



A net with holes: the regional fisheries management system

The UN General Assembly (UN GA) is discussing proposals to provide urgent protection for the biodiversity of the deep seas from destructive activities, most specifically from bottom trawl fishing. The UN GA is also discussing parallel proposals to improve management of fisheries on the high seas and to improve governance of the world's oceans. In this context, the Deep Sea Conservation Coalition is calling on the UN GA to agree to declare a moratorium (interim prohibition) on bottom trawl fishing on the high seas while such improvements are made.

Some countries have suggested that action by regional fisheries management organizations (RFMOs) would be sufficient to solve the problem. However, the management of fisheries on the high seas by RFMOs is highly fragmented and inconsistent. Most high seas areas, including all of the Pacific Ocean, the Indian Ocean, and the majority of the Atlantic Ocean, are not covered by RFMOs with the authority to manage deep sea bottom fisheries. Bottom trawl fishing in these regions is, by definition, unregulated high seas fishing.

The vast majority of RFMOs lack the legal competence to impose restrictions on high seas bottom trawl fishing, let alone to protect the ecosystem as a whole within their areas of jurisdiction. And even those RFMOs that do have the necessary authority can only control the practices of vessels flagged by member states. As a result, most RFMOs are wholly unprepared to protect high seas biodiversity from the destructive powers of bottom trawl fishing, especially where IUU fishing is used specifically to escape such limited flag state controls.

What is needed is a commitment to negotiate far more comprehensive oceans governance reform, within the framework of UNCLOS, where the full range of issues related to deep sea biodiversity protection, conservation and sustainable use can be addressed (including ecosystem based management of marine resources). Improving the competency, capacity and coverage of RFMOs is an important part of this broader reform process – but it is only one element of the process.

In the meantime, urgent UN General Assembly action is required to protect deep sea species and ecosystems and the interests of the international community as a whole on the world's global commons from the most immediate threat to deep sea biodiversity at hand – bottom trawl fishing on the high seas.

Background

The UN Convention on the Law of the Sea (UNCLOS) calls on states to engage in global, regional and sub-regional cooperation in the management and conservation of fisheries on the high seas. The 1995 UN Agreement on Management of Straddling and Highly Migratory Fish Stocks (FSA) strengthened this mandate by providing that fisheries for straddling and highly migratory fish stocks should be managed through

regional and sub-regional organizations. RFMOs are, in fact, central to implementation of the FSA, which establishes them as the primary mechanism through which states should cooperate and proactively manage and conserve straddling and highly migratory fish stocks.

There are currently some 30 regional fisheries bodies worldwide.¹ Most of these bodies have extremely limited authority and, in essence, can only provide advice to member states. Some – known as Regional Fisheries Management Organizations (RFMOs) – do have the authority and the technical capacity to assess the status of fish stocks of commercial value within their area of jurisdiction; set limits on catch quantities and the number of vessels allowed to fish; conduct inspections and/or regulate the types of gear that can be used. However, most RFMOs only regulate the fishing of particular species, such as tunas, salmon and halibut. Only five RFMOs² have the legal competence to regulate bottom trawl fishing and of these, only one, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), has taken steps to protect the marine biodiversity of the seabed from the impact of fishing.

Shortcomings of the current RFMO system

Gaps in coverage: By far and away the most serious shortcoming of the RFMO system is the fact that most high seas areas of the world's oceans are not covered by RFMOs with the legal competence to regulate bottom fisheries. Any bottom trawl fishing on the high seas in the Indian Ocean, the Pacific Ocean, the Central Atlantic and Southwest Atlantic Ocean is not covered by a regional management organization and, as such, constitutes unregulated high seas fishing. Establishing RFMOs that could regulate bottom fisheries in these areas, then ensuring that all countries involved in deep-water fishing abide by the RFMO's regulations, is a long-term process.

In the meantime, the UN General Assembly and other bodies have endorsed the 2001 UN FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. The Plan of Action defines IUU fishing as, amongst other things, in Article 3.3.2 as "Fishing in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law."

High seas bottom trawling and its impact on vulnerable benthic biodiversity and deep sea fish stocks is inconsistent with international law as reflected in UNCLOS, CBD and the FSA. Unregulated high seas bottom trawl fishing will either continue in, or expand into, many of these areas unless the UN General Assembly and other relevant bodies take action to prevent it from doing so.

Furthermore, in those few high seas areas where such RFMOs exist – the northern North Atlantic Ocean, the Southeast Atlantic Ocean, the Southern Ocean and the Mediterranean Sea, only the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) has taken steps to regulate bottom trawl fisheries for the impacts

¹ See, for example, the list of international fisheries bodies by region on the UN FAO's website at <http://www.fao.org/fi/body/figiscom/index.htm>

² The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the North Atlantic Fisheries Organization (NAFO), the Northeast Atlantic Fisheries Commission (NEAFC), the Southeast Atlantic Fisheries Organization (SEAFO) and the General Fisheries Commission of the Mediterranean (GFCM).

on deep-sea species on the high seas. Indeed, in the North Atlantic, the failure of the Northwest Atlantic Fisheries Organization (NAFO) and the North-East Atlantic Fisheries Commission (NEAFC) to regulate the impact of bottom trawl fishing on deep-sea ecosystems is a long-standing failure of the past four decades or more. The General Fisheries Council of the Mediterranean and the Southeast Atlantic Fisheries Organization have yet to regulate any deep-sea bottom trawl fisheries – the latter has only recently entered into force and its Commission and related infrastructure have yet to be fully established.

In addition to the fact that there are few RFMOs with the authority to regulate high seas bottom trawling, RFMOs share a number of other significant shortcomings.

Member coverage: While fishing fleets from states that are members of an RFMO are generally bound by the rules adopted by the RFMO, member countries may elect unilaterally not to be bound by particular RFMO rules. Furthermore, enforcement of the rules adopted by RFMOs is almost entirely left to each individual member country. As a result, RFMOs are entirely dependent on the good faith efforts of their member states. Even where RFMO member countries do enforce the rules, ship owners are free to transfer their vessels to flags of convenience in order to circumvent restrictions.

Non-member coverage: Under international law, a country is not bound by the decisions of an RFMO to which it does not belong. RFMO rules, therefore, apply only to states that are RFMO members³. Vessels flagged to states that are not members, including vessels flying flags of convenience, are unregulated in RFMO waters. Although RFMO member countries can apply some sanctions on uncooperative non-member countries, for example trade restrictions and import bans of certain types of fish products, the lack of control over non-member state fleets is an enormous loophole in the regional fisheries management scheme.

Decision making: Most RFMOs require a consensus in order to adopt regulations. As a result, decision-making is slow, and decisions are often diluted to satisfy the lowest common denominator. In addition, RFMO member states tend to be principally concerned with fishing issues such as catch allocation and vessel quotas. To worsen matters, the internal decision-making of most RFMOs tends not to be transparent to the public. Not surprisingly, reforms such as imposing controls on bottom trawling (and a number of other important measures consistent with the FSA's emphasis on the application of the precautionary approach and ecosystem-based management) are addressed very slowly, if at all.

Ineffective quotas: RFMOs often set catch limits or quotas well in excess of the advice from scientists and, in some cases, based on the highest historical effort. As the fish stocks subject to the quotas have declined or become depleted the limits are often entirely obsolete and ineffective.

³ The FSA seeks to bind parties who wish to fish in a particular area to either join the relevant RFMO or to abide by its conservation and management provisions. There are only 52 parties to the FSA as of October 2004.

Review of key RFMOs⁴

The following section briefly reviews several the key RFMOs with competence to regulate bottom trawl fisheries and their effectiveness in conserving fish populations and protecting deep-sea corals and other deep-sea species and ecosystems within their jurisdiction.

Northeast Atlantic Ocean: The Northeast Atlantic Fisheries Commission (NEAFC) has competence to regulate bottom fisheries on the high seas. For the first time, in 2002, NEAFC set a cap – a limit - on the international catch of many, though not all, deep-water species taken in bottom trawl fisheries on the high seas of the NEAFC area. The cap, however, specified that the fishing effort was not to exceed the “highest level put into deep-sea fishing in previous years” for these species, in spite of the fact that the International Council for the Exploration of the Seas has declared most deep-water fish species to be exploited well beyond safe biological limits in the region. The result is that the ‘cap’ establishes a limit far higher than the catch levels in recent years. The deep sea bottom trawl fisheries on the high seas of the Northeast Atlantic could expand up to sevenfold and still be within the limit set by NEAFC. Nor has NEAFC imposed any restrictions on the impact of deep-water trawling in the Northeast Atlantic on seamounts, coldwater corals and sensitive bottom ecosystems in the region. With such ineffectual regulation in place, destructive deep-sea bottom trawl fisheries could continue to expand in the Northeast Atlantic.

Northwest Atlantic Ocean: Most deep-water species caught on the high seas of the Northwest Atlantic are taken using bottom trawl gear. The Northwest Atlantic Fisheries Organization (NAFO), has perhaps the best-regulated deep-water trawl fisheries on the high seas. Still, NAFO has no regulations protecting corals or other deep-sea habitat from bottom trawling, and the region’s fisheries have significant problems. In 2002, for example, Estonia and Denmark/Faroe Islands chose not to accept NAFO’s catch and effort limit on northern prawn, a fishery from which they had taken 40% of the catch during the previous year. In addition, Greenland halibut populations are at historic lows, and fisheries for a number of other target species (e.g. redfish and skate) are unregulated altogether.

Southern Ocean: There is very little bottom trawling in the Southern Ocean in the area covered by the Commission for Conservation of the Antarctic Marine Living Resources (CCAMLR). There is, however, considerable interest in exploratory fishing in the region, primarily bottom longline fishing. However, two vessels have been granted permits to conduct exploratory fishing using bottom trawl in 2003 and 2004. In at least one of these cases, CCAMLR has taken impressive steps to limit the catch, the areas that can be fished, and to impose detailed scientific and reporting requirements, including requiring at least one independent scientific observer onboard the vessel. Although CCAMLR has not succeeded in halting IUU fishing in the region, its management measures provide an important model for future efforts to regulate bottom fisheries on the high seas.

South East Atlantic Ocean: The Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean (SEAFO), which entered into force in 2003, covers a large portion of the high seas of the Southeast Atlantic. SEAFO has the competence to regulate bottom fisheries on high seas within the Convention’s

⁴ M. Gianni, *High Seas Bottom Fisheries and their Impact on the Biodiversity of Vulnerable Deep-Sea Ecosystems*, (IUCN/NRDC/CI/WWF 2004), www.iucn.org/themes/marine/pubs/pubs/htm

jurisdiction but is not yet fully operational nor has it been ratified by more than a handful of countries to date.

Mediterranean Sea: The recently amended convention establishing the General Fisheries Commission of the Mediterranean gives the Commission competence to regulate bottom fisheries on the high seas. The Commission will likely be considering proposals to this end in late 2004.

High seas areas where no RFMO coverage exists for bottom trawl fisheries

Southwest Indian Ocean: The deep-sea fisheries on the high seas of the Southwest Indian Ocean have been unregulated. Several countries, such as Australia, New Zealand and South Africa, have put in place some unilateral measures for their fleets operating in the region. However, there have been no catch restrictions, and there is no regional management agreement and structure in place to manage the fisheries or safeguard the unique benthic biodiversity of the region. In the meantime, however, the bottom trawl fisheries of the Southwest Indian Ocean, which began in earnest in 1999, peaked in 2000, and most of the stocks of targeted fish seem to have been depleted or collapsed by 2002. Negotiations are ongoing to develop an RFMO for the deep-water fisheries on the high seas but it will likely take at least another several years before an RFMO is agreed and in force.

Southwest Pacific Ocean: There are no management measures or catch restrictions being applied to orange roughy fisheries on the high seas adjacent to the New Zealand EEZ in the Tasman Sea or the Southwest Pacific Ocean. The only high seas bottom fishery in the region that is regulated is the South Tasman Rise fishery for orange roughy - jointly managed by Australia and New Zealand through a Memorandum of Understanding between the two countries. However, the regulation of this fishery has failed to prevent serious overfishing. The quota for the 2000-2001 fishing season was 2400 mt of orange roughy. The actual catch in 2000-2001 was 830 mt, and in 2001-2002, the most recent fishing season for which data was available, it was 190 mt. These data strongly suggest that the orange roughy population on the South Tasman Rise has been depleted. Furthermore, massive bycatch of deep-water corals was recorded by observers in the first year of the fishery, with the total take believed to be over 10,000 tons. None of these fisheries were regulated to prevent damage to coral or other habitat associated with seamounts. Limited investigations to date have provided photographic and video evidence that bottom trawling has destroyed coral ecosystems associated with the region's seamounts.

Southeast Pacific: The Framework Agreement for the Conservation of Living Marine Resources on the High Seas of the South Pacific – the “Galapagos” Agreement – covering the fisheries of the Southeast Pacific Ocean, would also have the competence to regulate bottom fisheries in international waters, should the Agreement be ratified and enter into force. However, the Galapagos Agreement does not incorporate most of the conservation and ecosystem provisions of the UN Fish Stocks Agreement, nor those of the UN FAO Code of Conduct for Responsible Fisheries. As such, its effectiveness in protecting deep-water ecosystems may be limited.

North and Central Pacific, Central Atlantic, Southwest Atlantic Oceans: There are no RFMOs in place in these ocean regions with the legal competence to regulate deep-water fisheries. However, the Central East Atlantic Fisheries Commission, an advisory organization to governments in the region, has expressed concern over the recent and

unregulated development of deep-water fisheries around seamounts on the high seas of the region.

To protect deep-sea biodiversity on the high seas from continued indiscriminate destruction, and because of the failings of the RFMO system outlined above, the Deep Sea Conservation Coalition is calling on the United Nations General Assembly to adopt an immediate moratorium on deep-sea bottom trawl fishing on the high seas until legally binding regimes for the effective conservation and management of fisheries and the protection of biodiversity on the high seas can be developed, implemented and enforced by the global community.

For further information about the Deep Sea Conservation Coalition please visit www.savethehighseas.org