GREENPEACE

NAFO Case Study

The Northwest Atlantic Fisheries Organisation: a case study in how RFMOs regularly fail to manage our Oceans.

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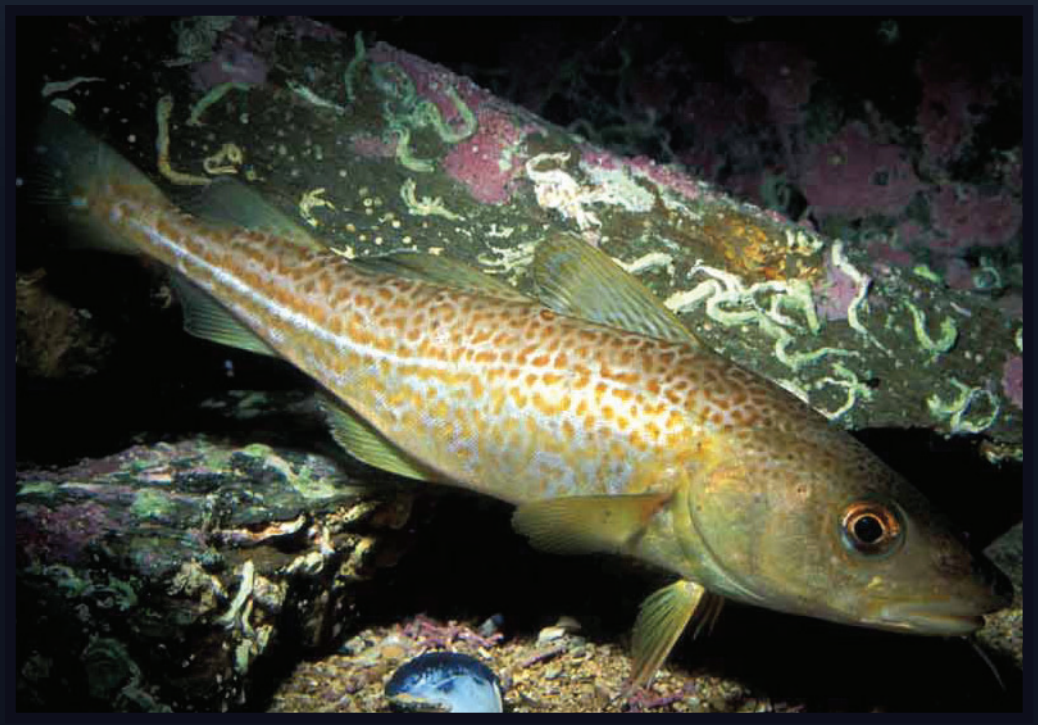

"COD COMING BACK, FISHERMEN SAY MINISTER UNDER PRESSURE TO END MORATORIUMS IN WATERS OFF NEWFOUNDLAND"

front page headline, Toronto Globe & Mail, October 5, 1996

The Atlantic cod *(Gadus morhua)*

This Report focuses on one of the most well established and developed RFMOs in the world: the Northwest Atlantic Fisheries Organisation (NAFO). With its origins in a regional commission that was established in 1949, it has been in existence since 1979 with the mandate "to contribute through consultation and co-operation to the optimum utilization, rational management and conservation of the fishery resources" of the Convention area[2]. Yet despite this, its adoption of a wide range of conservation and management measures, and a well developed institutional structure, NAFO has been unable to achieve its mandate and as of 2005, 10 stocks under NAFO's competence are currently under moratoria.[3]

NAFO is plagued by overfishing and misreporting by members because of a disregard for quotas and other regulations and the existence and subsequent frequent use of its objection procedure. It has a decision-making structure that often results in the adoption of lowest common denominator resolutions; no dispute settlement procedure; it is lacking in effective measures to eliminate IUU fishing; an ongoing disregard for and lack of inclusion of scientific advice; catch allocations based more on politics and history than conservation; a lack of transparency in its workings; and, the on-going lack of political will by Contracting Parties to enforce any significant penalties for management and conservation infringements.

In Gianni's 2004 report *"High Seas Bottom Fisheries and their Impacts on the Biodiversity of Vulnerable Deep Sea Ecosystems"* he estimated that 60% of the world's high seas bottom trawl landings comes from the Northwest Atlantic – with much of the fishery occurring in the NAFO Convention area.[4] This case study examines NAFO's track record and its poor performance in managing the fisheries under its jurisdiction. It highlights these problems through the stories of three vessels that have fished in the NAFO Area. It then concludes with some clear recommendations as to what is required if NAFO, and other RFMOs are going to measure up to the task of effectively and sustainably managing marine ecosystems in a precautionary manner, rather than Regularly Failing to Manage our Oceans.

Introduction

The deep ocean is viewed as one of the last major frontiers on the planet. While the high seas (areas beyond national jurisdiction), cover some 64% of the earth, there are more maps of the moon than of the deep ocean floor and few laws are in place to govern human activities and impacts in these areas. Where laws are in place, they are poorly enforced and the remaining gaps and loopholes leave most of the high seas open to overexploitation.

Very little is known about the mysterious world in the deep waters lying hundreds of miles beyond our shores. What little scientists and fishermen do know, is that in parts of the deep ocean, a myriad of life exists, and much of it is yet unknown to humankind. Scientists estimate that there may be over 100 million species inhabiting the deep seas and 500,000 species of macrofauna.[5] Areas rich in this deep-sea biodiversity are often the breeding and feeding grounds of deep-sea fish. As in most places across the world's oceans, where there are fish, there are industrial fishing vessels.

High seas bottom trawl fishing began in the late 1950s,[6] but expanded further in the 1980s as inshore fisheries became depleted and technology allowed fishermen to fish deeper and further out to sea. Bottom trawling – or 'dragging' as it is known in some inshore fisheries – is a fishing method in which huge nets fitted with heavy chains and steel plates which hold the doors open, are dragged across the ocean floor, destroying everything in their path in order to catch their target fish. Deep water bottom trawl fishing often takes place in areas where there is a very limited understanding of the biology of the species being caught, or of the ecosystems in which they live. There is the very real possibility that bottom trawling in these environments could drive such species to extinction.

High seas bottom trawling is largely unregulated with regard to the impacts on deep-sea biodiversity.[7] Marine scientists now consider bottom trawling to be the biggest threat to deep-sea biodiversity (www.mcbi.org) and the world's most harmful method of fishing[8]. High seas bottom trawling is also currently conducted in a manner wholly inconsistent with the conservation and management principles contained in Articles 5 & 6 of the 1995 UN Fish Stocks Agreement (UNFSA).[9]

Since the mid 1950s RFMOS have been the main mechanism developed by States to regulate fishing activities in areas of the high seas where fishing interests are most concentrated.[10] RFMOs were initially developed to avert conflicts over how to divide the amount of fish, amongst fishing nations particularly in rich fishing grounds. Their focus has been more on how to slice the 'fish stock' pie rather than to assess how those stocks fit into the broader marine environment and what the impacts of industrial fishing would be on those marine ecosystems. RFMOs have traditionally acted and continue to act as management bodies, with Contracting Parties carrying out the majority of enforcement and scientific surveys.

Since those early days, and due to a growing realisation that fishing activities were rapidly depleting the oceans of their living resources, additional international conventions and agreements have been agreed. The 1982 UN Convention on the Law of the Sea (UNCLOS), and later on the 1995 UN Fish Stocks Agreement[11] (UNFSA) set in place the fundamental principles on how activities on the high seas should be conducted. UNCLOS, in particular, stipulated that the right to use marine living resources went hand in hand with the obligation to conserve and manage its resources sustainably. The UNFSA specifically recognised the key role of RFMOs in ensuring that States work together so that fisheries conservation and management objectives are achieved and enforced.[12] The limited extent to which RFMOs, many of which pre-date the UNFSA, are institutionally able to set and deliver effective conservation objectives is acknowledged by a growing number of international agencies.[13]

One major shortcoming of RFMOs and fisheries management is that those with competence to regulate discrete deep-sea fish stocks, only cover some 25% of all of the high seas. Their membership is largely limited to those states with an interest in the fishery concerned. Large areas of the high seas are therefore completely unregulated, and where there is regulation through bilateral[14] and international agreements[15] , it is patchy and interest-based. This leaves 75% of high seas demersal fisheries unregulated by any management body.

In November 2004, months after more than a thousand scientists from 69 countries had called for a moratorium on high seas bottom trawling as a result of the negative impacts it has on vulnerable marine ecosystems, the UN General Assembly adopted a resolution on Sustainable Fisheries calling for States and RFMOs to:

> *"take action urgently to address the impact of destructive fishing practices, including bottom-trawling that has adverse impacts on vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold water corals located beyond national jurisdiction."*[16]

The UN Resolution requires that States and RFMOs act by 2006 to protect deep-sea biodiversity. One of the major obstacles to achieving this is that scientists do not yet know where all the vulnerable marine ecosystems are located on the high seas. Additionally, RFMOs as currently constituted are inherently ill equipped and in most cases do not have the scientific or management mandate to identify and protect these vulnerable areas. A recent review of RFMOs in Gianni's Report, concluded that the Convention on the Conservation of Antarctic Marine Living Resources, (CCAMLR) was the only RFMO that had demonstrated an ongoing obligation to regulate fisheries consistent with the ecosystem approach.[17]

Greenpeace believes that Regional Fisheries Management Organisations (RFMOs) must be fundamentally overhauled so that they can effectively implement the ecosystem approach to fisheries management as mandated by the UNFSA. Few RFMOs have sought to include or operationalise the ecosystem approach in their management regimes.[18] As Regional Ecosystem Management Organisations (REMOs), they must be given the functional ability and capacity as well as mandate to address the broader ecological impacts of human activities on the world's oceans. These changes will take time. It is therefore essential for the international community to recognise that RFMOs are a single, limited tool that could be effective in the medium to long-term governance of the oceans. The international community cannot wait around hoping for this change while marine biodiversity disappears. Action must be taken now. Urgent interim measures such as a moratorium on high seas bottom trawling must be put in place to stop the destruction of high seas biodiversity while medium and long-term measures are developed and implemented.

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2 Article II.1 NAFO Convention
3 Annex 1A NAFO Conservation and Enforcement Measures
4 Gianni, M ., High Seas Bottom Fisheries and their Impacts on the Biodiversity of Vulnerable Deep Sea Ecosystems, IUCN, WWF International, NRDC, Conservation International (2004).
5 Butler, A.J., Koslow, J.A., Snelgrove, PVR, and Juniper, SK, "A review of the biodiversity of the deep sea," Environment Australia, 2001, iii.
6 Gianni, M., High Seas Bottom Fisheries and their Impacts on the Biodiversity of Vulnerable Deep Sea Ecosystems, IUCN, WWF International, NRDC, Conservation International (2004).
7 Gianni, M., High Seas Bottom Fisheries and their Impacts on the Biodiversity of Vulnerable Deep Sea Ecosystems, IUCN, WWF International, NRDC, Conservation International (2004).
8 Auster, P.J., and R.W. Langton (1999). The effects of Fishing on fish habitation pp150-187 in L.R.Benaka, ed.
9 Gianni M. report see note 4
10 Michael W. Lodge* and Satya N. Nandan Some suggestions for better implementation of the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995 (May 2005)
11 The full name of the Agreement is: the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.
12 UNFSA article 7 (1) (a)
13 Lodge, M and Nandan, S, N See note 10
14 Barents Sea Loop Hole and Lord Howe Rise in the South Pacific
15 Donut Hole
16 A/RES/59/24, Operative paragraph 70
17 Gianni, M see note 4
18 Meltzer, E. Global Overview of Straddling and Highly Migratory Stocks www.dfo-mpo.gc.ca/fgc-cgp/documents/meltzer_e.htm

1. What is NAFO?

NAFO was established in 1979 as a fisheries regulatory agency following the expansion of coastal State jurisdiction out to 200 nautical miles in the Northwest Atlantic, to replace the obsolete 1949 International Commission for the Northwest Atlantic Fisheries (ICNAF).

NAFO is the regulatory agency responsible for fisheries conservation and management of most of the stocks beyond Canada's Atlantic 200-mile limit. Contracting Parties to NAFO include: Bulgaria, **Canada**, Cuba, **Denmark** (Faroe Islands and Greenland), **European Union, France** (St. Pierre-et-Miquelon), **Iceland**, Japan, Republic of Korea, **Norway, Russian Federation, Ukraine, USA**. The EU, with 25 countries, is recognised as a single entity by the NAFO Convention.[19]

The NAFO "Convention Area" includes both waters that fall under the jurisdiction of specific adjacent coastal states and high seas areas. A portion of the Exclusive Economic Zones (EEZ) of Canada, Denmark (Greenland), France (for the Islands of St. Pierre and Miquelon) and the United States, falls under the Convention Area, as well as high seas areas. NAFOs "regulatory area" (NRA) however, only covers those areas straddling and lying beyond the 200 nautical mile EEZs of those countries. It includes the northeastern portion of the Grand Banks (NAFO division 3L or the "Nose of the Bank"), the southeastern portion (division 3NO or the "Tail of the Bank"), and the outcropping of the shelf east of the Bank (division 3M or the "Flemish Cap").[20] In other words, it only regulates those prescribed areas outside the EEZs.

2. And what about the fish?

NAFO[22] covers all fishery resources of the Northwest Atlantic ocean area with the exception of cetaceans that are managed by the IWC, salmon, tuna and marlin and sedentary species of the continental Shelf.[23] As such, NAFO, like the North East Atlantic Fisheries Commission (NEAFC), is one of the few RFMOs that has the competence to regulate deep-sea bottom trawling activities.[24] NAFO is generally considered to have relatively good regulations in place, yet even so, these fisheries are in trouble.

2.1 Groundfish

Between 1992 and 2000, total reported catches of groundfish in the NAFO NRA declined from 153,365 tonnes to 91,315 tonnes – a downward trend that is expected to continue.[25] In 2000, about half of the total reported groundfish catch (or 46,282 tonnes) was comprised of species that were under no regulatory measures by NAFO, (e.g., skate, hake, and grenadier).[26] It was only in 2004/05 that regulations were adopted to manage 3LNO thorny skate, 3O redfish and 3NO white hake, even though they always made up a large portion of vessel earnings (See map opposite for NAFO management areas). Other species such as roundnose and roughhead grenadier and blue anatimora continue to be harvested but remain unregulated. Stocks of Atlantic cod, Greenland halibut, American plaice, witch flounder and shortfin squid in the Area are considered to be in poor condition, although the regulated yellowtail flounder stock is believed to be showing signs of continued recovery.[27]

In 2005, of the six straddling groundfish stocks managed by NAFO, four are under moratoria.[28] Ten other stocks are considered to have collapsed and moratoria have been established over catches of 3NO capelin and 3L cod since 1993. 3NO cod, 3M cod, 3LNO American plaice, 3M American plaice, 3 NO witch flounder, 3 L witch flounder and 3NO shrimp have been under moratoria since 1995. Since 1998, there has been a moratorium on catches of 3LN redfish. The status of 3LNO thorny skates, 3O redfish, 3NO white hake and Greenland halibut (currently under a 15-year rebuilding plan) is considered 'uncertain'.[29]

A rebuilding plan for Greenland Halibut is the first such plan to be adopted in the history of NAFO. It is generally seen by NAFO "as an example of forward-looking, precautionary fisheries management".[30] - NAFO is making very slow progress towards implementing the precautionary approach framework which they adopted in 2004 (ten years after the entry into force of the UNFSA).[31] Greenland halibut is an important by-catch species in the shrimp fishery. As the shrimp fishery increases, so too does the catch of associated species – and therefore – that of Greenland halibut.[32] Although this relationship is well understood within NAFO, without the implementation of an ecosystem approach to fisheries management alongside the

19 All those countries listed in boldface are also signatories to the UN Fish Stocks Agreement.
20 http://www.nafo.ca/About/FRAMES/AbFrMand.html
21 Global Overview of Straddling and Highly Migratory Fish Stocks. Evelyne Meltzer: working copy 04/2005
22 Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, done at Ottawa, 24 October 1978, entered into force on 1 January 1979, at http://www.nafo.ca/About/MANDATE/Convention_2003.exe ("NAFO Convention"). Members include Bulgaria, Canada, Cuba, Denmark (in respect of the Faroe Islands and Greenland), the European Community, Estonia, France (in respect of St. Pierre and Miquelon), Iceland, Japan, Korea (Rep. of), Latvia, Lithuania, Norway, Poland, Romania, Russia, Ukraine, and the United States. Website at http://www.nafo.ca/.
23 NAFO Convention, Article I(4). Sedentary species are defined as organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil.
24 See for instance NAFO Convention, Article II and VII. Thus, the conservation of sedentary species as such is not within its mandate.
25 "Straddling Stocks in the Northwest Atlantic": A report of the Standing Senate Committee on Fisheries and Oceans to the Thirty Seventh Canadian Parliament, June 2003 www.senate-senat.ca/fish.asp.
26 Ibid
27 NAFO Annual Report 2004 – Fisheries Commission
28 Annex 1 A, NAFO Conservation and Enforcement Measures
29 http://www.dfo-mpo.gc.ca/fgc-cgp/documents/meltzer/NAFOfinal.pdf
30 www.neafc.org/reports/annual-meeting/docs/am2003_papers/2003_18.doc - -18 May 2005
31 www.nafo.ca/Info/News/ar04/sc/sc-index.html
32 www.nafo.int/publications/meetproc/2004/sc/sep/sep-fis.html

For illustration purposes only.
Map Projection : Lambert Conf. Conic
Standard Parallels : 49°N, 77°N
Central Meridian : 60°W

Global Overview of Straddling and Highly Migratory Fish Stocks. Evelyne Meltzer: working copy 04/2005

Northwest Atlantic Fisheries Organization (NAFO)

- RFMO Boundary NAFO Convention Area
- NAFO Regulatory Area
- 200 mile limit
- NAFO Scientific and Statistical Subareas
- NAFO Scientific and Statistical Divisions

★ Headquarters: Dartmouth, Nova Scotia, Canada

21. map reference: www.dfo-mpo.gc.ca/fgc-cgp/documents/meltzer/maps/NAFO.pdf

precautionary framework that NAFO has already adopted, NAFO will continue to struggle to prevent further stock collapses.

The poor status of the above stocks, however, pales in comparison to the most notorious example of Canadian and NAFO mismanagement of bottom trawling activities in this area: the systematic collapse of the Northern cod fishery which was first placed under moratorium in 1992 and which continued until 1999. The moratorium was reinstated in 2003.

2.2 No Cod? Codswallop!

Abundant cod resources attracted European fishers to the waters of the Northwest Atlantic hundreds of years ago, and went on to spur the colonisation of the Canadian Atlantic coast. A recent study published in the Frontiers of Ecology and Environment estimates that there were 1.26 million tonnes of cod on the Scotian shelf in 1852 of which only 50,000 tonnes (or 4%) remains today.[33] In the 1950s, developments in fishing boat technology turned the Grand Banks cod fishery into an industrialised international fishing ground. Canada estimated the cod catch for 1968 (when the area was most heavily fished) at 900,000 tonnes, with 800,000 of that being caught by distant water fishers.[34]

With the declaration of Canada's 200 mile zone in 1977, foreign fishing in Canada's EEZ was phased out and bottom trawling in the international waters of the Grand Banks and Flemish Cap intensified, as did Canadian fishing inside the EEZ

Following the extension of the 200 mile limit the Northern cod stock was managed by Canada. It was a straddling stock with a significant amount of it inside the Canadian EEZ. In 1985 the EU tried to bring the Northern cod stock under NAFO management and the NAFO Fisheries Commission voted to prohibit fishing for that stock in the NRA on the grounds that it was fully subscribed by Canada.[35] Between 1986 and 1991, the EU disagreed with the NAFO-set quotas for northern cod and set its own quotas, often a lot higher.[36] Meanwhile the concerns being raised by scientists about the state of the stocks went largely unheeded by both Canada and NAFO, until the collapse of the fishery and the instigation of the moratorium in 1992.

After 1996, many of the fleets traditionally fishing on another cod fishery in the Flemish Cap (Division 3M), did not participate due to small catches in previous years. In 1998, one third of the catch was estimated to have been taken by Non-Contracting Parties. The total stock biomass in 1996, 1997 and 1998 was the lowest on record. [37] NAFO finally closed the international cod fishery on the Flemish Cap in 1999 (Division 3M), though Non-Contracting Parties continued to exploit it after this date.[38]

On 2 May 2003, two populations of Northern Cod were designated as threatened and endangered following assessments by the Canadian Committee on the Status of Endangered Wildlife[39] Despite the closure of the fishery in 1992, by-catch and indirect mortality on moratoria species continued.

An Observer report from the Portuguese-flagged vessel Lutador for the fishing period October 2002-March 2003, showed that approximately 58 tonnes (11% of the total catch) were discarded and a large portion of this was cod and plaice.[40] Under NAFO Conservation and Enforcement measures, a vessel has to move a minimum of 5 nautical miles from an area if its catches include a level of by-catch greater than 5% of the total (Article 9(4)). It appears from the Observer reports that where moratoria species such as cod reached the 5% level, rather than the vessel moving, the excess by-catch was discarded.[41]

Commenting on the 2003 extension of the moratoria on cod fishing, Dr John Caddy, a scientist formerly with the UN FAO and the Canadian Department of Fisheries and Oceans (DFO) said, "the reintroduction of bans on cod fishing in 2003 was resisted just as strongly by stakeholders as it was 11 years ago; the big difference is that this time there are no expectations that things will get better in the near future."[42] Dr. Caddy perceived on-going political interference as a serious impediment to any plan to rebuild the fishery and suggested that recovery plans would be more appropriately called "emergency plans", as there is no guarantee that stocks will ever recover.[43]

NAFO, like most RFMOs has no guiding principles on how to balance conservation interests with the social and economic interests of its Contracting Parties. This is most critically seen in the allocation of catches where "negotiated criteria for catch allocation are often based on the notion of historical catch, which is a powerful incentive to indulge in a race to fish."[44]

33 "Study: cod stocks at 4% of 1850s numbers," by Dene Moore in The Halifax Herald Limited, March 1, 2005.
34 www.senate-senat.ca/fish.asp.
35 The "NAFO Model of International Collaborative Research, Management and Cooperation," Journal of Northwest Atlantic Fishery Science, Vol. 23, 1998, p. 1-18.
36 ibid
37 http://archive.nafo.int/open/ar/ar99.pdf
38 Ibid http://archive.nafo.int/open/ar/ar99.pdf
39 FAO SOFIA Regional Reviews Ross Shotton 2005
40 NAFO 2003 Observer Mission Report for the Portuguese vessel Lutador
41 ibid
42 See ICES website on Atlantic cod stocks www.ices.dk/marineworld/recoveryplans.asp
43 ibid
44 Lodge, M and Nandan S.N. see note 10

2.3 The Turbot "War"

The turbot or Greenland Halibut "war" between the EU and Canada in 1995 is viewed as the low point in relations among NAFO Contracting Parties. In 1994, the Canadian Parliament passed Bill C-29 amending the Coastal Fisheries Protection Act to assert Canadian jurisdiction over its continental shelf extending beyond its EEZ, and authorizing officials to implement this measure by force if necessary[45]. By 1995, turbot had become the only commercially viable straddling stock of significant size in the Northwest Atlantic.[46] In the same year, NAFO reduced the total allowable catch (TAC) for turbot by 23,000 tonnes. The EU objected, opting out of this provision and setting its own higher TAC for turbot. On March 9, 1995 Canadian Fisheries and enforcement officials boarded and seized the Spanish-flagged fishing vessel Estai in international waters after it cut loose its nets and attempted to flee the area. The Estai halted its flight only after shots were fired across its bow.[47] Its nets (with a mesh size that violated NAFO minimum levels) were seized along with their catch of undersized turbot and the vessel was escorted back to Newfoundland[48].

The impasse was eventually resolved and Canada gave up some of its quota to the EU. NAFO did improve some aspects of fisheries management, including agreement for 100% observer coverage on all vessels, 100% port inspection, minimum mesh sizes for groundfish, and a minimum fish size for turbot,. Unfortunately, however, translating these agreements on paper into concrete action on the water remains a management challenge in the NAFO area today.

2.4 By-catch

Most of the deep water fish caught in international waters in the NW Atlantic are caught by the largely unselective fishing method - bottom trawling. According to Alverson et al. (1994), the top 20 highest discard ratios (the ratio of target species to discards, by weight) are dominated by bottom trawl fisheries where only one-fifth or less of the catch is usually retained.[49] A recent review of the different fishing gears used in the waters of the United States and their impact on ecosystems confirms that bottom-trawling rigs, bottom gillnets, and dredges have the worst ecological impacts of any gear type.[50] However, NAFO has no regulations in place to protect corals or other deep-water species or habitats from the destructive impacts of bottom trawling.[51]

By-catch is one of the major concerns with shrimp trawl fisheries. Trawling in general is known as a fishing method that is largely unselective. The FAO estimates that 35% of the world's incidental catch occurs in shrimp trawl fisheries - about 10 million metric tonnes of by-catch per year. It is generally accepted that fishing gear that is towed along the bottom of the ocean has the highest by-catch rates. By-catch from the northern prawn fisheries - developed after the collapse of the groundfish fisheries - in the NRA, includes species that have already been depleted by over-fishing. American Plaice is by-catch in the skate fishery in the 3LNO area of NAFO. There has been a moratorium on plaice since 1995 when this fish stock collapsed. The thorny skate fishery also takes Atlantic cod as by-catch – another fishery under moratorium. The skate fishery conducted by Spain, Portugal and Russia in 2000-2002 reported levels of by-catch at between 8.8% and 79% of total hauls[52].

Despite obvious concerns about by-catch of species under moratoria, the September 2004 NAFO General Council meeting[53] made no response to either the 2003 United Nations General Assembly call[54] for regional bodies to address the threats to vulnerable marine ecosystems and biodiversity, or to the CBD call[55] to urgently take the necessary measures to eliminate/avoid destructive fishing practices.[56] To establish why this is so and what the potential for action in NAFO is, it is necessary to look more closely at its structure and functioning.

45 'Fish Fight Left a Stench,' by Christina Blizzard in the Toronto Sun, March 27, 2005.
46 Straddling stocks report to the Canadian parliament. www.senate-senat.ca/fish.asp.
47 http://www.parl.gc.ca/InfoComDoc/37/1/FOPO/Studies/Reports/FOPORP10/08-rap-e.htm
48 ibid.
49 FAO Technical Paper 339, By-catch/Discards Analysis Alverson et al 1994
50 "Fishing Gear Associated with Global Marine Catches": Reg Watson, Eriko Hoshino, Jordan Beblow,Carmen Revenga, Yumiko Kura and Adrian Kitchingman Fisheries Centre Research Reports 12(6) 2004 The Fisheries Centre,University of British Columbia
51 Gainni M see note 4
52 Information on thorny skates in Div. 3LNO Report of the Scientific Council Meeting 5-19 June SC 6-19 Part D. Northwest Atlantic Fisheries Organisation. June 2003 pg. 167
53 http://archive.nafo.int/open/gc/2004/gcdoc04-05.pdf
54 UN General Assembly Resolution on Oceans and the Law of the Sea, A/RES/58/240 (23 December 2003), at http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/58/240&Lang=E, § 51and 52.
55 COP Decision VII/5, Marine and coastal biological diversity, Review of the programme of work on marine and coastal biodiversity, at http://www.biodiv.org/convention/result.aspx?id=7742.
56 Currie, D Deep, Deep Trouble: Regional Fisheries Management Organisations, the UN Fish Stocks Agreement and the Regulation of High Seas Bottom Trawling March 2005

3. NAFO Organisational Structure

NAFO is made up of a General Council (GC) with two standing committees, a Scientific Council (SC) with 4 standing committees, a Fisheries Commission (FC) with one standing committee and a Secretariat.

3.1 The General Council

The General Council is NAFOs main administrative body. It organises and co-ordinates the internal affairs and external relations of NAFO and also reviews and determines the membership of NAFOs Fisheries Commission.

Participation in the Convention is open to any State subject to notification in writing. The membership of the Fisheries Commission is, however, limited to parties which either participate in fishing activities in the NRA or, which provide evidence that they are going to participate in such fisheries in the near future. The membership of the Fisheries Commission is reviewed annually by the General Council.

NAFO is open to new members on the understanding that stocks are fully allocated and new allocations will only be available for previously unallocated stocks when these recover sufficiently to allow allocations.

Allocation of participatory rights goes to the heart of why some RFMOs are out of date and need reform, and NAFO is no exception. Torn between conservation imperatives and the economic interests of the Contracting Parties, the situation is further strained by the exclusive nature of most RFMO "clubs". Lodge and Nandan argue that the only resolution to this is to allocate on the basis of conservation and sustainable use. They suggest the FAO should assist RFMOs in developing equitable allocation criteria by providing guidelines on the implementation of Articles 10 and 11 of UNFSA.[57] NAFO is currently discussing allocation criteria. The example of how fast FAO members responded to the International Plan of Action on IUU fishing (IPOA-IUU) requirement to publish capacity management plans is not encouraging, only 9 members have responded since 1997. Progress on allocation criteria will likely be just as slow, and the question of whether there will be any species left to allocate once such criteria are set becomes a serious concern.

3.2. The Scientific Council

The Scientific Council provides a forum for discussion and collaboration around the study, appraisal and exchange of scientific information. It promotes scientific research, supervises the collection and maintenance of statistics and records, publishes and disseminates reports, and provides scientific advice to coastal states and the Fisheries Commission.

One of the main jobs of the Scientific Council of NAFO is to recommend annual fishery quotas based on a scientific assessment taking into account conservation obligations, the level of by-catch and depleted species. Contracting Parties then adopt and allocate these quotas by negotiation and, sometimes if necessary by voting. Between 1986 and 1992, the EU used the NAFO objection procedure 53 times to set quotas for its fleets far higher than those recommended by the Scientific Council and voted on by the NAFO membership.[58] This was in part what lead to the 1995 "turbot war" between the EU (Spain) and Canada. The turbot war ultimately led to changes in the NAFO regime that resulted in a reduction in Contracting Parties' abilities to disregard Scientific Council advice. Yet even with such changes, the problem of Contracting Parties disregarding scientific advice persists. For example, at the 2002 special meeting of NAFO in Helsingor, Denmark, NAFO Contracting Parties ignored advice of the Scientific Council and voted to increase the TAC for Greenland halibut from 40,000 tonnes to 44,000 tonnes. [59]

3.3. The Fisheries Commission

The Fisheries Commission (FC) is the most important body in NAFO and meets once a year in September. It is responsible for "the management and conservation of the fisheries of the Regulatory Area".[60] It adopts proposals for joint action by the Contracting Parties, as well as measures for control and enforcement within the NRA.

The Fisheries Commission has one committee: the Standing Committee on International Control (STACTIC). STACTIC includes representatives from each Fisheries Commission Contracting Party. STACTIC reviews control measures and reports of inspections and violations and promotes exchanges and collaboration between international inspectors. STACTIC makes recommendations on enforcement and control to the Fisheries Commission.

57 Lodge M, Nandan, S.N. pg 22 see note 10
58 Donald Barry, "The Canada-EU Turbot War: Internal Politics and Transatlantic Bargaining," International Journal 53:2 (Spring 1998).
59 Canadian Minister of Fisheries and Oceans, report on special meeting of the NAFO, Helsingor, Denmark, 2002 in Infoceans Volume 5 – Number 1 – FEBRUARY - MARCH 2002
60 www.nafo.ca/About/FRAMES/AbFrMand.html

Conservation measures such as minimum mesh and fish sizes, by-catch rules, the marking of boats and gears and reporting requirements and management and enforcement measures are adopted in the Fisheries Commission. The Commission establishes TACs for different species as well as national quota allocations based on advice from the Scientific Council. Decisions are mainly reached by consensus and where this is not possible by majority vote. Each Contracting Party has one vote. However, any measures agreed (e.g. a quota) by the Fisheries Commission only enter into force subject to an objection procedure, which allows Parties to opt out of measures simply by presenting an objection to a particular proposal within sixty days.[61]

4. Opting Out: The NAFO Objection Proceedure

The NAFO objection procedure is one of the key ways in which NAFOs ability to carry out its mandate is being undermined by Contracting Parties. An objection is all that it takes for a Contracting Party of NAFO to avoid having to abide by any conservation, management or enforcement measure, and there is no limit on the number of objections that can be made or on the type of proposal to which an objection may relate.

Between 1985 and 1992, over 50 objections were lodged by the EU using the NAFO Convention's Objection Procedure. While used less often today than in the past, the Objection Procedure has been used recently by the Baltic States, Iceland and Denmark to opt out of measures that they do not like.[62] In particular, objections to quotas set according to advice provided by the Scientific Council are becoming more regular. Conflicts over shrimp quota allocations in Sub-area 3L are a good example of this.

For example, in 1999 NAFO allocated 83% of the shrimp quota in the area to Canada. European nations were to share the remaining 17 per cent of the TAC for the area [63] The Faroese received a quota of 144 tonnes which they were unhappy with and disputed the allocation. As a result, Canada banned Faroese vessels from entering their ports in 2002. Canada reopened its ports in 2003, even though the Faroese continued to disagree with the allocation and in June 2004, Denmark on behalf of the Faroese, used NAFOs objection procedure to opt out of the NAFO 3L shrimp allocation scheme and unilaterally set a quota of 1,344 tonnes for the 2004 fishing season.

For the Faroese Minister of Fisheries, this disagreement was due to the distribution of allocation among Contracting Parties. He said, "the NAFO decision on how to divide the international portion of the TAC was taken without due regard for traditional fisheries interests in the area. As such it is entirely inconsistent with other NAFO decisions for allocating quotas in international waters. This has seriously undermined NAFO's credibility as an effective fisheries conservation and management body." However, Canadian Fisheries Minister Regan asserted, that this was an abuse of the objection procedure by Denmark which "undermines the credibility of NAFO as well as the organization's ability to properly manage fish stocks. It demonstrates the urgent need for reform of the NAFO governance regime."[64] In December 2004, Canada again closed it ports to Faroese and Greenlandic boats and as of early 2005, this issue remains unresolved.

Problems with NAFOs opt-out procedures are underlined by the fact that despite extensive discussions over the need to establish binding dispute settlement procedures, no agreement has been reached on how to achieve this, and thus no binding dispute settlement procedures exist whereby Parties can finally resolve such issues. As such, regardless of which side of the argument is supported, the ultimate burden of this disagreement has been born by the fishery and surrounding marine ecosystem. The amount of fish caught has been based on politics rather than conservation. The long-term sustainability of the area has been sacrificed for short-term self-interest.

61 www.nafo.ca/about/FRAMES/AbFrMand.html

62 Dr. Douglas Johnston, Marine and Environmental Programme, Dalhousie University, Committee Proceedings, 29 April 2003.

63 http://www.nafo.ca/info/News/quota.pdf

64www.nouvelles.gc.ca/cfmx/CCP/view/en/index.cfm?articleid=113329&categoryid=6&category=Audience

5. Compliance and Enforcement

In fisheries, compliance is said to be composed of two things: detection through fisheries observers;[65] and deterrence because of the likely consequences of being found to be breaking the rules. Canada reported 26 violations or incidents of non-compliance in the NAFO Area in 2001 alone.[66] Non-compliance according to the Canadian Department of Oceans and Fisheries includes: fishing for species under moratoria; exceeding quotas; misreporting catches by area and species; improper use of fishing gear (e.g., mesh sizes); fishing in areas closed to fishing; failure to maintain independent and impartial fisheries observers; and interference with NAFO inspectors, observers or evidence.

While conservation decisions are now more generally accepted by NAFO Contracting Parties, Canada reports the trend in fisheries violations since 1995 as one of increasing non-compliance.[67] In an attempt to address some of these issues, NAFO established a mandatory Observer Programme and required that all vessels install satellite-linked vessel monitoring systems. It also established a vessel registry and compiled its first compliance report in 2004.

5.1. The NAFO Observer Programme

Since 1998, NAFO has required that all Contracting Party vessels fishing in the NRA have an independent Observer onboard. The Observer's job is to monitor fishing activities by vessels and report on their compliance with NAFOs Conservation and Enforcement Measures. Observers report after each trip to their flag state as well as to the NAFO Secretariat.[68] In the NAFO area, Canadian boats use their own nationals as Observers. Norway uses Norwegian nationals. Observers on EU vessels are European nationals who may or may not be nationals of the flag State vessels to which they are assigned. The observers monitor fishing operations, compile catch data and collect biological information.[69]

Unfortunately, it appears that Contracting Parties have found a way of getting around the rules that they have agreed to for the monitoring of fishing operations by Observers. For example, in 2003 Canada issued a citation to a Faroese vessel for failing to have an independent observer onboard. The Captain of the vessel, Kappin, identified the cook (as documented on the crew list) as the observer.[70]

In the Observer Report from the vessel Lutador for the fishing period October 2002 to March 2003, the observer wrote that "when the processing of the catch and the trawl was not observed, or there was any doubt over the estimates the observer used the captain's figures". This certainly raises questions over the credibility of such data. The problem with credibility in Observer Reports is again evident in the 2003 Report from the Spanish-flagged vessel Pescaberbes Dos, where the Observer notes that " …I was also asked to fill in my weekly reports according to the figures I was given."[71]

Observer Reports are not available to the public for scrutiny and were only obtained for this study after the use of access to information laws were pursued in Europe for this purpose. Ensuring access to such reports would assist in assessing the degree of compliance with NAFO measures by all vessels authorised to fish in the area. It would also help Observers in fulfilling their duties to the Contracting Parties of the RFMO as a whole, and protect them from any possible consequences of Reports critical of vessel compliance efforts.

5.2. The NAFO Vessel Monitoring System (VMS)

Since January 1, 2001, NAFO has required that all Contracting Party vessels fishing in the NRA are equipped with a satellite tracking vessel monitoring system or VMS. Using this system, vessels transmit positional and other reports to their national Fisheries Monitoring Centers (FMC), which in turn send various messages, including position reports, every six hours to the NAFO Secretariat. These are then forwarded to Contracting Parties with an inspection presence in the area (Canada and the EU).[72]

5.3. The NAFO Registry: Lacking Transparency.

In another attempt to monitor fishing activity in the NAFO area, the Commission set up a list of Contracting Party vessels. However, the last time that NAFO officially published the names of the vessels listed was in 2001.[73] This lack of transparency bucks a trend within other RFMOs, which are beginning to recognise that greater transparency actually assists with monitoring, control and surveillance activities, and have started to publish their registries on the internet. In some cases, such lists include both suspected IUU as well as Contracting Party vessels. These RFMO's include the International Commission for

65 Straddling Stocks Canadian Parliament presentation 2003 www.senate-senat.ca/fish.asp.
66 http://www.parl.gc.ca/37/2/parlbus/commbus/senate/com-e/fish-e/rep-e/rep05jun03-e.htm#E.%20%20Non-Compliance
67 http://www.parl.gc.ca/37/2/parlbus/commbus/senate/com-e/fish-e/rep-e/rep05jun03-e.htm#E.%20%20Non-Compliance
68 http://www.nafo.ca/Publications/meetproc/2004/fc/stic_june04/stactic-j04.pdf
69 http://www.nafo.ca/Publications/meetproc/2004/fc/stic_june04/stactic-j04.pdf
70 Canadian Assessment of Compliance in the NAFO Regulatory Area – Report to NAFO Fisheries Commission Sept. 2003 http://www.dfo-mpo.gc.ca/media/backgrou/2003/nafo_e.htm
71 NAFO 2003 Observer Mission Report from the Pescaberbes Dos.
72 http://www.nafo.ca/Activities/FRAMES/AcFrFish.html
73 http://archive.nafo.int/open/ar/ar01.pdf page 99

the Conservation of Atlantic Tunas (ICCAT), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the Indian Ocean Tuna Commission (IOTC), and the InterAmerican Tropical Tuna Commission (IATTC) and CCAMLR.

The regional and VMS vessel registry of the Forum Fishing Agency in the Western and Central Pacific has just been released on their website. [74] Yet NAFO members appear unwilling to have an IUU or "black list" or to make it public. They also currently consider the list of Contracting Party boats fishing in the NAFO region as internal information.[75] This means that the public cannot find out who is fishing in the NAFO Area or how many vessels are fishing there.

This lack of transparency is not only frustrating for those of us interested in ensuring that NAFO is doing its job, but also frustrates attempts to broaden compliance efforts across RFMOs. A vessel that may have been fishing in an illegal or unregulated manner in the NAFO Area, may leave the region after being cited, and go on to fish in waters governed by other Regional bodies without their awareness that such a vessel has a questionable history. This lack of information exchange therefore encourages a permissive environment for vessels to act with impunity, effectively using NAFOs rules to undermine the rules of other RFMOs and take advantage of gaps and loopholes in international law.

Lack of transparency is one the key reasons identified by the OECD High Seas Task Force on IUU fishing for why RFMOs are ineffective in addressing IUU fishing.[76]

Perhaps one of the reasons for hiding the names of the vessels authorised to fish in the NRA is because several of them have run afoul of enforcement and compliance measures, yet continue to be permitted to fish. Evidence gathered by Greenpeace from sources outside of NAFO, indicates that the 2001 NAFO registry with 134 vessels listed, has changed considerably over the last three years: 20 vessels or 15% of the registry changed identity. Nine of these vessels changed their names, 11 changed flag, 2 were broken up, and 2 were declared by insurers as a total loss. Of the 134 vessels listed on the 2001 NAFO registry, 47 (or 35%) had citations issued against them[77]. In addition, two vessels, the Eyborg and Freija were registered as being flagged by two of NAFOs contracting parties at exactly the same time.[78]

Spain is one of the few NAFO members that published a list of their 35 flagged vessels fishing in the NRA in 2004.[79] If this list is added to the list of known Non Contracting Party (NCP) vessels reported to be in the region, as well as those vessels which had citations issued against them and identified by other sources, then the total list of vessels fishing in the NRA grows to 164.[80] Seventy[81] of these vessels - almost half of the total number of boats listed as fishing in the NRA in 2001 - have had citations issued against them. [82]

5.4 NAFO: Weak in Compliance and Poor in Enforcement.

The following list of infringements and detailed examples are drawn from a report presented to the NAFO Fisheries Commission in September 2003 on Compliance in the NRA[83] and from Observer Mission Reports[84] for the same period. They illustrate a serious and on going problem within NAFO to ensure compliance by Contracting Parties and to enforce any real penalties for infringements.

- During at-sea inspections in December 2002, two EU vessels, the ***Calvao*** and ***Lutador*** (Portuguese flagged), were cited for misreporting catch, directed fishing of moratoria species, and exceeding incidental catch limits. In both cases, the infringements were serious, yet Portugal did not re-direct these vessels to port for inspection. This meant the vessels fished into a new quota year and landed catch from both 2002 and 2003. It was impossible to differentiate between the two catches to identify any catch that might be connected with alleged non compliance[85]
- Observer reports for 2002 showed that on 72 days, EU vessels fished directly for moratoria species, primarily American plaice and cod. On these days, catch of moratoria species was 270% greater than non-moratoria species (245t versus 575t).

74 http://www.ffa.int/ffa_rreg
75 Private correspondence March 2005 NAFO secretariat and M. Gotje.
76 HSTF/09, available at www.high-seas.org
77 ibid
78 Lloyds Seaweb
79 http://noticias.juridicas.com/base_datos/Admin/res260504-2-apa.html
80 This number is calculated as:
a. 2001 registry (ex Spain): 104;
b. Spain vessels on both 2001 and 2004 list: 22;
c. Spain vessels only from 2004: 13;
d. non contracting party vessels and reefers cited in 2004: 20;
e. vessels and reefers cited by NAFO in 2002 and 2003: 3
f. vessels cited and blacklisted by Norway for Nafo infringements in 2000 and 1999: 2
81 Included in this figure are 24 of the vessels as a result of the dispute between Canada and Denmark (in respect of the Faeroes Islands) and Estonia in relation to the shrimp fisheries on the high seas outside the EEZ of Canada. The ports of Canada were closed to Danish fishing vessels from the Faroese and Greenland from December 1, 2004. The ports were also closed between March 2002 and August 2003 to Danish and Estonian vessels.
82 Martini Gotje, calculation April 2005
83 Canadian Assessment of Compliance in the NAFO Regulatory Area – Report to the NAFO Fisheries Commission Sept. 2003
84 NAFO Observer Mission Reports Lutador Oct 02 – March 03, and Calvao Nov 02 – Jan 03
85 ibid

The Story of the Solsticio (Portuguese flag):

In May 2003, information from several sources indicated that four EU vessels ***(Solsticio, Brites, Aveirense, Santa Mafalda)*** were fishing directly for moratoria species in Division 3O. One of these vessels, the ***Solsticio*** was monitored by VMS and an observer and was also inspected at sea by Canada and in port by the EU. The VMS fishing pattern identified the ***Solsticio*** in shallow waters of Division 3O for 2 weeks in an area where cod and American plaice were available.

In May 2003, Canadian inspectors boarded the ***Solsticio***. As the patrol vessel approached and while inspectors were onboard, the ***Solsticio*** moved to deeper water. When the net was retrieved, it contained 1.2t of fish. 60% was Greenland halibut and 40% was mixed non-moratoria species. The Captain was issued a citation for directing for cod. Upon completion of the trip, the Observer reported that of a total catch of 554t, 115t was 3NO cod, 122t was 3NO American plaice and 20t was 3NO witch flounder. Almost 50% or 257t of the total 554t consisted of moratoria species.

In June, 2003 the EU submitted a port inspection report to NAFO for the ***Solsticio***, stating "there were no infringements" by this vessel. Unbelievably, the port inspection report stated that the cargo was comprised of 90% non-moratoria species. For the ***Solsticio***, 3 sources - VMS, the Canadian inspection, and the Observer report - corroborate an infringement, while a single source (port inspection) indicated that no infringement occurred. [86]

The Story of the Brites: "moratoria, what moratoria?"

Rotting cod, American plaice and red fish - all species under moratoria - poked through the mesh of the net, which was cut from the vessel ***Brites*** in the early hours of May 4, 2004 as Canadian fisheries inspectors boarded it on the Grand Banks. When the net was eventually retrieved, its mesh was 107 millimetres wide. To protect threatened species, the smallest mesh width allowed on nets under international rules are 130 millimetres wide. Despite clear evidence indicating a violation of international fishing regulations, the ***Brites*** was not prosecuted. Consultations between the Portuguese government and the European Union resulted in an order for the ***Brites*** to return to Portugal to undergo inspection. A fisheries inspector from the EU remained on board for the trip home. The decision to send the boat home was supposed to demonstrate the EUs commitment to conservation.[88]

The outcome of the entire incident remains shrouded in secrecy. Requests by Greenpeace for documents on the exchange between Portugal and Canada, were denied[89].

In November 2004, the European Commission adopted a regulation stating that Portuguese vessels fishing for redfish in NAFO Area 3M had exhausted their quota in that area and that further fishing for redfish by Portuguese-flagged vessels was prohibited for the allocation year. The Regulation was made effective from October 14, 2004[90]. Yet even before the effective date of the regulation, the Brites was back on the Grand Banks. Lloyd's reported the vessel back in St. John's, Newfoundland by September 25, 2004[91].

- Canadian NAFO inspectors in September 2003 issued a citation to an EU vessel flagged to Portugal, the ***Santa Mafalda***. Approximately half the catch inspected were species under moratoria.[87]
- In 2001, the catch of Greenland halibut reported by EU observers amounted to 21000t. This exceeded the EU reported catch by 6800t and the EU allocation by 4600t.
- In 2002, the catch of Greenland halibut reported by EU observers amounted to 19,000t. This exceeded EU reported catch by 2000t and the EU allocation by 1000t.
- In August 2002, the Master of the ***Area Cova*** (Spanish flag) logged that 31% of their catch was Greenland halibut. Inspectors (Canada/EU), however, found that 83% of the catch was Greenland halibut.
- In October 2002, the Master of the ***Punta Robaleira***, also flagged to Spain, logged a total catch of 36.5t of Greenland halibut. Inspectors found 69.5t of Greenland halibut onboard.
- The ***Atlas***, a Latvian trawler, after being cited by Canadian authorities for 3 serious infractions

86 ibid
87 NAFO Observer Mission Report for the Santa Mafalda period of observation March 03-July 03
88 Globe and Mail, May 10, 2004
89 http://www.theindependent.ca/article.asp?AID=353&ATID=2
90 http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2004/l_341/l_34120041117en00200020.pdf
91 http://www.seasearcher.com/mt/seasearcher/vslcurrv.jsp?llpno=121722

(fishing without a license, no observer on board, no VMS) was given a maximum allowable penalty by the Latvian government of approximately 300 Euros.[92]

The Canadian press obtained briefing notes to the Director General of Fisheries & Oceans Canada, which clearly state that captains and officers operate under attractive incentive based contracts which can handsomely reward illegal catches. The average fine for ship captains found guilty in their home ports of illegally fishing is about 3,000 Euros. In some cases, the company or vessel owners pay the fines.[93]

The imposed penalties are nothing compared to the revenues. As an example, the European Commission quoted a figure of 28.7 million euros as being paid by fishermen in fines for breaking the EU Commons Fisheries Policy and overfishing in 2003. This represents just over 0.004 percent of the value of the fish landed at ports in 2002.[94] In 2002, there were 6,756 cases of serious infringement of current EU fisheries laws.[95]

Over the past decade, Canadian investigators have issued 319 citations for illegal fishing against European Union member state flagged vessels. Only 24 have resulted in convictions.[96] Between 2003-2005, about one third of all citations were against Portuguese-flagged boats. Canadian federal officials described the "follow-up" on non-compliance by flag states as ineffective and inadequate, "because deterrence is poor, compliance is by no means assured".[97] Enforcement depends on the flag state and its courts to take action and according to the Canadian Department of Fisheries and Oceans, "the European Union does not use observer data to follow up with legal charges."[98] The EU must be held responsible as a community for the extremely bad compliance record of its member states. All NAFO Contracting Parties, including the coastal states, must be held accountable for what is happening to the marine ecosystems that they are supposed to be co-managing.

6 .Illegal, Unregulated & Unreported (IUU) Fishing - An RFMOs Achilles Heel

RFMO measures to regulate and control fisheries in their areas of competence are limited to those states that are members of these bodies. While it has been illustrated above how RFMO member-states dodge compliance with adopted measures, vessels flagged to states that are not members of the RFMO do not even have to generate the perception that they are conforming with such measures. Vessel flying the flags of non-contracting parties (usually non- Parties to the UNFSA), are not bound by RFMO measures. Unlike those vessels flagged to NAFO Contracting Parties, their activities are not illegal – they are not breaking laws they have not signed up to. Instead they fall into the much larger category of fishers pillaging the high seas: the second "U' in IUU. They are simply "unregulated".

These vessels often evade NAFO rules. In addition, such vessels take advantage of the fact that NAFO has failed to regulate bottom trawl fisheries within the NRA. NAFO does request non-contracting parties (NCP) to respect their conservation and management measures when fishing in the NRA.[99] Unfortunately, non-compliance with these measures by many of the non-contracting parties found bottom trawling in the area seems to be the norm rather than the exception.

6.1. Russian vessels, Dominica flags

Russia is a member of NAFO and ratified the UNFSA in 1997. It chooses to flag some of its vessels fishing in the NAFO area under the flag of Dominica, which is not a member of UNFSA. During the 2004 fishing season, a total of 8 vessels flagged to Dominica were sighted engaged in fishing activities – suspected of bottom trawling for redfish - in the NRA.[100].

Seven of these vessels belong to Pionerskiy Ocean Fishing in Kaliningrad[101], which is controlled by the government of the Russian Federation. According to Lloyd's Seaweb, the vessels are registered to the subsidiary A B Bocyp Fishing, which is registered in Cyprus, but controlled by the government of Russia. The names of these vessels are: ***Oyra, Okhatino, Ostrovets, Olchan, Ostroe , Ozherelye*** and ***Kadri***. The ***Kadri*** is also

92 Greenpeace fact finding visit to Latvia April 2005
93 http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1111348993951_40
94 EU urges tougher penalties for illegal fishing (Reuters)30 May 2005
95 http://europa.eu.int/comm/fisheries/scoreboard/index_en.htm
96 http://www.nafo.ca/Info/News/Others/canfishoffnotallowed.html
97 Patrick Chamut, Assistant Deputy Minister, Fisheries Management, DFO, Committee Proceedings, 26 November 2002.
98 David Bevan, Director General, Resource Management, DFO, and Chair of the Standing Committee on International Control of NAFO, Committee Proceedings, 5 February 2003.
99 http://www.dfo-mpo.gc.ca/fgc-cgp/documents/meltzer/NAFOfinal.pdf
100 http://www.nafo.ca/Info/News/press04.html
101 http://www.sea-web.org/

known as the ***Lisa***.[102] The ***Pavlovsk***, another Russian owned and Dominica flagged vessel was also sighted in the area but is not believed to be owned by the Pionerskiy company.

Each of these vessels was sighted at least twice in NAFO Division 1F, south and west of Cape Farewell at the southern tip of Greenland during the period spanning July 27 to September 1, 2004[103].

Three further Russian-flagged vessels, the ***Kobrin, Granat*** and ***Olchan*** were all listed on the 2001 NAFO registry as Russian owned and flagged. The ***Kobrin*** was reflagged to Dominica in 2004 and again to Equatorial Guinea in 2005. The ***Granat*** and ***Olchan*** were reflagged to Dominica in 2004. Although the ***Olchan*** was on the NAFO list as Russian flagged in 2001, it was listed with Lloyds as Cyprus flagged All 3 vessels remain Russian owned in 2005. [104]

6.1.2. The Dominica Maritime Registry, Inc. – the "flag of responsibility"

"Our goal is to become the flag of choice for all quality ship owners and operators, giving them the ability to operate in an open-registry system that prides itself on integrity, honour and humanity. All of these actions serve to fulfil our pledge to be known as "The Flag of Responsibility."[105]

The Dominica Maritime Registry (DMRI) is operated by the Commonwealth of Dominica. Its offices are located in Fairhaven, Massachusetts.[106] Dominica provides registry services for fishing vessels and yachts. Dominica requires fishing vessels to comply with the Torremolinos International Convention for the Safety of Fishing Vessels (SFV '77) and international fishing conservation treaties, and to carry GMDSS transponders to help reduce enforcement boarding. SFV '77 has not yet entered into force and is now superseded by the Torremolinos Protocol of 1993, which also has yet to enter into force.[107] Dominica and Russia have neither signed nor ratified the Protocol.[108]

Dominican vessel registration guidelines, CDP 200, are published on the worldwide web.[109] Article 1.2.5, which deals with Fishing Vessels, clearly states that "only those fishing vessels that are operated by an entity resident in the Commonwealth of Dominica and that land their catches solely in the Commonwealth of Dominica will be considered for registration".[110] Research indicates that none of the above-listed Russian-owned but Dominica-flagged fleet has ever called into a port in Dominica. During the winter months, these vessels are usually laid-up in Rostock, Germany and Klaipeda, Lithuania[111]

It is widely believed that the catches from these vessels are transhipped at sea. In 2002, the Russian-flagged Reefer ***Metelisa*** was reported taking fish from the ***Ostroe***[112]. In 2004, the Belize-flagged ***Sunny Jane*** and Malta-flagged ***Caribbean Lady*** were observed in the same region as the Dominica vessels. It is also rumoured that the vessels are supplied with bunkers by the Liberian-flagged but Latvian owned tanker ***Razna***[113]. Russia and Latvia are both Parties to NAFO.

Dominica is also not a Party to the UNFSA. The Russian Federation ratified UNFSA in 1997

6.1.3. NAFOs reaction: a slap on the wrist

NAFO responded to the presence of these Dominica-flagged vessels in the NRA, yet these vessels continue to be operated by the same Russian company. Diplomatic demarches were sent to Russia, Belize, Dominica and the Dominican Republic as per the NAFO Standing Committee on Non-Contracting Party Fishing Activities (STACFAC) Working Paper 04/7. Russia confirmed the vessels were not on their registry. Belize replied and indicated that it had deregistered the vessels in question. The Dominican Republic replied stating that they were not the flag state of the vessels, which were in fact flying the flag of Dominica when sighted in the NAFO Regulatory Area in 2003. A demarche was subsequently delivered to the Commonwealth of Dominica on 23 February 2004. No reply has been received from Dominica.[114]

It is clear that the beneficiary owners and operators are Russian – a NAFO member - yet NAFO seems unable to even distinguish between Dominica and the Dominican Republic when taking 'action' – such as sending letters on the activities of these vessels.

Many high seas fishing vessels are flagged to countries that do not fully exercise their jurisdictional responsibilities under international law to exercise control over them. Until the concept of a 'genuine link' between the beneficial owners of fishing vessels and their flag states is defined and required under international law, this loophole will continue to be exploited. Dominica

102 http://archive.nafo.int/open/gc/2004/gcdoc04-05.pdf
103 http://archive.nafo.int/open/gc/2004/gcdoc04-05.pdf Annex 3 letter to Dominica
104 Lloyds Seaweb
105 http://www.dominica-registry.com/#
106 http://www.dominica-registry.com/#
107 http://www.imo.org/includes/blastData.asp/doc_id=693/status.xls
108 http://www.imo.org/includes/blastDataOnly.asp/data_id%3D11596/status.xls
109 http://www.dominica-registry.com/index.php?option=content&task=view&id=2&Itemid=27
110 http://www.dominica-registry.com/CDP200_VesselRegistration&MortgageRecordation.pdf
111 http://www.seasearcher.com/mt/seasearcher/comImd2.jsp?compid=66502
112 http://www.nafo.int/publications/meetproc/GC-FC-Proceedings/html/sfac_sep02/annex1-5.html#top
113 NAFO/GC Doc. 04/5, page 72
114 NAFO/GC Doc. 04/5

is not a Party to NAFO and thus not bound by its rules. Its vessels are not required to report their catches, fishing effort or areas of operation. They are not required to carry VMS or file VMS Reports. This clearly undermines management efforts.[115] Such activities are even more troubling when RFMO member-states themselves evade the few existing regulations by re-flagging their vessels to non-contracting Parties. It also begs the question as to how serious such member-states are about the measures that they themselves put in place if they not only 'opt out' of the system through NAFOs Objection Procedure, but also reflag vessels so that they are not obliged to meet the requirements of such measures.

Much has already been written about the role of flags of convenience, or, as they are now more fashionably called, "flags of non-compliance' in undermining international environmental, labour and human rights laws. Transhipment at sea further undermines existing management and regulatory measures inasmuch as fishing vessels evade the port state controls of states willing to exercise their responsibilities under international law. Transhipment at sea also serves as yet another loophole in the RFMO management regime: vessels flagged to countries that are not Party to an RFMO evade their rules, then tranship their catch at sea, evading any port state measures adopted by the RFMO to regulate the trade in species caught in their area of competence. The fish are caught by unregulated vessels, moved to other vessels that can evade rules pertaining to fishing vessels, and then enter the market in ports far from where they are caught and are not subject to any established rules. This is the 'chain of custody' that applies to much of the fish currently caught on the high seas. Without the adoption of comprehensive measures that can apply to all flags and all ports, these types of activities will continue and the negative impacts on the marine environment will persist. RFMOs can establish as many rules as they wish, but as long as they are patchy, apply to only a limited number of states, and are relatively easy to evade, the marine ecosystem will be left shouldering the burden.

6.2 Working Together hand in glove: the Need to Address IUU fishing as part of the fix.

According to the OECD High Seas Task Force, the problem of IUU Fishing is now considered the greatest threat to the sustainability of global fisheries. A FAO Plan of Action to Prevent, Deter and Eliminate IUU Fishing was adopted in 2001 but as a voluntary plan has done little to stop such fishing. Again, traditional notions of international law leave the flag state with primary responsibility to ensure that its ships comply with fisheries conservation and management measures, leaving other states with little recourse against pirate fishers operating beyond national jurisdiction.

The FAO IUU Plan of Action contains two definitions for unregulated fishing. One refers to fishing in an area governed by an RFMO by a vessel from a flag state not a party to that RFMO. The other definition is more relevant to high seas bottom trawling. It refers to high seas fishing in areas where there are no effective management rules or bodies as "unregulated" if it is "conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law." (Article 3). As presently practised, high seas bottom trawling is inconsistent with state responsibilities for the conservation of living marine resources under international law.

The fundamental changes required of RFMOs outlined below will need to go hand in hand with efforts and measures to address IUU fishing to be effective. See appendix 1 for recommendations for legally binding measures to regulate industrial fishing and address IUU fishing on the high seas.

115 FAO SOFIA deep water fisheries 2005 pg 196

Oh, what a tangled web we weave …
NAFO General Council infiltrated by IUU operators known for exploiting the marine environment on the other side of the planet

On December 19, 2004 the Estonian flagged ***Lootus II*** was cited for operating a net with a mesh size that was too small under NAFO regulations.[116] The ***Lootus II*** is another repeat offender. Since 2000, 7 infractions have been cited against this 554 GRT bottom trawler, including fishing for species under moratoria and exceeding by-catch on plaice and witch flounder.[117] The company MFV Lootus OÜ, is the registered owner of the ***Lootus II***. The company has an Estonian address in Tartu. A law firm had been resident at this address but moved a few years ago.[118.]

The original name of the ***Lootus II*** was ***Fragana*** (until 2000) and the owner at the time was Juana Oya Perez, a Vigo-based fishing company and a subsidiary of Grupo Oya Perez. Grupo Oya Perez became a shareholder in MFV Lootus OÜ on December 21, 2004. Grupo Oya Perez is also the owner of the notorious pirate patagonian toothfish vessel ***Ross***, flagged to Togo. The ***Ross***, previously named ***Alos*** was built in 1975, and was registered from 1984 to 1998 as the ***Combaroya Tercero (III)*** and owned by Paresis Trawling Ltd in Namibia, a subsidiary of Grupo Oya. In June 2001 the vessel was sold to Juan Manuel Oya Perez of Lena Enterprises Ltd (a subsidiary of Grupo Oya). It was again renamed ***Lena*** and registered in the Seychelles.

In December 2002, and again in January 2003, the ***Lena*** was photographed fishing illegally for toothfish in the French EEZ around the sub-Antarctic island of Kerguelen. In March 2003, ***Lena*** was sighted re-supplying in Durban, South Africa.[119]

Lena was again sighted fishing in waters around Kerguelen in May and July 2003 and is suspected to have been transhipping toothfish at sea. She was seen in Mauritius in July/August 2003.[120] The name of the vessel then changed back to ***Alos*** after she was seen by an Australian fishing vessel a month later (September 2003), and was chased and photographed within the Australian EEZ off Heard Island. The vessel was then again renamed as the ***Ross*** and flagged to Togo.

In March 2005 the ***Ross*** was seen fishing with five other vessels on the Banzare Bank, an area which had been closed to fishing by CCAMLR. The other vessels were the Togo-flagged ***Hammer*** and the ***Condor*** and the Georgian-flagged ***Kang Yuan, Jian Wuan*** and ***Koko***. The armed Australian vessel, ***Oceanic Viking***, could only request them to leave but because the flag states of these vessels are not members of the CCAMLR Commission, international law does not allow that any additional action be taken.[121] Juan Manuel Oya Perez from Grupo Oya Perez was part of the EU delegation at the 25th Annual Meeting of NAFO from September 15-19, 2003 in Nova Scotia, Canada.

In 2004, 3 of the members of the EU delegation to the NAFO meeting were from Grupo Oya Perez[122], yet none of the Spanish vessels on the NAFO registry is owned by Grupo Oya Perez. As highlighted above, Grupo Oya Perez does have shares in the Estonian-flagged ***Lootus II***.

NAFO and more particularly the EU must be aware that a notorious toothfish pirate sits as a delegate at their meetings and participates in decisions on important conservation matters and measures to deter IUU operations half way across the world.

116 www.dfo-mpo.gc.ca/overfishing-surpeche/en_citations_e.htm
117 www.nafo.ca/info/news/others/stillatit.html
118 Greenpeace visit to address in April 2005
119 http://www.colto.org/Vessels/vess_Ross.htm
120 http://www.colto.org/Vessels/vess_Ross.htm
121 http://www.colto.org/Vessels/vess_Ross.htm
122 http://archive.nafo.int/open/fc/2004/fcdoc04-17.pdf

7. Fundamentally Changing RFMOs - The Way Forward

NAFOs inability to effectively manage the marine areas over which it has competence is not unique. There are 33 regional fisheries bodies[123] but most have limited authority and their approach to fisheries management has mainly been a single species one. Only five have both regulatory competence and jurisdiction over all species within a particular geographic region of the high seas as well as the competence to regulate bottom trawling in their Areas. They are: CCAMLR, NAFO, NEAFC, the Southeast Atlantic Fisheries Organization (SEAFO) and the General Fisheries Commission of the Mediterranean (GFCM). To date, only CCAMLR, GFCM and NEAFC have taken some action to protect deep-sea biodiversity from the impact of bottom trawl fishing – and some of it is piecemeal and speaks more of political compromise than addressing real concerns.

RFMOs enable States involved in particular high seas fisheries to negotiate and co-operate on fisheries management issues. The UN Secretary-General recently reported[124] the gaps in RFMO coverage as being the south-east Pacific Ocean for all fish stocks, and the south-west Atlantic, south-east Pacific, west-central Pacific, Indian Ocean and the Caribbean for straddling fish stocks and discrete high seas fish stocks.[125] In other words, most of the high seas are not covered by RFMOs, and therefore most of the world's fish stocks remain unregulated. Furthermore, for those areas that are regulated, RFMOs have had a very disappointing track record in effectively managing their fisheries or applying the ecosystem-based fisheries management. They also seem to have severe problems addressing the loss of sharks, albatrosses, marine turtles, vulnerable habitats and other species impacted by fishing activities in their waters.

The 1995 UN Fish Stocks Agreement mandated RFMOs as the primary mechanism for managing and conserving high seas straddling and highly migratory fish stocks. UNFSA Articles 5 and 6 are the legal cornerstones for applying the ecosystem approach and precautionary principle to fisheries management. Yet states consistently fail to use RFMOs to implement the specific obligations they have under these Articles to manage fisheries in such a manner. The FSA covers only straddling and highly migratory fish stocks.[126] The management of discrete high seas stocks, such as orange roughy, is not covered in the FSA.

Regional Fisheries Management Organisations (RFMOs) must be fundamentally changed so that they can effectively implement the ecosystem approach as mandated by the FSA.

As Regional Ecosystem Management Organisations (REMOs), they must be given the functional ability and capacity as well as mandate to address the broader ecological impacts of human activities on the world's oceans. Since such change will take time, it is essential that the international community recognise RFMOs as a single, limited tool that could be effective in medium to long-term oceans governance. To stop the destruction of high seas biodiversity, the current presumptions in favour of freedom of the high seas and the freedom to fish[127] must be reversed. They must be replaced by ones that entrench the concept of freedom for the seas: where the ecosystem approach and precautionary principle are considered as the fundamental core of all oceans management.

The international community cannot simply wait and hope for this change while marine biodiversity suffers. Action must be taken now. Urgent interim measures, such as a moratorium on high seas bottom trawling must be put in place to stop the destruction of high seas biodiversity while medium and long-term measures are developed and implemented. Such medium- and long-term measures must include a fundamental restructuring of RFMOs (such as NAFO) so that they can effectively manage fishing activities in the regions they have been set up to manage as part of the marine ecosystem in which they subsist.

As a first step, a comprehensive, independent review and assessment of the efficacy of Regional Fisheries Management Organisations and other regional fisheries arrangements must be undertaken. Such a review must assess how such bodies have met the obligations and principles set forth in UNCLOS, the FAO Code of Conduct, the UN Fish Stocks Agreement (FSA), and other relevant international agreements. The United Nations should conduct such a review in cooperation with FAO, the Secretariat of the Convention on Biological Diversity, the Intergovernmental Oceanographic Committee, and other international and non-governmental organizations with relevant expertise (perhaps through the mechanism of UN-Oceans). The review should address, at a minimum, and make recommendations on the following issues:

123 www.fao.org/sof/sofia/index_en.htm
124 UN Report A/59/298. See also Advance and unedited reporting material on oceans and the law of the sea (addendum to the Report of the Secretary-General, A/59/62/Add.1) at http://www.un.org/depts/los/general_assembly/documents/addendum04.pdf.
125 UN Report A/59/298, page 35.
126 See Fish Stocks Agreement Articles 2 and 3.
127 This presumption is based on Articles 87(e) and 116 of the LOSC.

7. Fundamentally Changing RFMOs - The Way Forward

1. The extent to which the mandates of existing Regional Fisheries Management Organisations and other regional fisheries bodies incorporate the relevant obligations and principles set forth in UNCLOS, the FAO Code of Conduct, the UN Fish Stocks Agreement (FSA), the Convention on Biological Diversity (CBD), the FAO International Plans of Action (IPOA) and other relevant instruments;

2. The extent to which Regional Fisheries Management Organisations have adopted and implemented measures to comply with the relevant provisions of the FAO Code of Conduct, the FSA, the CBD, IPOA IUU Fishing, and other relevant instruments and an assessment of how well these obligations and principles are applied in practice;

3. The nature and extent of high seas fishing in regions where no regional fisheries management organisation with the legal competence to regulate such fishing exists;

4. Identification of the gaps in the geographical extent and competency of RFMOs and Regional Fisheries Bodies to deliver ecosystem-based fisheries management and eliminate IUU fishing;

5. The degree of transparency of such organisations;

6. Potential mechanisms for providing oversight.

The review should be prepared in time for states to consider its findings and recommendations at least three months before the May 2006 Fish Stocks Review Conference so that they can be considered as part of that Review process.

In addition, concrete proposals that would fundamentally change the way that high seas fisheries are managed and ensure transparency and accountability as part of such management, include:

1. **The immediate adoption of a United Nations General Assembly Resolution establishing a moratorium on high seas bottom trawl fishing to protect deep sea biodiversity of the high seas by all states.** This interim measure would provide scientists with the time to assess the range and extent of this biodiversity, and politicians with the space to negotiate longer-term measures that would ensure that bottom trawling on the high seas can be effectively regulated and sustainably and equitably managed. It would also provide time for RFMOs such as NAFO to act to protect marine biodiversity and fragile bottom habitats. **As such, the NAFO constitution must be updated to conform to the requirements of the UN Fish Stocks Agreement.**

2. **In high seas areas where there are no management regimes in place to effectively regulate fishing activities, all such activities should be prohibited until such time as effective measures have been put in place.** The Law of the Sea Convention does more than simply offer states the right to use our oceans. It also requires that States fulfil numerous duties: to "co-operate with other States in taking such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas" (Article 117), and "… to protect and preserve the marine environment" (Art. 192). Industrial-scale destructive fishing practices on the high seas are undermining the duties of states to individually and collectively protect and preserve the marine environment of this global commons.
   To stimulate efforts to address the current shortcomings in international oceans governance, high seas fishing that does not meet the UN Fish Stocks Agreement's conservation and management requirements should be prohibited. There should be a mechanism in place to certify that such standards have been met by RFMOs as well as by the vessels engaged in fishing. And finally, high seas bottom fishing in areas where there is no fisheries management organisation in place to set conservation standards should be prohibited until a body is established and in operation. Otherwise there is no assurance that such fishing will take place in a manner "consistent with State responsibilities for the conservation of living marine resources under international law", as described by the FAO IUU Plan of Action.

3. **Ratification and implementation of the United Nations Agreement on Straddling and Highly Migratory Fish Stocks (1995) (FSA) by all coastal and distant water fishing**

states. The requirement of fishing only in compliance with conservation measures established by an RFMO must be binding on all states. Right now only slightly more than a quarter of the international community has signed up to the Fish Stocks Agreement, even though it was developed as an implementing arm of the Law of the Sea Convention.The application of the FSA to discrete high seas fish stocks. **The Fish Stocks Agreement is currently limited in application to highly migratory and straddling stocks.** Yet under Art. 48.2, the Annexes to the Agreement 'may be revised from time to time … based on scientific and technical considerations" and incorporated into the Agreement if adopted by consensus at a meeting of the States Parties[128]. This, is just one of the ways in which it is technically possible to include discrete stocks under the umbrella of the Fish Stocks Agreement. With the 10-year Review of the FSA taking place in May of 2006, the time is ripe for revising these Annexes to include discrete stocks and associated and dependent species as part of the scientific and technical considerations that must be taken into account when putting Articles 5 and 6 of the FSA into practice.

4. **Regional Fisheries Management Organisations (RFMOs) that have not adopted the ecosystem approach and precautionary principle to fisheries management as directed in Articles 5 and 6 of the FSA, should be given 2 years by the United Nations General Assembly to do so, or face the closure of the fisheries under their jurisdiction until this has been achieved.** Article 119.1 (b) of UNCLOS maintains that States shall take into consideration the effects of fishing on "species associated with or dependent upon harvested species" to maintain or restore the latter above levels at which their reproduction may become seriously threatened. Articles 5 and 6 of the FSA further elaborate on this Article. RFMOs must adopt measures that operationalise these Articles and that work to maintain and restore associated and dependent species.

5. **Decision making processes inside of RFMOs must be reformed and made transparent.** Most high seas fisheries decision making continues to take place in closed meetings, and not in the public eye. They are thus free to disregard scientific data and advice and the concerns of the environmental and conservation community. Decisions on how to manage fisheries are about more than just single targeted fish species. This must change and impacts on associated and dependent species must be taken into account in RFMO management measures.
Without wider reforms as to how decisions are made, who participates in the decision-making, and how decisions may be enforced, it is premature to hand over deep-sea fisheries management to traditional Regional Fisheries Management Organisations. Decisions affecting the use of these resources should be made for the benefit of humankind and the planet, not just one user group.

6. **Use of best scientific evidence available to maintain and restore stocks to maximum sustainability.** RFMO decision-making bodies should not be allowed to disregard the advise of their Scientific Committees on allocation issues. Recommendations from Scientific bodies recognised by RFMOs should be viewed as the lowest common denominator position from which states Parties can operate. Opt out provisions on allocation and enforcement measures adopted by RFMOs should be prohibited.

7. **Regular exchange of scientific and fisheries information.** UNCLOS Article 119.2 asserts that States shall contribute and exchange available scientific information, catch and fishing effort statistics, and other relevant data through the competent international organisations on a regular basis. It is not enough that RFMOs work independently to collect and collate scientific data. If a comprehensive picture is to be developed that can identify the key threats to marine ecosystems across the world's oceans, then this enhances the capacity of the international community to take remedial or preventative measures. Such information should be available to the public in a timely manner to enhance transparency and ensure accountability in decision-making processes.

8. **A substantial reduction in the capacity of the international fishing fleet at national, regional and international levels.** Incentives must be developed to reduce such capacity

128 UNFSA, Article 48.2

and to prevent its export to less well managed areas. Harmful subsidies to the fishing industry must be removed. The establishment of a centralised registry of all vessels fishing on the high seas (see below) would provide 'eyes' to the international community in assessing and managing how many vessels there are, where they are fishing, and to which countries they are flagged.

8. Conclusion

What humans do on the high seas has been the focus of a significant amount of debate and discussion among states. It has resulted in both binding international law as well as non-binding agreements. The two key framework agreements, the UN Law of the Sea Convention (LOSC) and the Convention on Biological Diversity (CBD) make it very clear that states need to co-operate to conserve marine biodiversity across the world's oceans. The UN Fish Stocks Agreement and FAO Code of Conduct on Responsible Fisheries detail how fisheries should be conducted so that they comply with ecosystem based management approaches and the precautionary principle[129]. Even so, without the requisite political will by distant water fishing states to implement and enforce these Agreements, they remain words on paper. And even those words leave gaping holes in international oceans governance which facilitate the exploitation of deep-sea marine life well beyond sustainable limits.

The Law of the Sea Convention does more than simply offer states the right to use our oceans. It also requires that States fulfill numerous duties: to "co-operate with other States in taking such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas" (Article 117), and "… to protect and preserve the marine environment" (Art. 192). Industrial-scale destructive fishing practices on the high seas are undermining the duties of states to individually and collectively protect and preserve the marine environment of this global commons.

For 25 years, the member states of NAFO have failed to sustainably manage some of the richest fishing grounds on earth. Having overworked the waters of the Atlantic, these distant water fishing states are turning their attention to the Pacific and Indian oceans – largely unregulated realms that are beginning to feel the bite of overfishing. The time has passed for a leisurely approach to conserving what is left of the biodiversity and resources of the world's oceans at the cost and to the detriment of all countries and all peoples. Only bold, innovative, visionary, comprehensive and decisive action has any chance of preventing the massive and irreversible destruction of the biodiversity of our oceans. Only such visionary and decisive action can ensure freedom for our seas in the 21st Century.

"It's not fish ye're buying: it's men's lives."
(Fishmonger to a customer haggling over the price of haddock)

— Sir Walter Scott,
The Antiquary, 1816

129 Insert Refs to UNCLOS, CBD, UNFSA and Code here

LEGALLY BINDING MEASURES FOR ADOPTION INTERNATIONALLY AND WITHIN RFMOS FOR THE REGULATION OF INDUSTRIAL FISHING AND ADDRESSING IUU FISHING ON THE HIGHSEAS.

The establishment of a central monitoring, control and compliance authority for all vessels active on the high seas that would be funded by dues paid by States according to the number of vessels authorised to undertake extractive activities on the high seas. Dues paid by vessels licensed to fish in such waters could fund compliance, monitoring and enforcement which should be harmonised across all high seas areas. This would deter such vessels from 'turning a blind eye' to their illegal, unregulated and unreported (IUU) counterparts, as these fishers would actually be costing them money. It would also ensure that non-compliant vessels could not move from one area to another and continue fishing while avoiding enforcement measures.

Establishment of a single, centralised, compatible Vessel Monitoring System (VMS) for all vessels licensed to fish on the high seas to enable states to distinguish between vessels authorised to fish on the high seas or an Exclusive Economic Zone (EEZ). Vessels unable to provide VMS data for any part of their voyage would not be permitted to land their catch. Such a system would be operated by the centralised compliance authority, which would report to all states on infractions by any vessels in the system, and permit any states participating in the system to take punitive actions against such vessels in their respective jurisdictions.

"Redlisting" of fishing vessels and companies that breach conservation measures, i.e.: deny fishing vessels, and their owners/operators the authorisation to fish by any method and for any species on the high seas. Such a 'redlisting' would apply to all such vessels fishing in any RFMOs or other unregulated high seas areas.

Defining the notion of a 'genuine link' for fishing vessels that is accepted internationally and adopting national legislation that requires a 'genuine link' is made between the flag-state and vessels carrying their flags, and that makes it illegal for nationals to reflag vessels to avoid compliance. Such legislation should include the right for a State to legally sanction vessels, their owners and operators, as well as redlisting those that have reflagged vessels or attempted to do so.

Closing ports to non-complying fishing vessels and to vessels flying the flags of non-complying states.

Intensive in-port vessel inspections with the right to sanction such vessels provided by binding intergovernmental port state enforcement agreements.

Outlawing transshipment at sea at any time of any species that could be caught on the high seas.

Closing markets to fish and fish products which do not carry credible certification establishing that the fish and fish products caught on the high seas were derived from licensed fishing operations.

Using established international trade regulations (such as CITES listings) to regulate trade in species that are already under threat.

Harmonising and adopting national laws and regulations to implement international measures to control nationals engaged in, fishing or owning or operating vessels fishing in areas beyond national jurisdiction

Exchanging, pooling and publicising information on vessels and companies involved in high seas fishing, including the operators, captains, beneficial owners of vessels, and those providing banking, insurance and other services to them.

Requiring that information on vessels and companies interested in engaging in high seas fishing be provided to the central monitoring, compliance and enforcement authority in a standard international format, before authorisation to access these fisheries is given. Where vessels or companies have been 'redlisted' by the authorities, permission to fish will not be granted.

Requiring under domestic law, that prior to any vessel being granted the flag of a state, the information stated above is submitted to the central compliance authority. A prerequisite for 'flagging' will then be the confirmation by the central authority that the vessel, its owners and operators, have not contravened any international or national regulations.

Cooperation among coastal states and those participating in relevant regional management arrangements to ensure that all states have sufficient capacity to manage and control their coastal and EEZ fisheries to ensure compliance with national regulations and international obligations.