

13TH MEETING OF THE SPRFMO COMMISSION

Santiago, Chile, 17 to 21 February 2025

COMM 13 – Obs 12

DSCC Response to Second SPRFMO Performance Review Report

DSCC



DSCC and ECO NZ Response to 2nd SPRFMO Performance Report

DSCC Observer briefing to the 13th SPRFMO Commission Meeting, 2025

27 January 2025

Introduction

We refer to the [Second Performance Review Panel Report and Recommendations](#) “Panel Report” dated 29 November 2024. We request that this briefing be admitted as a late paper for the reasons set out below.

This is a joint submission of Deep Sea Conservation Coalition (DSCC) and Environment and Conservation Organisations of New Zealand (ECONZ) (“the Observer Groups”) on the Second Performance Review. DSCC and ECO thank the Panel members for their service. DSCC observed in our briefing [COMM13-Obs01](#) of 17 January 2025 that “In addition, the DSCC regrets that the Independent Performance Review report was not made available to observers in time for observers to include comments in their papers. Transparency requires that it be provided in a timely manner. The DSCC requests that observers be given an opportunity to comment on late papers.” The Deep Sea Conservation Coalition (DSCC) and ECO received the Panel Report upon its publication on the SPRFMO website on 22 January. We note that the High Seas Fisheries Group (HSFG) appears to have had access to the Performance Review before lodging its [briefing](#) on 17 January given their references to it. We urge that in the interests of transparency, all documents are released by the SPRFMO Secretariat and / or national delegations to all observers in accordance with agreed processes and protocols.

We will make our comments as brief as possible on some issues central to deep-sea fishing. The absence of remarks on specific issues should not be interpreted as either endorsement or opposition.

Recommendation

“The Review Panel recommends facilitating an annual strategic discussion aimed at producing a Statement of Intent that outlines where the Commission wants to be in 5 to 10 years and signals how it intends to get there. This should include how the Commission plans to address emerging issues such as climate change and BBNJ, among others.”

The Observer Groups agree and refer the Commission to DSCC Observer papers on BBNJ ([Obs-03](#)), and recommendations on climate change in [Obs-01](#).

Paragraph 126 (Concerning CMM 03-2023)

126 “The Review Panel acknowledges that the Commission did not act on the SC’s advice, which is not ideal practice. However, deeper issues must also be considered. The Panel’s view is that paragraph 19 of CMM 03 is binding, and the change in government within one Member country should not absolve the Commission from its obligations[17]. Disrupting a multilateral process due to such political changes is very unfortunate. The feedback from interviews and questionnaires indicate that this view is shared by at least three Members and one observer.”

[17] This discussion is recorded in paragraphs 13 and 58-67 of [COMM 12](#) report.

The Observer Groups agree. This is why they submit that [COMM13-Prop04](#) by Australia and the United States should be accepted. Multilateralism is at the heart of SPRFMO and national political developments must not override or undermine multilateral commitments.

The basis for CMM 03-2023

“139 (a) Alternative Options for the Deepwater Fishery Should Be Explored: The current management framework, particularly under CMM 03, has been met with dissatisfaction due to its complexity and the difficulties it presents for the fishing industry. The Review Panel recommends that the Commission explore alternative approaches to managing this fishery. A more flexible and adaptive management strategy should be developed, taking into account both biological sustainability and the economic viability of the sector. The Review Panel emphasizes the need for a constructive process to explore new management options, with the aim of finding a balanced approach that satisfies both conservation objectives and industry needs.”

This recommendation and accompanying text¹ are deeply concerning, and lack a

¹ *“127. The Review Panel is conscious that the deepwater fishery is complex, but the issue at hand is not simply whether the 70% protection should be implemented, or whether it should be a different percentage. The real concern is that CMM 03, in its current form, is unworkable. The catch and effort data, along with*

foundation in international law and policy. The dissatisfaction is presumably that expressed by one Member.

This issue has been the subject of complex discussions since 2006. New Zealand has consistently sought to avoid properly and fully implementing the UNGA resolutions through SPRFMO, starting with UNGA resolution 61/105 and the FAO Deep-Sea Guidelines. Those obligations are, as laid out in Paragraph 83 of UNGA 61/105, to (a) conduct bottom fishery impact assessments (BFIs); (b) to identify vulnerable marine ecosystems (VMEs) and determine whether bottom fishing would cause significant adverse impacts (SAIs) to VMEs; (c) to close bottom fishing areas where VMEs, including seamounts, hydrothermal vents and cold water corals, are known to occur or are likely to occur, and ensure that such activities do not proceed unless it has established conservation and management measures to prevent SAIs on VMEs; and (d) to implement a move-on rule. The pathway to implementing these commitments was clarified in the [FAO Deep-Sea Guidelines](#) in 2009.

Paragraph (b) and (c) are at the heart of these obligations, and require identification of VMEs, closures of areas and steps taken to prevent SAIs on VMEs.

periodic boundary changes, reflect a gradual reduction in fishing opportunities. The industry has repeatedly raised concerns that SPRFMO's approach has made it increasingly difficult for the sector to operate.”

“128. While the Commission is entitled to set management objectives and metrics, the current measure is difficult to regulate, costly to maintain from a scientific perspective, and may have hindered the industry beyond what is biologically necessary. The Review Panel does not suggest discarding SPRFMO's previous efforts but recommends that the Commission explore a range of management options to meet the objectives of the Convention. If it is found that the industry cannot operate effectively within the Convention's objectives, this should be determined after exploring alternatives, not based on one management regime alone.”

“129. The Review Panel recommends that the Commission, in collaboration with the SC, consider alternative approaches to managing the deepwater fishery over the next 3 to 5 years. This would allow the Commission to reconcile the sector's future with the Convention's objectives and provide time to resolve unresolved issues, such as the definition of significant adverse impacts on VMEs. The Panel stresses that this should be a constructive effort to explore new management approaches. The Review Panel does not foresee significant risks if CMM 03 remains in its current form, but the Commission must assess whether this is truly the best course of action.”

Rather than addressing these obligations directly, New Zealand has repeatedly avoided the mandated responsibility of SPRFMO and member States to prevent SAIs on VMEs, including seamounts, cold water corals and hydrothermal vents, from damage caused by destructive fishing practices, such as bottom trawling. Over the same period, other RFMOs, such as NEAFC, NAFO, and SIOFA, have taken meaningful steps towards fulfilling these obligations.

SPRFMO's Intersessional Working Group ([IWG](#)) has undertaken intensive efforts to progress VME protection across the SPRFMO convention area. It is now time for SPRFMO to implement the UNGA resolutions fully, starting with the implementation of CMM 03/2023 in its entirety.

When it comes to the protection of seamounts and other VMEs, the aim cannot be “a balanced approach that satisfies both conservation objectives and industry needs.” That is inconsistent with both UNCLOS and the SPRFMO Convention. UNCLOS requires in article 193 that “States have the obligation to protect and preserve the marine environment.” This obligation is unequivocal.

Article 194(5) of the United Nations Convention on the Law of the Sea (UNCLOS) mandates that:

“The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened, or endangered species and other forms of marine life.”

Notably, this provision does not allow for exceptions that would permit environmental damage due to the need to balance ecological protection with the viability of the fishing industry.

In its *Climate Change Advisory Opinion*, the International Tribunal for the Law of the Sea (ITLOS) characterized Article 192 as:

“a statement of principle upon which the legal order for the protection and preservation of the marine environment under the Convention is based.” [184]

Furthermore, ITLOS emphasized that:

“The obligation is comprehensive in nature and encompasses obligations contained in other provisions of the Convention, including Article 194, which set out more specific obligations.” [370]

The observer groups also draw Members’ attention to the objective of the Convention set out in article 2. The objective of the Convention 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 fishery resources and, in so doing, to safeguard the marine ecosystems in which these resources occur.

The objective does not require the ‘balancing of ‘economic interests with the requirement to ensure ‘conservation and sustainable use’.

Furthermore, the SPRFMO Convention in article 20(1)(d) requires the Commission to:

“(d)protect the habitats and marine ecosystems in which fishery resources and non-target and associated or dependent species occur from the impacts of fishing, including measures to prevent significant adverse impacts on vulnerable marine ecosystems and precautionary measures where it cannot adequately be determined whether vulnerable marine ecosystems are present or whether fishing would cause significant adverse impacts on vulnerable marine ecosystems.”

In this text there is no provision that allows for SAIs on VMEs in order to secure the economic viability of recognised destructive fishing practices.

This principle is explicitly outlined in UNGA resolution 61/105, para. 83(a): “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 authorized to proceed.**”

Similarly, UNGA resolution 64/72 (2009) reinforces this commitment, calling on States and RFMOs “not to authorize bottom fishing activities until such measures have been adopted and implemented” (para 120). These resolutions underline the imperative of SPRFMO moving to implement CMM 03 without further delay. We note the recommendation of the Panel that “The Review Panel does not foresee significant risks if CMM 03 remains in its current form.”

Bycatch

“130. Regarding the stocks, the Panel notes that despite multiple species being targeted in the deepwater fishery, only the orange roughy stock has a stock assessment and is managed under a TAC. Given the current fishing effort, the Panel does not consider it urgent to prioritise catch limits for other species. However, the Commission could consider establishing triggers to implement higher management levels if fishing effort significantly increases. The Review Panel also recommends that the Commission adopt a harvest strategy approach for these stocks, with alfonso stock assessment as the next priority.”

The Observer Groups supports the adoption of a harvest strategy but emphasise that the lack of assessment and management of target and non-target stocks or bycatch cannot be justified by low fishing effort. Any harvest strategy on a target species must not be single species focused. Instead it must consider the impact on bycatch species. Deep-sea fish are uniquely vulnerable due to their biological traits, including slow growth, late maturity, and low reproductive rates, which make them particularly susceptible to overfishing and thus non-target species require thorough evaluation and sustainable management.

Summary

It is a central responsibility of SPRFMO to prevent SAIs on VMEs according to article 20(1)(d) of the SPRFMO Convention. The Second Performance Report and the observations outlined above highlight two critical points: (1) Paragraph 19 of CMM 03-2023 must be implemented rigorously and without delay by the Commission, and (2) the relevant UNGA resolutions and FAO guidelines must be implemented faithfully and transparently. The time for seeking alternative approaches or further delays has passed. If the fishing industry cannot operate in a viable way while preventing SAIs on VMEs, it must reassess, evolve and adapt its practices to align with sustainable and responsible fishing standards.