

Deep Sea Conservation Coalition (DSCC) critique of the paper *Talking Points on a proposed moratorium on high seas bottom trawling* by the Fisheries Agency of Japan

The DSCC has received a copy of a paper written by the Fisheries Agency of Japan, apparently being distributed to other purportedly 'like-minded' countries. Ignoring the accusatory tone of the paper, the following response aims to address its numerous factual inaccuracies and short-sighted analyses.

1. Background

Fisheries Agency of Japan (FAJ): *“Paragraph 66 of last year’s UNGA resolution (A/RES/59/25) requested States to consider “the interim prohibition of destructive fishing practices, including bottom trawling that has adverse impacts on vulnerable marine ecosystems.””*

According to paragraph 66 of the 2004 fisheries resolution, States and RFMOs were called upon to take “action urgently:”

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, which 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;

FAJ: *“According to paragraph 71 the UNGA in 2007 will discuss whether a moratorium on high seas bottom trawling is necessary. It is expected that this issue will also be discussed at the Informal Consultations on Oceans and The Law of the Sea and Sustainable Fisheries Resolutions to be held at the United Nations headquarters in October and November 2005.”*

According to paragraph 71 of the 2004 fisheries resolution, the UNGA:

“Agrees to review within two years progress on action taken in response to the requests made in paragraphs 66 to 69 above, with a view to further recommendations, where necessary, in areas where arrangements are inadequate.”

This means that the review must be completed by the conclusion of 2006. “Within” does not imply, however, that the review must be delayed until the last possible moment. Indeed, the UNGA call for urgent action in paragraph 66 suggests that it should not. It would be logical to complete the review prior to the UNICP, so that ‘further recommendations in areas where arrangements are inadequate’ can be discussed in that forum.

FAJ: *“Environmental NGOs targeted high seas driftnet fisheries with an unscientific moratorium by UNGA Resolution 46/215 in December 1991. Now, they have chosen high seas bottom trawling as their next target and have started a campaign for its moratorium. The UNGA is again being used as the place to run their campaign since it is rarely attended by fisheries experts, avoiding scientific discussions on this issue at the fisheries specialized organizations such as the United Nations Food and Agriculture Organization (FAO) and regional fisheries management organizations (RFMOs).”*

It is important to recognize that this issue concerns both the effective regulation of fisheries as well as the conservation, protection and sustainable use of marine biological diversity beyond areas of national jurisdiction. Discussions, including scientific discussions, are taking place under the auspices of a variety of international fora, including the UN FAO, the International Seabed Authority, the United Nations Environment Programme (UNEP), the Convention on Biological Diversity (CBD) as well as a number of RFMOs, and regional environment conventions.

This is in response to the UN General Assembly resolution on Oceans and the Law of the Sea in 2002 (A/RES/57/141), when the General Assembly first raised concern over the risks posed to the biodiversity of these deep-water habitats. The resolution recognizes the role of a variety of international fora, including the UN FAO, in paragraph 56:

“[The General Assembly...] Encourages relevant international organizations, including the Food and Agriculture Organization of the United Nations, the International Hydrographic Organization, the International Maritime Organization, the International Seabed Authority, the United Nations Environment Programme, the World Meteorological Organization, the secretariat of the Convention on Biological Diversity and the United Nations Secretariat (Division for Ocean Affairs and the Law of the Sea), with the assistance of regional and subregional fisheries organizations, to consider urgently ways to integrate and improve, on a scientific basis, the management of risks to marine biodiversity of seamounts and certain other underwater features within the framework of the Convention”

NGOs and concerned scientists have been actively involved in working through appropriate international bodies and have participated (as observers or otherwise) in a variety of fora including meetings of the UN FAO, as discussed below, various bodies associated with the CBD, the International Seabed Authority, UNEP as well as regional fisheries management organizations such as CCAMLR, the General Fisheries Council of the Mediterranean and the North-East Atlantic Fisheries Commission and regional organizations such as the Comisión Permanente del Pacífico Sur and the Oslo and Paris Commission (OSPAR) for the Protection of the Marine Environment of the North-East Atlantic. All of these bodies are relevant and, given the global character of the problem and the range of international organizations involved, a coordinated approach and call for action by the UN General Assembly is required.

2. Japan’s position

FAJ: *“The political nature of the initiative is without doubt, as they [NGOs] had never cared to have FAO involved before advancing such call.”*

NGO's have consistently advocated a role for the UN FAO and were actively involved in the discussions at the UN FAO sponsored Deep-Sea 2003 conference in New Zealand in December 2003 and the discussion on deep-sea fisheries at the 26th Session UN FAO Committee on Fisheries (COFI) in March 2005. Thus far however, the UN FAO has played a limited role – the final report of the Deep Sea 2003 conference has not yet been issued and the March 2005 COFI only allocated approximately one hour to the discussion of deep-sea fisheries. In the more than six months that has passed since COFI, FAO has as yet done nothing to implement the actions agreed at that meeting. It is not expected that the results of the Deep Seas Fisheries Conference from December 2003 will be published before the end of this year. If it takes two years to publish the results of a meeting, how much time will it take FAO to actually take action on the substance?

IUCN has also been active in a variety of fora and the IUCN statement to the 26th Session of the UN FAO Committee on fisheries statement was representative of the views of a number of the NGOs attending COFI: “The prerequisites for sustainable management of deep sea bottom fisheries have so far been lacking. As is highlighted in COFI/2005/6 on Deep Sea Fisheries, problems include significant gaps in information on the biology of deep sea fish species, the diversity and ecology of deep sea ecosystems as well as on the location and amounts of catch, bycatch, and fishing effort associated with deep sea fisheries. Information is particularly poor for deep sea fisheries conducted on the high seas. Exacerbating these gaps are deficiencies in decision-making, governance, implementation of management and conservation measures, and compliance with existing requirements for sustainable and responsible fisheries. Participants at DEEP SEA 2003 agreed that rapid action is required to address these gaps if remaining deep sea fishery resources are to be managed on a sustainable basis and deep sea biodiversity protected.” http://www.savethehighseas.org/publicdocs/IUCN_cofi.pdf

At the same time, as indicated previously, the concern over deep-sea bottom trawl fisheries on the high seas is not the exclusive purview of the UN FAO as it goes well beyond the issue of whether high seas fish stocks are being exploited at unsustainable levels; the overall impact on deep sea biodiversity is equally of concern.

FAJ: *“We are very disturbed in this context with the growing propensity of these groups toward using political and diplomatic arenas for their political purposes – an attempt to discredit or exert undue influence in their favor on the competence of FAO and RFMOs on high specialized scientific issues.”*

Regarding the competence of the FAO – this is addressed in the response to the previous paragraph. Regarding RFMOs, the DSCC does have major concerns about the competence of most RFMOs to prevent the impacts of bottom trawl fishing on vulnerable deep-sea ecosystems. For example the Northwest Atlantic Fisheries Organization (NAFO) to date has not adopted any measures to regulate the impact of high seas bottom trawl fishing on corals or other vulnerable deep-sea ecosystems.

More importantly, most high seas areas are unregulated insofar as deep-sea bottom fisheries are concerned. Approximately 75% of high seas areas are not covered by a regime with competence to regulate deep-sea bottom fisheries, and therefore are effectively unregulated. This is an issue which requires urgent attention. In this regard, the DSCC agrees with all governments on the value of the 2001 UN FAO International Plan of Action on Illegal, Unregulated and Unreported Fishing. Consistent with the implementation of the Plan of Action, governments should take immediate action to halt high seas bottom trawl fishing in those areas of the high seas where no regional management organizations exist with the competence to manage these fisheries.

FAJ: *“The moratorium as proposed is without scientific justification...”*

There are numerous scientific reports, surveys and papers identifying and documenting the destructive impact of bottom trawl fishing on deep-water corals and other vulnerable deep-sea ecosystems. Amongst these are the report published by UNEP in 2004 *Cold Water Corals – Out of Sight no Longer Out of Mind* and various reports of the Advisory Committee on Ecosystems of the International Council for the Exploration of the Seas (ICES). In response to reports such as these and other scientific information on the impact of deep-sea bottom trawling on vulnerable ecosystems, more than 1100 scientists from around the world endorsed a statement in 2004 calling for a UN General Assembly moratorium on high seas bottom trawl fishing. More recently, prominent marine scientists in several countries are writing to their governments calling for the moratorium.

FAJ: *“...and is a blatant challenge against the UNCLOS regime and its objectives. It defies, inter alia, the following facts; productivity of the high seas being so meager, almost all of the present day fisheries take place within the resource-rich EEZs. In addition, trawling operations on the high seas occur almost exclusively on traditional grounds as evident in publications by FAO, ICES, PISCES and other RFMOs.”*

Establishing a UN General Assembly moratorium on bottom trawl fisheries on the high seas in areas where no RFMO with the legal competence to manage these fisheries exists until such time as an RFMO is created and has established effective regulations would not be contrary to UNCLOS. Rather it is the opposite – a clear means of promoting the effective implementation of UNCLOS Part VII and Part XII as well as the UN FAO Code of Conduct for Responsible Fisheries, the UN FAO IPOA to Prevent, Deter and Eliminate IUU Fishing (as explained above) and the UN Fish Stocks Agreement, amongst other

instruments.

Secondly, in considering the application of a moratorium on a regional basis in areas where RFMOs do exist, the UN General Assembly would be safeguarding the interests of the international community as a whole and provide RFMOs with a ‘global’ incentive to establish effective regulations. In short, a UN General Assembly moratorium on bottom trawl fishing on the high seas, to be lifted on a regional basis once effective multilateral regulations are in place, would have the direct effect of promoting and providing a clear mechanism for the implementation of UNCLOS, the UN Fish Stocks Agreement, the Convention on Biological Diversity, the UN FAO Code of Conduct, the UN FAO Compliance Agreement and other relevant instruments – consistent with the repeated calls for the implementation of these instruments made by the Plan of Implementation of the World Summit on Sustainable Development, various UN General Assembly resolutions on sustainable fisheries and the Law of the Sea over the past decade, the Rome Ministerial Declaration on IUU Fishing of March 2005, and other resolutions and fora.

Finally, with regard to trawling in the EEZ, management measures are the responsibility of the coastal State. There are legal structures at place – at least in theory – to regulate the bottom trawling industry. For the vast majority of the high seas, no such regulatory structure exists.

FAJ: *“trawling operations on the high seas occur almost exclusively on traditional grounds as evident in publications by FAO, ICES, PISCES and other RFMOs”*

This statement is incorrect. As examples, the following are excerpts from a variety of statements and reports from the UN FAO, ICES, RFMOs and other sources documenting the expansion of deep-water bottom trawl fisheries into new areas of the high seas in the Northeast Atlantic, Southwest Pacific, Southern Indian Ocean and the Central Atlantic:

Southwest Indian Ocean

A UN FAO report of a meeting sponsored by the UN FAO in 2002 documents the rapid expansion of high seas bottom trawl fisheries on the high seas of the Southwest Indian Ocean between 1999-2001 and the subsequent depletion, by 2002, of orange roughy stocks targeted in the fishery. The report states, “Effort expanded from five vessels in the opening months [of the 1999 season] to 20 in the next and 40 vessels within a year – all factory trawlers”

Central East Atlantic

According to a report prepared for the 17th Session of the **Fishery Committee for the Eastern Central Atlantic** in May 2004: “There were few if any other high

seas resources currently under exploitation, although exploratory fisheries had been undertaken on alfonsino (*Beryx splendens*) on sea mounts in the region..." A press release issued by the **UN FAO** on the outcome of the May 2004 CECAF meeting states: "Currently, the only high-seas non-tuna species of commercial interest reported in the CECAF area is alfonsino, which live on underwater elevations known as sea mounts... While current catch levels of the alfonsino and similar deep-water fishes in the CECAF zone are low, there is growing commercial interest in these species, according to FAO, prompting the decision by CECAF countries to begin submitting annual reports on high-seas fishing activities for non-tuna species. Any exploitation of these species should be carefully designed, taking into account the very low level of sustainable yield of these fish populations and the isolation of sea-mount benthic ecosystems," said a CECAF report."

Northeast Atlantic

The **ICES Advisory Committee on Fisheries Management** states that "fisheries on deep water species have developed rapidly and that the resources, which they exploit are generally especially vulnerable to overfishing" but that "It continues to be a major problem for the assessment of stock status that data on landings and particularly fishing effort are limited or of relatively poor quality" The **Working Group On The Appraisal Of Regulatory Measures For Deep-Sea Species of the Northeast Atlantic Fisheries Commission (NEAFC)** in June 2002 reported that in the Northeast Atlantic "The deep-water trawl fisheries have developed recently... For the deep-water trawl fisheries the typical development is a rapid increase in catches when a new resource is discovered followed by a decrease reflecting depletion of the resource. The trends in landings and CPUE for most deep-water fisheries currently indicate that fishing pressure is far beyond sustainability." A **European Commission** report from 2002 states "exploratory cruises by commercial fishing vessels continue to identify potential fisheries, particularly in international waters on the Hatton Bank and the Mid-Atlantic Ridge."

Southwest Pacific

In the Southern Indian Ocean and Southwest Pacific, New Zealand and Australian deep-water trawl vessels increasingly expanded the scope of their operations into high seas areas beginning in the late 1980s. As orange roughy stocks were depleted within the EEZ of New Zealand during the 1980s and Australia during the 1990s, trawlers moved into international waters in search of more fish, developing new grounds on the high seas in the Tasman Sea in 1988, followed by the high seas Louisville Ridge fishery (approximately 600 kilometers east of New Zealand) in 1993, the South Tasman Rise fishery on the high seas south of Tasmania in 1997, finally moving into the high seas areas of the Southwest Indian Ocean to find orange roughy in the late 1990s.

FAJ: *“It is thus quite obvious that there is no compelling reason to single out and condemn high seas trawling as against same activities within the EEZ, let alone practices on resource and environment use on land. The fact that they are insignificant both in number and contribution to the world’s food supply should never be the reason for discrimination and for them to be conveniently used for political agenda of anti-use groups.”*

The key issue here is the protection of deep-sea ecosystems on the high seas from the adverse impacts of bottom trawl fishing. As indicated earlier, there is a clear trend toward exploratory fishing and the expansion of deep-water bottom trawl fishing on the high seas. According to the Sea Around Us Project of the University of British Columbia Fisheries Centre, approximately one-half of all known seamounts are located on the high seas. Moreover, at least two-thirds of the deep-sea lies beyond countries’ EEZs.

A number of countries have begun to take steps to close vulnerable deep-sea areas to bottom trawl fishing within waters under their jurisdiction. As deep-water species are overfished and coastal states move to restrict deep-water fishing within their EEZs, fishing fleets are moving onto the high seas. Whereas governments already have the sovereign authority to take appropriate measures within their own areas of, the conservation and protection of biodiversity on the high seas is the collective responsibility of the international community as a whole. International action to protect the biodiversity of the high seas – the global commons – is an imperative in its own right, in addition to, but distinct from, steps taken by coastal states within the EEZs.

Conclusion

In conclusion the DSCC wishes to emphasize that a moratorium or interim prohibition of bottom trawl fishing on the high seas is the best option available to the international community to provide protection for vulnerable deep-sea ecosystems in the short term. The DSCC takes the view that a UN GA moratorium is scientifically imperative, legally justifiable (and arguably required), politically feasible, and enforceable in practice. It would have a minimum economic impact and would not adversely affect world fish supplies. It is the best short-term measure to provide comprehensive and effective protection to biodiversity and vulnerable ecosystems of the deep-sea on the high seas until the international community is able to put in place, on both the regional and global levels, the instruments and measures necessary to ensure the long-term protection, conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction and sustainable and equitable high seas fisheries.

The concern over the risks to the biodiversity of the deep-sea in areas beyond national jurisdiction has been clearly raised by the UN General Assembly. This issue has now become a test case for the commitment of the international community to conserve fish

stocks and protect deep-sea ecosystems on the high seas consistent with the political commitments and treaty obligations undertaken over the past decade or more.

The DSCC calls on Member Nations of the General Assembly to agree to prohibit bottom trawl fishing on the high seas where no regional fisheries management organizations (RFMO) exist to regulate these fisheries and for moratoria to be imposed on a regional basis where RFMOs which do have the authority to regulate these fisheries have failed to do so until effective regulations are in place to protect vulnerable deep-sea ecosystems and ensure sustainable fisheries consistent with international law.