

## Bottom Fishing Intersessional Working Group Participant Questionnaire

### Topic 1 - The Appropriate Scale of Management to Assess and Prevent Significant Adverse Impacts on VMEs

#### Guide to participants

This survey addresses the first topic of our work: appropriate scale of management to assess and prevent significant adverse impacts on VMEs.

This is a voluntary questionnaire. Your input will inform the development of Policy Paper 1. Participants can provide as much or as little input as you see fit. For example, can you provide detailed answers or simply refer me to relevant paragraphs of SC reports, or articles of legal instruments. I would be grateful if responses could be focussed on this specific topic.

I will keep your responses confidential. However, I will draw on these responses in the draft paper and identify where there are convergent or divergent views. These views will not be attributed in the papers. This will enable the working group to concentrate its effort on resolving differences of view through the policy paper.

I would be grateful for your responses by **7 March 2022**. Thank you in advance for your time on this important matter.

#### 1. Delegation name

Deep Sea Conservation Coalition

#### 2. What do you understand the term “appropriate scale of management” to mean?

The appropriate scale of management is that which is appropriate to assess and prevent significant adverse impacts on VMEs.

The FAO DS Guidelines use the term ‘site’ (e.g. Para 18(i) (“the intensity or severity of the impact at the specific site being affected”); para 67, 68 etc) and DSCC considers that this accords with good scientific practice. The SPRFMO Convention also requires the precautionary approach to be applied which includes the lack of knowledge about species involved, rare and cryptic species and for this reason as well, the site scale is appropriate for precaution.

#### 3. Why is it important to resolve this question?

New Zealand has argued for several years that VMEs can be managed on bioregional, and lately on a fisheries management area, scale. This approach is inconsistent with what is required.

#### 4. The Scientific Committee has previously referred to encounter area, management area and fishery management area as possible units of scale. Are there other options we need to consider?

As discussed above, we see the encounter area to be the ‘site’. The fisheries management area (FMA) is, by definition, the area for managing target fisheries, not managing VMEs. Significant adverse impacts

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are to be avoided on VMEs - being the VMEs themselves. Not on 'taxa'; and not on the FMA, but on VMEs. DSCC had suggested that the definition of VMEs be discussed. Discussion is at [SC9-obs02](#).

### What should the Commission take into account when determining the appropriate spatial scale?

#### 5. What are the scientific considerations?

The very simple point is that when a bottom trawl encounters a VME it damages or destroys it. That therefore is the scale for the scientific inquiry: how to avoid damage to the VME.

Scientific considerations include connectivity and energy flows. In SC9-obs02, Watling and Auster observed that "Identifying the presence, distribution, and abundance of an indicator species defines the state of that species at a moment (or period) in time. It does not define the composition of an associated community, the suite of species interactions that define and sustain the community, or the flows of materials and energy that define the bounds of the ecosystem. Most important, it is those details about species interactions (including population connectivity, energy flow that mediates growth and reproduction, and interactions mediated by the local oceanographic regime) that will be needed to understand and predict the extent to which fishing and other human activities produce significant adverse impacts." This approach is entirely consistent with the ecosystem approach, which is also mandated by the SPRFMO Convention. A paper discussing the relevance and importance of the precautionary approach and the ecosystem approach is at [SC9-Obs01](#).

#### 6. What is the significance of the Scientific Committee's previous advice and recommendations on this topic to your delegation?

The advice has been split. Some of the advice has not been scientifically verified because the evidence presented was not broad enough to provide the best available science. Partly for this reason, the advice was directed only at specific taxa rather than VMEs.

The scientific consideration should also be focusing on the impacts on VMEs as the priority, rather than what is desirable for the fishery as the priority. For instance, if SAIs on VMEs cannot be prevented, the fishery should not be undertaken. (UNGA resolution 61/105 para 83(a) (and to ensure that if it is assessed that these activities would have significant adverse impacts, they are managed to prevent such impacts, or not authorized to proceed, and UNGA resolution 64/72 para 120 ("and not to authorize bottom fishing activities until such measures have been adopted and implemented").

#### 7. What are the legal considerations?

##### SPRFMO Convention

The objective of the SPRFMO Convention, Article 2, makes it clear that the marine ecosystems must be "safeguarded".

The SPRFMO Convention in Article 20 provides for the CMMs of SPRFMO to: protect the habitats and marine ecosystems in which fishery resources and non-target and associated or dependent species occur from the impacts of fishing, including measures to prevent significant adverse impacts on vulnerable marine ecosystems and precautionary measures where it cannot adequately be determined whether vulnerable marine ecosystems are present or whether fishing would cause significant adverse impacts on vulnerable marine ecosystems." The mandate in Article 20(1)(d) is to 'protect' habitats and marine ecosystems. Article 20(1)(d) also refers to "precautionary measures" where it cannot adequately be determined whether VMEs are present or whether fishing would cause SAIs on VMEs. This is entirely

disregarded by the 'spatial management' approach proposed by New Zealand, which would tolerate SAIs on VMEs. Assessing SAIs on a "spatial scale" is the opposite of a precautionary measure, since there is inadequate information on VMEs, yet it allows fishing on them.

The Convention also requires in Article 10(c) that the role of the Scientific Committee is to "provide advice and recommendations to the Commission and its subsidiary bodies on the impact of fishing on the marine ecosystems in the Convention Area including advice and recommendations on the identification and distribution of vulnerable marine ecosystems, the likely impacts of fishing on such vulnerable marine ecosystems and measures to prevent significant adverse impacts on them." The measures are to prevent SAI on "them" – "them" being VMEs. Not Fisheries Management Areas (FMAs) or any other larger area."

### **Fish Stocks Agreement**

The SPRFMO provisions are also implementing the UN Fish Stocks Agreement, including:

- its preambular recital that Parties are "[c]onscious of the need to avoid adverse impacts on the marine environment, preserve biodiversity, maintain the integrity of marine ecosystems and minimize the risk of long-term or irreversible effects of fishing operations";
- the principle in article 5(g) to "protect biodiversity in the marine environment"; and
- the requirement in Article 5(6) to "apply the precautionary approach in accordance with article 6".

### **Law of the Sea Convention (UNCLOS)**

UNCLOS provides in article 192 that "States have the obligation to protect and preserve the marine environment" and accordingly provides in article 193 that "States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment." The "protect and preserved" aspect is crucial: VMEs as part of the marine environment need to be protected and preserved. This is reinforced where VMEs and habitat are addressed in article 194(5): "The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life."

It should be noted that there is no 'trade-off' between fisheries and environmental protection, as is sometimes argued.(e.g. there is no qualification such as "unless that exploitation is the result of a trade-off by economic considerations")

These provisions are implemented in UNGA [Resolution 61/105](#) and the following UNGA resolutions, that significant adverse effects (SAEs) on vulnerable marine ecosystems (VMEs) should be prevented.

The well known provisions of paragraph 83 of that resolution make it very clear that significant adverse impacts on vulnerable marine ecosystems must be prevented:

- (a) To assess, on the basis of the best available scientific information, whether individual bottom fishing activities would have significant adverse impacts on vulnerable marine ecosystems, and to ensure that if it is assessed that these activities would have significant adverse impacts, they are managed to prevent such impacts, or not authorized to proceed;
- (b) To identify vulnerable marine ecosystems and determine whether bottom fishing activities would cause significant adverse impacts to such ecosystems and the long-term sustainability of deep sea fish stocks, inter alia, by improving scientific research and data collection and sharing, and through new and exploratory fisheries;

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(c) In respect of areas where vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold water corals, are known to occur or are likely to occur based on the best available scientific information, to close such areas to bottom fishing and ensure that such activities do not proceed unless conservation and management measures have been established to prevent significant adverse impacts on vulnerable marine ecosystems;

(d) To require members of the regional fisheries management organizations or arrangements to require vessels flying their flag to cease bottom fishing activities in areas where, in the course of fishing operations, vulnerable marine ecosystems are encountered, and to report the encounter so that appropriate measures can be adopted in respect of the relevant site.”

The awareness of the importance of protecting biodiversity has increasing. Ten years ago, in the Rio+20 Outcome Document, [The Future We Want](#), world leaders stated that (169) “We also commit to enhance actions to protect vulnerable marine ecosystems from significant adverse impacts including through the effective use of impact assessments. Such actions, including those through competent organizations, should be undertaken consistent with international law, the applicable international instruments and relevant General Assembly resolutions and Food and Agriculture Organization (FAO) Guidelines.”

Just last year in the [Leaders Pledge for Nature](#), 93 countries from all regions, and the European Union, have committed to reversing biodiversity loss by 2030.

### 8. What are the management considerations? (e.g., technical, cost or implementation considerations)

The task for management in this context is to ensure the prevention of SAIs on VMEs through suitable controls. If cost is a consideration stopping necessary measures being taken, then the fishery should not be undertaken (UNGA 64/72 para 120; UNGA 61/105 para 83(a)). As noted above, there is no ‘trade-off’ between environmental protection and fisheries revenue.

### 9. Are there any other considerations you think the Commission needs to take into account to determine the appropriate scale of management to assess and prevent significant adverse impacts on VMEs?

The Commission is obliged to follow its Convention, including its objective and articles 10 and 20 , and other relevant international legal considerations.

### 10. Does your delegation already have a view on what the appropriate scale of management should be to prevent significant adverse impacts on VMEs?

Yes, it should be the site.

### 11. Is your delegation intending to submit any papers or information to the Scientific Committee which will contribute to addressing this question?

Yes  No

If you answered “yes,” please describe the work your delegation is planning to undertake.

We will submit a paper in support.

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### **12. What factors, if any, might distinguish SPRFMO's approach to this issue from other demersal RFMOs?**

On the contrary, SPRFMO should learn from the approach to management of other RFMOs and organisations with fisheries responsibilities, such as NAFO, NEAFC and CCAMLR. All of these CCAMLR bans bottom trawling on the high seas, establishes move-on rules to protect VMEs, closes any area where a move-on rule is triggered until reviewed (so far there have been no reviews), and has a separate process of closing known VMEs based on video or other information.

### **13. Is there any other information you want to provide, or comment that you wish to make, that is relevant to addressing the question of the appropriate scale of management to assess and prevent significant adverse impacts on VMEs?**

We look forward to discussing this important issue.