

DSCC Analysis of States' Submissions to DOALOS Review

Paragraphs 66 to 69¹ of UN General Assembly Resolution 59/25 on Sustainable Fisheries called on States to take urgent action to protect vulnerable marine ecosystems in areas beyond national jurisdiction from destructive practices, including bottom trawl fishing that has an adverse impact on vulnerable marine ecosystems in areas beyond national jurisdiction. The threat to cold water corals, seamounts and hydrothermal vents from bottom trawling was specifically highlighted in the resolution.

Effective conservation and management of deep ocean fish, their habitats and biodiversity beyond the zones of national jurisdiction will require fundamental changes in international oceans governance. Such changes could take many years to negotiate. In the meantime, fragile deep-sea ecosystems and fish populations are being damaged or destroyed on a daily basis by the high seas bottom trawling fleet. The Deep Sea Conservation Coalition (DSCC) is calling for a moratorium on high seas bottom trawling as an interim measure while States address gaps in the high seas legal regime.

DOALOS has been tasked with reviewing measures taken to implement paragraphs 66 to 69 of the 2004 Fisheries Resolution (A/59/25) “in order to facilitate the review referred to in paragraph 71 of resolution 59/25 of progress on action taken with a view to further recommendations, where necessary, in areas where arrangements are inadequate.”² The essential question here is not whether progress is being made towards developing and implementing long-term reforms – by the very nature of the process, progress after two years can be expected to be minimal. Rather, **the point of the exercise is to determine whether States have taken sufficient action to protect these areas in the short-term – the ‘urgent’ action called for in paragraph 66, and the intent of the moratorium called for by the DSCC.**

The DSCC has reviewed several of the most relevant DOALOS submissions to DOALOS, including the EU, Canada, New Zealand, Australia and the US which were made publicly available. According a report by IUCN, approximately 95% of high seas bottom

¹ 66. *Calls upon* States, either by themselves or through regional fisheries management organizations or arrangements, where these are competent to do so, to take action urgently, and consider on a case-by-case basis and on a scientific basis, including the application of the precautionary approach, the interim prohibition of destructive fishing practices, including bottom trawling that has adverse impacts on vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold water corals located beyond national jurisdiction, until such time as appropriate conservation and management measures have been adopted in accordance with international law;

67. *Calls upon* regional fisheries management organizations or arrangements with the competence to regulate bottom fisheries urgently to adopt, in their regulatory areas, appropriate conservation and management measures, in accordance with international law, to address the impact of destructive fishing practices, including bottom trawling that has adverse impacts on vulnerable marine ecosystems, and to ensure compliance with such measures;

68. *Calls upon* members of regional fisheries management organizations or arrangements without the competence to regulate bottom fisheries and the impacts of fishing on vulnerable marine ecosystems to expand the competence, where appropriate, of their organizations or arrangements in this regard;

69. *Calls upon* States urgently to cooperate in the establishment of new regional fisheries management organizations or arrangements, where necessary and appropriate, with the competence to regulate bottom fisheries and the impacts of fishing on vulnerable marine ecosystems in areas where no such relevant organization or arrangement exists;

² 59/25, paragraph 71

trawling was conducted by vessels flagged to just 11 countries in 2001. Six of these are EU States, and are therefore covered by the submission of the European Community (Spain, Estonia, Denmark/the Faroes, Latvia, Lithuania and Portugal).

In reviewing the submissions, **we have looked for concrete measures taken that have materially reduced the threat posed by bottom trawl fishing to vulnerable marine areas beyond national jurisdiction since 2004.** Good intentions, long term plans, or actions taken within EEZs – while of course welcome – do not amount to the implementation of the urgent action called for in 59/25, and have no bearing on the question of whether more comprehensive interim measures, i.e. a moratorium on high seas bottom trawling, are needed.

In the table below, we have endeavoured only to summarise the actions reported by States in their own submissions; it is NOT a comprehensive analysis of what has or has not been done worldwide. Text in italics is directly quoted from the relevant submission. **The most significant finding of our analysis is that there are NO entries in column two: None of the submissions analysed reported specific measures taken individually to halt or reduce the impacts of bottom trawling on vulnerable ecosystems in the high seas. Measures taken as members of RFMOs (column 3) have been scarce. The DSCC concludes that a moratorium on high seas bottom trawling until such time that effective protection measures have been put into place is still essential.**

State	Measures Taken Individually in Areas Beyond National Jurisdiction	Measures Taken as Part of RFMO (Existing or Under Negotiation)	General Comments on the Submission
The European Community		<i>At its 29th Session, held in Rome, Italy, 21-25 February 2005, the General Fisheries Commission of the Mediterranean adopted, on the basis of a proposal tabled by the European Community, Recommendation 2005/1 on the management of certain fisheries exploiting demersal and deepwater species. This Recommendation requires members of the Fisheries Commission to 'prohibit the use of</i>	The EU submission describes a proposal by the European Community to NEAFC to close certain areas on the Hatton and Rockall Banks to bottom trawl fishing in order to protect deep-water corals, based on information provided by ICES. However, they point out that the proposal was not agreed at the meeting of NEAFC in 2005. Some NEAFC parties insisted that NEAFC first agree to the criteria on which to base such closures before actually taking measures. Thus, threatened, vulnerable marine ecosystems continue to be destroyed while NEAFC sorts out its 'criteria' for protecting them.

	<p><i>towed dredges and trawlnets fisheries at depths beyond 1 000 m of depth'. This measure follows the advice of the Scientific Advisory Committee of the GFCM regarding the need to safeguard unmapped sensitive habitats (deep water coral reefs, sea vents, sea mounds, etc.), and take into consideration the fragile nature of deep water fish assemblages as well as the presence of juveniles of different crustaceans species at such depths. This binding Recommendation of GFCM entered into force in September 2005.</i></p> <p><i>At its 30th Session, held 24–27 January 2006, the General Fisheries Commission of the Mediterranean adopted, on the basis of a proposal by the EC, Recommendation GFCM/2006/3 on the establishment of fisheries restrictive areas in order to protect the deep sea sensitive habitats. This recommendation prohibits fishing with towed dredges and bottom trawl nets in three areas of the Mediterranean high seas, namely the “Lophelia reef off Capo Santa Maria di Leuca”, the</i></p>	<p>The DSCC notes as well that the Northeast Atlantic Fisheries Commission (NEAFC) only recently (since 2003) began to regulate bottom fishing for deep-sea species on the high seas despite the fact that bottom trawling for deep-sea species has taken place in the region for several decades and has expanded dramatically over the past 5-10 years.³ Even so, current regulations only call on states to “not exceed 70% of the highest level put into deep-sea fishing in previous years for the relevant species.” In practice, this would allow for significant growth of high seas bottom trawl fisheries over current levels. Yet deep-sea species in the region are already severely overexploited – a recent assessment of the status of deep-water fisheries in the Northeast Atlantic states that most exploited species are totally unregulated and nearly all are being fished “outside safe biological limits.”⁴ In short, the high seas bottom trawl fisheries of the NE Atlantic are effectively unregulated, lacking even the most basic restrictions on catch, although some states have imposed unilateral restrictions on their vessels.</p> <p>In November 2004, based on a proposal by Norway, NEAFC took the first steps to protect vulnerable bottom habitats by temporarily closing 4 seamount areas and a small section of the mid-Atlantic Ridge to all forms of bottom fishing until December 2007. However, despite expert recommendations, two areas known to be at very high risk from bottom trawl fisheries—the Hatton Bank and the Western slopes of the Rockall Bank—were not included in these closures. Additionally, all other seamounts, banks and ridge systems on the high seas of the Northeast Atlantic remain open to bottom trawl fishing (with the exception of an area of the</p>
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³ ICES Advisory Committee on Fisheries Management. 3.13 *Deepwater fisheries resources south of 63°N, Overview* W:\Acfm\Acfm\wg\2003\October\Overviews\O-3-13.Doc; pg 408. International Council for the Exploration of the Sea. 2003. <http://www.ices.dk/committe/acfm/comwork/report/2003/oct/o-3-13.pdf>. Also, Commission Staff Working Paper: Deep-Sea Fisheries. Report of the Subgroup Fishery and the Environment (SGFEN) of the Scientific, Technical and Economic Committee for Fisheries, Commission of the European Communities. Brussels 1.2.2002 SEC (2002) 133.

⁴ [Large, P. A., C. Hammer, O. A. Bergstad, J. D. M. Gordon, and P. Lorance.](#) *Deep-water Fisheries of the Northeast Atlantic: II. Assessment and Management Approaches.* Journal of Northwest Atlantic Fishery Science, Vol 31: 151-163. 2003 <http://www.nafo.ca/publications/Frames/PuFrJour.html>

		<p>“Nile Delta area cold hydrocarbon seeps” and “The Eratosthemes Seamount” south of Cyprus. The Recommendation further requires GFCM members to “call the attention of the appropriate authorities in order to protect these areas from the impact of any other activity jeopardizing the conservation of the features that characterize these particular habitats.”</p>	<p>Rockall Plateau closed to protect haddock stocks). As a result, only a small percentage of the most vulnerable areas have received any protection from bottom trawling. In addition, these fisheries are unregulated with respect to their impacts on deep-water corals and other vulnerable deep-sea ecosystems, except in a small fraction of the area of high seas in the Northeast Atlantic.</p> <p>A second issue is the fate of vulnerable ecosystems which have not yet been identified. As the ICES Working Group on Deepwater Ecology noted in its report of June, 2005, that the report “must be put in context of the paucity of information available on the distribution of seabed habitats in the NEAFC area. Without a concerted effort to map the distribution of seabed habitats, the available information is at best patchy, for instance in the context of collated records of cold-water corals, or virtually non-existent in the case of other significant habitat types, such as sponge fields. The Working Group stress the danger of</p>
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⁵ What is perhaps the most interesting aspect of the EC submission is what it DIDN'T say with regard to the world's number one high seas bottom trawling nation: Spain. In August, 2005, Spain announced that it was the “First Major Fishing Power to Support Regulation on Bottom Trawling.” According to the Statement, “*The General Secretariat for Fisheries has adopted a precautionary position in accordance with which it is established that in those areas in international waters where there are no RFMOs fishing with bottom trawls will be allowed **only if a scientific report determines the absence of a vulnerable ecosystem***” [emphasis added]. The statement also said: “*Where an RFMO exists, Spain will support regulations establishing specific conditions for fishing activities, in particular bottom trawling, to ensure that they that respect marine ecosystems.*” In further communications with the DSCC, the Spanish Director General for Fisheries clarified: “*Bottom trawling on the Patagonian shelf will continue to be permitted according to the more than 20 years existing scientific reports that prove that these fisheries are not carried out on vulnerable ecosystems. **In the event that vulnerable ecosystems had been located in this fishing area, they would now be gone due to past trawling.*** [emphasis added]. With regard to areas where there are Regional Fisheries Agreements (RFMOs), such as NAFO and NEAFC, Spain is undertaking a programme of scientific research to identify vulnerable areas in these regions. The DSCC was pleased with Spain's admission that bottom trawling is inherently destructive to vulnerable seabed ecosystems such as seamounts and deep-sea coral reefs, and that trawling on sensitive ecosystems will most certainly wipe them out. We were also gratified by the Spanish intention to impose a reverse burden of proof: that trawling should not be allowed until it is proven safe – a departure from the European Union's position (subsequently adopted by UNGA) that action should be taken on a case by case basis, interpreted by a number of fishing nations to mean that trawling can proceed until scientists can prove that it is causing damage. Given that the trawlers always beat the scientists in the race to find productive ecosystems, the case by case approach is an inherently bad idea. However, Spain appears to want to restrict the reversal of the burden of proof only to so-called new high seas areas and only where there are no RFMOs. The question of how one would define 'new' areas has been left unanswered. The assumption that there are no vulnerable ecosystems on the Patagonian shelf anywhere would also need to be tested. At the end of the day, the DSCC concluded that the new Spanish position meant very little – if anything - in terms of an actual reduction in damage to vulnerable marine ecosystems on the high seas. It would appear that the European Community agrees, since there was nothing about this in its submission to DOALOS.

			<p>relying on such incomplete datasets since decisions to close areas to bottom trawling may inadvertently divert trawling to similarly sensitive habitats that are currently unmapped. Naturally all responses need to be reviewed in light on new data on the distribution of vulnerable habitats in the NEAFC area.” [Emphasis added.]</p> <p>With regard to NAFO, the EC submission says: <i>The European Community thus considers that NAFO Members, including the Community itself, are effectively responding to the call made by the General Assembly in this paragraph of Resolution 59/25.</i> It makes this argument based on the results of last year’s NAFO meeting.</p> <p>Measures agreed by NAFO in 2005 include the following as described in the press release issued by NAFO: “First steps towards an ecosystem approach: “Scientists were tasked to look into areas of marine biological and ecological significance for NAFO. In addition, NAFO fishing vessels will collect, on a voluntary basis, data on seamounts in the NAFO area. These undersea mountains are viewed as potentially vulnerable ecosystems that might warrant special protection.</p> <p>“Ecosystem studies have long been a part of the work of the Scientific Council. In 2006, NAFO will hold a symposium to advance knowledge of the Northwest Atlantic ecosystems. During the past year NAFO began discussions of applying the ecosystem approach to fisheries management.</p> <p>“An important milestone was made in 2004 when NAFO adopted and began to implement a framework for the Precautionary Approach. Progress continues to be made in the application of the Precautionary Approach to stock assessments.</p> <p>[Emphasis added to words which show that meaningful action which will prevent damage has not been forthcoming.]</p> <p>The EC notes that in NEAFC: <i>a similar process has been</i></p>
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			<p><i>launched, in which the European Community has involved itself in an active way... These reforms were discussed lastly by the Working Group on the future of NEAFC that took place in London on 7-9 February 2006. There appears to be basic agreement of the NEAFC members on the scope and objectives of these reforms, pending a number of formalities required by the procedures for the amendment of the Convention.</i></p> <p>With regard to RFMOs under negotiation (SIOFA, South Pacific RFMO), the EC claims that interim measures are crucial. Unfortunately, 'interim measures' translates as 'data collection': for SIOFA, interim measures amount to data collection regarding fisheries in the high seas of the future SIOFA Area and for the SIOFA-covered fishery resources. For the SP RFMO: <i>In this respect, the European Community attaches high priority to establishing, through interim arrangements, a reliable state of play of the fisheries concerned. Data collection indeed constitutes the basis for the scientific assessment of the fishery resources at stake and of the impacts of fishing on the relevant ecosystem(s).</i> In other words, nothing to stop bottom trawlers from destroying fragile ecosystems in the meantime.⁵</p>
The United States		<p><i>To minimize the impact of trawling on non-target species in the fishery and on the seabed, and in accordance with its ecosystem approach, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) has prohibited the use of bottom trawls in the fishery for mackerel icefish around South Georgia and directed fishing for some demersal fish species that can be taken only by bottom trawls.</i></p>	<p>The US makes the same comment as the EC with regard to NAFO. We note: <i>The U.S. National Oceanic and Atmospheric Administration has supported research in the NAFO region on the New England seamount chain and the Corner Rise seamount cluster. In each of these seamount areas, vulnerable deep coral ecosystems were identified that have the potential to be seriously damaged by bottom-tending fishing gear, especially bottom trawl gear.</i></p> <p>However, as far as the DSCC is aware, NAFO has not agreed to any measures to prevent bottom trawl fishing on those seamounts which lie in the NAFO Regulatory Area or for that matter, imposed any restrictions on bottom trawl fishing in relation to potential impacts to cold-water corals and other vulnerable benthic ecosystems in the NAFO Regulatory Area.</p>
New			<p>At the international level, all of the actions listed by NZ relate to</p>

<p>Zealand</p>			<p>attending meetings and supporting resolutions which don't commit them to taking immediate measures. New Zealand has not reported a single measure to reduce or eliminate the threat posed by New Zealand flagged vessels bottom trawl fishing to vulnerable marine areas on the high seas.</p> <p>NZ (along with Australia and Chile) have responded to paragraph 69 of 59/25 by co-sponsoring <i>an initiative which seeks to fill a gap in the management of high seas areas in the South Pacific</i>. The first meeting to set up a new SP RFMO was held in NZ in February this year. The next meeting will take place in November but the process of negotiating an RFMO will likely take several years. Unfortunately for deep sea biodiversity, setting up an RFMO in the South Pacific, getting states to sign and ratify the agreement, making it operational and agreeing implementing conservation measures once it is operational may well take 4-7 years or more. In the intervening years destructive high seas bottom trawling is likely to continue unless "urgent" interim measures to establish an interim prohibition are adopted consistent with 59/25. Indeed, despite NZ's claim that it <i>"continues to be seriously concerned about threats to seamounts and other underwater structures from deep sea bottom trawling"</i> the Government freely licenses NZ-owned fishing companies to bottom trawl in international waters for orange roughy and other deep water fish. It has done nothing to reduce or eliminate the destructive impacts of its own high seas bottom trawling fleet.</p> <p>With regard to the SP RFMO, New Zealand says: <i>One of the key outcomes from this meeting was agreement among participants to consider at the next meeting (Australia, 6-10 November 2006) the adoption of interim measures to apply prior to the entry into force of the instrument establishing the new RFMO; and the Chair has been tasked with the preparation of a draft text on interim measures to be considered in November. It is envisaged that such measures will seek to address immediate fisheries and conservation issues by putting into place management controls (such as catch limits and reporting requirements) and measures to address the adverse impacts of destructive fishing practices on</i></p>
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			<p><i>vulnerable eco-systems.</i></p> <p>NZ discusses its participation in Pacific fora and conferences which are addressing high seas bottom trawling. It refers to the fact that outputs from these processes will be presented to the next Pacific Islands Forum (PIF) meeting in October. What it doesn't say, however, is that NZ blocked a proposal by Palau at the 2005 PIF meeting, supported by the vast majority of other participating States, for a moratorium on bottom trawling in the region. Since then, New Zealand has played a constructive role in the Pacific process, but the proposal currently before the Pacific Islands Forum will apply only to the tropical Pacific so will not affect the operations of the New Zealand, Australian or the Cook Islands fleets.</p> <p>Rather than take urgent action, New Zealand has, to date, ensured that no action has been taken which proscribes the current fishing activities of its own fleet.</p>
<p>Canada</p>			<p>Canada's paper lists various measures that have been ongoing over the past decade, including establishment of protected areas, fisheries closures and its commitment to "move from words to action", in a manner consistent with the St. John's Ministerial Declaration. However, on the whole, there are no measures taken to specifically address the call in Resolution 59/25 for action in areas beyond national jurisdiction. Measures taken to protect habitat are species specific, on both the east and west coasts – in the EEZ and not on the high seas. This is troubling given that 9 (out of 19) stocks in the high seas areas managed under NAFO are under moratoria, and that ground fish fisheries within Canada's national jurisdiction in the Atlantic are severely depleted. The fishery is almost completely an invertebrate fishery, showing a clear regime shift in terms of harvested biomass.</p> <p>Canada's statement: <i>at the outset, Canada would like to emphasize that the "normal" effect of fishing practices should not be confused with "destruction,"</i> shows that fundamentally,</p>

			<p>Canada has not recognized that bottom trawling is destructive. Nowhere in the paper is a definition given of what is expected of the “normal” effect. We note that this statement was recently contradicted by Loyola Hearn, the new Fisheries Minister for Canada, who noted that bottom trawling “does damage to the stocks and it does damage to the habitat,”⁶</p> <p>Canada’s statement that that: <i>[h]ighly productive trawl grounds are fished year after year and the minimal impact of bottom trawling in these areas is evidenced by the continued production and yield of sustainable fish catches</i> does not reflect the fact that many ground fish stocks under NAFO’s management are under moratoria, not to mention the northern cod collapse, which qualifies as one of the most spectacular fishery disasters in history.</p> <p>With regard to Canada’s efforts within RFMOs, the submission says that <i>On the high seas, Canada is a Contracting Party to NAFO, ICCAT, and the WCPFC. Canada is a cooperating non-member to NEAFC, IATTC, and CCAMLR. As a party to NAFO, Canada has agreed to collect data on seamounts in 2006.</i> See comments above on the submission of the European Community</p>
Australia		<p>Australia has been instrumental in promoting precautionary and ecosystem-based fishery management practices in CCAMLR, particularly for new and exploratory fisheries. It has also supported closure of areas to bottom trawling, and the establishment of protected areas within the CCAMLR area.</p>	<p>Australia is assisting with establishing new RFMOs and its RFMOs reform agenda which includes <i>“moving RFMOS towards a whole of ecosystem approach to fisheries management and implementing the precautionary approach”</i>.</p> <p>These actions, while welcome, still do not fall into the category of 'urgent' action to address the destructive impacts of high seas bottom trawling. As discussed above in regard to New Zealand – it will take many years before some of these arrangements will come into operation, let alone become effective governance tools.</p>

⁶ http://www.ctv.ca/servlet/ArticleNews/print/CTVNews/20060530/bottom_trawling_060530/20060530/?hub=SciTech&subhub=PrintStory

			<p>In regard to the establishment of the South Pacific RFMO it is significant that although Australia in its submission states that it will seek "<i>the establishment of interim arrangements to ensure that, while the RFMO is being developed, fish stocks are managed in a manner that does not undermine the principles of sustainable fisheries,</i>" at the first meeting in February 2006, Australia along with USA and Korea, blocked a proposal from France to put in place an immediate moratorium on destructive fishing practices while the RFMO was being negotiated and put in place, without putting forward any alternative proposal.</p> <p>Australia was also influential in narrowly restricting more immediate action via the Pacific Island Forum processes to put in place measures to prevent destructive fishing practices around seamounts in the Pacific Island area. While Australia has supported the need for action in theory, it with others, has effectively ensured that recommendations for interim prohibitions on destructive practices while studies and longer term governance arrangements are put in place did not go forward.</p> <p>Likewise, Australia while an active player in the recent (July 2006) Southern Indian Ocean Fisheries Agreement did not advocate the need for an interim prohibition until the agreement comes into force. Consideration of this now being left to later in 2006.</p> <p>Australian permits for high seas bottom trawling and the precautionary principle: The Australian regulatory body -- the Australian Fisheries Management Authority [AFMA] -- for high sea bottom trawlers is "developing a policy on high seas fishing by Australian operators in order to provide guidance for decisions relating to the issue of</p>
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⁷ Anderson & Clark (2003) 'Analysis of bycatch in the fishery for orange roughy, *Hoplostethus atlanticus*, on the South Tasman Rise'
Koslow et al (2001) 'The seamount benthic macrofauna off southern Tasmania: community structure and impacts of trawling'. MEPS 213: 111-125

			<p>high seas permits".</p> <p>Australian legislation already requires decision-makers to apply the precautionary principle in the issuing of fishing permits. There is a strong case that Australian officials are currently in breach of their obligations under this section of the Act as the relevant scientific research has not been undertaken to guide such decisions. Section 516A of the Commonwealth Fisheries Management Act 1991 requires AFMA "to pursue the objective of ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development and the exercise of the precautionary principle."</p> <p>The existing scientific studies relating to impacts of deep sea trawling on seamounts in Australian waters or near Australia are unequivocal. It cannot be claimed, as some Australian Government officials have done, that Australia operates a 'clean, green' deepwater trawl fishery. While it is clear that the global impacts of deep sea bottom trawling are not fully known, the studies undertaken all indicate evidence of significant impacts -- heightening the need for application of the precautionary principle and the application of interim measures.⁷</p>
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