



DSCC Update - June, 2008

30 June 2008

Since our last update in April, there is much to report with regard to protection of biodiversity in deep-sea ecosystems on the high seas. To name a few highlights: NAFO agreed on measures to implement provisions in the UNGA Sustainable Fisheries Resolution (61/105) on high seas bottom fishing; the 9th Conference of Parties to the Convention on Biological Diversity endorsed scientific criteria that will be important for establishing marine protected areas in the high seas; the FAO has published an updated draft of the international guidelines for managing deep-sea fisheries and the high seas (to be finalized in August); and countries are beginning to implement interim measures in the South Pacific. The DSCC is encouraged by progress in some areas towards meeting the obligations set out in 61/105, though the devil will be in the implementation details.

UN Working Group on Biodiversity in Areas beyond National Jurisdiction

The second meeting of the Ad Hoc Open-ended Informal Working Group of the United Nations General Assembly to study issues relating to the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction (the Working Group) concluded on May 2 in New York. One of the most important outcomes of this meeting was the broad recognition of the need for systematic environmental impact assessments for all activities in areas beyond national jurisdiction. There was also widespread support for the use of marine protected areas on the high seas as a means of conserving and protecting biodiversity. The "advanced and unedited Joint Statement of the Co-Chairpersons" of the meeting can be found at <http://www.un.org/Depts/los/biodiversityworkinggroup/biodiversityworkinggroup.htm>

More details on this meeting can also be found on the DSCC website at <http://www.savethehighseas.org/display.cfm?ID=170> and at <http://www.iisd.ca/oceans/marinebiodiv2/>

The Northwest Atlantic Fisheries Organization (NAFO)

NAFO adopted a comprehensive agreement to manage high seas bottom fisheries in the Northwest Atlantic at its meeting which ended May 7th. NAFO has agreed that all high seas bottom fishing will be subject to impact assessments by the end of 2008, and that fishing areas should be closed or fisheries prohibited where damage to corals, sponges and other deep sea species cannot be prevented. NAFO has set itself an ambitious work schedule over the next several months to complete the assessments and to begin identifying areas on the high seas that require protection. The agreement, if properly implemented, could set a precedent for protection of deep-sea ecosystems across the whole of the North Atlantic.

The NAFO Scientific Council is currently discussing recommendations on key issues relevant to implementation, including a review of maps showing vulnerable marine ecosystems in the area that was drawn up by NAFO's Ecology Working Group. The DSCC will be monitoring developments in the run up to the annual NAFO meeting in September.

Northwest Pacific Negotiations

Negotiations on the establishment of a new RFMO in the Northwest Pacific continued in May in Vladivostok. The interim measures adopted by participants in previous negotiating sessions called for a freeze in the existing footprint of bottom fishing activity¹; discussion in Vladivostok focused on determining the size and location of that footprint. Based on the information provided by individual states, the trawling footprint is limited to the summits of specific seamounts in the Emperor chain: Suiko, Youmei, Nintoku, Jingu, Ojin, Koko, Kimmei, Yuryaku, Kammu, Colahan and C-H (and the bottom gillnet footprint included the slopes of these seamounts as well). The remainder of the proposed convention area should therefore be closed to bottom fishing.

Continued fishing on the seamounts named above will still be subject to other provisions of 61/105, and measures need to be adopted before the end of this year. The next meeting will take place in Tokyo in October, at which point participants hope to finalize standards and criteria for assessing whether fishing activity is having a significant adverse impact on any marine species or vulnerable marine ecosystem.

With regard to the text of the North Pacific management arrangement itself, participants are still discussing various draft proposals including on the geographic scope and species to be covered.

Convention on Biological Diversity (CBD) COP 9

The 9th Conference of Parties to the CBD (COP-9) met in Bonn, Germany 16-30 May. The decision on marine and coastal biodiversity:

- Adopted scientific criteria for identifying ecologically or biologically significant marine areas in need of protection in open ocean waters and deep-sea habitats.
- Called for progress by applying the scientific criteria and guidance to implement conservation and management measures, including representative networks of MPAs in areas beyond national jurisdiction.
- Agreed to convene an "expert workshop" "to provide scientific and technical guidance on the use and further development of bio-geographic classification systems, and guidance on the identification of areas beyond national jurisdiction which meet the scientific criteria" adopted by CBD COP-9.

- Recognized the growing threats to marine environment, especially from unregulated activities in the high seas, and decided to develop scientific guidance for environmental impact assessments and strategic environmental assessment of activities which may have a significant adverse impact on marine biodiversity beyond national jurisdiction. Parties also agreed to convene an expert workshop to contribute to the development of such guidance.
- On the controversial issue of ocean fertilization, COP-9 signaled clear concern and called for a halt to any further efforts to undertake large-scale fertilization projects until environmental impacts assessments have been conducted and a regulatory regime established. Specifically, COP-9 "requests Parties and urges other Governments, in accordance with the precautionary approach, to ensure that ocean fertilisation activities do not take place until there is an adequate scientific basis on which to justify such activities, including assessing associated risks, and a global, transparent and effective control and regulatory mechanism is in place for these activities..."

COP-9 also agreed to establish an IPCC-like international panel of scientists for assessing/reporting on the state of the world's biodiversity which presumably will have a marine biodiversity component.

For further information and news coverage see:

<http://www.iisd.ca/vol09/enb09452e.html>

<http://news.bbc.co.uk/2/hi/science/nature/7428819.stm>

SPRFMO - Implementation of Interim Measures

The New Zealand government has adopted permit regulations to implement the interim measures agreed by the parties negotiating a South Pacific Regional Fisheries Management Organization (SPRFMO). The NZ regulations are only a first step, as new legislation will be required for full implementation. The permit regulations require Ministry of Fisheries observers onboard all vessels while bottom trawling on the high seas. New Zealand has agreed to close some 40% of its trawl 'footprint' - defined by the SPRFMO negotiations as blocks of high seas areas of approximately 1000km square where any bottom fishing has taken place between 2002-2006 - to continued bottom trawling. However, in a major concession to the fishing industry, New Zealand has allowed the remaining areas within the footprint to be fully open to bottom trawling, potentially leaving many vulnerable seamount ecosystems at risk of continued degradation. New Zealand has agreed to impose a move-on rule in some areas, about 50 percent of areas still open to bottom trawl fishing (in the event that evidence of a Vulnerable Marine Ecosystem (VME) is encountered as defined on the basis of an "indicator score", vessels must "move on" five nautical miles from the area). However, key requirements of UN GA resolution 61/105 and the SPRFMO interim measures have yet to be incorporated in the New Zealand regulations: at the moment there is no requirement to conduct impact assessments to determine the potential for significant adverse impacts on VMEs or the long term sustainability of the deep-sea fisheries on the high seas. As of this writing, there have been no applications for NZ permits for the current fishing season.

New Zealand is the major deepwater fishing nation on the high seas in the South Pacific, with New Zealand vessels responsible for some 90 percent of the fishing for orange roughy and deepwater oreos in the region. Australia is the other major high seas bottom fishing nation in the South Pacific, with additional activity in recent years from a Faroese vessel and a Chinese vessel flagged to Belize. Unlike New Zealand, neither of the other three countries have publicized any measures that they, as flag States, have adopted to implement the SPRFMO Interim Measures Agreement and UN GA 61/105 in respect of their bottom fishing vessels operating on the high seas in the South Pacific Ocean.

International Seabed Authority

The International Seabed Authority rules for prospecting of polymetallic sulphides are nearing completion. At the Fourteenth Session of the ISA, Kingston Jamaica 26 May - 6 June 2008, The Council adopted Regulation 33 related to the protection and preservation of the marine environment, based on changes drafted by a group of delegations including Australia, India, New Zealand, South Africa and Spain. The relevant paragraph of Regulation 33 now reads:

"The Commission shall develop and implement procedures for determining, on the basis of the best available scientific and technical information, including information provided pursuant to Regulation 20, whether proposed exploration activities in the Area would have serious harmful effects on vulnerable marine ecosystems, in particular hydrothermal vents, and ensure that, if it is determined that certain proposed exploration activities would have serious harmful effects on vulnerable marine ecosystems, those activities are managed to prevent such effects or not authorized to proceed."

The rules will probably be finalized at the Fifteenth session of the ISA.

FAO Deep-Sea Guidelines

The latest draft of the UN FAO International Guidelines for Managing Deep-Sea Fisheries in the High Seas is available at: <http://www.fao.org/fishery/nems/38028/en>

FAO was asked by UNGA to develop these guidelines, and specifically to define key issues related to implementing Resolution 61/105 (e.g. criteria for identifying VMEs, and defining what constitutes a "significant adverse impact"). The FAO hosted a Technical Consultation in February 2008, and the key elements of the text agreed at the February meeting related to defining and identifying VMEs, defining significant adverse impacts, and criteria for conducting impact assessments in high seas bottom fisheries, are highlighted in bold in the draft text. This agreed text is already



being used by some RFMOs in developing measures to implement 61/105 in advance of the final guidelines being adopted.

The Technical Consultation will meet again on 25-29 August to finalize the guidelines.

Flag State regulation of high seas bottom fisheries in areas not covered by an RFMO or Interim Measures

The European Council of Fisheries Ministers will meet during the last week of June to consider adopting a regulation on high seas bottom fishing by European Community (EC) vessels bottom fishing in areas of the high seas where no RFMO or multilaterally agreed Interim Measures exist to regulate bottom fisheries. The European Commission has drafted a proposal to regulate EC fisheries consistent with paragraph 86 of UN GA 61/105 that would require impact assessments, 100% observer coverage, and a prohibition on bottom fishing below 1000 meters depth. The Spanish high seas bottom trawl fishing industry has been lobbying heavily to exempt all existing EC bottom fishing in such high sea in a s areas from impact assessments, the 100% observer coverage, and the depth restriction. The DSCC is not aware of any other flag State initiatives in this regard.

Finally, deep-sea bottom fisheries on the high seas of the Indian Ocean continue to be unregulated consistent with UN GA 61/105 and the deadline of 31 December 2007 established in the resolution. Although there has been an effort recently to negotiate a set of interim measures to implement the resolution in the Indian Ocean, thus far the DSCC is unaware of whether any such measures have been adopted or implemented.

Upcoming meetings

UNICPOLOS

Discussions on maritime security (highlighting problem of flags of convenience and flags of non-compliance), New York The DSCC would urge the meeting of UNICPOLs this year to recommend the establishment of a Negotiating Group on flag State implementation, recognizing that there are serious concerns in relation to flag State control over vessels operating on the high seas, including but not limited to the problem of IUU fishing.

The DSCC would also encourage some discussion at the meeting of UNICPOLOS-9 this year regarding the effectiveness of the measures agreed by the UN GA in paragraphs 83-86 of resolution 61/105 in protecting marine biodiversity in areas beyond national jurisdiction, including the extent to which these measures have been implemented by flag States and RFMOs to date. We would also encourage discussion (whether formal or informal at this stage) on the terms of reference, to be agreed later this year during the 63rd Session of the UN GA, for the review in 2009 of the implementation of paragraphs 80-91 of UN GA 61/105 by the UN GA.

The DSCC would recommend that the UN Secretary General be requested to prepare a report by June 2009 on progress in the implementation of 61/105 to allow for further discussion of this important issue at UNICPOLOS-10 in 2009, should the mandate of UNICPOLOS be renewed. The DSCC would further recommend that during the 64th Session of the UN GA beginning in September 2009, several days be set aside to formally review the implementation of 61/105 in light of the deadline of December 2008 established in the resolution for the adoption and implementation of measures to protect vulnerable marine ecosystems from significant adverse impacts of bottom fishing on the high seas. The review should review the extent to which RFMOs and flag States individually have implemented 61/105, determine whether additional measures are needed to protect vulnerable marine ecosystems and deep-sea fish species and species assemblages from the adverse impacts of bottom fishing on the high seas, and to recommend further actions by RFMOs and flag States as required.

North-East Atlantic Fisheries Commission

NEAFC will be holding an extraordinary meeting in London 1-3 July. Norway has proposed that the agreement adopted by NAFO be adapted for the NEAFC context, and adopted in July. This proposal has apparently received a favorable response from other NEAFC parties.

CCAMLR Implementation of bottom fishing controls

All states applying to bottom fish in Southern Ocean CCAMLR high seas waters have until the end of July to provide information on the known and anticipated impacts of its bottom fishing activities on vulnerable marine ecosystems, including benthos and benthic communities. The requirements apply to bottom longlining as bottom trawling is prohibited on the high seas in CCAMLR waters. The CCAMLR Scientific Committee will be developing further criteria in October to assess the effects of bottom fishing on vulnerable marine ecosystems and the additional mitigation measures needed to prevent adverse impacts.

Additional important oceans related meetings through the end of the year include:

- FAO -- Technical Consultation to draft a legally-binding instrument on port State measures to prevent, deter and eliminate illegal, unreported and unregulated fishing, 23 - 27 June, Rome
- NEAFC Extraordinary Meeting, 1 -3 July, London
- FAO Technical Consultation on International Guidelines for the Management of Deep-Sea Fisheries in the High Seas, 25 - 29 August, Rome
- NAFO Annual Meeting, 22 - 26 September, Vigo, Spain
- IUCN World Conservation Congress, October 5-14, Barcelona, Spain

- SPRFMO, 6th negotiating session, 6 - 10 October, Canberra, Australia
- Northwest Pacific negotiating session, 14 - 18 October, Tokyo
- CCAMLR (Commission and Scientific Committee), 27 October - 7 November, Hobart, Australia
- NEAFC Annual Meeting, 10-15 November
- London (Dumping) Convention, November, London, UK

1 A. Limit fishing effort in bottom fisheries on the high seas of the North Western Pacific Ocean to the existing level in terms of the number of fishing vessels and other parameters which reflect the level of fishing effort, fishing capacity or potential impacts on marine ecosystems.

B. Not allow bottom fisheries to expand into areas of the North Western Pacific Ocean where no such fishing is currently occurring, in particular, by limiting such bottom fisheries to seamounts located south of 45 degrees North Latitude and to provisionally prohibit bottom fisheries in other areas of the North Western Pacific Ocean covered by these measures.

C. Notwithstanding subparagraphs A and B above, exceptions to these restrictions may be provided in cases where it can be shown that any fishing activity beyond such limits or in any new areas would not have a significant adverse impact on marine species or any vulnerable marine ecosystem.