

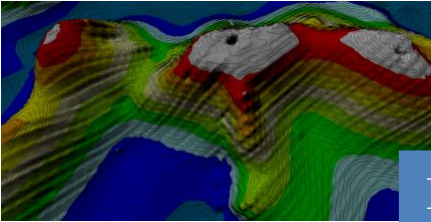
10TH MEETING OF THE SPRFMO COMMISSION

Held virtually, 24-28 January 2022

COMM 10 – Obs 04

HSFG Submission to the 10th SPRFMO Annual Meeting

HSFG



ENOUGH is ENOUGH!

HIGH SEAS GROUP'S RESPONSE TO PROPOSED SCENARIOS TO ACHIEVE PROTECTION OF THE MODELLED VME INDICATOR TAXA.

22 December 2021.

Introduction

The Science Committee is tasked by the SPRFMO Commission¹ to develop spatial management scenarios for Bottom Trawling that encompassed protection levels of 70%, 80%, 90%, and 95% of the modelled VME indicator taxa. MPI has been working with Australia on draft scenarios to achieve this. In doing so the Commission has required the SC has to explicitly account uncertainties in the current model predictions.

MPI invited the High Seas Group (HSG) members in early December 2021 in consultation to have input into what is described in the model as “the industry value layer”. This to determine whether the proposed contraction of the fishable areas would have the perverse outcome in that the areas could not be fished, reducing the areas to the extent that there is insufficient area to allow the HSG member vessels to set or haul their gear. The HSG signals its opposition to this process for the reasons outlined in this document.

Background.

From the beginnings of the spatial management process in SPRFMO the HSG have repeatedly commented on the flawed science and inputs that underpin the models and the consequent analysis, noting that the modelling is heavily conservation centric and does not provide sufficient weight (value) to industry access to High Seas fisheries.

Utilisation of the High Seas resources are specifically contemplated by UNCLOS, SPRMO and the NZ Fisheries Act 1996 and the New Zealand International Fisheries Strategy. We are

¹ Comm-9 Report at page 7 para 67..

concerned that further restriction of access appears to be enthusiastically embraced by government and anti-fishing NGOs, to the point that the HSG assert 'enough is enough'.

Members may be aware that only a single NZ operator (and HSG member) deployed a vessel into the northern bottom trawl fisheries (such as the Norfolk Rise or Louisville Ridge) in the SPRFMO area in 2021. The reason for this is that the combination of measures that have been imposed through the vessel's High Seas Permits (HSP) progressively over the past decade restricting access make it uneconomic and too risky to deploy vessels to these remote fisheries. The result is that the cumulative extent of regulation has created a *de facto* barrier to access, which we suggest, is not contemplated by the underlying legislative matrix.

The HSG fears that the additional modelling that MPI and Australia (although Australia have no trawl vessels operating in SPRFMO) are engaged with, will inevitably result in increased restriction of access and act as a disincentive for the operators of these vessel to deploy vessels to the remaining open areas. This is clearly out of step with New Zealand's International Fisheries Strategy.

For the record, we strongly object to NZ and Australia continuing to use the current models to support a further contraction of the open areas.

This approach is flawed on the grounds that:

1. It is unnecessary. Over 99% of the SPRMO area is already closed to trawling and bottom lining and only an area of 0.019% of the area under management by SPRFMO is accessible by bottom trawl. This is set out in an HSG presentation given at the 7th SC held in Cuba in 2019 which is attached to this paper as **Annex 1**;
2. The areas that are currently trawled have been trawled over many decades;
3. The remaining open boxes where fishing is still allowed are subject the move on rule (which we objected to);
4. Even in the open areas, our vessels are only able to fish in less than one third of the areas due to fishing related restrictions (depth, topography etc);
5. The data that is relied on in the MPI models, cannot be accurately representative of the distribution of taxa in the areas fished, as our vessels are tightly constrained in their fishing activity by the topography of the areas that they fish, the depth of water, tides, and many other factors.
6. To build an analysis on benthos samples from tows (which are agreed to be poor sampling tools) is to build a regulatory matrix on a flawed foundation, with the unintended consequence that vessels are precluded from access.
7. The spatial constraints significantly increase the risk of vessels breaching the CMMs and been characterised as IUU vessels.
8. Where HSG members are alleged to have breached the CMMs they have been declined High Seas Permits – notwithstanding that the alleged breaches may be unproven, speculative and have yet to be reviewed by the NZ courts. No business can

operate where key access to fisheries that form part of their annual fishing plan is subject to the whims of a regulator that is being pressured by international geopolitics and a very vocal environmental lobby pushing selective advocacy “pseudo-science” often quoting papers written more for their use in environmental advocacy rather than providing balanced science.

9. While the general quality of the modelling is adequate and subject to review, the vital next step in ground truthing outputs is absent. While MPI maintain that there has been ground truthing (for example by using actual video or camera footage of the benthos) to validate some of the modelling this has been very at best broad brush and not of a suitable scale and geographical extent to verify modelling outputs which currently represent the key instrument in ultimately limiting or closing all these areas to all fishing.

Unbalanced Approach.

The HSG attended online at SC 8 and presented a paper at the SC7 Obs-1 meeting in Havana Cuba in October 2019, noting their concerns around the poorly defined use of terminology, poor science and their concerns around the new proposed BFIAS. The continued attack on bottom fishing has continued into 2020 and 2021 with claims disguised as science supported by questionable “models” being put forward by countries (such as Australia) and eNGOs that are determined to see bottom and mid water trawling banned on the high seas.

AGAIN we ask that members get matters into perspective. If 99% of the Convention area closed is not deemed precautionary, then what is? BE HONEST! On top of this within the remaining 1% that is open to fishing, less than a third of that area is available to trawl! Taking the above into account, any suggestion that these measures are not hyper “precautionary” is laughable. Members should by contrast, consider the terrestrial ecosystem that we live in and the extent to which we have modified the land.

Blind adherence to biological allocation and management criteria, at the expense of considered opportunity to utilise the stocks sustainably, is neither consistent with UNCLOS, the SPRMO Convention or New Zealand’s expression of these measures under provision of the Fisheries Act 1996 and the Deed of Settlement 1992 with indigenous Maori.

The adoption of this approach creates an unintended bias towards environmental objectives rather than to sustain New Zealand’s position. The HSG asserts that the existing environmental measures leave a flag state, vulnerable to challenge as they are more onerous than New Zealand’s domestic legislation (The Fisheries Act 1996) and the domestic legislation of other flag states.

We have previously stated that there is an overt bias that underlies the approaches of New Zealand and Australia towards there management of the High Sea fisheries in SPRFMO that is

out of step with domestic management measures. This bias prioritises absolute marine protection over rational use under the FA1996.

The HSG is a strong advocate for sustainable fishing. We welcome sensible controls on the high seas within the overarching framework of UNCLOS and the UNGA resolutions, but we also expect to be able to sustainably harvest resources on the high seas and not to be excluded from access. This is contemplated within the objective of the proposal by the words “sustainable use”, which echoes the same phrase from Article 2 of the convention.

The approach of New Zealand and Australian officials has extensively focused on establishing ‘science-based measures’ for management. The overall picture is one where officials are more interested in establishing NZ environmental credentials at the expense of fishing; with little consideration given to rational use and opportunities to sustainably utilise the resource.

This unbalanced approach is evident a number of areas:

1. Conservation Management Measures (CMMs) are developed with limited input from actual resource users (the industry and NZ’s indigenous groups) being given proper weight. The HSG is frustrated by so-called “consultation” with our input being ignored and see that policy is instead developed by central government to meet political agendas on the world stage. Consequently, the negotiation process has been captured by political lobbyists, which in NZ include a strong environmental lobby. This was evident with respect to the establishment of the Kermadec Ocean Sanctuary within the NZ 200nm zone. This approach is at odds with NZ government’s partnership obligations with its indigenous Maori people guaranteed by Treaty and its obligations under the FA1996 to consult on domestic enactment of CMM measures and properly “provide for the utilisation of fisheries resources while ensuring sustainability” (FA1996 Purpose). It is not proper to interpret this section as being a mandate to protect the environment at all costs. The Court of Appeal in **Kellian v Minister of Fisheries** expressly recognised the purpose of utilisation along with sustainability and noted that reflected UNCLOS articles 61 & 62.
2. The HSG strongly believe that NZ negotiators are influenced against sustainable use by inclusion of government conservation advocacy in the form of the NZ Department of Conservation (DOC) in negotiations. It should be recognised that DOC was established purposely as a Department (not a Ministry) and under the Conservation Act the prime purpose is administering the New Zealand conservation estate on land and not at sea, preserving freshwater fisheries and has no mandate at sea. Unfortunately, the original policy considerations in establishing DOC has been lost. The reason that the marine estate was not placed under the jurisdiction of DOC and its advocacy but instead was retained in multiple use under the Fisheries Act 1996 administered by the Ministry of Primary Industry (MPI), (and its predecessor the

Ministry of Fisheries), is that decisions on access requires balanced (not advocacy based) decision making to give effect to the purposes of the Act.

3. Checks and balances were placed in law to re-enforce this distinction. We are seeing a similar process playing out through SPRFMO. The Convention requires balanced decision making; however we are seeing that these lines have become blurred in the international negotiations process and in the view of the HSG, the effect of this is to give the conservation lobby and the ENGOs a disproportionate voice and influence in these negotiations.
4. NZ government negotiators have a history of operating behind closed doors in concert with other nations (in the case of SPRFMO - Australia) in an effort to exclude the Industry from decisions that are biased towards absolute protection not sustainable use. There is an apparent attitude that manifests itself as a “we know best as we are government”, when in fact in many cases Industry have the knowledge, data and the platforms that collect the data and work at the coalface. We have stated many times that “all best available information“, which is a requirement of SPRFMO, has not been utilised, and this continues to be the case.
5. We believe the NZ government has applied biological and model based and science approaches in the establishment of area access and allocation shares without proper consideration given to economic and cultural (i.e. utilisation) factors as required under UNCLOS, the SPRFMO Convention UNDRIP and the NZ Fisheries Act 1996. The most glaring example of this is the failure of the NZ / Australia informal mediation which then allowed SPRFMO to establish a 200 tonne high seas allocation for the Westpac Bank. In the view of the HSG a proper bio-economic analysis of catches on the ORH straddling stock on the Challenger Plateau (a more appropriate approach to determining optimal management as required under UNCLOS) would likely conclude that there is no headroom catch available for high seas allocation in this straddling stock.
6. Lack of any trade-off analysis conducted to balance use with conservation demonstrates little regard given to fishery use in decision making. The NZ modelling and science-based approach to establishing catch limits and other management measures implicitly assumes a 0% discount rate for environmental objectives (e.g. protection of habitat) when setting management rules. This gives infinite value to the objective of protection in priority to use, which simply cannot be the case (and was not intended under the FA1996) and is arguably inconsistent with the legal objectives established (and agreed to) under UNCLOS, the Convention which promote optimal use (not non-use). The result will inevitably bias decisions to absolute protection over environmentally sustainable use.

7. Even if NZ wants to accept that the environment should be given infinite value over use, it is not safe to assume that all SPRFMO members have similar discount rates, in fact this is not the case. The US government for example uses a discount rate for environmental protection of between 3 and 8% (the latter being a commercial rate similar to the discount rate of fish quota). Trade-off analysis at 8% discount would give equal value to quota and the environment. This means that measures NZ has applied to its own industry are far more onerous than other countries would apply in practice. The NZ government should not assume that its aspirations for environmental protection in the SPRFMO area of competence are commonly held and, moreover, it is questionable whether it is legally appropriate for NZ to apply more stringent rules to its own industry than others would. We believe that NZ is in effect tying industry hands in negotiations by taking such an approach.

Case Study

This unbalanced approach can be demonstrated through a recent case study of an incident that involved a New Zealand operator fishing under a High Seas Permit in the SPRFMO area.

In this matter the New Zealand operator has been denied a High Seas Permit on the grounds of an alleged breach of the encounter protocol in Clause 27 and 28 of CMM 03-2020².

The following facts are relevant:

1. The vessel encountered benthos on a High Seas Trip in the SPRFMO evaluated area. The MPI observer (there were two on the vessel) on duty completed an encounter form and duly took the encounter form to the captain. It recorded that 2.7 kg of benthos was caught and the weight was recorded. The captain thought there was more benthos caught, and suggested that the amount recorded on the form should be checked /doubled. The observer declined this request.
2. At the time of the encounter the vessel had been fishing the area and continued to fish after the encounter as those responsible for reporting onboard (presumably

² 27. For the purposes of this section of the CMM, the term "Encounter" means catch of a VME indicator taxa **above threshold** levels as set out in paragraph 28.

28. Where VME indicator taxa are encountered in any one tow at or above the threshold limits in Annex 6A, or three or more different VME indicator taxa at or above the weight limits in Annex 6B, **Members and CNCPs shall require any vessel flying their flag to: a) cease bottom fishing immediately within an encounter area of one (1) nautical mile either side of the trawl track extended by one (1) nautical mile at each end; b) report the encounter immediately to the Member or CNCP whose flag the vessel is flying and the Secretariat, in accordance with the Guidelines for the preparation and submission of notifications of encounters with potential VMEs, contained in Annex 7.** [Our emphasis].

together with the government observer given the silence) *did not consider it had triggered the threshold*, or even had come close to triggering the threshold.

3. The vessel returned to port, unloaded and returned to the same area and fished the same area for another trip; all without the encounter being raised.
4. At the end of the subsequent trip and after the observer had been debriefed, MPI decided to review the event. The HSG notes that the observer's brief is clear, in that any benthic material caught must be weighed and recorded at the time of capture.
5. It was only some months later that MPI opened an investigation and closed the area to fishing and notified other operators the area was closed due a threshold being exceeded. This was based on speculation about the weight of benthos caught.
6. The Skipper and HSG experts estimate that the amount of benthos caught was *well below* the 15kg threshold required to report and move on. It is not possible to determine the weight of benthos after the event with pictures and video.
7. The incident was not reported by MPI in line with CMM 03-2020 in that the alleged incident occurred on the 21st October 2020 and the other HSG members and flag states were only informed 23rd December 2020 to cease fishing the area, some 2 months after the alleged incident.
8. The area forms part of an area that is open to fishing and has been trawled for at least 30 years by many nations.
9. As a consequence, on application for a High Seas Permit for the 2021/2 fishing year, the operator has been denied a HSP.

The HSG objected to this incident being used to trigger the encounter protocol and therefore resulting in the area being closed. It is clearly an inappropriate case to be used as a test case to establish an encounter protocol as the threshold was not triggered. The area was closed after the fact, based on poor information, speculation, and a misapplication of the CMM and the precautionary principle.

The HSG has repeatedly noted its objection to the weight thresholds, the species mixes and how these are integrated into modelling with a clear conservation bias. The HSG has also repeatedly objected to the overzealous application of the move on rule and notes that should the commission adopt the reduced footprint that would result from the current MPI analysis, this **will** result in the progressive closure of the few remaining areas open to fishing.

Conclusions

Enough is enough! Political agendas need to get out of fisheries management and countries advocating for strong measures in the SPRFMO area need to take a good hard look at their own backyards and stop seeking to regulate fisheries on the other side of the world.

Over 70% of the world's protein comes from the wild fisheries and with a world that is growing in population food security is vitally important, not only for those privileged few that attend but for those whose jobs and people whose very existence rely on fishing.

An adherence to hyper conservative and ultimately non science based approach to access, the use of flawed modelling in the absence of real data and consequent management at the expense of considered opportunity to utilise the stocks sustainably, is neither consistent with provisions established under the UNCLOS, the SPRMO Convention or New Zealand's expression of these measures under provision of the Fisheries Act 1996 and the Deed of Settlement 1992.

The HSG asserts that there should be intensive economic analysis – conducting some policy (economic) scenario analysis around the various CMM proposals against the UNCLOS objective of optimal use. This would be fruitful in informing NZ's position and rebalancing the potentially overzealous and one eyed focus on absolute protection.

The HSG, challenge members to collectively arrive at a coherent policy position for high seas management that is not just based on models (largely unverified) but is instead informed by explicit trade-off analysis (what are the costs and benefits at the margin of fishing and what the risks to use and protection of any measure). This will require intensive economic analysis on the impact of the proposed contraction of the fishable areas. This will benefit SPRFMO and this needs to be universally applicable and has implications for domestic as well as international fisheries management.

Yours truly,



ANDY SMITH

Chair

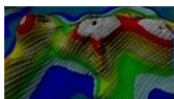
High Seas Fisheries Group Incorporated.

SPRFMO SC

"So where has all the Benthos gone "



High Seas Fisheries Group

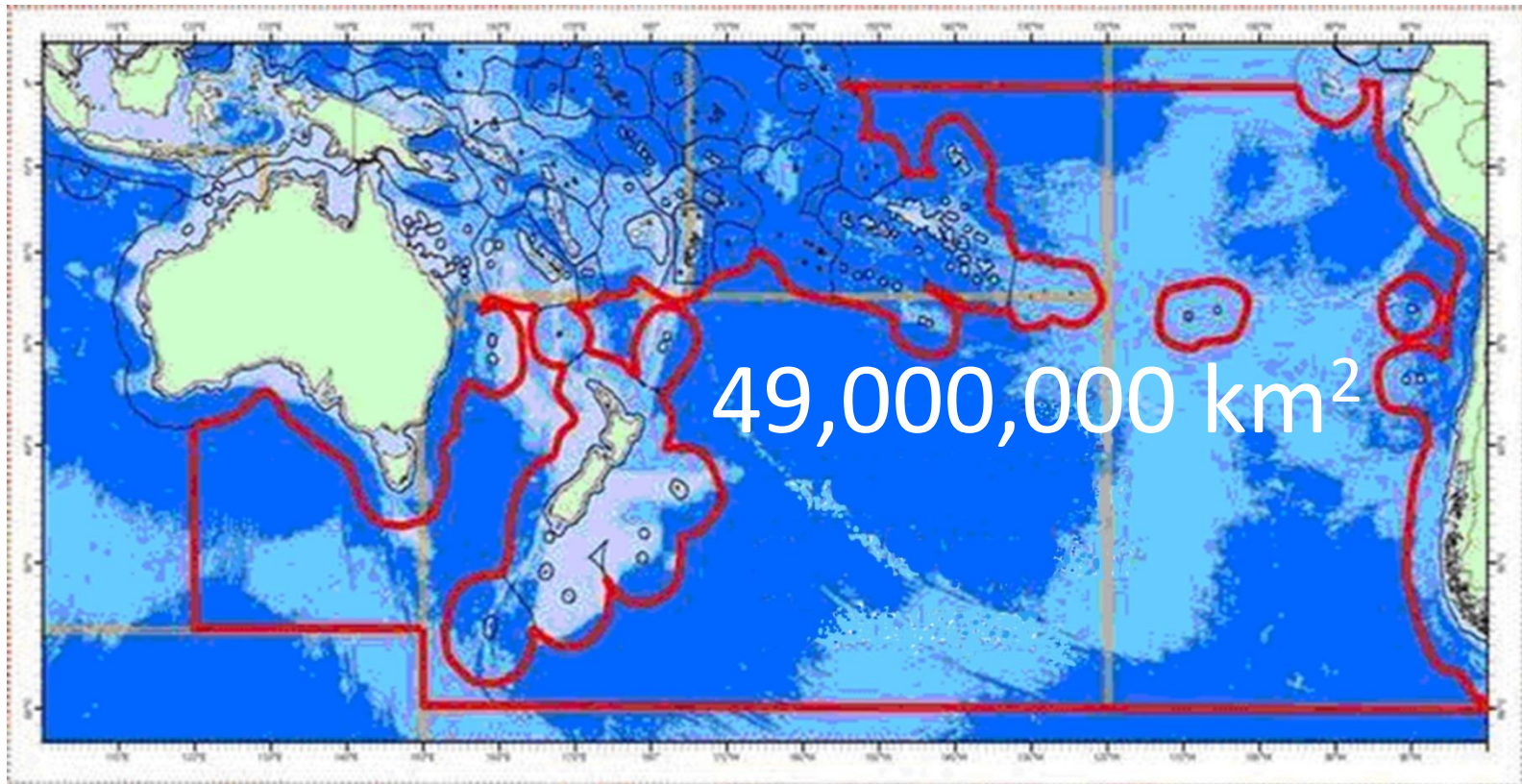


Scale matters

- Total SPRFMO area is 49,000,000 Km²
- The new Evaluated area within SPRFMO is 12,863,560 Km² (excluding land mass)
- Within the Evaluated area that is open to bottom trawl (63,745 km²), **0.50 %** is open or **.13%** of the area under management by SPRFMO
- The area accessible by bottom trawl depth (up to 1500m) is 9452 Km² – **0.019 %** of the area under management by SPRFMO - And within this area the trawl tracks represent a small fraction of the **0.019%.**

The effect of the new measures is to close areas to bottom trawling amounting to 99.81 % of the total SPRFMO area. NOTE the remaining 0.19% has been made subject to a move on rule, notwithstanding that the convention provides for the **sustainable use of the fishery resources**.

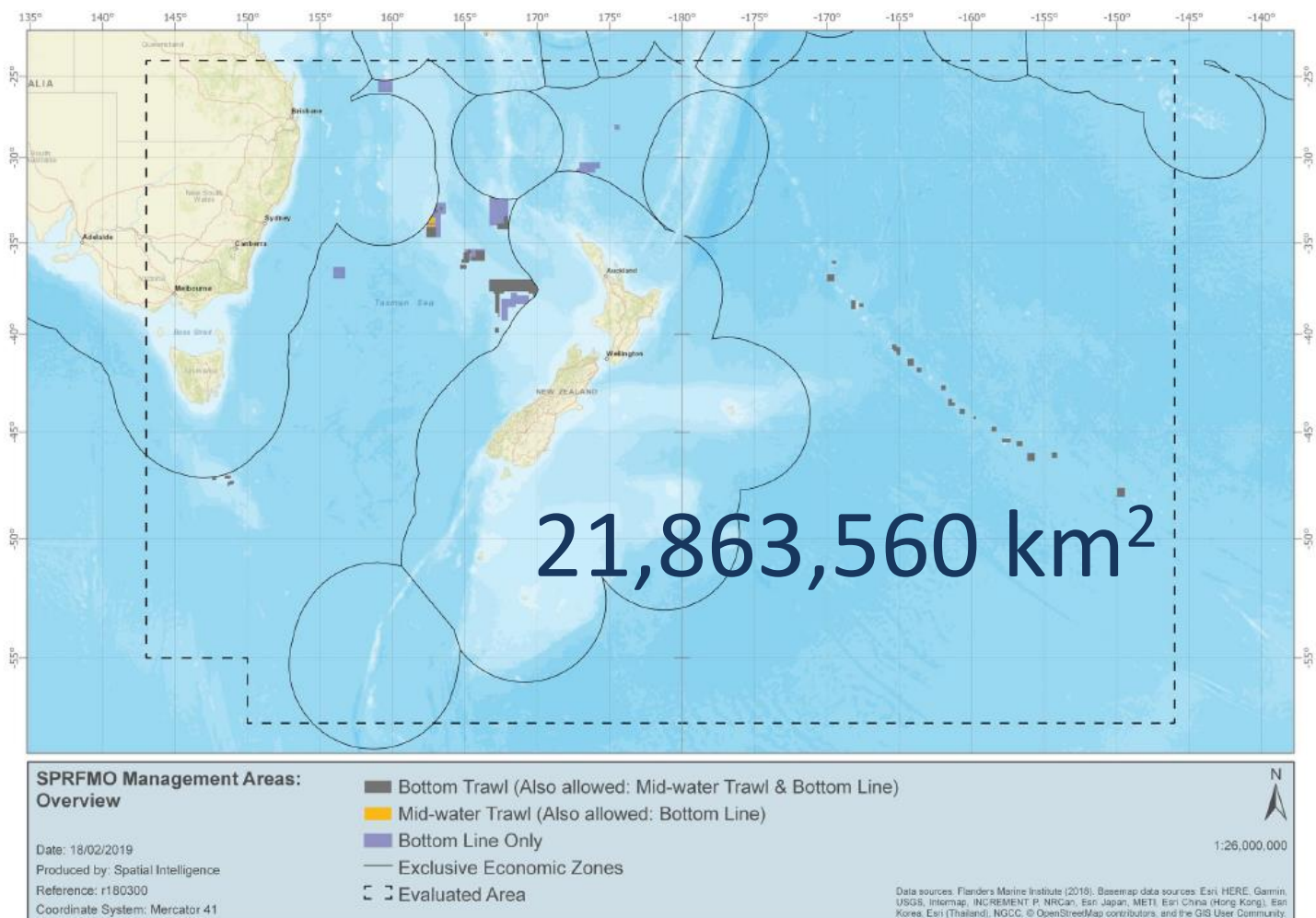
When I compare the area of the 2019 open boxes with the evaluated area (minus the area of NZ and portion of Australia that is within the evaluated area, I conclude that **0.5 %** of the evaluated area is open to fishing and not **5.5 %** as stated by New Zealand in COMM7-Prop 03.1



This slide below shows the Evaluated area (defined below) noting that bottom trawling was previously open across the whole of the SPRFMO area is now restricted to this much reduced area.

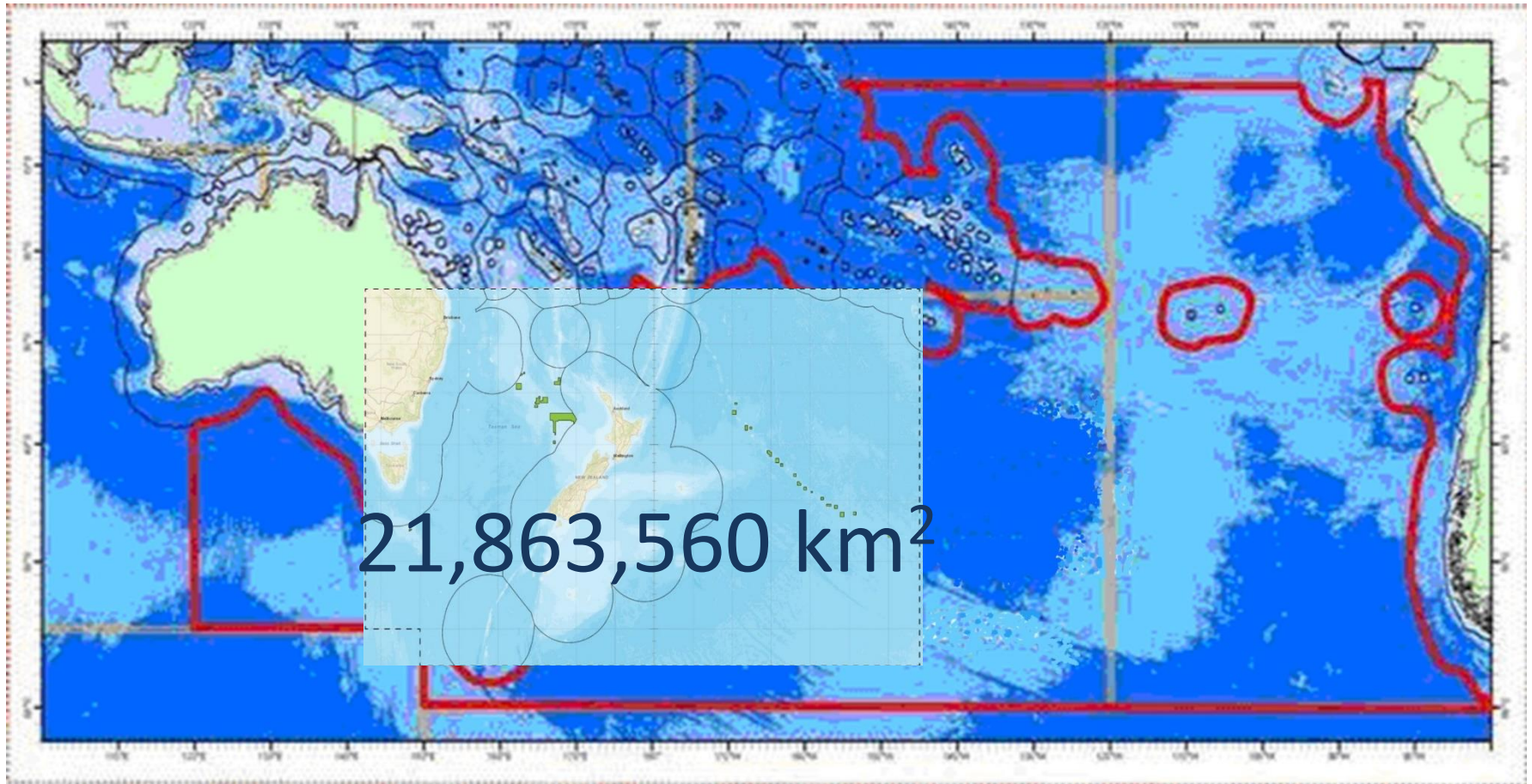
For the purposes of this CMM, the term “Evaluated Area” means those parts of the Convention Area that are within the area starting at a point of 24°S latitude and 146°W, extending southward to latitude 57° 30S, then eastward to 150°E longitude, northward to 55°S, eastward to 143°E, northward to 24°S and eastward back to point of origin.

ANNEX 1: SPRFMO Bottom Fishing Evaluated Area and Bottom Fishing Management Areas



This slide below show the evaluated area against the backdrop of the SPRFMO area. We remind members that inside the evaluated area only a fraction of the area is actually fished. I suggest strongly this is hyper-precautionary and at odds with sustainable use of fishery resources.

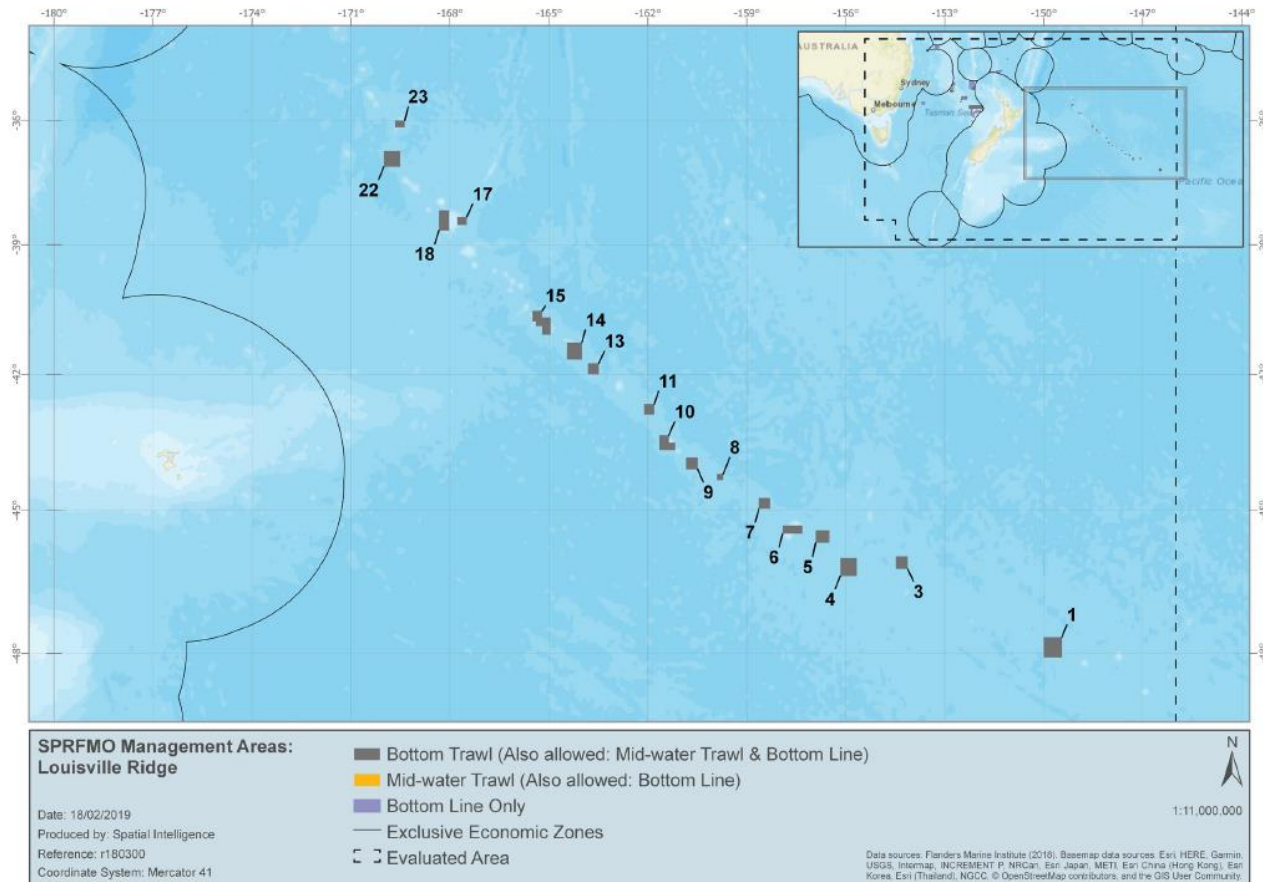
The objective of the CMM together with CMM 03a-2019 (Deepwater Species) is, through the application of the precautionary approach and an ecosystem approach to fisheries management, to ensure the long-term conservation and sustainable use of deep sea fishery resources, including target fish stocks as well as non-target or associated and dependent species, and, in doing so, to safeguard the marine ecosystems in which these resources occur, including inter alia the prevention of significant adverse impacts on vulnerable marine ecosystems.



The numbered brown boxes are new open areas and are where we are now permitted to bottom trawl (defined below). New Zealand has stated that these new boxes further reduce the areas that were available to fish under the old CMM to vessels by an additional 50%.

The measure states that “Bottom trawl” is defined as fishing using a trawl net that is designed to be pulled through the water and to come into contact with the seabed.

ANNEX 2: SPRFMO Bottom Fishing Management Areas for the Louisville Ridge



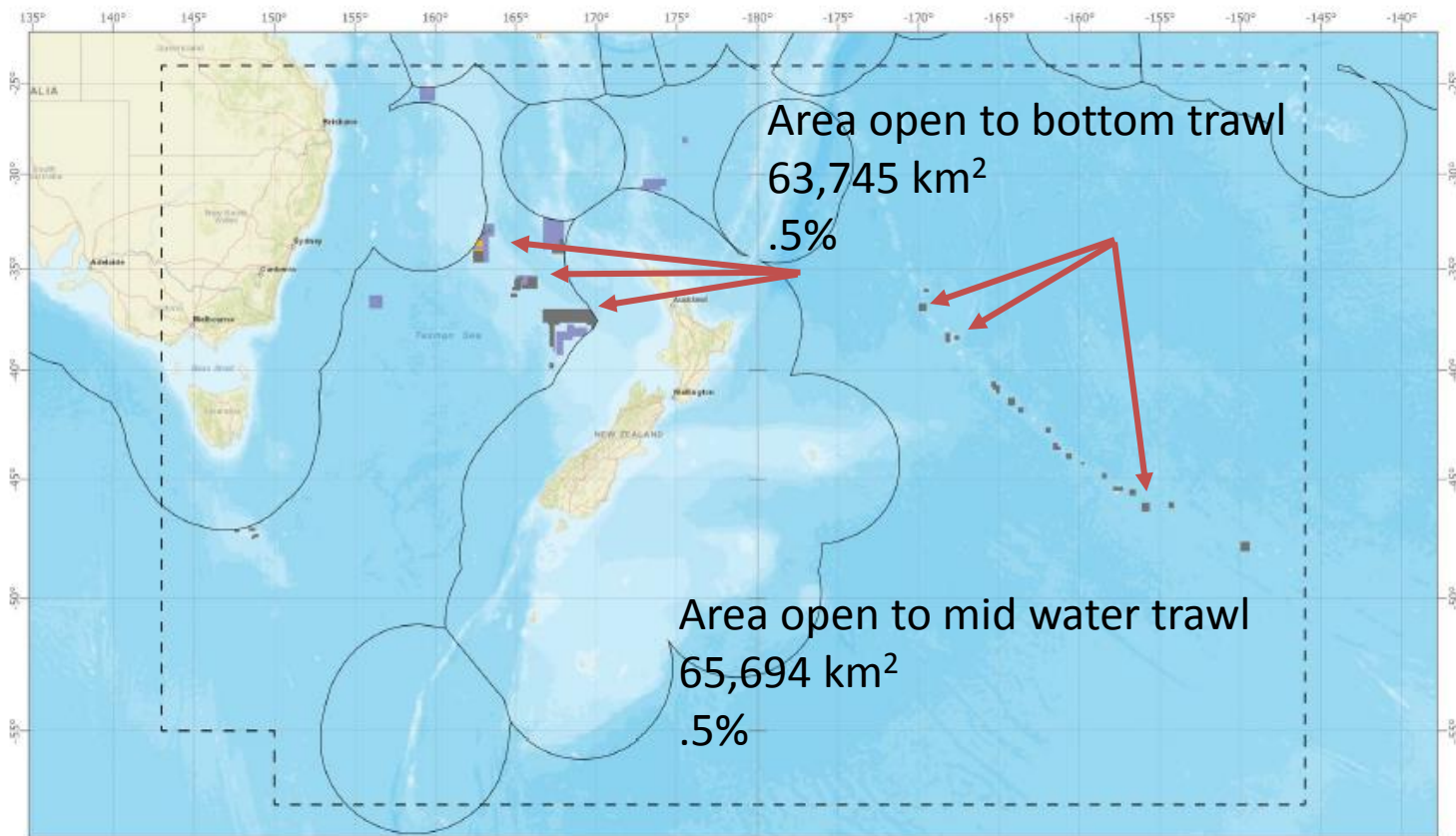
The Commission hereby establishes within the Evaluated Area the following Management Areas, the coordinates for which are provided in Annex 4:

- a) Bottom trawl Management Area
- b) Mid-water trawl Management Area
- c) Bottom line Management Area

Bottom trawling shall only occur in a bottom trawl Management Area;

b) Midwater trawling shall only occur in a midwater trawl Management Area or a bottom trawl Management Area;

ANNEX 1: SPRFMO Bottom Fishing Evaluated Area and Bottom Fishing Management Areas



SPRFMO Management Areas: Overview

Date: 18/02/2019
Produced by: Spatial Intelligence
Reference: r180300
Coordinate System: Mercator 41

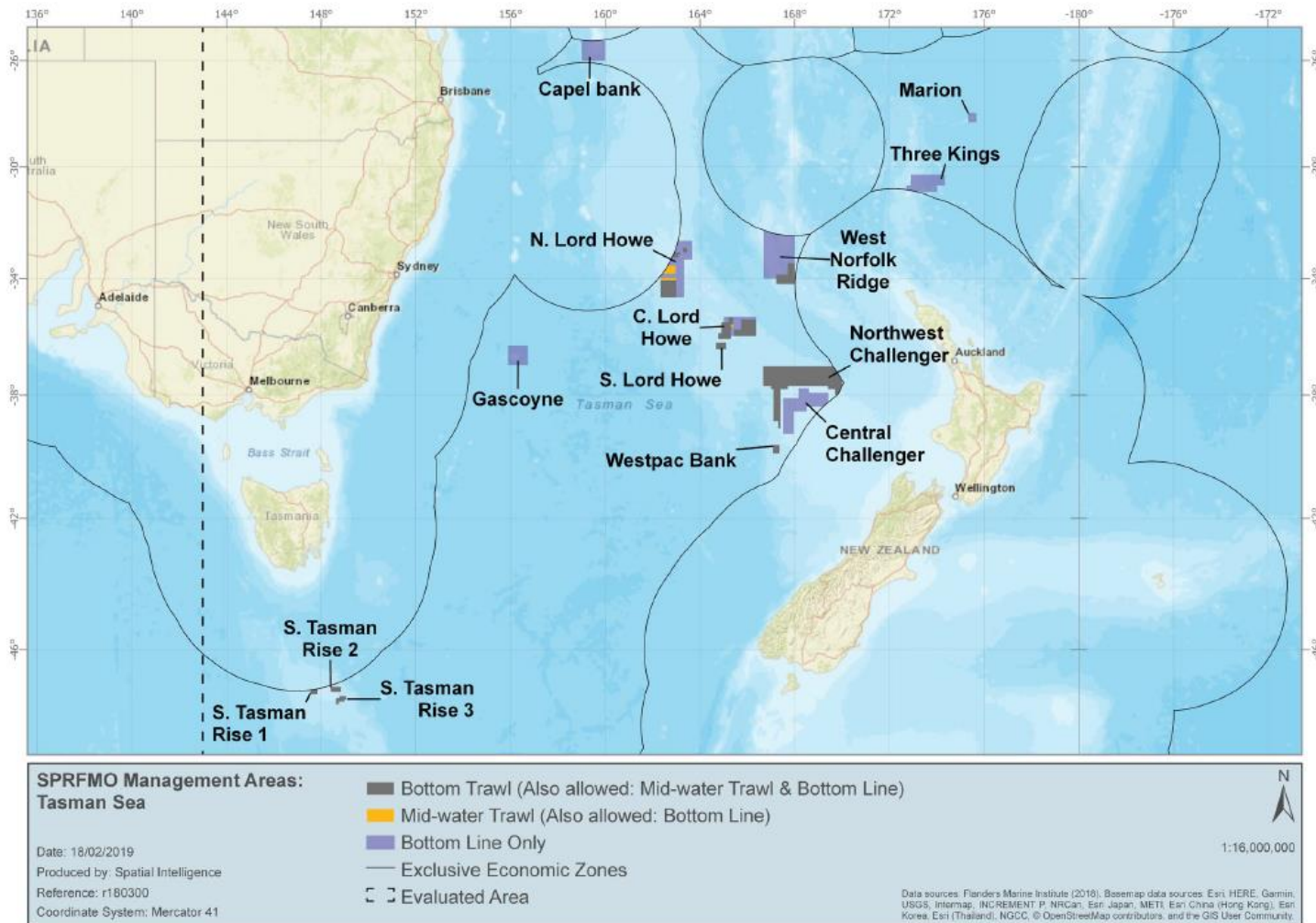
- Bottom Trawl (Also allowed: Mid-water Trawl & Bottom Line)
- Mid-water Trawl (Also allowed: Bottom Line)
- Bottom Line Only
- Exclusive Economic Zones
- ⊔ Evaluated Area

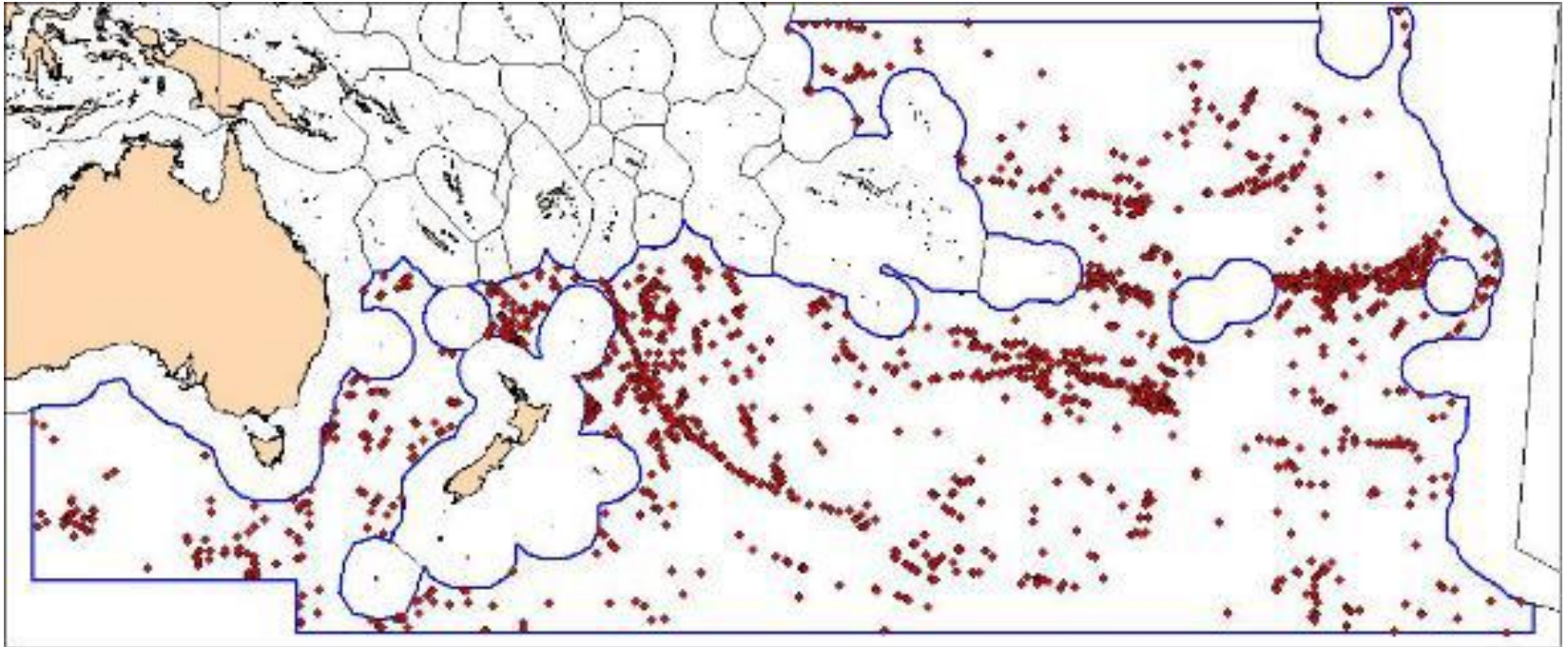
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Data sources: Flanders Marine Institute (2015). Basemap data sources: Esri, HERE, Garmin, IGN, Intermap, iPC, NITEL, NRC, Esri, Japan, METI, Esri, China (Beijing), Esri, Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community.

- b) “Mid-water trawl” which is defined as fishing for benthic-pelagic species using a trawl net that is designed to be pulled through the water near the seabed and designed not to come into extended contact with the seabed.
- c) “Bottom line” which is defined as fishing using a line to which a hook or hooks (whether baited or not) are attached and rigged to sink and fish on or near the seabed. This includes, but is not limited to, longlines, hand lines, drop lines, trot lines, and dahn lines.

ANNEX 3: SPRFMO Bottom Fishing Management Areas for the Tasman Sea



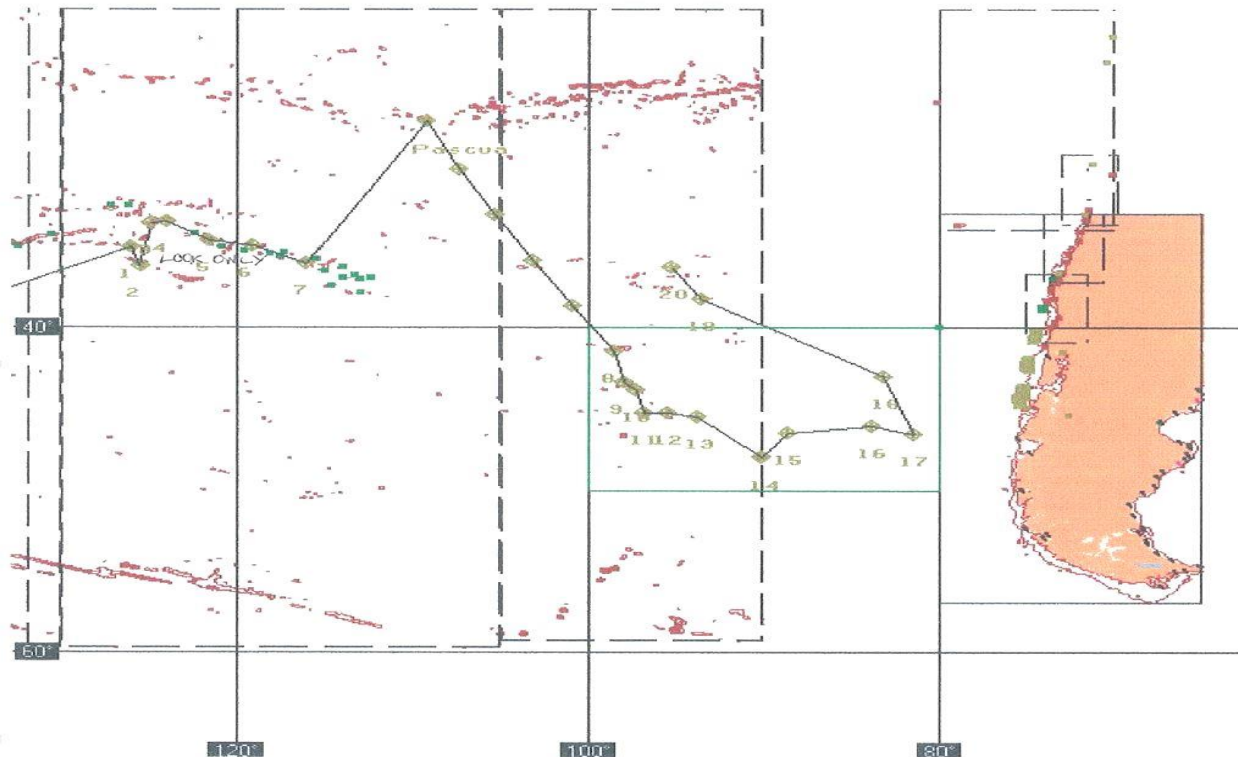


Geographic distribution in the SPRFMO area of **potentially trawlable** seamounts, i.e. seamounts which summit depth is located between 250 and 1500 m depth (stolen from SC7-DW03_Rev2)

Please consider this is a HUGE area, has been fished in the past by many nations , New Zealand / Chile/ Russia / Korea / Japan / to name a few , these are now all closed. So the previous slide says **potentially trawlable** well in fact many have been trawled and data gathered from them.

The chart below shows a NZ vessel track over thousands of square nautical miles of underwater features, This information was not used by New Zealand in determining the original footprint.

The full reach of these features are now closed and represent 100% protection of VMEs – something that is ignored when determining access and protection of VMEs .





“The ancient coral forests found on seamounts and similar deep-sea features are the Kauri of our ocean. Living to hundreds of years old these fragile forests can be wiped out by bottom trawling, and recent studies show they take decades to even begin to recover.”



Deep Sea @DeepSealm... · 18h ✓

This glass sponge, observed at 2,280 m (~7,480 ft), was host to many other organisms, including [#brittlestars](#), a gooseneck [#barnacle](#), an [#amphipod](#), a [#polychete](#) worm, and a [#squatlobster](#)!



[#deepsea](#) [#MarineLife](#)
[#seasponge](#) [#glass sponge](#)



3 33 111



Deep Sea @DeepS... · 15/08/19 ✓

Glass sponge at a depth of 3,400m (2.1 miles).

The sponge looks very similar to *Poliopogon* cf. *amadou*, which has not yet been identified from the Caribbean!



[#deepsea](#) [#MarineLife](#)
[#seasponge](#) [#glass sponge](#)



1 22 73

**..to give
the
discussion
some scale**

The entire SPRFMO
area encompasses
49,000,000 km²



..the scale of things...

The entire SPRFMO
area encompasses
49,000,000 km²

To illustrate this in
tangible terms..

Imagine that the
whole Havana city
block this Hotel sits
on.



The new evaluated area in SPRFMO is 12,586,560 km², or **25%** of the entire SPRFMO area.



The new evaluated area in SPRFMO is 12,586,560 km²,

or **25%** of the entire SPRFMO area.

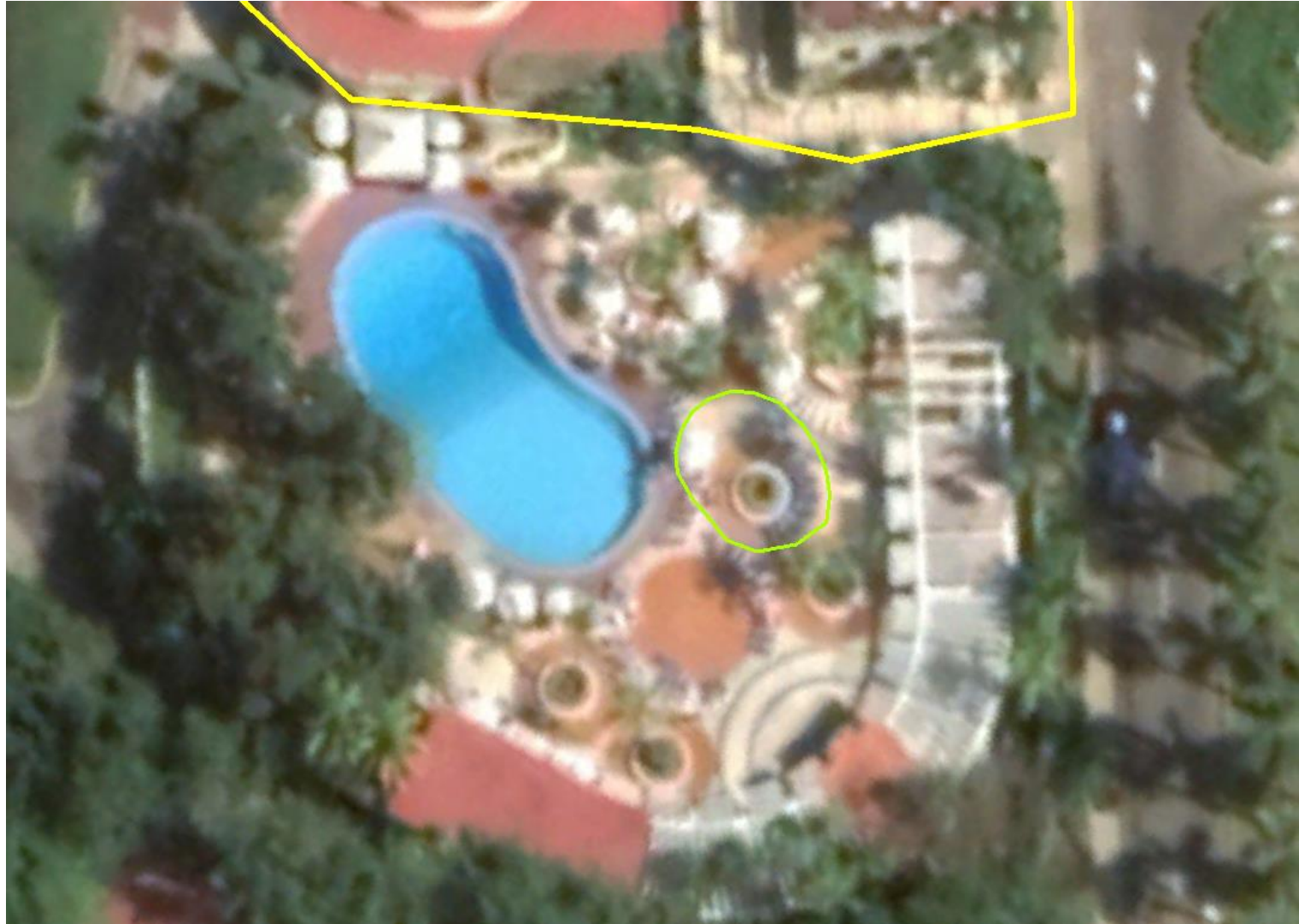
This is **25%** of our Havana city block.

This encompasses the pool area, the tennis court and entry driveway.



In the evaluated area of SPRFMO a very small area is open to bottom trawling.

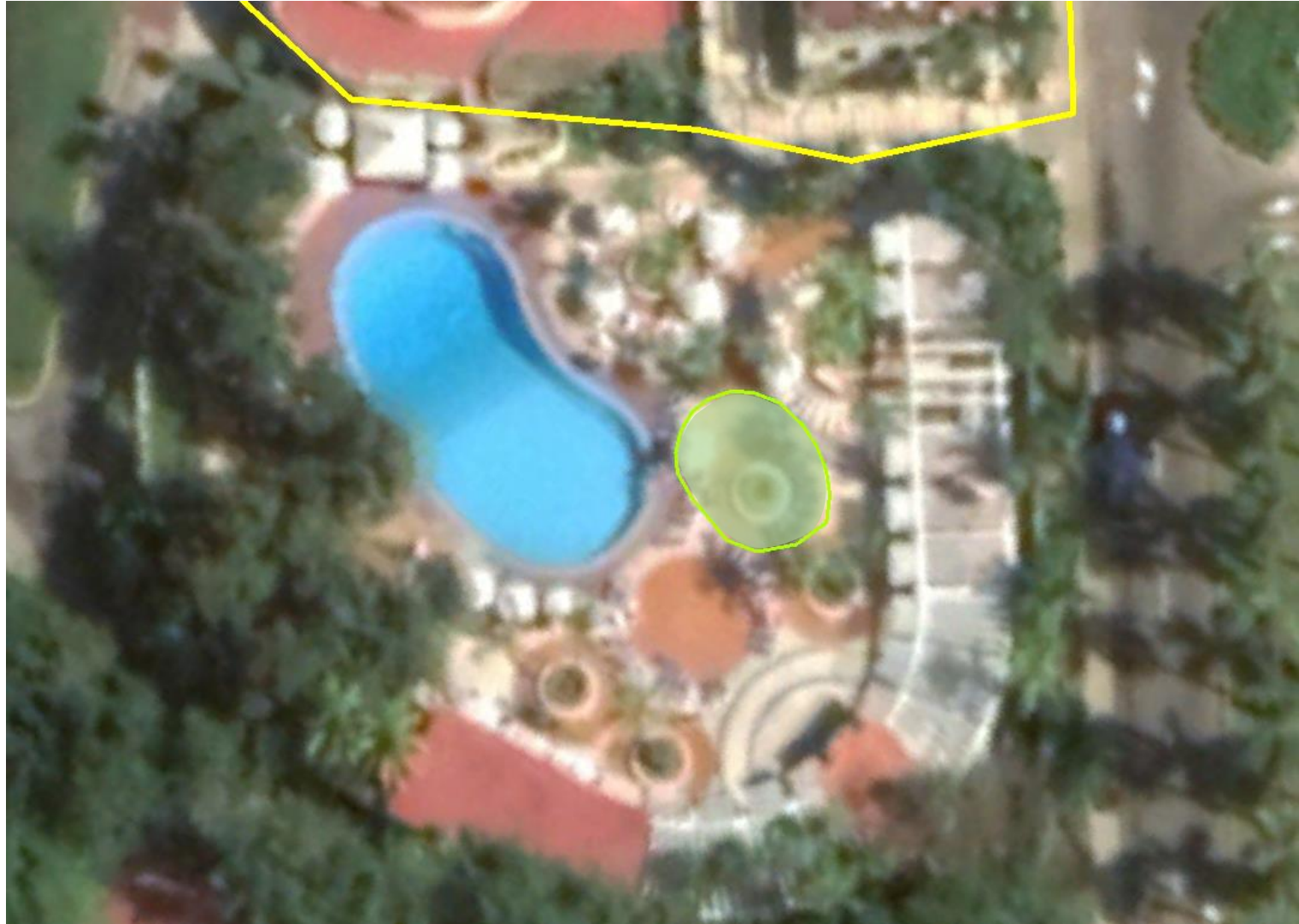
This area accounts for **0.13%** of the whole SPRFMO area.



In the evaluated area of SPRFMO a very small area is open to bottom trawling.

This area accounts for **0.13%** of the whole SPRFMO area.

0.13% in our scale is an area just slightly larger than one of the tiled circles in the hotels pool area.



If you haven't managed to see the hotel's pool area, here's a better shot. Trip Advisor says it's very nice!



In the **0.13%** of SPRFMO that is open to bottom trawling, only some of this area is at workable trawl depths (< 1,500 m).

This actual fishable area accounts for **0.019%** of the whole SPRFMO area.



In the **0.13%** of SPRFMO that is open to bottom trawling, only some of this area is at workable trawl depths (< 1,500 m).

This actual fishable area accounts for **0.019%** of the whole SPRFMO area.

0.019% on our scale this gets hard to see on Google Earth,



...so here's a better photo..

This garden bed out by the hotel pool represents **0.019%** of the area our city block.



...so here's a better photo..

This garden bed out by the hotel pool represents **0.019%** of the area our city block.

Of this **0.019%**, available to bottom fish, only a fraction is impacted by actual trawling.



Lets get this into perspective..

This cap off a beer bottles covers the equivalent area of this garden bed as the area in SPRFMO that is actually impacted by trawl tracks. And this is not precautionary !



In Summary

The HSG submits that:

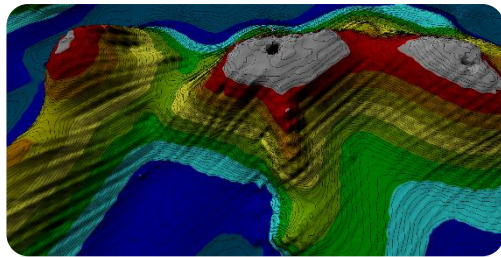
There is already more than adequate science and data and models showing that a closed area of 99.81% provides adequate protection under UNGA resolutions; and that the approach to closures that this commission has taken is hyper precautionary and at odds with the sustainable use of fishery resources on this high seas.

We have tried to show this in this presentation.

The SPRFMO area is huge, but only a tiny % is open through CMM 03-2019 and even a smaller area available to trawl

SUSTAINABLE USE MATTERS

THANK YOU



New Zealand High Seas Group Incorporated