

THE UN FISH STOCKS AGREEMENT AND HIGH SEAS BOTTOM TRAWLING

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The UN Fish Stocks Agreement (FSA) contains a number of important provisions requiring States Parties to take precautionary and ecosystem-based action individually and collectively to prevent overfishing and address the impact of fishing on the marine environment, including on the high seas. These provisions build on the requirements in UNCLOS to protect and preserve the marine environment, including rare or fragile ecosystems (Arts. 192, 194.5); to conserve the living resources of the high seas (Art. 117); to cooperate with other states to achieve these ends (Arts. 63, 64 and 118); and take into account the interdependency of target stocks with associated or dependent species that may be affected by fishing (Arts. 61 and 119).

This paper briefly assesses progress toward meeting the conservation mandates in the FSA with respect to controlling destructive fishing and protecting deep ocean habitats beyond areas of national jurisdiction,¹ and recommends actions to protect such vulnerable habitats.

The FSA requires States Parties to, *inter alia*: adopt conservation and management measures to ensure long term sustainability of target stocks (Art. 5(a)); assess the impacts of fishing on both fisheries and associated species (Arts. 5(d) and (6(d))); minimize impacts on associated species (Art. 5(f)); protect biodiversity in the marine environment (Art. 5(g)), and apply the precautionary approach (Arts. 5(c), 6 and Annex II). For new or exploratory fisheries, states are required to adopt precautionary conservation measures, including catch and effort limits, until there are sufficient data to assess the impact of the fisheries on the long-term sustainability of the stocks (Art. 6(6)).

Regrettably, effective measures to implement these requirements to protect deep-sea fisheries and habitats from the destructive effects of high seas bottom trawling remain few and far between:

- The Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR) has made the most progress, adopting and implementing detailed provisions governing new and exploratory fisheries, prohibiting the use of bottom trawls in the mackerel icefish fishery around South Georgia, and rejecting a permit for exploratory bottom trawling sought by the UK.²
- The North East Atlantic Fisheries Commission (NEAFC) temporarily prohibited bottom trawling on a number of seamounts, but failed to protect equally important habitats on the Hatton Bank and elsewhere. ICES has called for a complete overhaul of deep-sea fisheries management in the Northeast Atlantic as most deep sea species currently fished are well below safe biological levels, and in many cases are severely depleted.³
- The General Fisheries Commission for the Mediterranean (GFCM) prohibited bottom trawling at depths below 1000m, and three vulnerable marine areas located at shallower depths. However, many highly diverse coral habitats have yet to receive similar protection.
- The Northwest Atlantic Fisheries Organization (NAFO) has not adopted any concrete habitat protection measures.
- The South East Atlantic Fishery Organization (SEAFO) has not yet established any measures to prohibit bottom trawl fishing on vulnerable marine ecosystems.

¹ The organization of work for the FSA review conference (A/Conf.210/210/2006/4) requests delegations to focus their interventions in part on implementation successes and failures. This approach, by focusing principally on *implementation* of the agreement, does not permit a full assessment of the effectiveness of the agreement as required by Article 36 of the FSA. This paper therefore evaluates what has and has not worked with respect to *both* the substance of and implementation of the provisions of the Agreement that relate to high seas bottom trawling.

² See ASOC report of CCCAMLR XXIII (2004) at <http://www.asoc.org/pdfs/ASOC%20REPORT%20CCAMLRXXVIII.pdf>

³ <http://www.ices.dk/advice/icesadvice.asp>

Taken together, Regional Fisheries Management Organisations (RFMOs) with the competence to manage deep-sea bottom trawl fisheries have protected only a tiny fraction of the high seas covered by such RFMOs.

In those areas where new RFMOs are being established, there has been little or no progress toward adoption of effective interim protection measures consistent with either the conservation provisions of the FSA or more recent UNGA resolutions. For example, the 2005 UNGA Fisheries Resolution called on states to “urgently accelerate their cooperation in establishing interim targeted protection mechanisms for vulnerable marine ecosystems” (para. 72). To date there has been no agreement to take any such measures in the South West Pacific, where very high levels of endemism and extraordinary biodiversity have been documented on the ocean floor, or in the South Indian Ocean. Vulnerable habitats in both regions remain unassessed and unprotected.

The same is true for those areas of the high seas where no RFMO exists or is contemplated.

The lack of meaningful international control over bottom trawl fisheries in most areas of the high seas, the fact that most of these fisheries are being conducted on an unsustainable basis and are causing long-term and possibly irreversible damage to marine biodiversity, and the poor record of performance of most existing RFMOs to prevent such damage, means that for the large majority of high seas areas, deep-sea bottom fisheries are not conducted in a manner consistent with the requirements of the FSA. The extremely fragile nature of most deep-sea species and ecosystems, along with trends indicating growing interest in deep-sea bottom fisheries, make this problem extremely urgent.

The failure of States Parties to the FSA to address the destructive effects of high seas bottom trawling contrasts with actions taken by a number of countries within areas under their jurisdiction. For example, the EU has closed most of the EEZs surrounding the Azores, Madeira and Canary Islands, along with the Darwin Mounds off the coast of Scotland, to bottom trawling to protect cold-water corals and seamounts; the US has put hundreds of thousands of square miles of its EEZ off limits to bottom trawling to protect corals and other sensitive habitats from bottom trawling; Palau has banned bottom trawling altogether in its own waters and by its nationals anywhere in the world; Kiribati has announced the creation of the first marine park with deep-sea habitat, including seamounts; New Zealand has closed 19 seamounts within its EEZ to bottom trawling, and is considering closing 1/3 of its EEZ to bottom trawling; Brazil is in the process of banning bottom trawling within its waters below 1000 meters; Norway has in place a process to map cold-water coral reefs and ban bottom trawling on these reefs as they are discovered – current bans cover over 2000 sq. kilometers; and Australia banned bottom trawling from a network of 15 seamounts, covering 370 km².

In conclusion, high seas bottom trawling takes place in international waters where States have committed themselves under UNCLOS and the FSA to protect rare or fragile ecosystems, conserve the living resources of the high seas, prevent overfishing, minimize the impact of fishing on associated and dependent species, protect habitats of special concern, protect biodiversity in the marine environment, apply the precautionary approach widely, cooperate with other states to achieve these ends, and not use the absence of adequate scientific information as an excuse for postponing or failing to establish conservation measures. To achieve these ends, we recommend that the FSA Review Conference:

- 1) Commit to the application of Articles 5 & 6 of the Agreement to the management of all high seas fisheries, including “discrete” and similar high seas fish stocks;
- 2) Establish terms of reference and a timeline for a systematic, regular, transparent, and independent assessment of RFMO actions and their effectiveness in implementing the conservation provisions of the Agreement, specifically Articles 5 and 6, along with specific recommendations for improvement; and
- 3) Recommend the immediate suspension of destructive practices, such as bottom trawl fishing in areas beyond national jurisdiction, until adequate measures for conserving and sustainably managing fisheries and marine biodiversity beyond national jurisdiction are adopted and implemented.
