



**Progress report on the Implementation of UN General Assembly resolution 61/105
for the protection of vulnerable marine ecosystems from the impact of bottom
fisheries on the high seas**

15 January 2009

Dear Colleagues,

On behalf of the Deep Sea Conservation Coalition (DSCC), we extend our best wishes to you for 2009.

We wish to highlight 2009 as an important year for the conservation and protection of marine biodiversity in areas beyond national jurisdiction. As of 31 December 2008, high seas fishing States have agreed, under UN General Assembly (UNGA) resolution 61/105, to prohibit their flagged fishing vessels from bottom fishing on the high seas where regulations have not been established to implement paragraphs 83 - 86 of the resolution.

In 2006, the UN General Assembly established the 31 December 2008 deadline for States and regional fisheries management organizations (RFMO/As) to ***adopt and implement*** measures to prevent 'significant' adverse impacts to vulnerable marine ecosystems from high seas bottom fisheries (UNGA 61/105). Where these measures have not been implemented, high seas fishing nations agreed to prohibit ("not authorize to proceed") their vessels from high seas bottom fishing after 31 December 2008.

While most RFMO/As have adopted binding framework agreements or interim measures over the past two years consistent with resolution, it is clear that the regulations established for high seas bottom fisheries by States and RFMO/As to date fall far short of effective *implementation* of the UNGA resolution.

In light of the failure to effectively implement Resolution 61/105, the DSCC would expect flag States and RFMOs with competence over high seas bottom fisheries to prohibit such fishing in 2009 until conservation and management measures are in place to fully implement the resolution. We would urge the Secretary General and the UN GA to conduct a robust review of the implementation of UNGA 61/105 later this year and we hope that this will lead to strong recommendations adopted by the UN GA to further prompt flag States and RFMOs to ensure that real change will take place on the oceans to protect vulnerable deep sea marine biodiversity and ecosystems from the adverse impacts of high seas bottom fisheries.

The DSCC will prepare a comprehensive and detailed report, within the next several months, of the actions taken by States and RFMO/As by 31 December 2008 to implement

UNGA 61/105. In the meantime, please find below a summary of progress by States and RFMO/As in meeting the deadline.

Paragraph 83 of resolution 61/105 commits nations whose vessels engage in high seas bottom fishing and competent RFMO/As to:

1. Conduct impact assessments of individual bottom fishing activities and establish measures to prevent significant adverse impacts or else prohibit (not authorize to proceed) high seas bottom fishing (83a);
2. close areas where vulnerable marine ecosystems (VMEs) are known or likely to occur unless measures are in place to prevent significant adverse impacts (83c);
3. ensure the long-term sustainability of deep-sea fish stocks (83b); and
4. establish a 'move-on' rule to ensure that bottom fishing vessels move out of an area where 'accidental' encounters with VMEs occur (83d).

In 2007 and 2008, the UN FAO hosted a process of consultation and negotiation to further define key terms and measures in the resolution, in particular “vulnerable marine ecosystems”, “significant adverse impacts,” and criteria for conducting impact assessments of high seas bottom fishing activities. The end result was the adoption of the International Guidelines for the Management of Deep-Sea Fisheries in the High Seas (ftp://ftp.fao.org/FI/DOCUMENT/tc-dsf/2008_2nd/2_1e.pdf).

So, how have the RFMO/As performed in the implementation of the four key elements of paragraph 83 of UNGA 61/105, including through application of the FAO Guidelines?

1. **Impact assessments:** In the area regulated by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), five of the dozen or so flag States bottom fishing in the region submitted “preliminary” impact assessments of their bottom longline fishing activities to CCAMLR in 2008 (bottom trawling and gillnet fishing are currently prohibited by CCAMLR). Elsewhere, Japan, Korea, Russia and New Zealand have produced reviews, of varying quality, of the available information on the potential impact of bottom fishing by their flagged vessels in the Northwest Pacific and Southwest Pacific respectively. However, these are not impact assessments per se and certainly do not meet the criteria for conducting impact assessments established in the UN FAO Guidelines.

No impact assessments have been conducted for the high seas bottom fisheries in the Atlantic. Indeed, parties to the North-East Atlantic Fisheries Commission (NEAFC) unilaterally declared in November 2008 that current high seas bottom fisheries in the Northeast Atlantic would not cause significant adverse impacts, without having conducted any impact assessments whatsoever.

On a more positive note, as indicated, CCAMLR has established an interim prohibition on bottom trawl fishing and banned bottom gillnet fishing. NEAFC has also banned deep-sea bottom gillnet fishing on the high seas of the Northeast Atlantic. In addition, the Scientific Committee of the South East Atlantic Fisheries Organisation (SEAFO) in 2007

recommended temporarily prohibiting bottom trawling and bottom gillnet fishing until impact assessments are conducted and measures established accordingly. However, SEAFO has not yet agreed to adopt regulations to implement the recommendation.

2. Areas where VMEs are known or likely to occur: No RFMO/A has undertaken a systematic effort to identify where VMEs are likely to occur and to close such areas or otherwise establish measures to prevent significant adverse impacts consistent with paragraph 83c of UNGA 61/105. That said, the Northwest Atlantic Fisheries Organization (NAFO), NEAFC, and SEAFO have closed some areas where VMEs are known or likely to occur although in the case of NAFO, a number of ‘closed’ areas remain open to exploratory fishing. In the Northwest Pacific and South Pacific, Interim Measures have been adopted to temporarily ‘freeze the footprint’ of bottom fishing to areas where fishing has occurred over the previous several years. The footprint freeze agreed in the Northwest Pacific confines bottom fishing to the peaks and upper slopes of seamounts already fished, whereas in the South Pacific, the freeze allows for continued fishing within approximately 1000 square kilometers surrounding an area where any trawling, even a single tow, has occurred between 2002 and 2006. New Zealand, the dominant high seas bottom fishing nation in the South Pacific has closed an additional - approximately 40% - area within its footprint although there are areas currently open within the footprint where fishing has not previously occurred. In both the Northwest and South Pacific, the freeze is set to expire in 2010.

While there have been a number of area closures in some regions, in all regions many high seas areas where VMEs are likely to occur still remain open to bottom fishing with few, if any, restrictions to protect VMEs. The NAFO Scientific Council for example, identified six high seas areas where VMEs are known or likely to occur in the Northwest Atlantic. Rather than close these areas, the Contracting Parties of NAFO, in September 2008, decided to wait until more research has been conducted over the next one to two years before taking action to close or otherwise manage these areas to prevent significant adverse impacts. Where restrictions on bottom fishing outside of closed areas exist, they generally consist only of a ‘move-on’ rule (described below) which is likely to have a very limited effect in protecting VMEs. In the Northwest Pacific, no protection was given to most of the areas identified as known or likely to support VMEs within the existing footprint.

3. Long-term sustainability of deep-sea fish stocks: This is an area where very little has been done. For most deep-sea fish stocks subject to bottom fisheries on the high seas, insufficient information is available to determine whether sustainable rates of exploitation are possible and, if so, what these rates should be. The fisheries for some high seas deep-sea fish stocks are regulated, many are not, in particular for deep-sea species taken as bycatch. For many of those that are regulated, the regulations have not been able to prevent continued decline in the abundance of deep-sea stocks because the regulations are often either too lax, not based on scientific advice, and/or simply ignored or unenforced.

4. Move-on rule: Most RFMO/As have adopted a ‘move-on’ rule. In some cases, these rules are much more restrictive than in other areas - e.g. the move-on rules adopted by

CCAMLR and by New Zealand in the South Pacific are much more restrictive than those adopted by NAFO, NEAFC and by Japan, Russia and Korea in the North Pacific. NAFO and NEAFC have both adopted a measure that only requires a vessel to move 2 nautical miles from an area if the vessel brings up more than *100 kilograms* of 'live' corals or *1000 kilograms* of sponges – a rule that is grossly inadequate and ludicrously weak. Japan, Korea and Russia have adopted the same move-on rule for their high seas bottom fishing vessels fishing in the NW Pacific.

In addition to the above, it is important to emphasize that the move-on rule is a measure of last resort to protect VMEs, as a complement to, not a substitute for impact assessments, identifying and closing areas where VMEs are known or likely to occur, and establishing regulations to prevent significant adverse impacts to VMEs in areas where high seas bottom fishing is permitted to take place. Even where stringently applied, the move-on rule is not likely to be effective in preventing significant adverse impacts to VMEs other than in exceptional cases. The Bottom Fishery Impact Assessment recently submitted by New Zealand to the Science Working group of the South Pacific RFMO negotiations notes that commercial bottom trawl fishing gear is often not likely to retain much, if any, coral and/or other vulnerable bottom species impacted by bottom trawl gear and thus likely to be of limited value in assessing whether significant adverse impacts have occurred to VMEs. (See <http://www.southpacificrfmo.org/science-working-group/benthic-impact-assessments/new-zealand2/> pg 74). In the case of NAFO and NEAFC, where the move-on rule is the only regulation in place designed to protect VMEs in areas where bottom fishing is permitted to take place, the degree of protection afforded by the move-on rule is likely to be minimal, if at all. This is not a valid implementation of paragraph 83d of UNGA resolution 61/105.

Finally, it is worth noting that at least one State/fishing entity, the European Union, has adopted a regulation to implement the resolution in areas of the high seas where no RFMO currently exists or is under negotiation. However, it is not yet clear whether and to what extent this regulation has been implemented. We would also emphasize that no interim measures have been agreed for the high seas bottom fisheries in the Southern Indian Ocean pursuant to paragraph 85 of UNGA 61/105.

Resolution 61/105 called on States and RFMOs to make their impact assessments and the conservation measures adopted to protect VMEs publicly available. As far as the DSCC is aware, the only impact assessments that are publicly available are the preliminary assessments of the impact of bottom longline fishing in the Southern Ocean submitted by Australia, Japan, New Zealand, Spain and the UK to CCAMLR, and the assessments provided by New Zealand, Japan, Russia and Republic of Korea to the South Pacific and North Pacific RFMO negotiating processes.

In summary, in the DSCC's view, it is clear that the measures agreed to in resolution 61/105 have not in most cases been effectively implemented as of 31 December 2008. High seas bottom fishing nations thus far have not fulfilled their commitment to implement the resolution and thus should refuse to authorize their flagged vessels to bottom fish on the high seas in 2009 until the provisions of the resolution have been

implemented, as called for in paragraph 83a of 61/105. Some flag States and RFMO/As, such as CCAMLR and New Zealand, have made substantial progress toward implementing the measures in the resolution although more needs to be done, particularly in respect of assessments and the formulation and implementation of measures to prevent significant adverse impacts on VMEs and the long-term sustainability of deep sea fish stocks. Others, such as NAFO and NEAFC, while they have closed some high seas areas to bottom fishing, have been major disappointments. It is worth noting that the largest high seas bottom fisheries in the world – as measured by volume of catch - occur in the North Atlantic. Of the countries involved, European Union fleets (primarily from Spain, Portugal, Estonia, Latvia and Lithuania) are responsible for some 80-90% of the high seas bottom fish catch in the region. Most of the remainder is taken by vessels flagged to Russia, Iceland, Faeroe Islands, and Japan.

In the meantime, scientists continue to discover new species in the deep-seas. See for example National Geographic's: "New Deep Sea Species Revealed by Marine Census" at <http://news.nationalgeographic.com/news/2008/11/photogalleries/marine-life-census-photos/> and <http://news.nationalgeographic.com/news/2007/05/photogalleries/antarctica-new-species/index.html>. At the same time, bottom trawling continues to be recognized by scientists as the most serious threat to vulnerable marine ecosystems, as illustrated most recently by the response by the International Council for the Exploration of the Sea (ICES) to a request from NEAFC, highlighting the fact that the greatest 'immediate' adverse impact to sensitive deep-sea bottom ecosystems is caused by bottom trawl fishing (<http://www.ices.dk/committe/acom/comwork/report/2008/Special%20Requests/NEAFC%20request%20on%20identification%20of%20vulnerable%20marine%20ecosystems.pdf> pg22-23).

The DSCC has been actively engaged in regional efforts in the North and South Pacific, the North Atlantic, the Southern Ocean and elsewhere over the past two years to implement the resolution since its adoption in 2006. The DSCC has provided a series of updates over the past year on the progress by regional fisheries management organizations and arrangements in the implementation of UN GA 61/105. (See the DSCC website at www.savethehighseas.org for progress reports and updates from December 2007 and April, June, September and November 2008).

As indicated previously, the DSCC will prepare a comprehensive and detailed report, within the next several months, of the actions taken by States and RFMO/As to meet the 31 December 2008 deadline established in resolution 61/105. We look forward to a robust review by the UN General Assembly this year of the implementation of the resolution.

The key question to be addressed by the UN General Assembly this year is what happens next? High seas fishing nations have committed to prohibiting high seas bottom fishing after 31 December 2008 unless or until they have fully implemented the resolution. In the view of the DSCC, at a minimum, any vessels continuing to fish in breach of UNGA resolution 61/105 should be considered IUU vessels and subject to port State, market State and other measures in the event that the flag State fails to take appropriate action.

The credibility of the commitment of high seas fishing nations to conserve and protect marine biodiversity beyond areas of national jurisdiction and their commitment to the efficacy of the UN General Assembly as the most important global forum to address this issue and related issues of high seas oceans governance will largely be determined by whether they deliver on their commitment to the international community in UN General Assembly resolution 61/105 to protect vulnerable marine ecosystems on the high seas from the impact of bottom fisheries, in particular bottom trawling. In 2009, it will be crucial that the General Assembly seriously review, debate and call for real and effective action where high seas fishing nations have failed to effectively implement the 2006 resolution.

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