum,¹³ and closed to purse seine fishing by the Western and Central Pacific Fisheries Commission (WCPFC).¹⁴ They have biological and ecological importance, and being in the high seas, are vulnerable to overfishing, IUU activities and other activities outside the jurisdiction of States. This shows the growing recognition of the importance of MPAs in RFMOs, particularly in the Pacific region. On 21 October 2009, the Bikenibeu Declaration by Ministers for Fisheries of the Parties to the Nauru Agreement (PNA) expressed concern that the high seas continues to provide a safe haven for IUU fishing and agreed that further work will be taken on closures of additional high seas areas.

The Northern Boundary

DSCC hopes that participants will endorse the suggested extension of the northern boundary in Article 5 to fully enclosed waters beyond national jurisdiction, in light of the Pacific Leaders' Nadi Declaration on Deep-Sea Bottom Trawling,¹⁵ which suggested the inclusion of the high seas areas in the tropical Pacific within the area covered by 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 Auckland.

Annex: DSCC Comments on the Sixth Proposal from the Chair

The following are specific comments and suggestions on the Revision 6 text, based on the above principles. We focus mainly on changes from Revision 6 to Revision 5, but also highlight changes that still need to be made.

Preamble and Article 2 Objective

We still believe that the proposed change made in Revision 5 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.¹⁶ 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 FAO Guidelines for Deep-Sea Fisheries 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 shows that the proposed change is not warranted.

Article 1 Definitions

With respect to the deletion of the definition of an ecosystem approach and its move to Article 3, 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 1(a)(i): It is proposed to replace “taking full account of international best practice” with “taking into account best international practice.” This weakens the obligation and should be changed back.

Paragraph (iv): It is proposed to be amended by qualifying ‘marine ecosystems’ by ‘in which fishing resources occur’. This qualification is unnecessarily restrictive. The ecosystem approach demands that information relating to impacts on marine ecosystems should be collected, etc. If there are impacts caused by fishing on marine ecosystems in which fishing resources do not occur, these must be collected as well. There is no justification for causing damage to marine ecosystems even if fishing resources do not occur there (or no longer occur there) and such damage must be reported.

Paragraph 1(a)(vii), 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

[(vii) 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. DSCC supports the proposed inclusion of the high seas enclaves north of the equator, and further supports covering up to 20° north. This would avoid there being a governance gap.

Article 10 Scientific Committee

Paragraph 2(b)(iii): this proposed new paragraph should also refer to the objectives of the Convention, so it reads:

*(iii) analyses of conservation and management alternatives, such as the establishment of total allowable catch or total allowable fishing effort at different levels, that estimate the extent to which each alternative would achieve **the objective of the Convention and the objective or objectives of any management strategy or plan adopted, or under consideration, by the Commission;***

Article 11 Compliance Committee

Paragraph 2(b): We do not support the deletion of reference to enforcement of the Convention. Enforcing compliance is essential for the effective functioning of the Compliance Committee and the Convention. To be clear, compliance refers to whether States meet their obligations,¹⁷ whereas enforcement refers to the implementation of consequences for non-compliance with obligations.¹⁸ In practical terms, the Compliance Committee will, as is recognised in paragraph (c), be addressing enforcement measures, such as to control IUU fishing. We refer to Article 24 in this regard. The Compliance Committee should clearly have the powers to provide advice and recommendations as to enforcement as well as to review enforcement.

Article 16 Decision-Making

We are dismayed to see the reversion from 2/3 to 3/4 majority voting, as it was in revision 3 in Canberra. We continue to submit that 2/3 is a more achievable majority than 3/4.

Article 17 Implementation of Commission Decisions

We continue to note that if objections 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.

Article 18 Transparency

DSCC does not support the restriction of public dissemination to non-commercially sensitive information. The former wording, 'confidential information', is far more restrictive and meaningful. A great deal of fishing information can be described as commercially sensitive; especially relating to the location of fishing activities, which, particularly if they involve VMEs, may be critical information. In addition, fishing effort and CPUE may be highly relevant to stock assessment and other conservation efforts, while fishing operators may argue the information is commercially sensitive. Commercial sensitivity alone should not be a reason to withhold information.

Article 20 Conservation and Management Measures

As we have noted earlier, it is essential to be clear that area based management tools can be adopted. The current draft is "2 (d) the general or specific locations in which fishing may or may not occur; (e) the periods in which fishing may or may not 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 1(e). We have added suggested language since the last meeting at Lima to follow the criteria developed at the CBD for identifying areas in need of protection in the open ocean and deep sea following the recent expert workshop in Ottawa which developed draft guidance for applying the criteria.

*(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 **and the protection of ecologically or biologically significant areas.**”*

Alternatively, following CCAMLR’s Convention, again with the suggested amendment in bold:

*(e) 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 **and ecologically or biologically significant areas**”.*

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

*“(e) apply area-based management tools, including closed areas, to ensure the conservation of representative ecosystem and habitat areas, unique areas, **ecologically or biologically significant areas** and highly biodiverse areas.”*

In any of these cases,¹⁹ 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 or f) and any other measures necessary to give effect to this Convention.

Paragraph 3 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 20(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 21 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 25 Flag State Duties

Paragraph 1(d): the proposed changes delete a requirement for full observer coverage. This is a retrograde step. Also, the restriction should not be to fishery resources caught in the Convention area. Such a restriction may require enforcement authorities to prove that the fish was caught in the Convention area. Since “fishery resources” is defined in the Convention, any transshipment of such fishery resources in the Convention Area should be addressed.

DSCC also continues to be concerned that in subparagraph 1(d) 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.

This could read:

(d) land or tranship fishery resources 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

(d) land or tranship fishery resources 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(c). This invites slippage.

Article 26 Port State Duties

We are mindful of the concluded negotiations within the FAO on Port State measures. We believe that this requires modification of paragraph 1. This could read:

*“1. A port State Contracting Party has the right and duty to take measures, in accordance with international law, to promote the effectiveness of sub-regional, regional and global conservation and management measures **according to international law.**”*

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.

Former Article (26) Market-Related Measures (deleted)

DSCC strongly submits that the proposed deletion of this Article is a retrograde step.

The proposed addition of paragraph (d) in Article 27, Monitoring, Compliance and Enforcement, does not make up for the deletion. Market related measures are important and deserve their own Article. In addition, the proposed paragraph on traceability has been lost:

“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.”

The point of catch/trade documentation schemes is to identify all fish, so consumers can discriminate between IUU and non-IUU fish. The obvious point is that the illegally caught fish would by definition not be accompanied by documentation.

Our proposed text in fact should 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 27 Monitoring, Compliance and Enforcement

As noted above, market related measures should be in a separate paragraph.

Article 35 Amendments

We welcome the proposed provision allowing 3/4 majority amendment of the text. This does show, however, that 3/4 is not an appropriate majority for substantive measures (see Article 16).

We do however oppose the proposed paragraph 3 provision whereby if one Party objects, the amendment shall not take effect for any Contracting Party. At the very most, it should not take effect for other Contracting Parties vis-à-vis that Party only.

Deleted Article 46 Interim Arrangements

DSCC strongly submits that the deletion of the ‘interim arrangements’ Article is a retrograde step.

We continue to 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 would ensure that participants will be in compliance with Paragraph 8. The Interim Measures must be made legally binding along with the Agreement. Article 46 ensures there would be no such gap. The Article would have read:

Article 46 ***INTERIM ARRANGEMENTS***

In order to ensure the conservation and sustainable use of fishery resources and to strengthen the effective exercise of flag state responsibility by Contracting Parties for fishing vessels flying their flag, the Interim Arrangements set out in Annex shall apply upon the entry into force of this Convention and remain in force until the Commission decides otherwise.



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Endnotes

¹ The IUCN paper by 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 and does not take into account the catchability of different fishing methods. 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.

² The FAO Guidelines on deep-sea fisheries (2008) make this clear, in paras. 67-69 and elsewhere.

³ 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 <ftp://ftp.fao.org/docrep/fao/010/a1341e/a1341e.pdf>.

⁴ 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.

⁵ See JPOI para. 32 (c) calling for representative networks.

⁶ 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>, (FAO MPA Workshop) para. 14.

⁷ Marine reserves are highly protected areas that are off limits to all extractive and destructive uses, including fishing.

⁸ 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.

⁹ FSA Review Conference Para. 15.

¹⁰ 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.”

¹¹ 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>.

¹² 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.

¹³ This third implementing agreement was welcomed by Leaders at the Pacific Island Forum in Niue.

¹⁴ 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. See Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean: Conservation and Management Measure 2008-01.

¹⁵ 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.”

¹⁶ 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 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...’

¹⁷ See for instance Edith Brown Weiss and Harold K. Jacobson, *A Framework for Analysis*, in *Engaging Countries: Strengthening Compliance with International Environmental Accords* 1, 4 (Edith Brown Weiss and Harold K. Jacobson, eds., 1998).

¹⁸ See George W. Downs, “Enforcement and the Evolution of Cooperation,” 19 *Mich. J. Int’l L.* 319, 320 (1998).

¹⁹ Ref 2006 Oceans Resolution para. 97.