5 May, 2009

Mr Andrew Penney
Chair, Science Working Group
Wellington

Via email: Andrew.Penney@fish.govt.nz

Dear Andrew,

Re: Comments on Bottom Fishery Impact Assessment Standard Draft April 2009

These are comments by the Deep Sea Conservation Coalition (DSCC) on the Fishery Impact Assessment Standard Draft April 2009.[1]

Absence of comment on any section does not imply agreement.

OVERALL COMMENTS

The background to this assessment is threefold:

1. 2006 UN GA resolution 61/105, which in paragraphs 83-86 provides that States and RFMOs must adopt and implement measures by 31 December 2008 or not authorize bottom fishing on the high seas to proceed.
2. The SPRFMO Interim Measures, adopted in Reñaca, Chile in May 2007. Paragraph 6 of those Measures requires participants to close areas where vulnerable marine ecosystems are known to occur or are likely to occur based on the best available scientific information to bottom fishing unless, based on an assessment undertaken in accordance with paragraphs 11 and 12, conservation and management measures have been established to prevent significant adverse impacts (SAIs) on vulnerable marine ecosystems (VMEs) and the long-term sustainability of deep sea fish stocks or it has been determined that such bottom fishing will not have SAIs on VMEs or the long term sustainability of deep sea fish stocks.
3. The FAO International Guidelines for the Management of Deep-Sea Fisheries in the High Seas, adopted in August 29th 2008. These guidelines show States how to apply UN GA resolution 61/105 and provide strong guidance on implementation of the Interim Measures, but do not supercede them: the first two instruments have priority.

The UN Fish Stocks Agreement 1995 and the FAO Code of Conduct are also relevant considerations, and the IUCN General Assembly also adopted recommendations which are relevant, including consolidated motion CGR4.MOT043: Achieving conservation of marine biodiversity in areas beyond national jurisdictions and CGR4.MOT040-Rev 1: Fisheries management by Regional Fisheries Management Organisations (RFMOs).

In general, the draft standard is heading in the right direction and is a thorough attempt to formulate a standard. At this early stage these comments are restricted to the threshold weight determination.

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[1] At http://www.southpacificrfmo.org/assets/7th-Meeting-May-2009-Lima/DW-Subgroup-VII/SP-7-SWG-DW-03-Bottom-Fishery-Impact-Assessment-Standard-Draft-April-09.doc .

VME EVIDENCE PROTOCOL/THRESHOLD WEIGHT DETERMINATION

The threshold weights in Appendix A for the Rapid Assessment VME Evidence Form are somewhat arbitrary. To put this into context, Paragraph 83(D) of UNGA resolution 61/105 mandates "[t]o 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". Paragraph 7 of the Interim Measures likewise mandates that participants "[r]equire that vessels flying their flag cease bottom fishing activities within five (5) nautical miles of any site in the Area where, in the course of fishing operations, evidence of vulnerable marine ecosystems is encountered, and report the encounter, including the location, and the type of ecosystem in question, to the interim Secretariat so that appropriate measures can be adopted in respect of the relevant site. Such sites will then be treated in accordance with paragraph 6 above.

The move-on rule in the UN GA resolution is intended as 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. Commercial bottom trawls do not retain taxa efficiently, and thus likely to be of limited value in assessing whether significant adverse impacts have occurred to VMEs.

So the simple question is: is a VME encountered?

The measures put in place must identify the amounts of taxa which will themselves provide evidence of VMEs – bearing in mind that commercial bottom tows (or bottom longline sets for that matter) are unreliable methods of providing such evidence, since, for instance, material will fall out of the nets or be crushed and pass through the net. The test is one of identifying 'evidence of an encounter." The FAO Guidelines make this clear, in paras. 67-69 and elsewhere. We may never be able to tell from observer data what damage has been done. This is why bottom fishing should not occur until individual assessments have been done - most likely a benthic survey - and measures put in place.

Penney *et al*[2] *stated that "[s]uch evidence would not necessarily constitute proof of actual existence of VMEs, and would also not provide adequate evidence of significant adverse impacts on such VMEs. Additional review and comprehensive scientific analysis of all available data, including data from frequent repeated encounters with VMEs, together with additional information indicating likelihood of existence of VMEs in specific areas, would be required to properly identify and map VMEs."*

The IUCN paper[3] on FAO guidelines for deep-sea fisheries considered that a single haul constituting more than 5 kg of stony coral or coral rubble or 5 kg of sponge constitutes as significant by-catch indicating the presence of a VME.

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[2] A. Penney, S. Parker, J. Brown, M. Cryer M. Clark & B, Sims, New Zealand Implementation of the SPRFMO Interim Measures for High Seas Bottom Trawl Fisheries in the SPRFMO Area

[3] Alex D Rogers, Malcolm R Clark, Jason M Hall-Spencer, Kristina M Gjerde, "The Science behind the Guidelines: A Scientific Guide to the FAO Draft International Guidelines for the Management of Deep-Sea Fisheries in the High Seas and Examples of How the Guidelines may be Practically Implemented," (December 2007).

In the CCAMLR interim measures for bottom longlines and pots there was agreement that 10 litre or 10 kg basket of all significant species caught in 1200m or 1000 hooks would identify a potential VME which should be closed and subject to further investigation.

Lastly, we note that in terms of the Interim Measures, VMEs include cold water corals and sponge fields according to footnote 3, which then trigger a report and appropriate measures. This indicates in fact that the 50 kg and 30 kg thresholds (Table 18) are far too high. We also refer to the IUCN report (page 25), a lack of by-catch of species that comprise VMEs is not definitive evidence that they are not present in an area that is fished. It is therefore clear that while the proposed conditions are a worthwhile start, more work needs to be done fully to implement the Interim Measures.

The NAFO Scientific Working Group[4] recently looked at a similar issue in identifying coral VMEs. In identifying coral VME components the working group "considered the size, structural complexity, gregariousness, fragility, vulnerability to fishing gears, rarity, longevity, role in the ecosystem (associated species, biodiversity) and international recognition of status." They determined for trawl catches "three precautionary threshold levels for the evaluation of a significant concentration of corals":

Pennatulaceans (sea pens) 1.6 kg per tow

Small gorgonians 0.2 kg per tow

Large gorgonians 2 kg per tow

The DSCC consider these more appropriate levels than those proposed by New Zealand.

In summary, we recommend thresholds based on what are likely to indicate a VME, and suggest that repeated encounters need to be addressed.

Applying the test 'is a VME encountered?' we recommend that the move-on rule is triggered upon any evidence of an encounter with coral, sponges or other vulnerable species. The area should then be subject to an impact assessment to determine whether one or more types of bottom fishing would have significant adverse impacts. Depending on the results of the impact assessments, the area could be reopened to one or more types of bottom fishing activity.

Yours sincerely

Barry Weeber

[4] **Report of the NAFO SC Working Group on Ecosystem Approach to Fisheries Management (WGEAFM Response to Fisheries Commission Request 9.a. NAFO SCS Doc. 08/24 October 2008.**