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Accompanying document to the

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Destructive fishing practices in the high seas and the protection of vulnerable deep sea
ecosystems**

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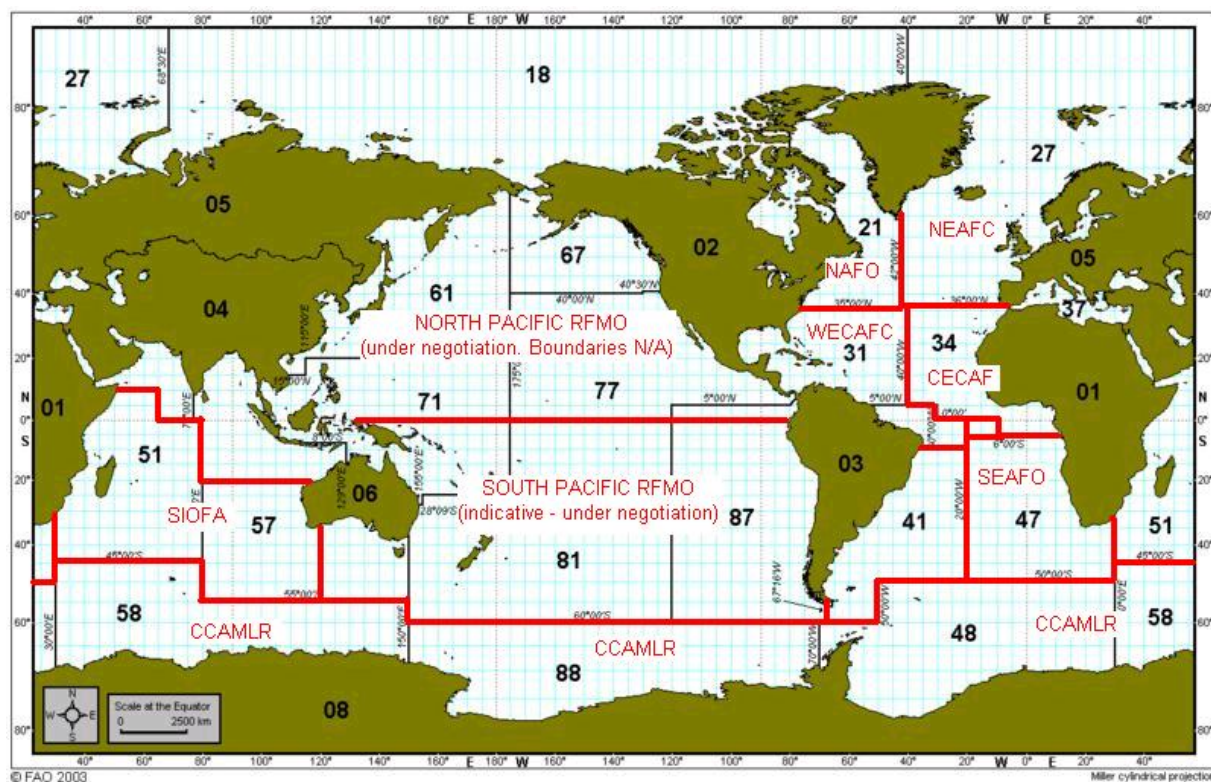
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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

Destructive fishing practices in the high seas and the protection of vulnerable deep sea ecosystems

Section 1

Coverage of the world's oceans by Regional Fisheries Management Organisations with competence to over bottom (demersal) fisheries in the high seas.



The map above shows the limits of the different RFMOs superposed on the statistical areas used by FAO to collect statistical fisheries data. The following should be noted:

- The northern boundary of the South Pacific RFMO has not yet been agreed in the context of the negotiation process still underway to establish this Organisation. The interim arrangements agreed by participants in this process (April 2007) apply within the coordinates presented in the map.
- There is also a process underway to establish a demersal RFMO in the North Pacific. Information about its boundaries is not available.
- The outlined areas must be understood as excluding waters under national jurisdiction (Exclusive Economic Zones), not depicted. Conservation and management measures adopted by these

RFMOs apply only to fisheries taking place in the high seas, i.e., in areas waters beyond national jurisdiction.

- CECAF and WECAFC are FAO Regional Fisheries Bodies with advisory powers only. According to FAO there are no significant high seas fishing activities taking place in either area. Both bodies have, nevertheless, established scientific activities for the assessment of stocks in their areas and issue conservation and management recommendations to their members.
- Non-covered high-seas areas are the Southwest Atlantic (FAO area 41), the Arctic (FAO areas 18 and 27), and Area 04, north of SIOFA. Of these, only the first is significant in terms of hosting high seas fisheries.

Section 2

Key background references

(1) International texts

- Johannesburg World Summit on Sustainable Development Plan of Implementation:

32. *In accordance with chapter 17 of Agenda 21, promote the conservation and management of the oceans through actions at all levels, giving due regard to the relevant international instruments to:*

(c) Develop and facilitate the use of diverse approaches and tools, including the ecosystem approach, the elimination of destructive fishing practices, the establishment of marine protected areas consistent with international law and based on scientific information, including representative networks by 2012 and time/area closures for the protection of nursery grounds and periods, proper coastal land use and watershed planning and the integration of marine and coastal areas management into key sectors;

- Article 117 UNCLOS

All States have the duty to take or to cooperate 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.

- UN Convention on Biological Diversity, Conference of the Parties Decision COP VII/5 on Marine and Coastal Biodiversity (adopted February 2004):

The Conference of the Parties

56. *Invites Parties and other States to identify activities and processes under their jurisdiction or control which may have significant adverse impact on deep seabed ecosystems and species beyond the limits of national jurisdiction, in order to address Article 3 of the Convention;*

60. *Concerned about the serious threats to the biological diversity, stresses the need for rapid action to address these threats on the basis of the precautionary approach and the ecosystem approach, in marine areas beyond the limits of national jurisdiction, in particular areas with seamounts, hydrothermal vents, and cold-water corals, other vulnerable ecosystems and certain other underwater features, resulting from processes and activities in such areas;*

61. *Calls upon the General Assembly and other relevant international and regional organizations, within their mandate, according to their rules of procedure, to urgently take the necessary short-term, medium-term and long-term measures to eliminate/avoid destructive practices, consistent with international law, on scientific basis, including the application of precaution, for example, consideration on a case by case basis, of interim prohibition of destructive practices adversely impacting the*

marine biological diversity associated with the areas identified in paragraph 60 above;

62. Recommends Parties to also urgently take the necessary short-term, medium-term and long-term measures to respond to the loss or reduction of marine biological diversity associated with the areas identified in paragraph 60 above.

Full Decision text:

<http://www.cbd.int/decisions/default.shtml?m=COP-07&id=7742&lg=0>

– Resolution 59/25 of the General Assembly of the United Nations on Sustainable fisheries (adopted November 2006):

The General Assembly:

66. Calls upon States, either by themselves or through regional fisheries management organizations or arrangements, where these are competent to do so, to take action urgently, and consider on a case-by-case basis and on a scientific basis, including the application of the precautionary approach, the interim prohibition 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, until such time as appropriate conservation and management measures have been adopted in accordance with international law;

67. Calls upon regional fisheries management organizations or arrangements with the competence to regulate bottom fisheries urgently to adopt, in their regulatory areas, appropriate conservation and management measures, in accordance with international law, to address the impact of destructive fishing practices, including bottom trawling that has adverse impacts on vulnerable marine ecosystems, and to ensure compliance with such measures;

71. Agrees to review within two years progress on action taken in response to the requests made in paragraphs 66 to 69 above, with a view to further recommendations, where necessary, in areas where arrangements are inadequate;

Full Resolution text:

http://www.un.org/Depts/los/general_assembly/general_assembly_resolutions.htm

– Resolution 61/105 of the General Assembly of the United Nations on Sustainable fisheries (adopted December 2007):

The General Assembly:

82. Welcomes the important progress made by States and regional fisheries management organizations or arrangements with the competence to regulate bottom fisheries to give effect to paragraphs 66 to 69 of its resolution 59/25 to address the impacts of fishing on vulnerable marine ecosystems, including through initiating negotiations to establish new regional fisheries management organizations or arrangements, but on the basis of the review called for in paragraph 71 of that resolution, recognizes that additional actions are urgently needed;

83. *Calls upon regional fisheries management organizations or arrangements with the competence to regulate bottom fisheries to adopt and implement measures, in accordance with the precautionary approach, ecosystem approaches and international law, for their respective regulatory areas as a matter of priority, but not later than 31 December 2008:*

(a) To assess, on the basis of the best available scientific information, whether individual bottom fishing activities would have significant adverse impacts on vulnerable marine ecosystems, and to ensure that if it is assessed that these activities would have significant adverse impacts, they are managed to prevent such impacts, or not authorized to proceed;

(b) To identify vulnerable marine ecosystems and determine whether bottom fishing activities would cause significant adverse impacts to such ecosystems and the long-term sustainability of deep sea fish stocks, inter alia, by improving scientific research and data collection and sharing, and through new and exploratory fisheries;

(c) In respect of areas where vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold water corals, are known to occur or are likely to occur based on the best available scientific information, to close such areas to bottom fishing and ensure that such activities do not proceed unless conservation and management measures have been established to prevent significant adverse impacts on vulnerable marine ecosystems;

(d) To require members of the regional fisheries management organizations or arrangements to require vessels flying their flag to cease bottom fishing activities in areas where, in the course of fishing operations, vulnerable marine ecosystems are encountered, and to report the encounter so that appropriate measures can be adopted in respect of the relevant site;

84. *Also calls upon regional fisheries management organizations or arrangements with the competence to regulate bottom fisheries to make the measures adopted pursuant to paragraph 83 of the present resolution publicly available;*

85. *Calls upon those States participating in negotiations to establish a regional fisheries management organization or arrangement competent to regulate bottom fisheries to expedite such negotiations and, by no later than 31 December 2007, to adopt and implement interim measures consistent with paragraph 83 of the present resolution and make these measures publicly available;*

86. *Calls upon flag States to either adopt and implement measures in accordance with paragraph 83 of the present resolution, mutatis mutandis, or cease to authorize fishing vessels flying their flag to conduct bottom fisheries in areas beyond national jurisdiction where there is no regional fisheries management organization or arrangement with the competence to regulate such fisheries or interim measures in accordance with paragraph 85 of the present resolution, until measures are taken in accordance with paragraph 83 or 85 of the present resolution;*

Full Resolution text:

http://www.un.org/Depts/los/general_assembly/general_assembly_resolutions.htm

(2) Selected scientific papers

- Cheung, W., Alder, J., Karpouzi, V., Watson, R., Lam, V., Day, C., Kaschner, K., and Pauly, D., (2005). *Patterns of species richness in the high seas*. Secretariat of the Convention on Biological Diversity, Montreal, Technical Series no. 20.
- Freiwald, A., Fossa, JH, Grehan, A., Koslow, T. Roberts, J.M., 2004. *Cold-water coral reefs*. UNEP-WCMC, Cambridge, UK.
- Hall-Spencer, J., Allain, V., Fossa, J.H., 2002, *Trawling damage to Northeast Atlantic ancient coral reefs*. Proceedings of the Royal Society, London, 269, 507-511.

Section 3

Summary of the main features of the EU fishery in the waters of the South West Atlantic

The map presented in Annex 1 illustrates the spatial gap affecting the South West Atlantic in terms of RFMO coverage for the purposes of regulating high seas fisheries. This area roughly coincides with FAO statistical Area 41.

The EU fleet present in this area operates both within the Falklands Islands Conservation Zone and in the high seas. There are about 20 EC vessels (flagged to Spain) active in bottom trawl fisheries targeting mainly hakes (*Merluccius hubbsi*, *M. australis*) and squid (*Illex argentinus*, *Loligo gahi*). In total, the fishery counted about 100 licensed vessels in 2006 including, besides the Spanish fleet, vessels registered in the Falklands and vessels flagged to Korea, China and Chinese Taipei.

A study carried out for the Commission¹ reports three main harvesting areas, two of which are located in international waters bordering the Argentine EEZ. At these points the seabed falls rather abruptly from 200 m to 1 000 m. This description corresponds to a location where deep water corals and sponges may likely occur on the steep continental slope. Although hakes and squid are harvested mainly on sandy bottoms on the shelf flats, trawls extending beyond the shelf break may be deployed deep and thus threaten to damage any coral reefs they encounter.

These fisheries are subject to national management arrangements, which include a number of basic requirements stipulated by EU regulations. They are also subject to monitoring, including on-board observers and Vessel Monitoring Systems. In addition, they are carried out under licenses delivered by the Falklands Islands Government Fisheries Department, which include the requirement of a specific licence to fish in the high seas of the region. Catch data is collected by the Falkland Islands Government and by the Spanish authorities, and the latter also provide for an on-board observer programme. Research surveys specifically aimed at the identification of vulnerable marine ecosystems in the region have been announced by Spain.

¹ Data collection for stock assessment of two hakes (*Merluccius hubbsi* and *M. australis*) in international and Falkland waters of the SW Atlantic – Study project 99/016, final report dated 15.5.2002.

Section 4

Summary of measures taken by the EU or with its support for the protection of vulnerable marine ecosystems

- (1) Action taken regarding waters under the jurisdiction of EU Member States to which the rules of the Common Fisheries Policy apply
 - (a) The EU Council Directive 92/43 EC, Habitats Directive, includes deep water seafloor structures and Posidonia meadows amongst the habitats to be protected by EU Member States.
 - (b) Since 1994² fishing with bottom trawl nets above the Posidonia meadows or other marine phanerogams is prohibited in the Mediterranean, with the exception of some small localised fleets; moreover bottom trawling is prohibited within three nautical miles from the coast or at depths less than 50 m where that depth is reached at a shorter distance. Stricter measures regarding the operation of towed nets in coastal areas have been introduced in 2006³, including the prohibition of fishing with trawl nets over the Maërl beds and Coralligenous habitats.
 - (c) In 2004, the Community adopted a Regulation⁴ prohibiting vessels from using any bottom trawl or similar towed nets operating in contact with the bottom of the sea in the area known as “Darwin Mounds’ north-west of Scotland. In 2005, similar prohibitions were adopted in respect or areas surrounding the Azores, Madeira and Canary islands⁵.
 - (d) In 2004 the Community adopted a Regulation⁶ regarding fishing activities within the 25 nautical miles zone of Malta, where trawling activities is restricted to only 14 geographically identified trawlable areas.
- (2) Action taken at international level
 - (a) Through its bilateral fisheries relations, the EU is introducing actions and programmes aiming at balancing sustainable fisheries and marine conservation, including in particular the establishment of marine protected Areas: Within the framework of the negotiations of new Fisheries Partnership Agreements with countries such as Senegal, Mauritania and Guinea Bissau, the Community has

² Council Regulation (EC) No 1626 of 27 June 1994 laying down certain technical measures for the conservation of fishery resources in the Mediterranean.

³ Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 1626/94.

⁴ Council Regulation (EC) No 602/2004 of 22 March 2004 amending Regulation (EC) No 850/98 as regards the protection of deepwater corals from the effects of trawling in an area north west of Scotland.

⁵ Council Regulation (EC) No 1568/2005 of 20 September 2005 amending Regulation (EC) No 850/98 as regards the protection of deepwater coral reefs from the effects of fishing in certain areas of the Atlantic Ocean.

⁶ Council Regulation (EC) No 813/2004 of 26 April 2004 amending Regulation (EC) No 1626/94 as regards certain conservation measures relating to waters around Malta.

sought to include financial support for the implementation of this instrument and improved fisheries controls in such areas.

- (b) The EU has promoted the adoption by a number of RFMOs of conservation measures that respond directly to the call made by the General Assembly Resolution since 2004. All these measures have been subsequently transposed into Community Law:

- General Fisheries Commission of the Mediterranean (GFCM)

- 29th Session (2005): Recommendation 2005/1, based on an EC proposal, on the management of certain fisheries exploiting demersal and deepwater species. This Recommendation requires members of the Fisheries Commission to ‘*prohibit the use of towed dredges and trawlnets fisheries at depths beyond 1 000 m of depth*’. The Recommendation, which is binding for GFCM members, entered into force in September 2005.
- 30th Session (2006): *Recommendation* GFCM/2006/3, based on an EC proposal, on the establishment of fisheries restrictive areas in order to protect the deep sea sensitive habitats. This binding recommendation prohibits fishing with towed dredges and bottom trawl nets in three areas of the Mediterranean high seas, namely the “Lophelia reef off Capo Santa Maria di Leuca”, the “Nile Delta area cold hydrocarbon seeps” and “The Eratosthemes Seamount” south of Cyprus.

- North East Atlantic Fisheries Commission (NEAFC)

- 23rd Annual Meeting (2004): adoption of area closures for the Hecate Seamounts, the Faraday Seamounts, Reykjanes Ridge (partem), the Altair Seamounts and the Antialtair Seamounts. These measures were transposed into Community Law through transitional technical measures in a Regulation⁷ that also prohibits the deployment of bottom set-nets at depths beyond 200 metres in ICES Divisions VIab, VIIbcjk and Subarea XII.
- 24th Annual Meeting of the (2005): the European Community tabled a proposal “for a recommendation to close certain areas in the Regulatory Area in order to protect deep-water corals.” (Ref. AM/2005/53), based on the scientific advice provided by the ICES. The proposal sought to prohibit all fishing activities in areas of Hatton Bank, North West Rockall, Logachev Mounds, South Rockall, West Rockall Mounds and South West Rockall located within the NEAFC regulatory area. No consensus could be found to adopt the proposal.
- 25th Annual Meeting (2006); further discussions on the EC proposals led to agreement to implement closures on Hatton Bank, Rockall Bank, Logachev Mounds and West Rockall Mounds, effective from 1 January 2007 until 31 December 2009.

⁷ Council Regulation (EC) No 51/2006 of 22 December 2005 fixing for 2006 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required.

- Northwest Atlantic Fisheries Organisation (NAFO)
 - 27th Annual Meeting (2005): the Organisation’s Scientific Council undertakes to identify areas of marine biological and ecological significance in order to set the basis for measures granting special protection to such vulnerable ecosystems. In addition, pursuant to NAFO recommendations incorporated in Community law, Member States must implement, where possible, special requirements for collecting data on seamounts in the NAFO area.
 - 28th Annual Meeting (2006) : adoption of a proposal by Canada (with EU support) of area closures affecting four seamounts (Orphan Knoll, Corner Seamounts, Newfoundland Seamounts and New England Seamounts) in respect of fisheries using bottom gears, based on the ecosystem approach to fisheries (FC Doc. 06/5). The measure foresees a review in 2007 in order to consider providing access to a small scale and restricted exploratory fishery, effective January 1, 2008, not to exceed 20% of the fishable area of each seamount, subject to recommendations by the Scientific Council regarding fishable sections as well as protocols on the conduct of fishing operations and data collection. Full observer coverage is required.
 - South East Atlantic Fisheries Organisations (SEAFO)
 - 3rd Annual Meeting (2006): adopted Conservation and management measure 06/06 whereby 12 seamounts located in the Convention Area are closed to all fishing activities for species covered by the SEAFO Convention from 1 January 2007 to 31 December 2010. Provisions similar to those adopted by NAFO apply with regard to restricted exploratory fisheries, data collection and on-board observers.
 - Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)
 - XXV Session (2006): adopted Conservation Measure 22-04 establishing and interim prohibition of deep-sea gillnetting in the Convention Area for purposes other than scientific research pending evaluation of the environmental impacts of this practice. CCAMLR also adopted Conservation Measure 22-05 establishing interim restrictions on the use of bottom trawling gear in high-seas areas of the Convention Area for the fishing seasons 2006/07 and 2007/08. Under this measure, the use of bottom trawls is restricted to areas for which the CCAMLR has conservation measures in force for this gear.
- (c) Interim Arrangements
- South Pacific RFMO: the EU participates in the negotiation process and supported the adoption of Interim Measures during the 3rd Meeting held in April 2006 in Chile. The interim measures will apply as of 30 September 2007 and foresee the limitation of bottom fishing effort or catch in the Area to existing levels and their continuation only in areas currently fished. As of 2010, before opening new regions of the Area or expanding fishing effort or catch beyond existing levels, members undertake to establish conservation and management measures to prevent significant adverse impacts on vulnerable marine ecosystems. Scientific

research, area closures and control measures, notably on-board observers and vessel monitoring system, are also prescribed. These measures will now be transposed into Community law. Negotiations to complete the drafting of the SPRFMO establishing Convention are expected to take place before the end of 2007.

- Southern Indian Ocean: the organisation of a meeting is foreseen before the end of 2007 to agree on interim arrangements based on the set agreed in the framework of the South Pacific RFMO process. The SIOFA Agreement was signed by the EU on 7 July 2006 and will now undergo the ratification phase.