8TH MEETING OF THE SPRFMO COMMISSION

Port Vila, Vanuatu, 14 to 18 February 2020

COMM 8 – Obs 01
Information Paper from the HSFG to the SPRFMO Commission

HSFG

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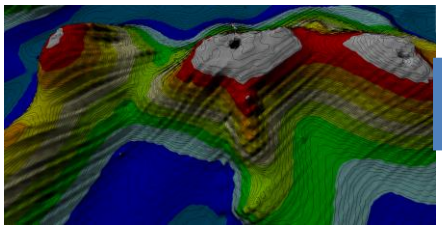

High Seas Fisheries Group Incorporated

Information paper for SPRFMO Commission Meeting Vanuatu February 2020.

24th December 2019.

Background

The High Seas Group (HSG) has previously noted its objections to the 2019 bottom fishing CMMs which have restricted access to key fishing areas to a point where the deployment of vessels to fish in the footprint area left available to fishing is a risky exercise for numerous reasons .

The HSG 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 HSG gave a presentation to the SC at Havana, this can be found as a presentation submitted with this paper which seeks to represent in a practical way the areas that remain open to fishing to HSG members, noting that the closure of >99.9% of the High Seas area in SPRFMO creates a defacto MPA.

The purpose of this paper is to build on these concerns expressed through the documents and offer some further context within which to view the manner in which access to fisheries in SPRFMO is managed.

Executive Summary

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

The adoption of this approach creates an unintended bias towards extreme environmental objectives rather than to allow continuation of sustainable and rational fishing activities by licenced nations. The HSG asserts that the existing and future proposed environmental measures leave a flag state, potentially vulnerable to challenge as they are more onerous than those domestic fisheries of some flag state vessels.

Analysis

We have previously stated that there is an overt bias that underlies the approaches of New Zealand and Australia towards their management of the High Sea fisheries in SPRFMO that is out of step with domestic management measures. This bias prioritises complete marine protection over effective (as in achievable) rational use under the Fisheries Act 1996 (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 repeats the same phrase in the Art 2 of the convention.

The New Zealand and Australian government's approach to date has focused in large part on establishing so called science-based measures, and modelling, for management seemingly aimed more at establishing increasing environmental principles with little or inadequate consideration given to how ongoing rational use and utilisation opportunities fit in with these. This has manifested in several ways as follows:

1. CMMs are developed with limited input from actual resource users (the industry and indigenous groups) being given proper weight. The HSG is frustrated at what is called consultation (our input) being ignored and see more priority being placed on policy development by central government to meet political agendas on the world stage. Consequently, the negotiation process has being captured by political lobbyists, which includes a strong environmental lobby. This was evident in New Zealand with respect to the proposed establishment of the Kermadec Ocean within the NZ 200nm zone. This approach, was at odds with the New Zealand 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.

2. The HSG strongly believe that from a New Zealand perspective, their flag state negotiators are influenced against sustainable use by inclusion of government conservation advocacy in the form of the NZ Department of Conservation (DOC) in negotiations pushing a separate agenda. It should be recognised that DOC was established purposely as a Department (not a Ministry) with the prime purpose of administering the New Zealand conservation estate on land and not at sea. Unfortunately, the original policy considerations in establishing DOC have been lost, with their expansion into marine activities. The reason that the marine estate was not originally placed under the jurisdiction of DOC and its advocacy but instead was retained primarily under the FA1996 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. This is to balance use with conservation

3. Checks and balances were placed in New Zealand law to re-enforce this distinction.

4. We are now 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 in these negotiations.

5. As an example, the HSG has experienced a history of New Zealand government negotiators operating behind closed doors in concert with other nations (in the case of SPRFMO - Australia) in an effort to exclude the Industry from having input into, and their views being taken in to consideration, with the final outcomes - as to date these outcomes are biased towards increased protection with rapidly diminishing 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 apply the principles at the coalface.

6. We have stated many times that SPRFMO has not based its decision making through the proper use of "all best available information "which is required in SPRFMO and other RFMOs however ,this continues. The pattern in SPRFMO is not unique as it was also apparent in New Zealand negotiations for the establishment of a Kermadec MPA (justified at least in part as a step to gain international support for protecting NZ's EEZ rights around the Kermadec Island under mounting pressure from foreign fishing interests) and earlier on in the negotiations for establishing shares in the Southern Bluefin Tuna fishery, in the latter case NZ agreed to a catch reduction for many years far below its historical share to the objection of the New Zealand industry, when other countries did not take such measures!

7. We believe the New Zealand government has applied biological and model-based science approaches in the establishment of area access, allocation shares without proper consideration given to economic and cultural (i.e. utilisation) factors as required under UNCLOS, the SPRFMO Convention UNDRIP and the New Zealand Fisheries Act 1996. The most glaring recent example of this is the failure of the New Zealand / Australia informal mediation which 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 Plateaux (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 – put simply New Zealand can and has taken the optimal yield from this biological stock the majority of which is within its EEZ and should therefore argue simply that there is no room for high seas catch if this target is to be met unless it is taken by New Zealand vessel as has been the case over the last two decades plus.

8. Lack of any trade-off analysis conducted to balance use with conservation demonstrates little regard given to fishery use in decision making. The New Zealand 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 over 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 protect overuse.

9. The ultra-conservative approach New Zealand has led in SPRFMO is simply wrong and we believe open to challenge if someone should choose to do so. HSFG presented to SC Cuba paper SC7 Obs-1. Additionally, the HSG did a presentation to put into perspective the unbalanced approach to management of SPRFMO fisheries. The HSG members are now forced into an area within SPRFMO area which borders on total closure. We are aware that it the aim of some stakeholders on the High Seas is to close access to the High seas and we are deeply concerned that this will occur over the next few years.

10. Even if the New Zealand Government positions 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 and we believe that 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 New Zealand has applied to its own industry are more onerous than other countries would apply in practice. The New Zealand government should not assume that it's aspirations for environmental protection in the SPRFMO area of competence are commonly held and, moreover, it is questionable whether it is legally appropriate for New Zealand to apply more stringent rules to its own industry than others would, in a multi member / country RFMO .

11. Allocation of rights to fishing is not something that can be determined by biological/ environmental science alone - calculated for example as the residual share to be allocated after environmental objectives have been met – rather it is a historical, cultural, social and economic issue that requires careful consideration of how access rights might be established for High seas resources. Three strategies for establishing interests in fisheries are in play as follows:

    a. Historically the main mechanism used in securing rights of access to previously unowned fisheries resources has been by extension of national boundaries. The establishment of the territorial sea (at the distance of cannon shot) the extension of that right to the 200 mile limit (and potentially the extension of that zone to the edge of the continental shelf of a nation) is part of that development. Countries should look to these provisions as a first step in developing a negotiating position of fisheries rights. This, by its nature, provides the most solid foundation for negotiation and this applies to fisheries that straddle or swim through national jurisdiction.

       Catch history should be taken into account, but within this one must look at the Industry's investment in the fishery, the science provided by industry, the, data gathered and protection and management of these fisheries in the absence of which we would have no information about these stocks or their environment.. New Zealand has led the way in some High seas fishery such as CCAMLR and SPRFMO and has provided more information than any other nation. Catch history is however a blunt instrument as an allocation approach since it is not well tied to a nations' geographic involvement to fishery resources and has little real legal standing. It can be destructive in application (as we have seen in SPRFMO) as countries race to establish such history in the hope of allocation (seemingly contrary to intentions of UNCLOS) – A recent example of this was the South Pacific mackerel fishery. Catch history consequently

invites debate about fairness – a factor that Australia used in its mediation with New Zealand (used as leverage).

b. New Zealand has a direct coastal state interest in these allocations (particularly the Westpac Bank straddling stocks). The various fisheries conventions established under the mandate of UNCLOS and the FSA do provide other entry points for this discussion, including the need for coherency in policy and application through a considered understanding of optimal use and its application. In this respect we are not just interested in what is caught but also in catching a sustainable and economically profitable supply of fish which requires very specific regulatory settings such as a catch allocation management system.

c. As an aside, it should be noted that equity as an allocation criterion is not a consideration provided for under UNCLOS as Australia has now recently asserted in seeking an allocation on Westpac Bank except perhaps for the special provisions applying to developing countries or small island states (which has at times been resisted in application by non-coastal state nations). Adopting such an ill-defined and ill-definable criterion surely offers little leadership to SPRFMO or any other RFMO for managing such serious matter. We believe SPRFMO members should challenge Australia on why such criterion have been applied and is it consistent with other conventions.

Conclusions

The High Seas Group is fully committed to working with SPFMO members in an open and collaborate way to ensure that the sustainable harvesting continues to be an important, enduring and balanced component of fisheries and ecosystem management. An initial area of focus is to review access to straddling stocks - on the grounds of policy coherence to ensure optimal use (both requirements of UNCLOS).

Blind adherence to biological allocation, modelling and management criteria, at the expense of considered opportunity to utilise the stocks sustainably, is neither consistent with provisions established under the UNCLOS, the SPRMO Convention or domestic aspects – such as New Zealand's expression of these measures under provision of the Fisheries Act 1996 and the Deed of Settlement 1992.

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 might be fruitful towards informing NZ's position and rebalancing the approach taken to date.

The HSG would like to see SPRMO undertake a performance review of its CMM's and resolutions in relation to the higher order UNCLOS Policy statements for High Seas Fisheries – to consider better alignment where necessary and refocus development of future fishery objectives to complying with the international framework expectations.

Regards

ANDY SMITH
Chair

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High Seas Fisheries Group Incorporated.

SPRFMO SC

"So where has all the Benthos gone "

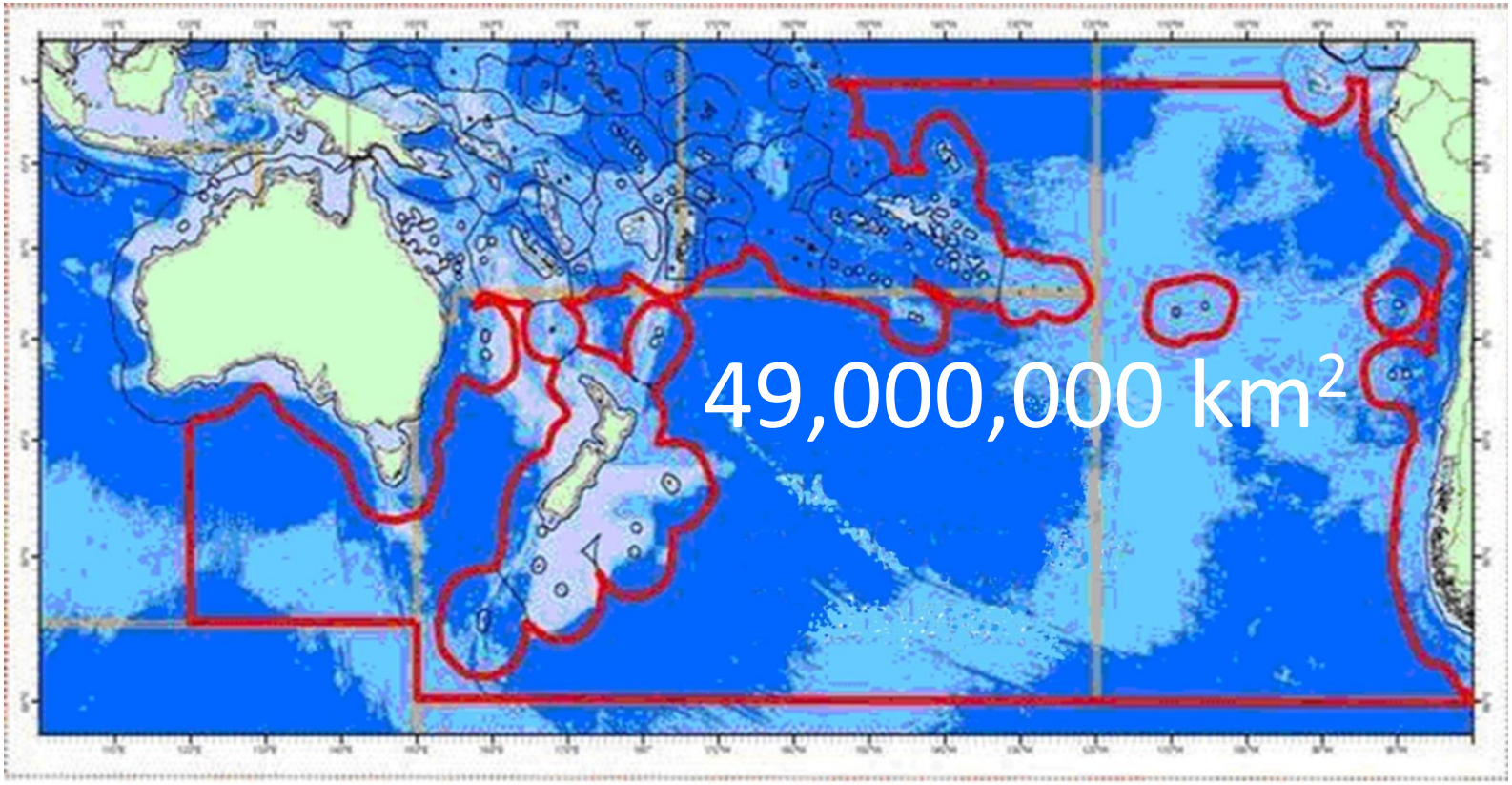
High Seas Fisheries Group

Scale matters

- Total SPRFMO area is 49,000,000 Km^2
- 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 km^2), **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 Km^2 – **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**.

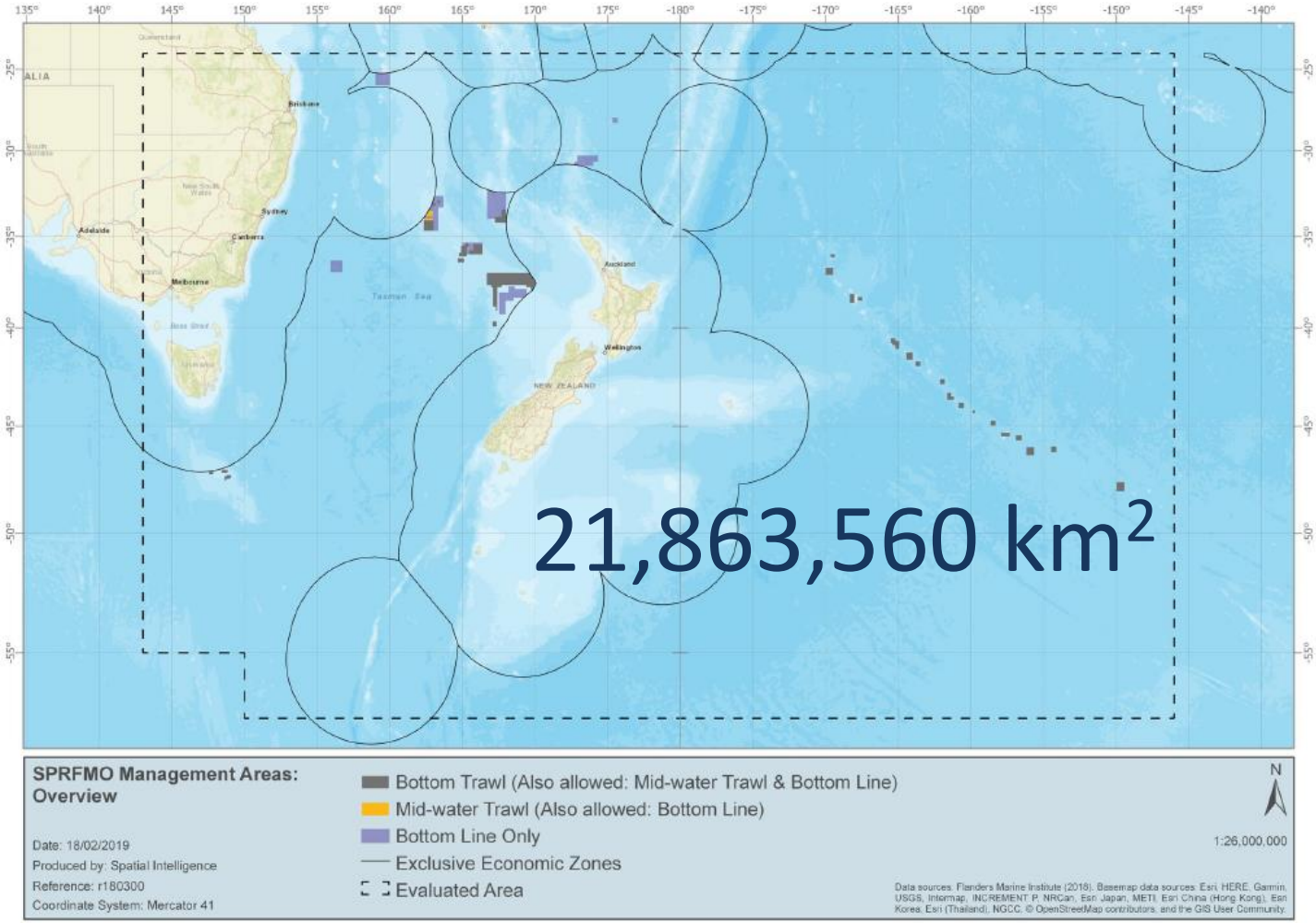
When I compare the area of the 2019 open boxes with the evaluated area (minus the area of NZ and portion of Australia that is within the evaluated area, I conclude that **0.5 %** of the evaluated area is open to fishing and not **5.5 %** as stated by New Zealand in COMM7-Prop 03.1



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.

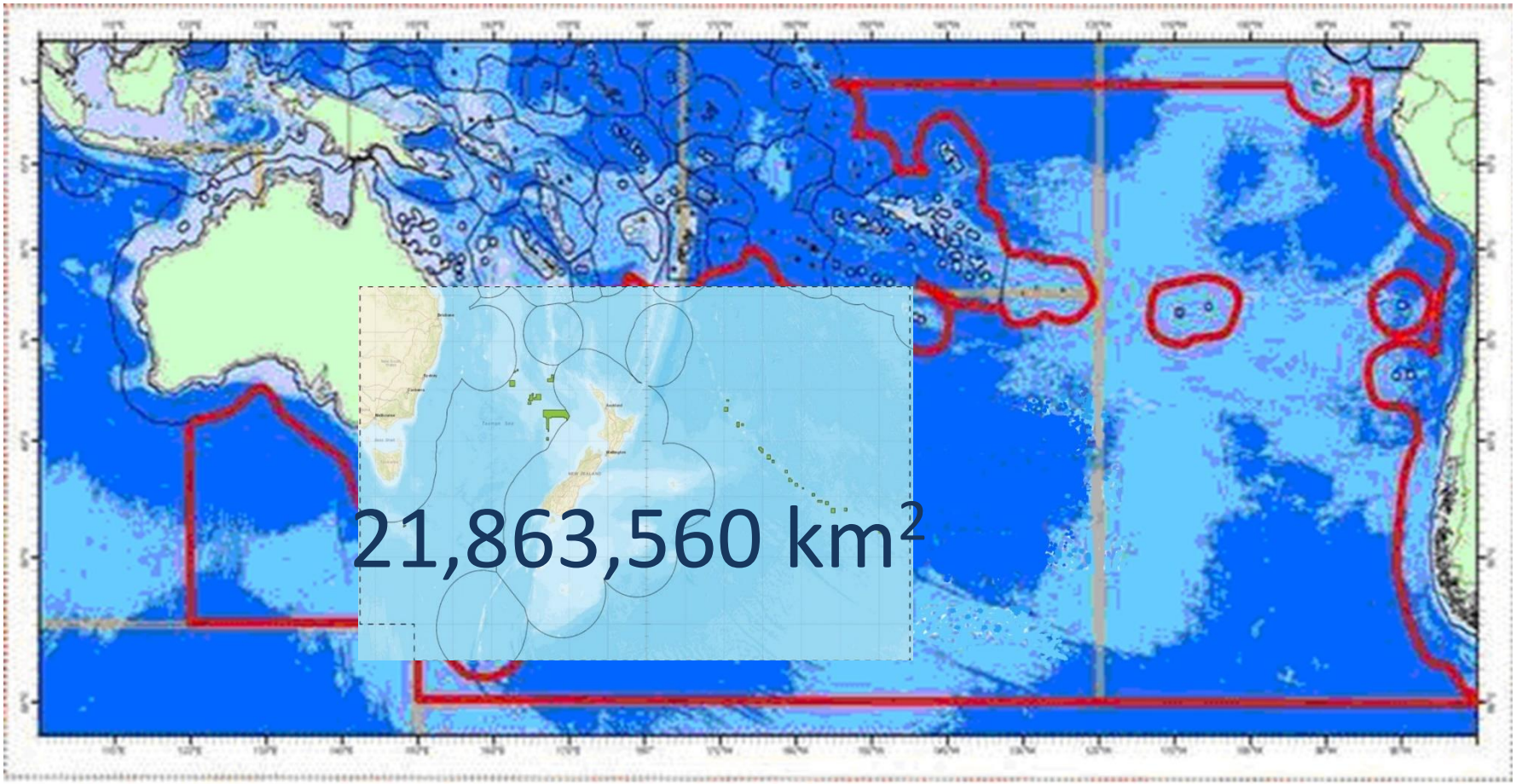
For the purposes of this CMM, the term "Evaluated Area" means those parts of the Convention Area that are within the area starting at a point of 24°S latitude and 146°W, extending southward to latitude 57° 30S, then eastward to 150°E longitude, northward to 55°S, eastward to 143°E, northward to 24°S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

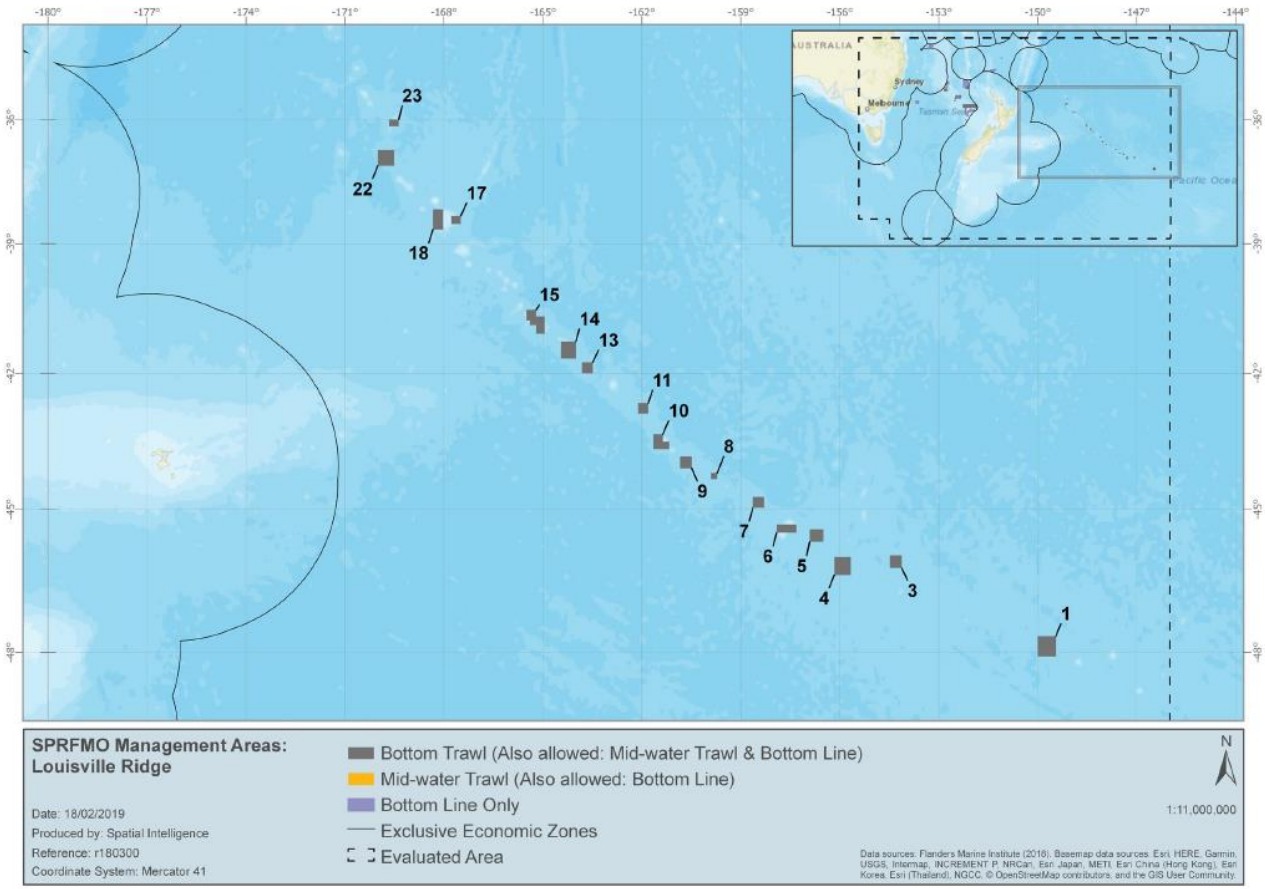
The objective of the CMM together with CMM 03a-2019 (Deepwater Species) is, through the application of the precautionary approach and an ecosystem approach to fisheries management, to ensure the long-term conservation and sustainable use of deep sea fishery resources, including target fish stocks as 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.

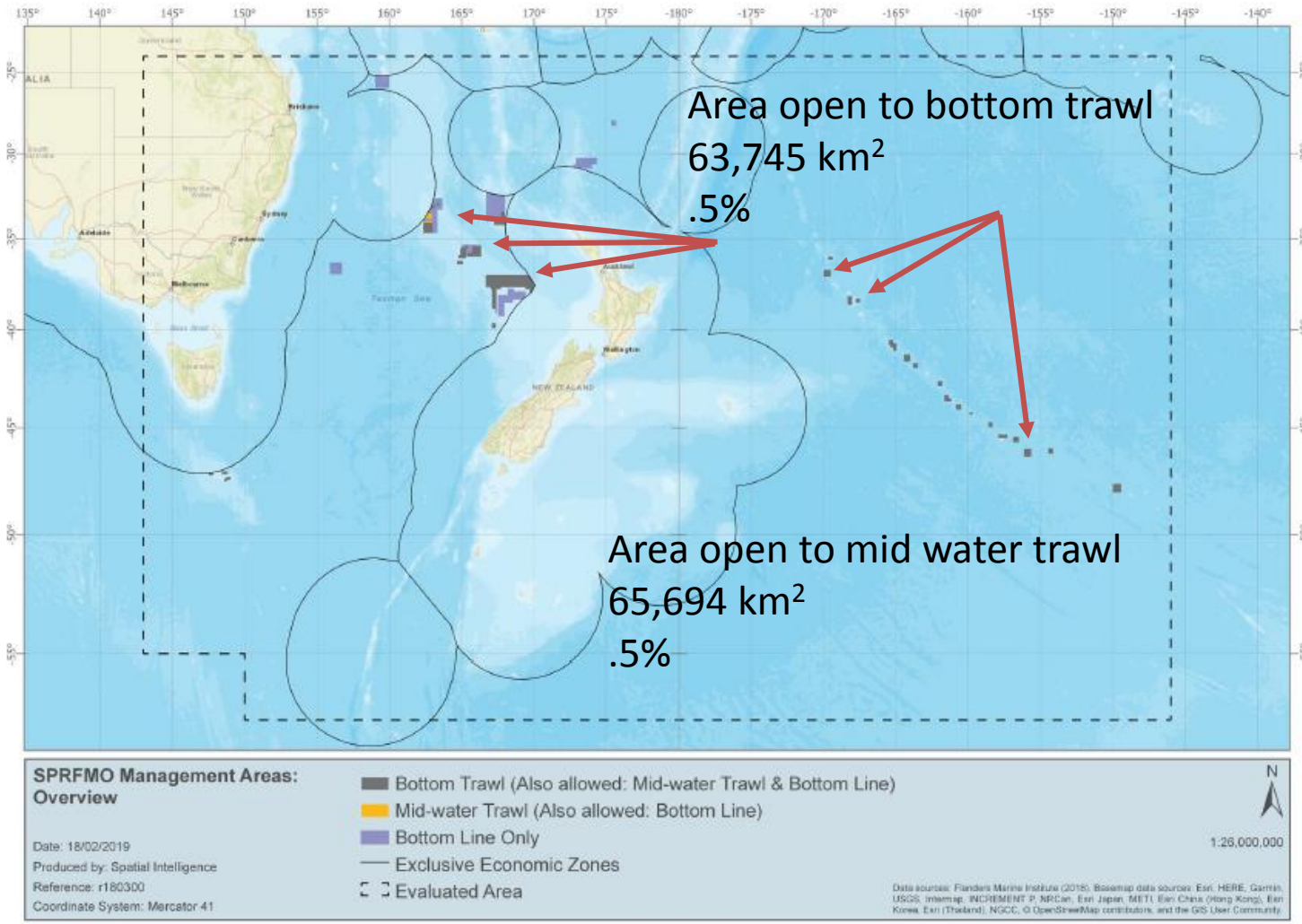
ANNEX 2: SPRFMO Bottom Fishing Management Areas for the Louisville Ridge



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

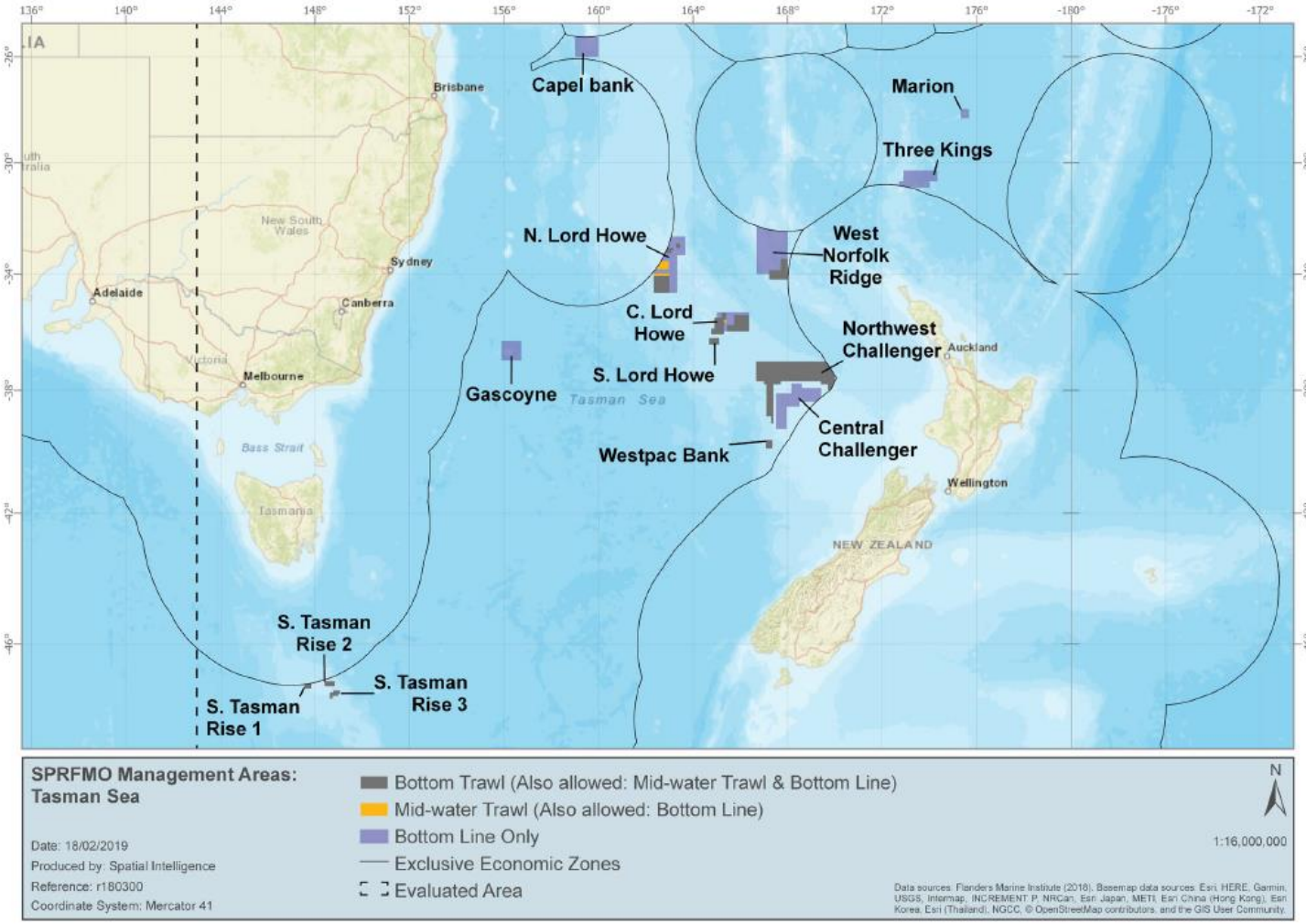
Bottom trawling shall only occur in a bottom trawl Management Area;
b) Midwater trawling shall only occur in a midwater trawl Management Area or a bottom trawl Management Area;

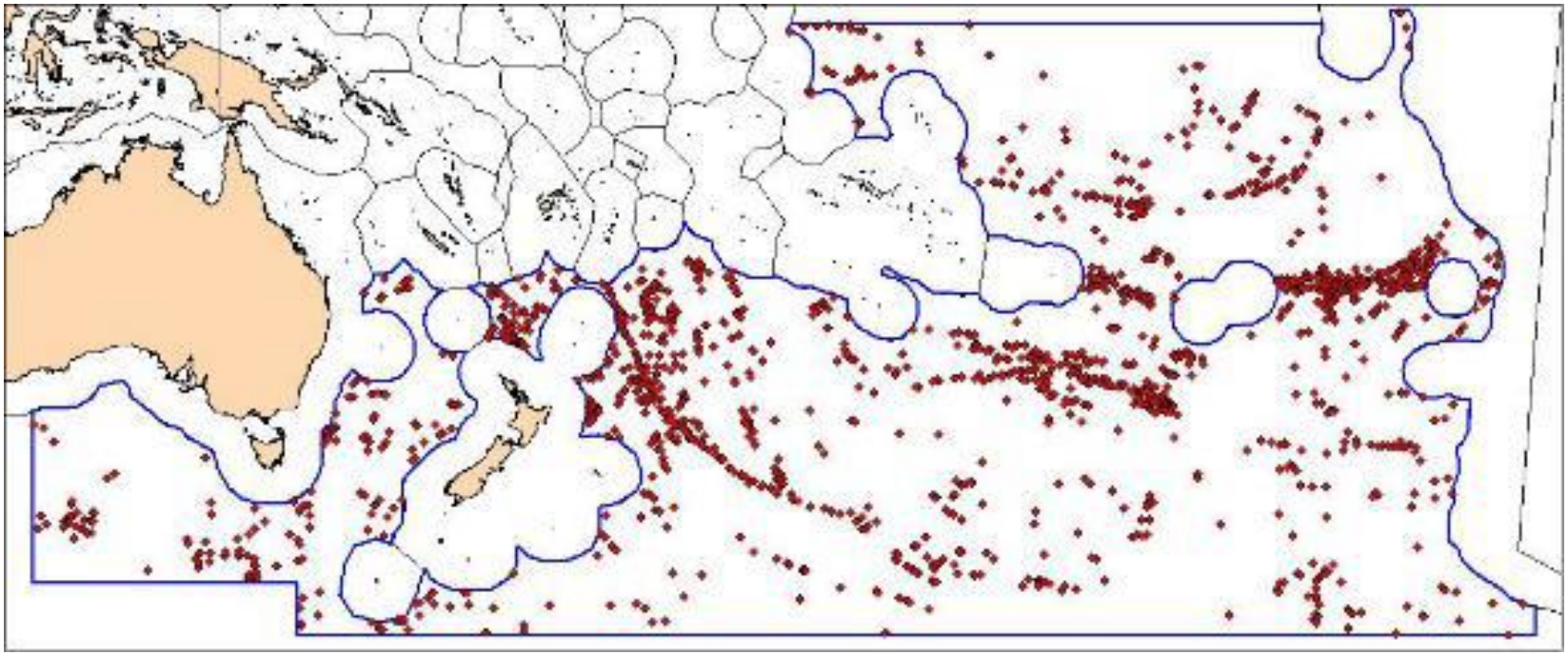
ANNEX 1: SPRFMO Bottom Fishing Evaluated Area and Bottom Fishing Management Areas



b) “Mid-water trawl” which is defined as fishing for bentho-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



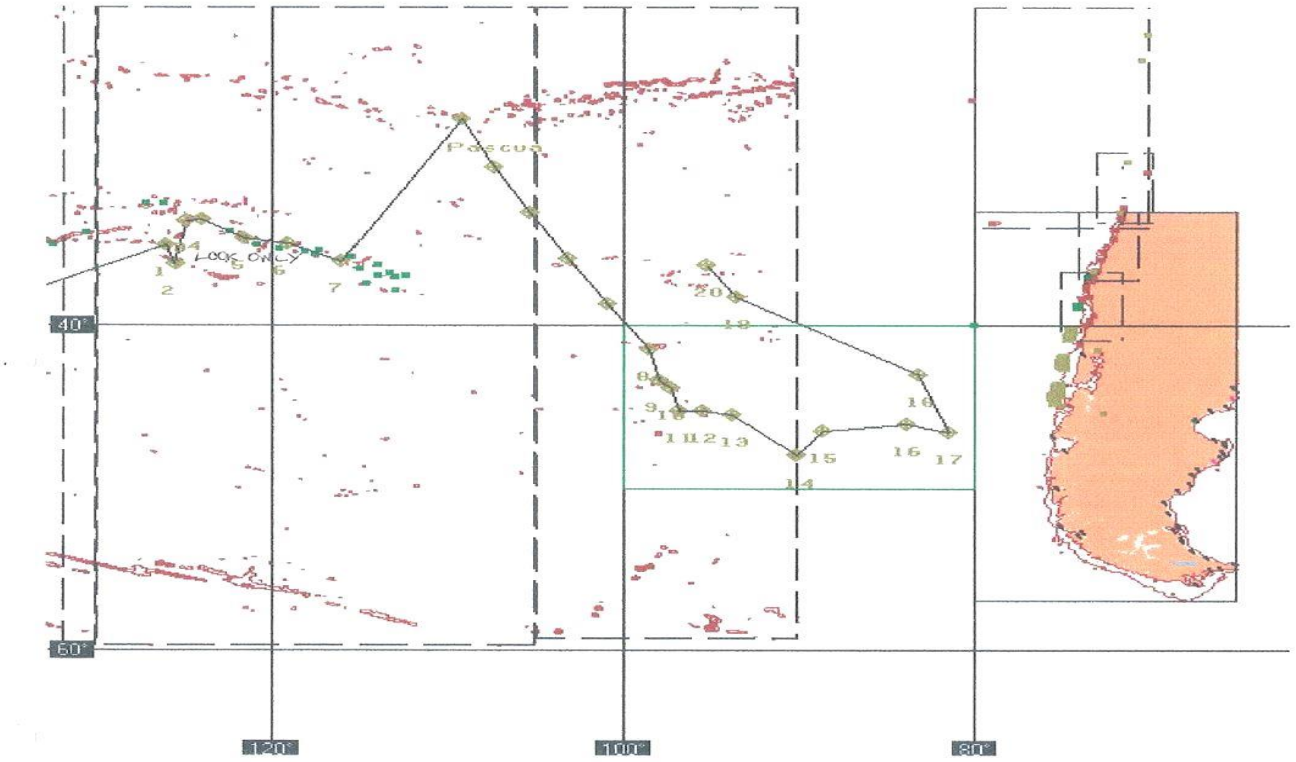


Geographic distribution in the SPRFMO area of **potentially trawlable** seamounts, i.e. seamounts which summit depth is located between 250 and 1500 m depth (stolen from SC7-DW03_Rev2)

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 eve 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!

📷NOAA

#deepsea #MarineLife #seasponge **#glasssponge**

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!

📷NOAA

#deepsea #MarineLife #seasponge **#glasssponge**

1 22 73

..to give the discussion some scale

The entire SPRFMO area encompasses 49,000,000 km^2

..the scale of things…

The entire SPRFMO area encompasses 49,000,000 km^2

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 $km^{2,}$

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

The new evaluated area in SPRFMO is 12,586,560 $km^{2,}$

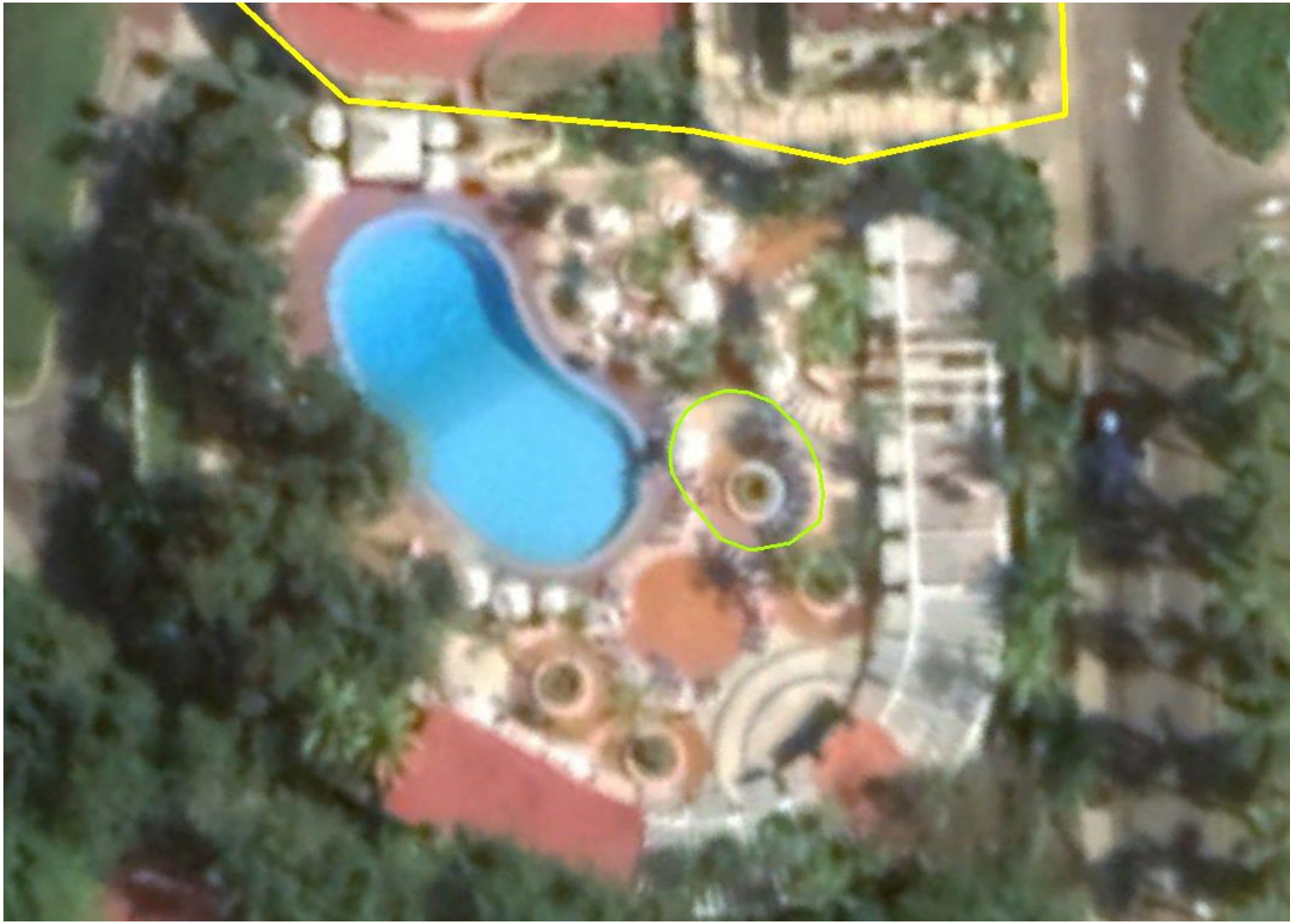
or **25%** of the entire SPRFMO area.

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.

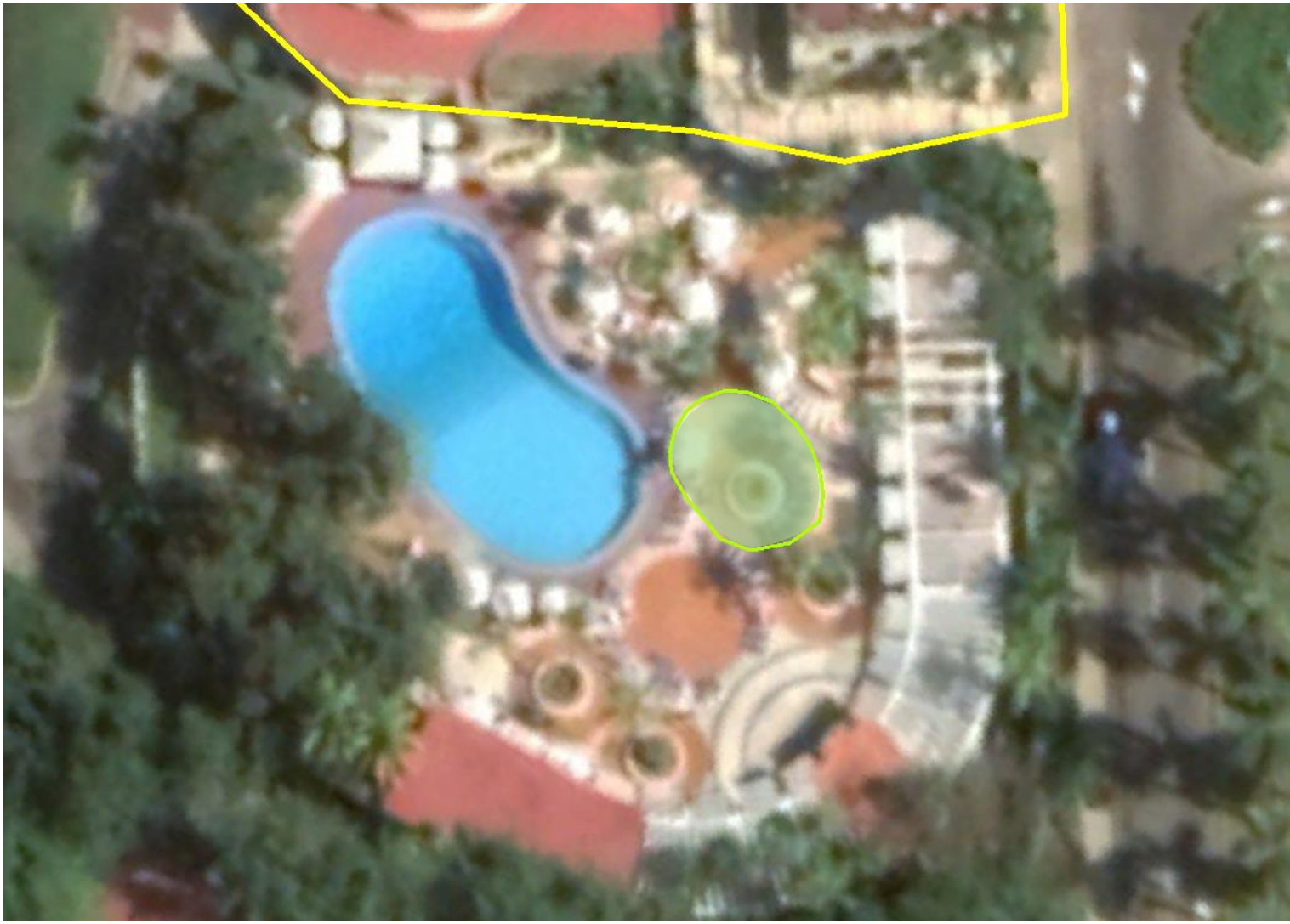
This area accounts for **0.13%** of the whole SPRFMO area.



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,

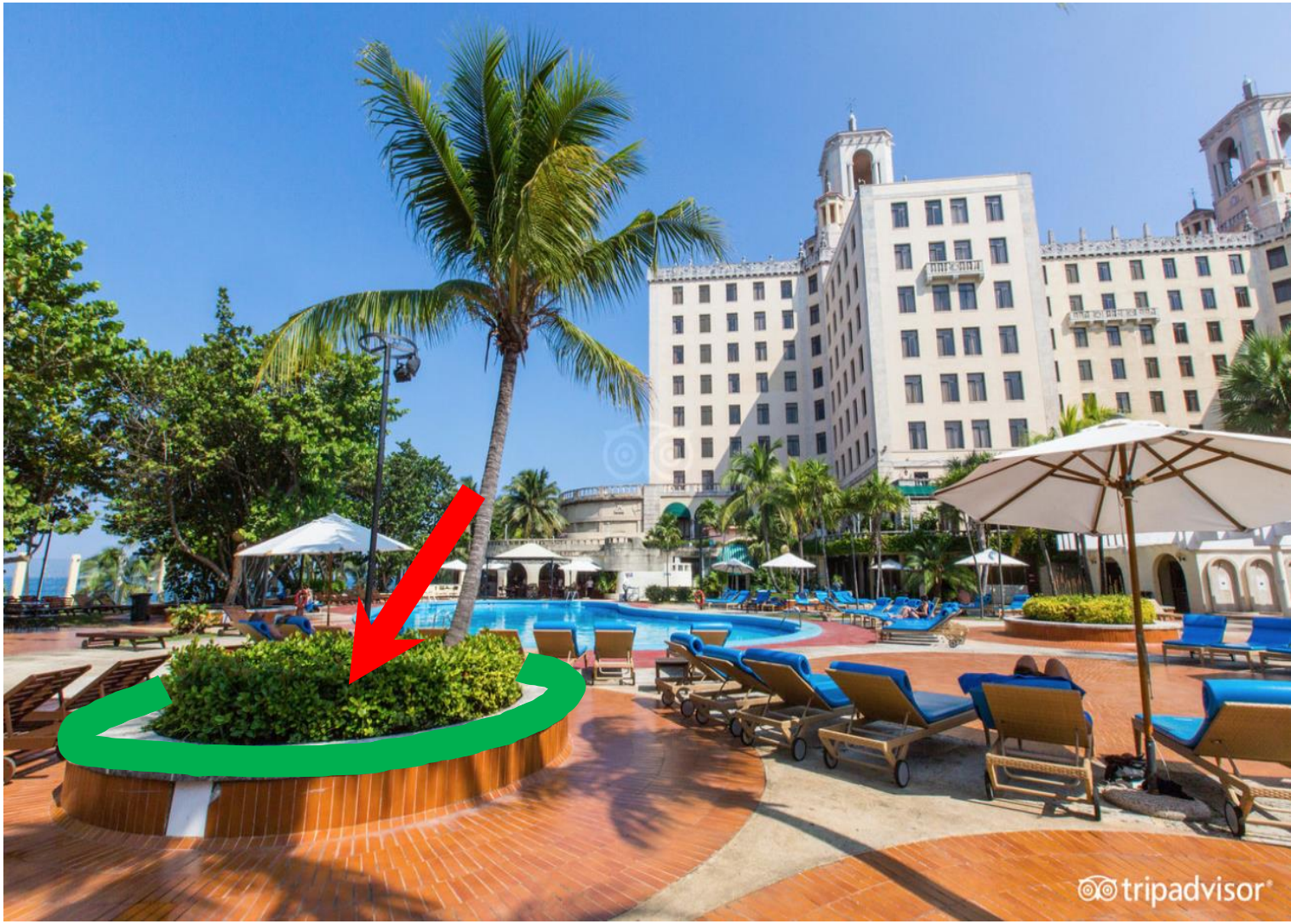
only some of this area is at workable trawl depths (< 1,500 m).

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..

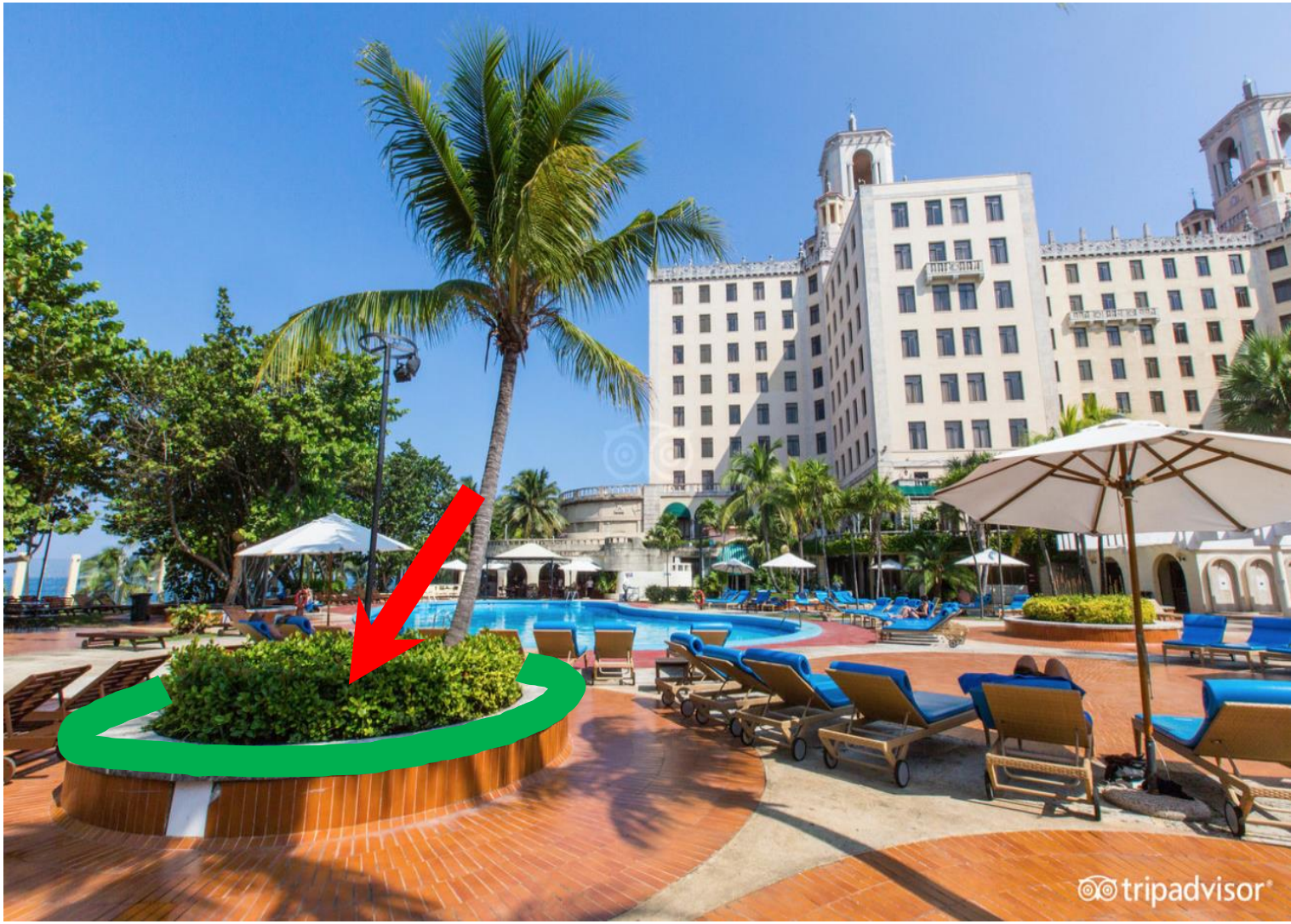
This garden bed out by the hotel pool represents **0.019%** of the area our city block.



…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:

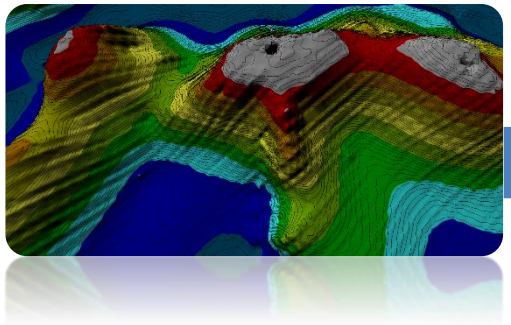
There is already more than adequate science and data and models showing that a closed area of 99.81% provides adequate protection under UNGA resolutions; and that the approach to closures that this commission has taken is hyper precautionary and at odds with the sustainable use of fishery resources on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