



## **Briefing for the First Meeting of the Commission of the South Pacific Regional Fisheries Management Organisation**

**Auckland, January 28-February 1, 2013**

### **Introduction and Summary**

The Deep Sea Conservation Coalition (DSCC) respectfully submits this briefing for the First Meeting of the Commission of the South Pacific RFMO (SPRFMO). In brief:

1. The Commission needs to ensure that any measure which replaces the interim measure on bottom fishing adopted in Reñaca in 2007 takes into account United Nations General Assembly (UNGA) [resolution 64/72](#) (2009) paragraphs 119<sup>1</sup> and 120,<sup>2</sup> and [resolution 66/68](#) (2011),<sup>3</sup> as well as [resolution 61/105](#)<sup>4</sup> (2006) and the 2008 United Nations Food and Agriculture Organisation (FAO) [Deep Sea Fishing Guidelines](#).<sup>5</sup>
2. The Commission should also adopt a work programme which ensures that the resolutions are implemented, including not only identifying vulnerable marine ecosystems (VMEs), encounter protocols, closing areas and prior environmental impact assessments, but ensuring the sustainability of deep-sea stocks, including through stock assessments and catch limits.
3. The work on VMEs complements, and does not replace, Convention on Biological Diversity (CBD) work on ecologically or biologically significant marine areas (EBSAs).

### **Background**

In 2006, in response to widespread concern at the impacts of high seas bottom trawling, the UNGA adopted a 'compromise' package offered by nations whose vessels deep-sea fish on the high seas through UNGA Resolution 61/105. This was

---

<sup>1</sup> UNGA Resolution 64/72 (2009) paragraph 119(a) Conduct the assessments called for in paragraph 83 (a) of its resolution 61/105, consistent with the Guidelines, and to ensure that vessels do not engage in bottom fishing until such assessments have been carried out.

<sup>2</sup> UNGA resolution 64/72 paragraph 120: "Calls upon flag States, members of regional fisheries management organizations or arrangements with the competence to regulate bottom fisheries and States participating in negotiations to establish such organizations or arrangements to adopt and implement measures in accordance with paragraphs 83, 85 and 86 of its resolution 61/105, paragraph 119 of the present resolution, and international law, and consistent with the Guidelines, and not to authorize bottom fishing activities until such measures have been adopted and implemented."

<sup>3</sup> A/RES/66/68 - Sustainable fisheries, including through the 1995 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, and related instruments (to be issued).

<sup>4</sup> <http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/61/105>.

<sup>5</sup> FAO, International Guidelines for the Management of Deep-Sea Fisheries in the High Seas (2009). At <http://www.fao.org/docrep/011/i0816t/i0816t00.htm>.

adopted by consensus in December 2006. Resolution 61/105 committed nations that authorise their vessels to engage in bottom fisheries on the high seas to take a series of actions set out in Paragraph 83 of the resolution. The main action points were to:

1. Conduct **impact assessments** to determine whether bottom fishing activities would have significant adverse impacts on VMEs;
2. **Ensure that**, if fishing activities have significant adverse impacts, they are managed to prevent such impacts, or else prohibited;
3. **Close areas** of the high seas to bottom fishing where VMEs such as cold-water corals are known or likely to occur, unless fishing in these areas can be managed to prevent significant adverse impacts to such ecosystems;
4. Establish and implement protocols to require vessels to cease fishing in areas where an **encounter with VMEs** occurs during fishing activities; and
5. **Sustainably manage** the exploitation of deep-sea fish stocks.

Following this resolution, SPRFMO adopted [interim measures](#)<sup>6</sup> in 2007 in Reñaca, Chile. In 2008, a set of [International Guidelines for the Management of Deep-Sea Fisheries in the High Seas](#)<sup>7</sup> ('FAO Guidelines') was adopted under the auspices of the UN FAO to further define and agree criteria for the conduct of impact assessments of high seas bottom fisheries, identify VMEs, and then assess whether deep-sea fisheries would have "significant adverse impacts" on VMEs.

In 2009, the UNGA determined that Resolution 61/105 had not been implemented sufficiently, and adopted additional provisions in resolution 64/72.<sup>8</sup> This resolution made it clear that the measures called for in Resolution 61/105 must be implemented, consistent with the FAO Guidelines prior to authorising bottom fishing on the high seas. States must ensure that vessels do not engage in bottom fishing until assessments have been carried out and, further, must not authorize bottom fishing activities until all required measures have been adopted and implemented. Resolution 64/72 further called for stock assessments and conservation measures to ensure the long-term sustainability of deep-sea fish stocks, including species impacted by deep-sea fishing which are not of commercial value (so-called non-target or bycatch species), and the rebuilding of depleted fish stocks.

In 2011, the UNGA conducted a [further review](#). The DSCC<sup>9</sup> reported to the UNGA that, as a result of the interim measures adopted by SPRFMO participants, substantial and highly valuable information has become available on the bottom fisheries in the

---

<sup>6</sup> [http://www.southpacificrfmo.org/assets/3rd-Meeting-April-2007-Renaca/Plenary-III/SPRFMO%20Interim%20Measures\\_Final.doc](http://www.southpacificrfmo.org/assets/3rd-Meeting-April-2007-Renaca/Plenary-III/SPRFMO%20Interim%20Measures_Final.doc).

<sup>7</sup> <http://www.fao.org/docrep/011/i0816t/i0816t00.htm>.

<sup>8</sup> The key elements of the resolution are contained in paragraphs 119-120.

<sup>9</sup> Unfinished Business: A Review of the Implementation of the Provisions of United Nations General Assembly Resolutions 61/105 and 64/72, Related to the Management of Bottom Fisheries in Areas Beyond National Jurisdiction (September 2011). At [http://www.savethehighseas.org/publicdocs/DSCC\\_review11.pdf](http://www.savethehighseas.org/publicdocs/DSCC_review11.pdf).

SPRMO region. The freeze of the footprint has served to temporarily protect a large area of the South Pacific from significant adverse impacts of bottom fishing. Further, the 100% observer coverage on bottom trawl vessels should help to provide additional information on the interaction between bottom fishing and VMEs, and the prohibition on bottom gillnet fishing has been a positive development.

However shortcomings include:

- Impact assessments consistent with the FAO Deep Sea Guidelines had not been done where bottom fishing was permitted to occur;
- As a result, the measures adopted by the relevant flag States were not sufficient to ensure that bottom fishing was managed to prevent significant adverse impacts on VMEs, in spite of the application of a move-on rule to some areas; and
- The long-term sustainability of none of the deep-sea fish stocks and species was ensured. New Zealand reported 137 species recorded in the bottom fisheries in the SPRFMO region, of which approximately 22 were considered target species.

Following its September 2011 workshop, the UNGA adopted resolution 66/68, which calls on high seas fishing nations to take stronger actions to protect deep-sea life. It specifically calls for strengthening procedures for conducting environmental impact assessments of high seas bottom fisheries. It further calls on States to publicise “without delay” the assessments and improve compliance with deep-sea fisheries regulations. The new resolution calls for more transparency in RFMOs and for impact assessments to be made public. The DSCC is therefore pleased that the SPRFMO did, prior to this resolution, publish the [New Zealand](#)<sup>10</sup> and [Australian](#)<sup>11</sup> assessments. However, those assessments need to be amended and brought up to date to comply with the FAO Guidelines. In this regard we were encouraged by the statement made by the delegation of New Zealand during the UNGA workshop in September 2011 that New Zealand intended to update its impact assessment consistent with the FAO International Guidelines.

This offers an updated means of implementation of the bottom fisheries interim measure:

"6. In respect of areas where vulnerable marine ecosystems are known to occur or are likely to occur based on the best available scientific information, close such areas to bottom fishing unless, based on an assessment undertaken in accordance with paragraphs 11 and 12 below, conservation and management measures have been established to prevent significant adverse impacts on

---

<sup>10</sup> SP-7-SWG-DW-01 <http://www.southpacificrfmo.org/assets/7th-Meeting-May-2009-Lima/DW-Subgroup-VII/SP-7-SWG-DW-01-New-Zealand-Bottom-Fishery-Impact-Assessment-Posted.pdf>.

<sup>11</sup> <http://www.southpacificrfmo.org/assets/10th-SWG-and-9th-DIWG-meetings-Vanuatu/SWG-10/SWG-10-DW-01a-Australian-BFIA-Final-Report.pdf>. See DSCC comments at <http://www.southpacificrfmo.org/assets/10th-SWG-and-9th-DIWG-meetings-Vanuatu/SWG-10/SWG-10-INF-03-DSCC-Comments-on-Australian-SPRFMO-assessment.pdf>.

vulnerable marine ecosystems and the long - term sustainability of deep sea fish stocks or it has been determined that such bottom fishing will not have significant adverse impacts on vulnerable marine ecosystems or the long term sustainability of deep sea fish stocks."

It should be noted that both UNGA resolutions 64/72 (2009) and 66/68 (2011) post-date this interim measure, which needs to be read in the light of both resolutions. These resolutions include, in particular, the call to update assessments and make assessments publicly available (UNGA 66/68 paras 129, 130), and to adopt conservation measures for deep-sea fish stocks on the basis of stock assessments and the best available scientific information, to ensure the long-term sustainability of deep sea fish stocks *and* non-target species, and the rebuilding of depleted stocks. (UNGA 64/72 para 119 (d)).

### **The Science Working Group**

The Deep Water Subgroup (DWSG) of the 11th Science Working Group which met in Lima in October 2012 made a number of observations to which the DSCC would like to respond:<sup>12</sup>

*A. The CBD's process for describing EBSAs might overlap or be inconsistent with SPRFMO's work on VMEs.*

The DSCC notes that certainly the areas may overlap, since they are the product of different processes. The EBSA work<sup>13</sup> is not, however, in any way inconsistent with the protection of VMEs. The VME work is a product of the UNGA resolutions, particularly resolution 61/105 (2006) and 64/72 (2009), and the FAO Guidelines , and is central to the management of deep-sea bottom fishing. It should not be confused with the EBSA work being carried out by the CBD,<sup>14</sup> which is focusing on identifying areas as a scientific and technical exercise.<sup>15</sup> A meeting was held in Ecuador in August 2012 to identify regional EBSAs.<sup>16</sup>

International governance steps responsive to the identified EBSAs, such as designating some EBSAs as marine protected areas (MPAs), have yet to be

---

<sup>12</sup> Report of the Deepwater Sub-Group, Annex SWG-11-04.

<sup>13</sup> See overview by IDDRI, "Ecologically or biologically significant marine areas (EBSAs): the identification process under the Convention on Biological Diversity (CBD) and possible ways forward. At [http://www.iddri.org/Publications/Collections/Idees-pour-le-debat/WP1712\\_ED\\_EBSAs.pdf](http://www.iddri.org/Publications/Collections/Idees-pour-le-debat/WP1712_ED_EBSAs.pdf).

<sup>14</sup> See CBD Decision XI/17 (2012). Marine and coastal biodiversity: Ecologically or biologically significant marine areas. At <http://www.cbd.int/cop/cop-11/doc/2012-10-24-advanced-unedited-cop-11-decisions-en.pdf>.

<sup>15</sup> CBD Decision XI/17: "6. Noting that, in accordance with decision X/29, the application of the scientific criteria for ecologically or biologically significant marine areas is a scientific and technical exercise and emphasizing that the identification of ecologically or biologically significant marine areas and the selection of conservation and management measures is a matter for States and competent intergovernmental organizations, in accordance with international law, including the United Nations Convention on the Law of the Sea, as stated in paragraph 26 of decision X/29"

<sup>16</sup> Eastern Tropical and Temperate Pacific Regional Workshop to Facilitate the Description of Ecologically or Biologically Significant Marine Areas, from 28 to 31 August 2012, in the Galapagos Islands, Ecuador. At <http://www.cbd.int/doc/?meeting=5081>.

determined. So, in conclusion, it is important that SPRFMO carries on its work in identifying and protecting VMEs, quite separately to determining its response to any identified EBSAs.

*B. The DWSG drafted a description of high priority research tasks for inclusion in the Science Working Group's research programme. These include studies of the biology of target species (e.g. orange roughy), habitat models for predicting the spatial distribution of target species, the estimation of sustainable yields by feature or area, assessment of the impact of fishing on bycatch species and the identification and mapping of potential VMEs. Crucial to these tasks is the provision of catch and fishing effort data at a suitable resolution, e.g. a data resolution of 6 minutes or finer is required for scientific mapping of deepwater fishing activities.*

The DSCC again emphasises that it is essential for SPRFMO to respond to the UNGA calls, particularly to ensure that prior environmental impact assessments are carried out before bottom trawling is commenced and to ensure that vessels do not engage in bottom fishing until such assessments have been carried out; and that the long-term sustainability of the deep-sea fish stocks, whether taken as targeted catch or bycatch, is ensured, including through stock assessments and catch limits,<sup>17</sup> consistent with the precautionary approach.

The UNGA also paid particular attention to encounter protocols, including definitions of what constitutes evidence of an encounter with a VME, in particular threshold levels and indicator species, based on the best available scientific information and consistent with the FAO Guidelines.<sup>18</sup> The DSCC considers the SWG should also focus on these encounter protocols - which define the 'move-on' parameters - since New Zealand and Australian encounter protocols are not consistent with the FAO Guidelines.<sup>19</sup>

DSCC also expresses concern that no papers were submitted to the DWSG on options for stock assessment or sustainable management of deepwater species. DSCC reminds members that the sustainability of deep-sea target and bycatch species is a critical component of the UNGA resolutions as well as a fundamental

---

<sup>17</sup> UNGA resolution 64/72 para. 119(d)

<sup>18</sup> UNGA resolution 64/72 para. 119(c)

<sup>19</sup> See DSCC Comments on the Revised Draft Bottom Fishery Impact Assessment Standard SWG-10-DW-03, 17 September 2011. DSCC noted that the threshold quantities should take into account the fact that nets are not designed to retain taxa and that significant amounts of taxa will fall through the net. The proposed method for deriving threshold weights is logically flawed, since it is based on the median of the cumulative distribution of observed bycatch weights. This is not correlated with actual VMEs much less an assessment of the impact on VMEs, and simply relies on a statistical formulation based on past fishing data, as opposed to data on the impact of fishing on VMEs. The exercise is to identify VMEs, not to facilitate a certain amount of fishing. In addition, the threshold should be based on prior assessments, including an assessment of each biogeographic region to identify VMEs and vulnerable fish species, such as sharks, including rare and endemic species. The assessments should use (ii) "best available scientific and technical information on the current state of fishery resources and baseline information on the ecosystems, habitats and communities in the fishing area, against which future changes are to be compared" in the (iii) "identification, description and mapping of VMEs known or likely to occur in the fishing area." (From FAO Guidelines para 47).

requirement of the UN Fish Stocks Agreement. The DSCC calls on Australia and New Zealand to prepare and present such papers to the next DWSG.

### **Bottom Fishery Impact Assessment Standard**

The third session of the Preparatory Conference adopted the revised Bottom Fishery Impact Assessment Standard (BFIAS) (in accordance with 12(b) of the 2007 interim measures for bottom fishing) for use by Participants and the SWG.<sup>20</sup>

Important to application of the BFIAS are the threshold levels for the application of the move-on rule. For the Australian assessment, the DWSW noted that the trigger threshold for the move-on rule for trawl fishing was not regarded as appropriate, as the weight threshold was too high and there was no incorporation of a biodiversity index.<sup>21</sup> This shows the need for the DWSG to reassess the trigger threshold.

However, we would again emphasise that the conservation value of threshold limits in bottom trawl fisheries, and management solely or predominantly by the move-on rule, has been increasingly discredited by scientists and others as a means of preventing significant adverse impacts - particularly in fisheries employing mobile gear.. For example, the Joint NAFO/ICES Working Group on Deep-Sea Ecology (WGDEC) in 2010 concluded that:

*“The damage caused by deep - sea bottom fishing activities to marine habitats and species, in particular VME indicators, is likely to remain unrecovered for decades to centuries. Reactionary management strategies such as the “encounter clauses” and “move - on rules” are of limited benefit to prevent significant adverse impacts because they still allow damage to occur which will gradually degrade ecosystems over time.*

- 1) Bottom habitats at fishable depths... are not inhabited by one fauna that ranges over the whole region, thus there can be no uniform “rule”;*
- 2) exploratory fishing with bottom contact gear in the deep sea is unacceptable because of the long - term damage such gear does to bottom habitats;*
- 3) exploratory fishing with bottom contact gear is unnecessary because modern data management tools and computer modeling techniques can provide a mechanism for making predictions about where vulnerable marine ecosystems are likely to be present; and*
- 4) the burden of proof regarding whether any particular area of the seabed can be fished with bottom contact gear without causing damage to VMEs must reside with the entity proposing to do the fishing.”<sup>22</sup>*

---

<sup>20</sup> Final Report of the Preparatory Conference for the Establishment of the Commission of the South Pacific Regional Fisheries Management Organisation, 3 February 2012.

<sup>21</sup> Report of the Deepwater Subgroup, Annex SWG-10-04, page 4.

<sup>22</sup> Report of the ICES/NAFO Joint Working Group on Deep-water Ecology (WGDEC), 22–26 March 2010, Copenhagen, Denmark. ICES WGDEC REPORT 2010, ICES ADVISORY COMMITTEE, ICES CM 2010/ACOM:26, International Council for the Exploration of the Sea (ICES). [http://www.ices.dk/reports/ACOM/2010/WGDEC/wgdec\\_final\\_2010.pdf](http://www.ices.dk/reports/ACOM/2010/WGDEC/wgdec_final_2010.pdf).

## New and Exploratory Fisheries

The 2007 Interim Measures state that:

"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."

SPRFMO needs to transpose the interim measures into SPRFMO measures, including the additional provisions adopted by the UNGA in resolutions 64/72 (2009) and 66/68 (2011). For new and exploratory fishing, any revised measures must ensure that no fishing is undertaken until compliant impact assessments have been carried out<sup>23</sup> and compliant measures have been adopted.<sup>24</sup> They must also comply with UNGA resolution 66/68, which called on States to:

*a) strengthen procedures both for carrying out assessments to take into account **individual, collective and cumulative impacts**, and for **making the assessments publicly available**, recognizing that doing so can support transparency and capacity building globally;*

*b) establish and improve procedures to ensure that **assessments are updated** when new conditions or information so require;*

*c) establish and improve procedures for **evaluating, reviewing and revising, on a regular basis, assessments based on best available science and management measures**; and*

*d) establish mechanisms to **promote and enhance compliance with applicable measures related to the protection of vulnerable marine ecosystems, adopted in accordance with international law.***<sup>25</sup>

---

<sup>23</sup> Following UNGA resolution 64/72 paragraph 119(a): Conduct the assessments called for in paragraph 83 (a) of its resolution 61/105, consistent with the Guidelines, and to ensure that vessels do not engage in bottom fishing until such assessments have been carried out.

<sup>24</sup> Following UNGA resolution 64/72 paragraph 120: "Calls upon flag States, members of regional fisheries management organizations or arrangements with the competence to regulate bottom fisheries and States participating in negotiations to establish such organizations or arrangements to adopt and implement measures in accordance with paragraphs 83, 85 and 86 of its resolution 61/105, paragraph 119 of the present resolution, and international law, and consistent with the Guidelines, and not to authorize bottom fishing activities until such measures have been adopted and implemented."

<sup>25</sup> Paragraph 129 of UN General Assembly document A/66/L.22 adopted by the General Assembly on 6 December 2011. To be issued as UNGA resolution 66/68 [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/66/L.22](http://www.un.org/ga/search/view_doc.asp?symbol=A/66/L.22). Emphasis added.

To conclude, in practical terms, in order to be consistent with the UNGA resolutions, the best scientific information available and the precautionary approach the impact assessments must:

- be made public,
- take into account individual and collective impacts, as well as cumulative impacts,
- be updated when new conditions or information requires,
- be regularly evaluated, reviewed and revised, based on the best available science and management measures, and
- be required prior to the commencement of any exploratory fisheries.