

Report on implementation of UNGA Resolution 61/105 OP 83-90 (8 December 2006)

The European Community appreciates the possibility to inform the Secretary General about efforts undertaken in the European Community to implement UNGA Resolution 61/105 OP 83-90 of 8 December 2006.

The report of the European Community consists of four parts: 1. the EC action in areas not covered by RFMOs 2. the EC action in areas covered by RFMO/As, including recent proposals submitted by the EC in RFMO/As 3. an assessment of progress achieved so far and 4. an annex in which relevant EC texts can be found.

1. European Community Action in areas not covered by RFMO/As measures

The European Commission on 17 October 2007 tabled a Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions (COM (2007) 604) "Destructive fishing practices in the high seas and the protection of vulnerable deep sea ecosystems" accompanied by a Commission Staff Working Document (SEC (2007) 1314). In these public policy papers the European Commission presented the measures it is asking EC Member States to respect and proposed a regulation for the areas of the high seas not covered by Regional Fisheries Management Organisations or Arrangement (RFMO/As).

The related Council Regulation (EC) N°734/2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears was adopted by the Council of Ministers on 15 July 2008 (and has been published in OJ L 201/8, 30.7.2008).

The Regulation foresees a system of special fishing permits that shall be issued by the EC Member States if specific conditions for issuance, including the submission of a detailed fishing plan, have been met. The competent authorities of the EC Member States shall issue a special fishing permit after having carried out an assessment on the potential impacts of the vessels intended fishing activities and concluded that such activities are not likely to have significant adverse impacts on vulnerable marine ecosystems (VMEs). In areas where no proper scientific assessment has been carried out and made available, the use of bottom gears shall be prohibited. The Regulation also contains provisions on unforeseen encounters with VMEs, area closures and an observer scheme for all vessels which have been issued a special fishing permit. An evaluation of the implementation of the Regulation will be performed before 30 June 2010 and may lead to its amendment.

Given the place of bottom fishing activities by EC vessels, two main areas are concerned for the application of this Regulation:

- South West Atlantic, where there is no competent RFMO/A for bottom fishing;
- Southern Indian Ocean, as the Southern Indian Ocean Fisheries Agreement (SIOFA) did not adopt measures to protect VMEs before 31 December 2008,

Most EU Member States do not pursue any bottom fishing activities.

Portugal has not issued any fishing permits (under Regulation (EC) N° 734/2008) to vessels flying its flag for areas beyond national jurisdiction where there is no RFMO/A nor in the SIOFA area of competence

Spain has mobilised financial, technical and human resources to improve marine environmental research in the high seas and to identify vulnerable ecosystems in the areas in which the Spanish fleet operates in international waters within the framework of RFMO/As or where there are no RFMO/As, and in some areas on the high seas in which the fleet does not currently carry on fisheries activities

The objective of the strategy followed by Spain through the implementation of multidisciplinary oceanographic campaigns to map sea beds and identify vulnerable ecosystems has been to contribute to scientific knowledge of sea beds, making the results known to scientific institutions in all fields, to the EC and the international community, for the purpose of deciding on Marine Protected Areas and adopting the appropriate fisheries management measures, both for RFMO/As and countries.

Marine areas where there are no RFMO/As in place in which the Spanish fleet is operating

Spain has been applying that same methodology since 2008 in the international waters of the South West Atlantic with a view to mapping and identifying VMEs situated at a depth of less than 1500 metres in which Spanish vessels have been carrying on bottom trawling. The results of that investigation will be made public at the end of 2009 and will serve as a basis for determining the areas to be protected in that area. The sampling work lasted eight months, spread out over 2008 and 2009 and was carried out by Spanish scientists under the direction of the Instituto Español de Oceanografía (Spanish Institute of Oceanography) aboard the research vessel *Miguel Oliver*.

The scientific results will be published in order that appropriate measures for fisheries management can be adopted.

From 1 January 2009, and until presentation of the results of that research, a mitigating measure in accordance with UNGA 61/105 and Regulation (EC) No 734/2008 provision was adopted restricting fisheries activities to the area where fisheries took place in the past ("historical footprint"), assuming that where there has been fisheries activity there are no VMEs.

To that end, vessels were granted fishing authorisations subject to conditions and obligations to be fulfilled by shipping companies. All vessels carry on board a scientific observer and follow a protocol in the event of an encounter, similar to that laid down in the RFMO/As of the North Atlantic.

The mandatory rules to be followed in the event of an encounter of a VME are as follows:

There will be deemed to be an encounter of a VME when the incidence of VME indicators exceeds the limits laid down (over 100kg of live coral per casting or over 1 000 kg of live sponge per casting). Indicators of VME are: live corals (species of coral identified as antipatharia, gorgonians, ceriantipatharia, lophelia and feather coral) and/or live sponges.

Obligations to be followed in the event of an encounter with VME indicators by captains of vessels:

(a) Quantify the type of VME indicator, that is, coral or sponge.

(b) If the quantity of VME indicators exceeds the limits stated above per casting, captains of vessels:

- Shall report the incident to the Secretary General for Maritime Affairs
- Shall stop fishing and move at least 2 nautical miles away from the last point of casting in the direction least likely to give rise to further findings. The captain shall use his best judgment based on all available sources of information.

The scientific results will be published in order that appropriate measures for fisheries managements can be adopted.

Lithuania has one fishing vessel engaged in bottom fisheries in NAFO and NEAFC. This vessel has very small quotas of several deep sea species: Black scabbardfish and Roundnose grenadier in the NEAFC regulatory area. According to NEAFC's policy in recent years to reduce fishing activities in relation to deep sea species, Lithuanian quotas are very low.

2. European Community Action in areas covered by RFMO/As

In every RFMO/A of which it is a member, the European Community actively promotes an ecosystem approach to deep water fisheries management and contributes to the identification of marine environments in need of protection. It supports the FAO in collecting data globally on vulnerable marine ecosystems.

Marine areas in RFMO/As in which the Spanish fleet is operating

In 2005, Spain launched an investigation with a research vessel open to the participation of scientists from other countries in order to find out why vulnerable beds in the North East Atlantic in the Hatton Bank area exist and where they are located. So far three campaigns of one month's duration, in 2005, 2006 and 2007, have been executed aboard the research vessels *Vizconde de Eza* and *Miguel Oliver* to carry out cartographical studies of the area. The results have been presented to the Working Group on Deep-water Ecology the International Council for the Exploration of the Sea (ICES CM 2008/G:01, ICES CM 2007/A:01, ICES CM 2007/R:01 e ICES CM 2007/R:20)

On the basis of that information and the data obtained from scientific observers aboard the fisheries vessels and the data on the satellite positions of the vessels, ICES was able to identify areas which should be protected, primarily rocky outcrops covered with cold water coral reefs. ICES, as the scientific organisation which advises the North East Atlantic Fisheries Commission (NEAFC), has made recommendations regarding the sensitive habitats identified and that organisation has closed those areas to fishing in order to protect them.

Marine areas where there are RFMO/As but in which the Spanish fleet is not operating

During 2008 and 2009 the Spanish Institute of Oceanography and the National Marine Information and Research Center (Namibia) carried out aboard the research vessel *Vizconde de Eza* a multidisciplinary campaign in the Dorsal de Walvis seamounts opposite the Namibian coast as an experimental study to localise and identify VMEs associated with seamounts which could interact with fishing gears or tackle. The results are being collated at the present time (the preliminary report of the study has been transmitted to the EC).

New actions planned

An international mapping project of VMEs will commence from the month of June 2009 in the NAFO Regulatory Area at a depth of less than 2000 metres, using the vessel *Miguel Oliver*. In addition to the Spanish scientific bodies, the IEO and the Consejo Superior de Investigaciones Científicas (Higher Council for Scientific Research), scientific bodies from Canada, the USA and the United Kingdom will participate in that project.

In the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) Conservation Measures 22-06 applies to the Convention Area with the exception of areas where an established fishery was in place in 2006/2007. Until 30 November 2008, bottom fishing activities were limited to areas in which they were approved by the Commission in the 2006/2007 fishing season. As of 1 December 2008, all individual bottom fishing activities are subject to an assessment by a Scientific Committee. On the basis of the advice of the Scientific Committee, the Commission is to adopt conservation and management measures to prevent significant adverse impacts on VMEs. There are clear provisions on encounters with VMEs and monitoring and control of fishing activities. This measure will be reviewed at this year's CCAMLR meeting, based on the findings of the Scientific Committee and biennially thereafter in order to examine the effectiveness of relevant conservation and management measures.

Conservation Measure 22-07 is an interim measure for bottom fishing activities subject to 22-06 and aims at identification of Risk Areas (defined as areas where 10 or more VME indicator units are recovered within a single line segment, in a radius of 1n mile from the midpoint of the line segment). Risk Areas shall remain closed for any fishery until reviewed by the Scientific Committee and management actions are determined by the Commission.

In the South Pacific Regional Fisheries Management Organisation (SPRFMO) interim Measures on bottom fishing were adopted at the 3rd International Meeting for the Establishment of SPRFMO in May 2007 which are in accordance with UNGA 61/105. They resolve, inter alia, to limit bottom fishing effort or catch in the Area to existing levels, establish conservation and management measures before opening new regions of the Area or expanding fishing effort as of 2010, cooperate to identify VMEs and close such areas unless conservation and management measures have been established. A protocol for assessing whether individual fishing activities would have significant adverse impacts on VMEs is also outlined.

The European Community also considers it useful to mention some of the proposals that it has recently submitted in RFMO/As to further the implementation of UNGA 61/105.

In April 2007 the EC submitted a proposal in the SPRFMO on the Interim Measures corresponding to the obligations of UNGA 61/105.

In the context of the South East Atlantic Fisheries Organisation (SEAFO), in 2006 on the basis of EC proposals, Conservation Measure 06/06 was adopted, in advance of UNGA 61/105, deciding the closure of several areas that were deemed to be vulnerable deep water habitats and ecosystems. This was supplemented in 2007 with Conservation Measure 11/07, also on the basis of an EC proposal, which lays down the conditions for the opening of fisheries in previously closed areas. The conditions contained in this measure require that a mapping of the area be undertaken, along with an impact assessment and requirement of a research fishery plan before fishing can continue. At the 2008 Annual Meeting of SEAFO a measure was adopted, 12/08, regarding the identification of existing areas of bottom fishing, mapping of these areas and impact assessments. There are also provisions relating to the identification of threshold limits to be used as triggers to identify VMES, which are subject to review.

In the North East Atlantic Fisheries Commission (NEAFC) meeting of Heads of Delegations (HOD) in March 2009 the EC proposed that, concerning the Mid Atlantic Ridge closures, NEAFC should also close the areas identified by OSPAR. The EC also suggested extending the area closure at Hatton bank (based on Spanish surveys of the seabed and a clear ICES recommendation to extend the closure). Unfortunately no agreement could be reached on these proposals.

The EC also proposed in the NEAFC HOD meeting that the current thresholds of 100 kgs of live coral and 1000 kgs of live sponges, which trigger the identification of a possible VME during fishing operations, be reduced immediately by 50 % and that ICES be asked to pronounce on what would constitute appropriate levels. The NEAFC HODs acknowledged that the current thresholds were too high and requested the management committee to consider recommending new reduced levels for the 2009 Annual Meeting.

During the Northwest Atlantic Fisheries Organisation (NAFO) Joint Working Group Meeting of Fishery Managers and Scientists on VMEs in March 2009 the EC supported that the VME areas identified by the Scientific Council in the Regulatory Area of NAFO should be closed. When the Joint working Group agreed to present to the fisheries Commission at the Annual Meeting of NAFO a series of options for action to be taken regarding the introduction of interim closures of identified VMEs in relation to corals the EC insisted that a risk analysis be undertaken on the option which will be retained for interim closures of identified VMEs. A joint research programme will be carried out by Spain, the UK, Canada and the US over the next two years with the objective to map and identify areas of concentration of corals in the NAFO area.

The EC also suggested in NAFO to considerably lower the encounter thresholds triggering the identification of VMEs during fishing operations. There was agreement that this threshold is set at too high a level, but no alternative could be agreed. The issue will be revisited in the light of experiences in other RFMOs in establishing threshold levels. The EC also insisted on the development of a "footprint" of existing fisheries; any fisheries undertaken outside this "footprint" area will be considered as new fisheries and be subject to the specific NAFO protocol for such fisheries. Another meeting of the Joint Working Group will be held prior to the Annual Meeting of NAFO in September to address the issue of sponges which will be examined by the Scientific Council in June.

3. Assessment of progress achieved so far

In the wake of the adoption of UNGA 61/105 considerable progress has been made as regards transposing the obligations contained in the resolution into concrete rules in the framework of RFMO/As. With the exception of SIOFA all RFMO/As to which the EC is a Party have indeed agreed provisions to regulate bottom fishing pursuant to UNGA 61/105. However, clear difference can be observed as regards the speed and the degree of detail with which the implementation takes place.

In the process of setting and applying the rules, it has become apparent that some of the rules laid down initially such as the thresholds set for the encounters with VME indicators (100 kgs corals, 1000 kgs sponges) do not sufficiently ensure protection of possible VMEs and therefore do not correspond to the precautionary approach. But recent discussions in RFMO/As show that the problem has been identified and that the search for a more appropriate threshold, based on scientific advice, is under way. The European Community also considers that interim measures such as limiting bottom fishing activities to areas where bottom fishing has been taking place in the past ("historical footprint" areas) should soon give way to applying the general rule of having impact assessments before proceeding to any bottom fishing activities. Even in areas where bottom fishing took place in the past it cannot be assumed without scientific advice that no VMEs exist.

The European Community would like to stress the important scientific work undertaken by Spain and others, particularly in the field of mapping the sea bed and looks forward to the publication of the scientific studies. This scientific work will contribute to providing us with the necessary information on VMEs in the future.

When assessing the progress made it should be taken into account that the UN FAO Guidelines for the Management of Deep-sea Fisheries in the High Seas were only agreed in August 2008. The FAO Guidelines constitute an important tool for RFMO/As providing guidance on how to address the issue of bottom fishing and helping to implement the precautionary approach in the spirit of UNGA 61/105.

The European Community considers that Council Regulation (EC) N° 734/2008 constitutes a measure described in OP 86, 83 of UNGA Resolution 61/105 for areas beyond national jurisdiction where there is no RFMO/A. We are now assessing the first reports on how the Regulation has been implemented.

From the above follows that on the one hand, progress has undoubtedly taken place as regards the setting of rules. Even though some RFMO/As clearly need to further speed up their decision making processes and take scientific advice on suggested area closures into consideration, the rules-setting process in general can be assessed as positive.

On the other hand, the EC considers that more progress is still needed on the practical implementation of the rules that have been agreed. RFMO/As and States should publish their impact assessments, decisions on area closures and other measures pursuant to OP 83 of UNGA 61/105 as well as put on record the list of vessels flying their flag authorized to conduct bottom fisheries. This is necessary to achieve the degree of transparency which will in the end allow evaluating the efficiency of the protection system developed under UNGA 61/105. The EC will continue to contribute to attaining this objective with a view to improve transparency.

4. Annex

- COM(2007) 604 "Destructive fishing practices in the high seas and the protection of vulnerable deep sea ecosystems" accompanied by a
- Commission Staff Working Document (SEC (2007) 1314).
- Council Regulation (EC) N°734/2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears (OJ L 201/8, 30.7.2008).