

6th Meeting of the Commission
Lima, Peru, 30 January to 3 February 2018

COMM 6 – PROP 09
Proposal to Amend CMM 13-2016 on Exploratory Fisheries
New Zealand

CMM 13-2017¹

Conservation and Management Measure for the Management of New and Exploratory Fisheries in the SPRFMO Convention Area.

The Commission of the South Pacific Regional Fisheries Management Organisation;

RECALLING Article 22 of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (the Convention) which provides that a fishery that has not been subject to fishing or has not been subject to fishing with a particular gear type or technique for ten years or more shall be opened as a fishery or opened to fishing with such gear type or technique only when the Commission has adopted cautious preliminary Conservation and Management Measures (CMMs) in respect of that fishery and, as appropriate, non-target and associated or dependent species, and appropriate measures to protect the marine ecosystem in which that fishery occurs from adverse impacts of fishing activities;

RECOGNISING Articles 3(1)(a)(i) and (ii) of the Convention which call on the Commission, in giving effect to the objectives of the Convention, to adopt CMMs that take account of international best practices and protect the marine ecosystem, particularly ecosystems with long recovery times following disturbance;

FURTHER RECOGNISING Articles 3(1)(b) and (2) of the Convention which call on the Commission to apply the precautionary approach and ecosystem based approach to fishery resources under the mandate of the Convention;

NOTING United Nations General Assembly (UNGA) Resolution 61/105 which calls upon Regional Fisheries Management Organisations (RFMOs) 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 authorised to proceed;

FURTHER NOTING UNGA Resolution 64/72 which calls upon RFMOs to establish and implement appropriate protocols for the implementation of UNGA Resolution 61/105, including definitions of what constitutes evidence of an encounter with a VME, in particular threshold levels and indicator species; and to implement the FAO Guidelines for the Management of Deep-sea Fisheries in the High Seas (FAO, 2009; FAO Deep-sea Fisheries Guidelines) in order to sustainably manage fish stocks and protect vulnerable marine ecosystems (VMEs);

FURTHER NOTING UNGA Resolution 66/68 which encourages RFMOs to consider the results available from marine scientific research, including those obtained from seabed mapping programmes concerning the identification of areas containing VMEs, and to adopt CMMs to prevent significant adverse impacts from bottom fishing on such ecosystems, consistent with the FAO Deep-sea Fisheries Guidelines, or to close such areas to bottom fishing until such CMMs are adopted, as well as to continue to undertake further marine scientific research, in accordance with international law as reflected in Part XIII of the Convention;

FURTHER NOTING UNGA Resolution 71/123 which calls upon RFMOs to use the full set of criteria in the FAO Deep-sea Fisheries Guidelines to identify where VMEs occur or are likely

¹ CMM xx-2018 supersedes CMM 13-2016 (Exploratory Fisheries) and previously CMM 4.13.

to occur as well as for assessing significant adverse impacts, to ensure that impact assessments, including for cumulative impacts of activities covered by the assessment, are conducted consistent with the FAO Deep-sea Fisheries Guidelines, are reviewed periodically and are revised whenever a substantial change in the fishery has occurred or there is relevant new information, and that, where such impact assessments have not been undertaken, they are carried out as a priority before authorizing bottom fishing activities, and to ensure that CMMs are based on and updated on the basis of the best available scientific information, noting in particular the need to improve effective implementation of thresholds and move-on rules;

RECOGNISING paragraph 17 of CMM xx-2018 on the Management of Bottom Fishing in the SPRFMO Convention Area which envisages the undertaking of bottom fishing activities by a Member or Cooperating Non-Contracting Party (CNCP) outside any of the Management Areas established in paragraph 15 of that CMM, including using other bottom fishing methods within the Evaluated Area, or undertaking bottom fishing outside of the Evaluated Area;

NOTING the requirements in CMM xx-2018 on the Management of Bottom Fishing in the SPRFMO Convention Area which place a number of obligations on Members and CNCPs who intend to authorise their flagged vessels to engage in any bottom fishing in the Convention Area;

AGREEING that new and exploratory fisheries should not be permitted to expand faster than the acquisition of information necessary to ensure that the fishery can and will be developed in accordance with the principles set out in Article 2 of the Convention;

ADOPTS the following CMM in accordance with Articles 8, 20 and 22 of the Convention:

OBJECTIVE

1. This CMM details the framework which will govern the management of new and exploratory fisheries in the SPRFMO Convention Area. This CMM is intended to ensure that sufficient information is available to evaluate the long term potential of new and exploratory fisheries, to assist the formulation of management advice, to evaluate the possible impacts on target stocks and non-target and associated and dependent species, to ensure new and exploratory fishery resources are developed on a precautionary and gradual basis and to promote the sustainable management of new and exploratory fisheries.

APPLICATION

2. Hereinafter, “new and exploratory fisheries” shall be referred to in this CMM as “exploratory fisheries”.
3. This CMM applies to all fishing activity in exploratory fisheries, as defined in this CMM, in the Convention Area.

INTERPRETATION

4. For the purposes of this CMM, a fishery is an “exploratory fishery”:
 - a) if it has not been subject to fishing in the previous ten years; or
 - b) for the purposes of fishing with a particular gear type or technique, if it has not been subject to fishing by that particular gear type or technique in the previous ten years; or

c) if fishing in that fishery has been undertaken in the previous ten years pursuant to this CMM, and a decision has not yet been taken in accordance with paragraph 23 or 24 of this CMM to either close or manage the fishery as an established fishery.

REQUIREMENTS FOR EXPLORATORY FISHERIES

5. Any Member or CNCP seeking to permit a vessel that flies its flag to fish in an exploratory fishery, or to fish in an exploratory fishery with a gear type that has not been used in that fishery for the previous ten years; shall, not less than 60 days in advance of the next annual meeting of the Scientific Committee:

a) submit an application to the Commission to permit a vessel or vessels that fly its flag to fish in that exploratory fishery. This application shall include information that satisfies paragraphs 2 and 3 of Annex 1 of CMM 05-2016 (Record of Vessels);

b) prepare and submit a Fisheries Operation Plan to the Scientific Committee. The Fisheries Operation Plan shall include the following information, to the extent it is available:

- i. a description of the exploratory fishery, including area, target species, proposed methods of fishing, proposed maximum catch limits and any apportionment of that catch limit among areas or species;
- ii. specification and full description of the types of fishing gear to be used, including any modifications made to gear intended to mitigate the effects of the proposed fishing on non-target and associated or dependent species or the marine ecosystem in which the fishery occurs
- iii. the time period the Fisheries Operation Plan covers (up to a maximum period of three years);
- iv. any biological information on the target species from comprehensive research and/or survey cruises, such as distribution, abundance, demographic data and information on stock identity;
- v. details of non-target and associated or dependent species and the marine ecosystem in which the fishery occurs, the extent to which these would likely be affected by the proposed fishing activity and any measures that will be taken to mitigate these effects;
- vi. the anticipated cumulative impact of all fishing activity in the area of the exploratory fishery if applicable;
- vii. information from other fisheries in the region or similar fisheries elsewhere that may assist in the evaluation of the relevant exploratory fishery's potential yield, to the extent the Member or CNCP is able to provide this information;
- viii. if the proposed fishing activity is bottom fishing, as defined in CMM xx-2018 (Bottom Fishing), the proposed assessment of the impact of their flagged vessels' bottom fishing activities, prepared pursuant to paragraphs 30 and 31 of CMM xx-2018; and
- ix. where the target species is also managed by an adjacent Regional Fisheries Management Organisation or similar organisation, a description of that neighboring fishery sufficient to allow the Scientific Committee to formulate its advice in accordance with paragraph 8.

c) provide a commitment in its proposal to implement the Data Collection Plan for the exploratory fishery developed in accordance with paragraph 9, should the Commission approve fishing in accordance with the Fisheries Operation Plan.

6. The requirements in paragraphs 5 shall be considered as a proposal for the next annual meeting of the Commission and will be made available to all Members and CNCPs in accordance with the Rules of Procedure.

SCIENTIFIC COMMITTEE CONSIDERATION

Fisheries Operation Plans

7. At its annual meeting, the Scientific Committee shall consider all Fisheries Operations Plans submitted pursuant to paragraph 5, all information provided in accordance with a Data Collection Plan and any other relevant information.
8. The Scientific Committee shall provide recommendations and advice to the Commission on each Fisheries Operation Plan on the following matters, as appropriate:
- a) management strategies or plans for fishery resources;
 - b) reference points, including precautionary reference points as described in Annex II of the 1995 Agreement;
 - c) an appropriate precautionary catch limit;
 - d) the cumulative impacts of all fishing activity in the area of the exploratory fishery;
 - e) the impact of the proposed fishing on the marine ecosystem;
 - f) the sufficiency of information available to inform the level of precaution required and the degree of certainty with which the Scientific Committee's advice is provided;
 - g) the degree to which the approach outlined in the Fisheries Operation Plan is likely to ensure the exploratory fishery is developed consistently with its nature as an exploratory fishery, and consistently with the objectives of Article 2 of the Convention; and
 - h) in respect of a Fisheries Operation Plan that proposes any bottom fishing activity, advice and recommendations in accordance with paragraph 30(b) of CMM xx-2018 (Bottom Fishing).² Where the proposal is establish an exploratory fishery in the Evaluated Area, advice and recommendations on the impact of such a proposal on any existing Management Area for that gear type in the Evaluated Area.

Data Collection Plans

9. When considering a Fisheries Operation Plan submitted pursuant to paragraph 5 of this CMM in respect of an exploratory fishery that meets the definition of paragraph 4(a) or (b) of this CMM, the Scientific Committee shall develop a Data Collection Plan in respect of that exploratory fishery which should include research requirements, as appropriate. The Data Collection Plan shall identify and describe the data needed and any operational research actions necessary to obtain data from the exploratory fishery to enable an assessment of the stock, the feasibility of establishing a fishery and the impact of fishing activity on non-target, associated or dependent species and the marine ecosystem in which the fishery occurs. The Scientific Committee shall review and update the Data Collection Plan for each exploratory fishery annually as appropriate.
10. The Data Collection Plan shall require, as appropriate:
- a) a description of the catch, effort and related biological, ecological and environmental data required to undertake the evaluations described in paragraph 24;
 - b) the dates by which the data must be provided to the Commission;
 - c) a plan for directing fishing effort in an exploratory fishery to allow for the acquisition of relevant data to evaluate the fishery potential and the ecological relationships among harvested, non-target and associated and dependent populations and the likelihood of adverse impact;
 - d) where appropriate, a plan for the acquisition of any other research data obtained by fishing vessels, including activities that may require the cooperative activities of

²For greater clarity, it is intended that where a proposed fishing activity falls within the scope of both this measure and of CMM xx-2018 (Bottom Fishing), the requirements of each measure will apply cumulatively. However, it is envisaged that the Scientific Committee will be able to assess the proposed fishing activity against the requirements in each measure at the same time. The same approach would also apply to the Commission's consideration of the proposed fishing activity.

scientific observers and the vessel, as may be required by the Scientific Committee to evaluate the fishery potential and the ecological relationships among harvested, non-target, associated and dependent populations and the likelihood of adverse impacts; and

e) an evaluation of the time scales involved in determining the responses of harvested, dependent and related populations to fishing activities.

COMPLIANCE AND TECHNICAL COMMITTEE CONSIDERATION

11. The Compliance and Technical Committee shall consider any Fisheries Operation Plan submitted pursuant to paragraph 5 and any advice of the Scientific Committee thereon and provide advice and recommendations to the Commission on appropriate management arrangements, including in light of the obligations in CMM xx-2018 (Bottom Fishing), if applicable.

COMMISSION CONSIDERATION

12. At its annual meeting, the Commission shall consider all Fisheries Operation Plans submitted pursuant to paragraph 5, any advice or recommendations provided by the Scientific Committee and Compliance and Technical Committee pursuant to paragraphs 8 and 11, and any applicable obligations under CMM xx-2018 (Bottom Fishing) in respect of the proposed fishing activity. On the basis of this consideration, the Commission shall take a decision as to whether to approve fishing in the exploratory fishery in accordance with the Fisheries Operation Plan and for what period of time, up to a maximum period of three years. If the Commission approves fishing in accordance with the Fisheries Operation Plan it shall adopt a CMM in respect of the exploratory fishery which shall include a precautionary catch limit and any other management measures the Commission considers appropriate.

13. The Commission may amend a Fisheries Operation Plan, as necessary, prior to approving fishing.

14. Exploratory fisheries shall only be open to those vessels that are equipped and configured to comply with all relevant CMMs.

FISHING ACTIVITY

15. Members and CNCPs shall not permit their flagged vessels to fish in an exploratory fishery without approval from the Commission.

16. Members and CNCPs shall ensure that any vessel that flies their flag only fishes in an exploratory fishery in accordance with the Fishery Operations Plan prepared and approved in respect of that vessel's proposed fishing activity.

17. Members and CNCPs shall ensure that where their flagged vessels fish in an exploratory fishery, the data required by the Data Collection Plan is provided to the Commission. That data shall be provided to the relevant standard prescribed in CMM 02-2017 (Data Standards). Members and CNCPs whose vessels participate in exploratory fisheries shall be prohibited from fishing in the relevant exploratory fishery if the data specified in the Data Collection Plan has not been submitted to the Commission for the most recent season in which the fishing occurred, until the relevant data has been submitted to the Commission and the Scientific Committee has had the opportunity to review that data.

18. Members and CNCPs whose vessels participate in exploratory fisheries shall ensure that each vessel that flies its flag carries one or more independent observers sufficient to collect data in accordance with the Data Collection Plan.

19. None of the obligations in this measure exempt a Member or CNCP from complying with any other obligations in the Convention or any CMM adopted by the Commission.

20. Any fishing activity undertaken pursuant to this CMM will not be considered to be a precedent for future allocation decisions.

21. Notwithstanding paragraph 16, Members and CNCPs shall be entitled to authorise fishing in an exploratory fishery by a flagged vessel not identified in the Fisheries Operation Plan if a vessel specified in the Fisheries Operation Plan is prevented from fishing on account of legitimate operational or force majeure reasons and a replacement vessel is proposed pursuant to this paragraph. In such circumstances the Member or CNCP concerned shall immediately inform the Secretariat and provide:

- a) full details of the intended replacement vessel;
- b) a comprehensive account of the reasons for the replacement and any relevant supporting evidence; and
- c) specifications and a full description of the types of fishing gear to be used by the replacement vessel.

The Secretariat shall circulate this information to all Members and CNCPs as soon as possible.

REVIEW

22. Once a Fisheries Operation Plan expires, a Member or CNCP may prepare a new Fisheries Operation Plan in accordance with paragraph 5.

23. Once an exploratory fishery has been fished for 10 years pursuant to this CMM, any further fishing in that fishery shall be undertaken only in accordance with a CMM adopted by the Commission in accordance with paragraph 24 to manage that fishery as an established fishery.

24. At any time if the Commission is satisfied that sufficient information is available:

- a) to evaluate the distribution, abundance and demography of the target species to inform an estimate of the exploratory fishery's potential yield; and
- b) to review the exploratory fishery's potential impacts on non-target and associated or dependent species and the marine ecosystem in which the fishery occurs; and
- c) to allow the Scientific Committee to formulate and provide advice to the Commission on appropriate management arrangements;

the Commission may take a decision, on the application of any Member, to manage the fishery as an established fishery.

25. This measure shall be reviewed at the annual meeting of the Commission in 2019. Such review shall take into account, *inter alia*, the most recent advice of the Scientific Committee on exploratory fisheries.