



Review of the implementation of the provisions of UNGA resolutions 61/105 and 64/72 related to the management of high seas bottom fisheries

Preliminary Summary

2nd June 2011

The Deep Sea Conservation Coalition (DSCC) has undertaken its 2011 review of bottom trawling, the third in recent years. The review builds on DSCC reviews of implementation of resolutions 61/105 and 64/72 in 2009 and 2010 and background papers prepared for the Busan workshop and a variety of scientific papers and reports, including from organizations attending Regional Fisheries Management Organizations (RFMOs), United Nations (UN) and other meetings.

Key summary findings are provided below with the full report to be published at the end of June 2011.

KEY FINDINGS

UNGA resolutions 59/25, 61/105, and 64/72 have had an impact on the management of deep-sea fisheries on the high seas.

- Two new agreements to establish RFMOs to manage deep-sea fisheries in the high seas have been negotiated.
- The resolutions prompted States and RFMOs to take a number of tangible measures to protect Vulnerable Marine Ecosystems (VMEs).
- The use of bottom trawls has been prohibited on the high seas in the Commission for the Conservation of Antarctic Living Marine Resource (CCAMLR) area.
- Several RFMOs have established bans on the use of bottom gillnets in their regulatory areas.
- The Northwest Atlantic Fisheries Organization (NAFO), North-East Atlantic Fisheries Commission (NEAFC), and the South East Atlantic Fisheries Organization (SEAFO) have closed substantial areas in the high seas to bottom fishing.
- The General Fisheries Commission of the Mediterranean (GCFM) has prohibited bottom trawling below 1000 metres.

The resolutions have not been fully implemented by States and RFMOs. VMEs in the high seas are not sufficiently protected from significant adverse impacts, and deep-sea fisheries are not managed for long-term sustainability.

- Impact assessments have not been conducted for bottom fisheries in the Atlantic and Indian Oceans and the assessments in other regions are partial, inconclusive, or both.
- Some high seas areas have been closed to bottom fishing but many areas where VMEs are likely to occur remain open with few or no constraints.
- Move-on rules are often the only conservation regulation in place to protect VMEs in existing fishing areas but are of limited value given the high threshold levels established as triggers.
- The identification of VMEs in most areas has been limited to coral and sponge species.
- There has been a general reluctance to close areas where most bottom fishing currently takes place, or has taken place in recent years. Most high seas bottom fisheries cannot be considered sustainable and the catch of many deep-sea species on the high seas is essentially unregulated.

The exception to the above is the management of the bottom fisheries in the Southern Ocean. CCAMLR has come closest to fully implementing the provisions of the UNGA resolutions, with a prohibition on bottom trawl fishing and requiring all contracting parties to submit impact assessments as a condition for authorization to fish. Moreover, the CCAMLR Scientific Committee has identified VME related species and species groups for management purposes beyond corals and sponges and the move-on rule adopted by CCAMLR has resulted in area closures to protect VMEs.

The UN General Assembly (UNGA) must continue to act

- The failure of deep-sea fishing nations to effectively implement the UNGA resolutions risks undermining the authority and efficacy of UNGA as the pre-eminent body with oversight and responsibility for the conservation and protection of the biodiversity of the global oceans commons.
- Unless or until the resolutions have been fully and effectively implemented, fishing must be prohibited, and the UNGA must make this clear to high seas bottom fishing nations.

DETAIL

Impact assessments

Paragraph 119(a) of resolution 64/72 calls on States to “ensure that vessels do not engage in bottom fishing until such [impact] assessments have been carried out”. Impact assessments have not been conducted by States for any of the high seas bottom fisheries in the Atlantic or Indian Oceans. For the bottom fisheries in the Northwest Pacific, impact assessments consistent with the UN FAO Guidelines have been carried out but they have been inclusive in many respects as to whether significant adverse impacts on VMEs would or would not likely occur. In the South Pacific, New Zealand has submitted detailed information on its high seas bottom fisheries but has not conducted a compliant impact assessment. Rather, New Zealand has recognized that VMEs are likely to occur on seamounts throughout its high seas fisheries footprint but has agreed to a compromise with the fishing industry whereby approximately 60% of the footprint remains open bottom fishing.

In the CCAMLR area, the impact assessments vary considerably in detail and quality but, for the most part, the States concerned assert that although the impacts on VMEs from bottom longline fishing is not known, there is little risk of significant adverse impacts because the extent of the fishery in relation to the size of the CCAMLR convention area is small and that longline gear is much less destructive than bottom trawl gear.

One of the reasons often cited for failure to conduct impact assessments is that it is too expensive to do so, in particular in relation to subparagraphs ii & iii of paragraph 47 of the FAO Guidelines which call for collecting “baseline information on the ecosystems, habitats and communities in the fishing area, against which future changes are to be compared” and the “identification, description and mapping of VMEs known or likely to occur in the fishing area”. Where impact assessments have not been conducted, the continued authorization of bottom fishing on the high seas allows companies within the jurisdiction of the flag State, and the flag State itself (e.g. through tax revenues), to profit from bottom fisheries on the high seas without assuming the cost of proper management.

Some have interpreted paragraph 48 of FAO Guidelines as meaning that no impact assessments are required or necessary in historically trawled areas (e.g. NEAFC). Paragraph 48 only refers to the risk assessments in part vi of the paragraph 47 criteria for impact assessments and not the overall requirement to conduct an impact assessment.

More generally, the argument that existing or historically fished areas do not need to be subject to impact assessments (and regulations to protect VMEs) is often based on the false assumption that in areas where extensive bottom fishing has occurred in the past, in particular bottom trawl fishing, any VMEs that may have existed in such areas have already been destroyed. There is ample scientific information indicating that while in some areas where VMEs occur and bottom trawling has occurred, the VMEs have been effectively obliterated by intensive trawling (e.g. the coral cover on several seamounts off Tasmania in Australia), in many areas substantial portions of the VMEs reefs still remain intact.

Identify VMEs and close areas where VMEs are known or likely to occur unless management measures are in place to prevent significant adverse impacts

Several countries have conducted benthic surveys in areas where bottom fishing occurs to determine whether VMEs exist in the areas. Gathering detailed baseline information on the known and likely locations of VMEs is a critical component of conducting an impact assessment. However, biogeographic information and predictive modeling for at least some types of corals, though widely available,¹ has been used only sparingly, if at all, by many RFMOs in considering area closures. Most of the effort to date to identify VMEs has focused on species of corals and sponges. Many more species are likely to fit the VME criteria in the FAO Guidelines (paragraph 42); much more work needs to be done in this regard.

The only proven method of preventing significant impacts on VMEs to date is to entirely close areas to bottom fishing. In areas where bottom fishing is permitted, it is difficult to “manage the fisheries to prevent significant adverse impacts” because of a lack of baseline information on the presence of VMEs and the difficulty, if not impossibility, of determining the extent of an impact on a VME or VMEs based on the presence of VME indicator species in the fishing gear.

In some high seas regions, substantial areas have been closed to bottom fishing. However, protecting only some areas where VMEs are known or likely to occur while permitting continued bottom fishing in other areas where VMEs are likely to occur with no meaningful measures in place to protect VMEs, from bottom trawling in particular, does not fulfill the conditions of the UNGA resolutions, does not satisfy the concerns of the scientific and international community, and is not consistent with international law.

VME encounter and move-on provisions

States and RFMOs continue to manage bottom fisheries in the high seas in areas where fishing is permitted primarily with a VME encounter and move-on rule as a substitute for, as opposed to a complement to, impact assessments and mitigation measures based on the impact assessments. The VME encounter and move-on regulations adopted by RFMOs to date are generally regarded as being of limited, if any, conservation value in regards to mobile fishing gear – i.e. bottom trawling. The VME encounter provisions may be effective in the CCAMLR area as the bottom fishing is primarily conducted with fixed longline gear. Thus the location of the ‘encounter’ with a VME can be determined with a reasonable degree of accuracy and further damage can be avoided through closing or restricting fishing in the area.

In the case of bottom trawl gear, especially in fisheries where the gear is towed for several kilometers or more, it is difficult to determine where the encounter occurred, and thus where the VME is located, much less the size of the VME and the extent of the damage to the VME, based on the quantity of VME indicator species in the fishing gear. While the threshold levels established by New Zealand are much stricter than those adopted by NAFO, NEAFC and SEAFO, no areas of the high seas have been closed as a result of the move-on rule outside of the CCAMLR area as far as the DSCC is aware. Regardless of the threshold levels, at best a move-on rule can only prevent further damage after damage to VMEs has already occurred.

With the possible exception of CCAMLR, no RFMO or flag State has applied the encounter provisions and move-on rule consistent with resolution 64/72, paragraph 119(c). This paragraph recognizes that a prior impact assessment, including detailed information on the types, characteristics and locations of VMEs known or likely to occur in an area, is a prerequisite to both protecting VMEs as well as determining what type of encounter regulations would be most effective in preventing significant adverse impacts in areas that remain open to bottom fishing.

¹ GOBI; Davies & Guinotte, Clark et al.

Sustainability of deep-sea fish stocks and bycatch species

Most high seas bottom fisheries target low productivity species (e.g. orange roughy, grenadiers, deep-sea sharks) highly vulnerable to overexploitation and depletion. There are exceptions, such as the bottom fisheries for Argentine hake and squid in the Southwest Atlantic. In addition, a large number of species have been recorded in the bycatch of many high seas bottom fisheries, in particular bottom trawl fisheries, the majority of which are likely to be low productivity species. The status of target species and bycatch species in deep-sea fisheries on the high seas is largely either unknown or, where information is available, considered overexploited or depleted. Regulations are in place in some fisheries in some areas (CCAMLR, NAFO, NEAFC, SEAFO) to manage the target catch and at least some species of commercial value taken as bycatch in high seas bottom fisheries. However, the catch of many target species is unmanaged and the impact on few, if any, of the bycatch species of non-commercial value is subject to controls or management measures. Most fisheries impacting deep-sea stocks or species on the high seas cannot be considered sustainable. It is not likely that the situation will significantly improve anytime in the near future. This is one of the most significant failures in the implementation of the resolutions.

Impact of bottom trawling vs other gears

Numerous reports and studies over the past several years continue to point to bottom trawling in the deep-sea as a fishing practice of particular concern.² Benn et al estimate that the cumulative area of deep seabed (>200 metres depth) impacted by bottom trawling on the Hatton and Rockall Banks was between – a figure that was one to two orders of magnitude above the physical impact on the deep seabed of all other activities combined in the whole of the Northeast Atlantic. The area of seabed physically impacted by high seas bottom trawling is likely to be an order or two of magnitude higher than the impact of high seas bottom longlining and other bottom gears. A rough estimate of the cumulative area of seabed impacted per year over the past decade by high seas bottom trawling is some 50,000 - 300,000 km² per year; by comparison, the cumulative impact on the seabed of bottom longlining may be a few thousand km² or less per year.

Delineating the bottom fishing footprint

Many of the RFMOs and RFMO negotiating processes have agreed to establish “footprints” of high seas bottom fishing areas designed to differentiate between ‘historically’ fished areas and new, or previously unfished, areas. Generally the footprint has been defined on the basis of areas fished in the 5-20 years prior to 2007. However, the footprints are often crudely defined or delineated and are not based on precise set by set or tow by tow information. Most of the footprints are likely to include areas or VMEs not previously impacted by fishing or only lightly impacted by fishing.

Establishing a fisheries footprint has not meant that fisheries are confined to the footprint – the so-called freeze the footprint approach, with the exception of the South Pacific, although this freeze technically expired in 2010. The delineation of the footprint has generally resulted in the application of different management measures within and outside of the footprint. Within the footprint, the measures are for the most part less stringent than the measures articulated in the UNGA resolutions. This has been done primarily as a concession to the fishing industry (e.g. exemptions from a requirement to conduct impact assessments).

RFMO performance

The reasons for the shortcomings in the implementation of the resolution by a number of RFMOs and RFMO negotiating processes vary from region to region but are not always clear. For example, the

² (Hogg et al, 2010; Roberts et al, 2009; Benn et al. 2010)

reasons for the failure of the Contracting Parties of a number of RFMOs to conduct prior impact assessments RFMO may be due either to the failure by member States to conduct the assessments or to a refusal by member States to agree to measures requiring the assessments. Decisions regarding the adoption of management measures for the fishery for orange roughy by NEAFC in the Northeast Atlantic is an example where the record of the decision-making process of the RFMO, as reflected in the Annual Reports of NEAFC, indicates that the problem can be traced to a single Contracting Party's interest in continuing to maintain a targeted fishery for this species. This is in spite of scientific advice to the contrary and the opposition of a majority, though not all, of the other Contracting Parties. On the other hand, the process that led to the decision by NEAFC and NAFO to exempt existing fisheries (except under certain conditions) from a requirement to conduct impact assessments is not clear from the record of the Annual Meetings.

CBD

Finally, it is worth noting that this issue has also been raised at meetings of the Conferences of Parties to the Convention on Biological Diversity over the past seven years. In 2010, CBD COP-10 adopted Decision X/29 which, in paragraph 54, reinforces the importance of the implementation of the resolutions through calling on Parties to the CBD to take the following action:

54. Encourages Parties and other Governments to fully and effectively implement paragraphs 113 through 130 of the United Nations General Assembly resolution 64/72 on responsible fisheries in the marine ecosystem, addressing the impacts of bottom fishing on vulnerable marine ecosystems and the long-term sustainability of deep-sea fish stocks, in areas beyond national jurisdiction, in particular paragraphs 119 and 120 of the resolution, calling on States and/or regional fisheries management organizations (RFMOs), consistent with the Food and Agriculture Organization of the United Nations International Guidelines for the Management of Deep-Sea Fisheries in the High Seas and consistent with the precautionary approach, to conduct impact assessments, conduct further marine scientific research and use the best scientific and technical information available to identify areas where vulnerable marine ecosystems are known or likely to occur; either adopt conservation and management measures to prevent significant adverse impacts on such ecosystems or close such areas to fishing, and adopt measures to ensure the long-term sustainability of deep-sea fish stocks (both target- and non-target stocks), and not to authorize bottom-fishing activities until such measures have been adopted and implemented;

BACKGROUND

The DSCC is a coalition of over 70 organizations worldwide promoting fisheries conservation and the protection of biodiversity on the high seas.

Since the adoption of UNGA resolution 59/24 in 2004, member organizations and advisors to the DSCC have been involved in a variety of regional and national efforts to implement the provisions of the UNGA resolutions related to the management of high seas bottom fisheries to VMEs and ensure the long-term sustainability of deep-sea fish stocks and species.

Over the past several years, DSCC representatives have participated in meetings of NEAFC, CCAMLR, the North Pacific RFMO negotiations and the South Pacific RFMO negotiations, as well as consultative and legislative processes in a number of countries designed to implement regional agreements and the UNGA resolutions at the national level.

DSCC representatives also participated in the development of the FAO International Guidelines for the Management of Deep-Sea Fisheries in the High Seas, negotiated under the auspices of the UN Food and

Agriculture Organization (FAO) in 2008 and the workshop to review the implementation of the Guidelines co-sponsored by the UN FAO and Republic of Korea in Busan, Korea in May 2010.

Top ten high seas bottom fishing nations: Impact Assessments

In addition to reviewing the regional implementation of the UNGA resolutions, all three resolutions place the emphasis on flag States to take action, both individually and through regional fisheries management organizations, to protect VMEs and sustainably manage the impact of fishing on deep-sea fish stocks.

According to the UN FAO Worldwide Review of Bottom Fisheries in the High Seas, 10 States flagged for approximately 80% of the high seas bottom fishing fleet in 2006. Of the estimated 285 vessels engaged in bottom fishing that year, 228 vessels were flagged to Spain, the Republic of Korea, New Zealand, the Russian Federation, Australia, Japan, France, Portugal, Belize, and Estonia.³ Most of these countries authorize vessels to bottom fish in two or more high seas regions.

One measure of the performance of flag States in the implementation of the UNGA resolutions is the extent to which the top ten countries in 2006 have conducted impact assessments. The following tables contain information on the above.

Country	Has submitted impact assessment to relevant RFMO/A	Has not submitted impact assessment to relevant RFMO/A
Spain	Southern Ocean, South Pacific	Northeast Atlantic, Northwest Atlantic, Southeast Atlantic, Southwest Atlantic
Republic of Korea	North Pacific, Southern Ocean	Southeast Atlantic, Southwest Atlantic
New Zealand	Southern Ocean, South Pacific	
Russian Federation	North Pacific	Northeast Atlantic, Northwest Atlantic
Australia		South Pacific, Indian Ocean
Japan	North Pacific, Southern Ocean	Northwest Atlantic, Southeast Atlantic

³ Bensch, A., Gianni M., Greboval D., Sanders J.S., Hjort A. World Wide Review of Bottom Fisheries in the High Seas. Food and Agriculture Organization of the United Nations. Rome, 2009. Note that the numbers of vessels per country currently bottom fishing on the high seas may be different than in 2006 and thus their ranking may have changed since the publication of the FAO report; however, updated information is not currently available for all countries.

France		Northeast Atlantic
Portugal		Northwest Atlantic
Belize		??
Estonia		Northwest Atlantic

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