

Joint environmental and developmental NGO position on the Proposal for a COUNCIL REGULATION on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears (COM(2007)605)

This contribution is on behalf of the following organisations:
BirdLife International – Greenpeace – Oceana – Seas at Risk

This is a joint environmental and developmental NGO position on the European Commission Proposal for a Council Regulation on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears (COM(2007)605).

Background

In light of poorer returns from an increasing number of over-fished stocks in pelagic and coastal fisheries, commercial fishing fleets have relatively recently turned to targeting the previously un-fished waters of the deep sea. Modern trawl vessels are capable of fishing deep-sea canyons and rough seafloors to depths greater than 1,000 metres below sea-level, using nets armed with steel plates and heavy rollers. This has already resulted in the destruction of vulnerable deep-sea biodiversity hotspots, including cold-water coral habitats around seamounts and hydrothermal vents, and is posing a growing threat to vulnerable deep-sea ecosystems around the world.

Deep-sea ecosystems typically support slow-growing, long-lived and often endemic species, which are particularly sensitive to disturbance. The growing pressure on these ecosystems has led many marine scientists to call for an end to destructive deep-sea bottom fisheries, in particular trawl fisheries, and has resulted in political commitments to regulate or prohibit such fishing. EU Member States take approximately 60% of the total high seas bottom trawl catch.

In 2002, recognising the vulnerability of deep-sea biodiversity, the United Nations General Assembly (UNGA) first called upon the international community to urgently consider the risks of high seas bottom trawling. Since then, the UNGA and other regional and international organisations have reiterated these concerns, resulting most recently in UNGA Resolution 61/105 of 8 December 2006 on the elimination of destructive fishing practices that threaten vulnerable marine ecosystems (VMEs) in the high seas.

The undersigning NGOs consider the proposed Council Regulation (COM(2007)605) to be a necessary first step in the implementation of UNGA Resolution 61/105. In this sense, the Regulation seems an appropriate tool, noting in particular the importance of prior assessments, reference to precautionary criteria, the use of area closures, the introduction of a depth limit (although this appears to merely be a compromise, as vulnerable deep-sea ecosystems at all depths should be protected) and of enforcement and infringement provisions (incl. observer schemes).

However, compared to the scale of the problem of destructive deep-sea fishing (bottom trawling in particular), this Regulation only addresses a very small part of it.

General comments on the Regulation

Firstly, we consider it inappropriate and irresponsible that VMEs in areas not covered by the scope of the proposed Regulation will continue to be at risk from destructive deep-sea fishing practices; this includes VMEs in Community waters as well as VMEs in areas where RFMOs or interim agreements have not, or not yet, resulted in equivalent or more far-reaching protection. The Community must meet its flag state responsibilities in all areas of our seas and oceans, even

if this means imposing unilateral measures on its own fleet when RFMOs have not acted or have adopted weaker standards than outlined in the draft Regulation. In addition, the Community and Member States must jointly ensure the protection of VMEs in all marine areas that fall under the jurisdiction of the EU Member States. Reefs and submarine structures made by leaking gases, as well as other bottom habitats, are protected under the EU's Habitats Directive (92/43) and must be safeguarded through the designation of area closures, an obligation that Member States have not yet complied with despite the fact that the Directive came into force in 1992.

Short of establishing an interim prohibition until all areas have been surveyed, we agree that the proposed measures – in particular the introduction of prior (impact) assessments, fishing permits that are conditional upon proof that a defined fishing plan is not likely to have significant adverse impacts on VMEs, the introduction of closed areas, observer and VMS schemes, as well as relocation requirements in the case of unforeseen encounters – are necessary and suitable elements of a management framework until more targeted conservation and fisheries management measures have been put in place. Moreover, the merit of these measures exists independent of whether an area is covered by an RFMO or not; at least until more stringent and/or far-reaching fisheries management measures as well as more targeted conservation provisions have been agreed and implemented. Therefore, the same or equivalent measures should apply to all EU deep-sea fishing activities, whether they are in or outside Community waters, and whether covered by a regional or national governance framework or not.

Secondly, the Commission proposal does not ensure an effective and harmonised application of its rules in the Member States. This is outlined in more detail in the specific comments below. Generally speaking, the undersigning NGOs propose that the Commission must play a more prominent role in streamlining, overseeing and providing guidance on the effective implementation of the proposed provisions. In particular, it is necessary to ensure that Member States apply a consistently high level of scientific rigor when implementing assessments. We believe that this can best be ensured by submitting the impact assessments to an independent scientific review as part of a common implementation strategy. Greater co-ordination and consistency in the implementation the assessments, would also help to ensure a quality of assessments that is suitable for the building of an EU or even international database of vulnerable marine ecosystems.

Thirdly, the above assessment should be accompanied by a determination whether bottom fishing activities would cause significant adverse impacts to the long-term sustainability of deep sea fish stocks in the relevant area, as required by Paragraph 83(b) of UNGA Resolution 61/105 and appropriate under the UN Fish Stocks Agreement and CFP Basic Regulation (2371/2002).

Specific comments on the provisions:

1) Scope (Article 1):

It is inappropriate and irresponsible that VMEs in areas not covered by the scope of the proposed Regulation will continue to be at risk from destructive deep-sea fishing practices. The same or equivalent measures proposed in this Regulation should apply to all the EU's deep-sea fisheries, whether they are in or outside Community waters, and whether covered by a regional or national governance framework or not. This should be the case until and unless more stringent and/or far-reaching fisheries management measures, as well as more targeted conservation provisions, have been agreed and implemented. See our detailed comments above.

2) Conditions for issuance (Article 4):

UNGA Resolution 61/105 shifts the burden of proof, such that no bottom trawling is allowed in any high seas area until/unless it is determined that there are no ecosystems vulnerable to the impact of bottom trawl fishing in the area. The Regulation takes a reasonable step towards this reversal of the burden of proof by requiring prior assessment, but it does not transfer the burden of proof to the company that is requesting a fishing permit.

As regards Article 4(5), greater coherence within the Regulation should be created by ensuring that VMEs identified in the course of an assessment are communicated to the Commission and other Member States and that a closed area under Article 8 of the Regulation is created without delay. In this context see further comments on closed areas below.

Moreover, any assessments prepared in accordance with Article 4 should be independently reviewed by relevant scientific bodies. In addition, more guidance and/or Commission scrutiny is necessary in order to ensure a harmonised application of Article 4. The framework for this should already be set up by provisions in the proposed Regulation.

As regards Article 4(4), the clarity of the second sentence should be improved by rephrasing it to read:

"In case of doubt as to whether significant adverse impacts will occur, it shall be presumed that such impacts will occur unless demonstrated otherwise".

For a comment on "the best available scientific information", please see the section on "closed areas".

3) Unforeseen encounters with VME (Article 7)

Firstly, neither the definition of VMEs in Article 2, nor the wording in Article 7(1) on encounters with VMEs, are sufficient to promote effective implementation by allowing fishermen to judge whether they have encountered a VME. The undersigning NGOs recommend that a list of indicators of what it means 'to encounter' a VME should be added in an Annex to the Regulation, followed if necessary by detailed guidance. In the absence of adding such list, however, an example must be added to the provision, as follows (bold, underlined text should be inserted):

*"Where, in the course of fishing operations, a fishing vessel encounters a vulnerable marine ecosystem, **evidence of which includes the presence of bycatch in the haul of the net as listed in Annex X**, it shall immediately cease fishing, or refrain from engaging in fishing in the site concerned."*

ANNEX X:

List of bycatch which shall constitute evidence of a vulnerable marine ecosystem:¹

Corals

A single haul constituting >10kg of coral or coral rubble

Two or more consecutive hauls containing live corals on the same trawl track or setting area for fishing gear, or where consecutive trawling tracks or sets intersect.

>5 encounters of corals within an area (10km²) within one year.

>5 corals per 1,000 hooks in a long-line fishery within 1 year within an area (10km²)

¹ Alex D Rogers, Malcolm R Clark, Kristina Gjerde, Jason M Hall-Spencer, "The Science behind the Guidelines: A Scientific Guide to the FAO Draft International Guidelines (December 2007) for the Management of Deep-Sea Fisheries in the High Seas and Examples of How the Guidelines may be Practically Implemented." (January 2008), page 30.

*>20% of hauls of any gear within an area (10-1,000km²) containing corals
 Sponges or other habitat-forming epifauna
 A single haul constituting >10kg of sponge or other habitat-forming epifauna
 Two or more consecutive hauls containing >5kg sponges or other habitat-forming epifauna on the same trawl track or setting area for fishing gear, or where consecutive trawling tracks or sets intersect.
 >10 encounters of >5kg sponges or other habitat-forming epifauna in an area (10km²) within one year
 >20% of hauls of any gear within an area (10-1,000km²) containing sponges or other habitat-forming epifaunal taxa*

Chemosynthetic ecosystems
*Any encounter with elemental sulphur, mineral chimneys (usually smelling of hydrogen sulphide) or methane hydrate (brightly coloured ice-like substance)
 Any encounter with chemosynthetic organisms (vent or seep mussels or clams, pogonophoran or vestimentiferan tube worms, vent shrimp or other identifiable vent fauna).*

It would further appear necessary that unforeseen encounters are not only reported to the competent authority, but also to the European Commission, the Community Fisheries Control Agency and other Member States as soon as possible. An additional paragraph to this regard should be added, as well as a commitment to establish an electronic, online mapping scheme, with the aim of building up a lasting map of VME.

4) Area closures (Article 8)

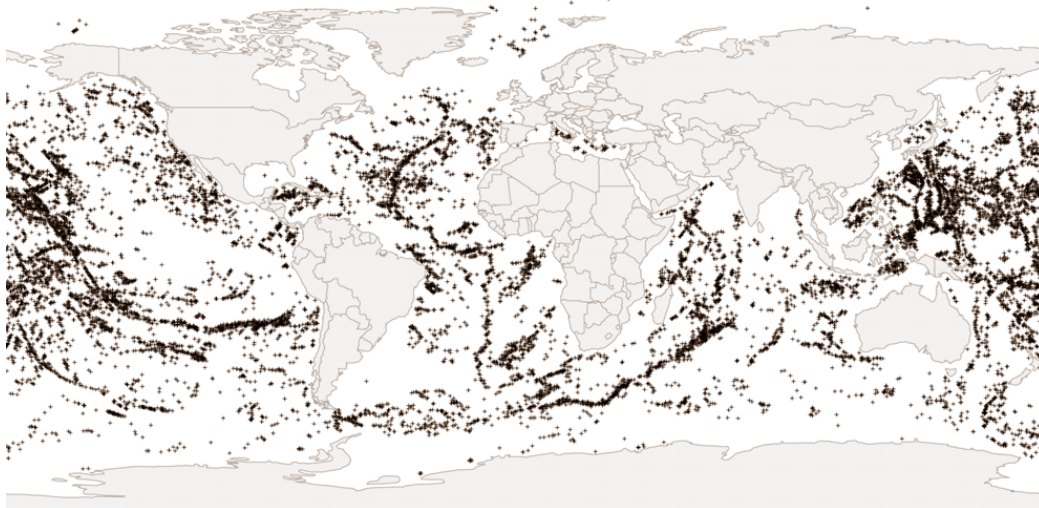
The undersigning NGOs support the provisions on area closures. However, the provisions should be strengthened and must be linked to the provisions on assessment in Article 4 (as above).

Firstly, all areas that are confirmed to contain – or are likely to contain – VMEs must be established as closed areas and recorded in a public, electronic and online database. Although limited, there is existing knowledge of the distribution of VME in the high seas. It would seem appropriate that the Regulation identifies these areas as closed areas, indicating both confirmed sites and areas which are likely to contain VMEs. The Regulation should explicitly prohibit the issuing of permits for fishing activities in such areas and should list the relevant coordinates in an Annex.

The closed areas must cover the full extent of the relevant ecosystem, as well as a buffer zone surrounding the site of the VME.

If existing details are not to be included in the Regulation itself, it should at least include the setting up of a framework or process by which a Community database of closed areas will be established. As a starting point, the Regulation could use surveying work in progress under the Marine Census Project (<http://www.coml.org/>), the IMap (<http://bure.unep-wcmc.org/marine/highseas/viewer.htm>) or Seamounts Online Project (<http://seamounts.sdsc.edu/>), Synthesis report on the best available scientific studies on priority areas for biodiversity conservation in marine areas beyond the limits of national jurisdiction produced as part of the review process under the Convention on Biological Diversity (<http://www.cbd.int/doc/meetings/sbstta/sbstta-13/information/sbstta-13-inf-11-en.pdf>), or build on existing scientific publications such as the paper published by Kitchingman and Lai (2004)². The latter contains the following map of confirmed and potential seamounts. The process should require an ongoing review of the “best scientific information available”.

² http://www.seaaroundus.org/report/seamounts/05_AKitchingman_Slai/AK_SL_TEXT.pdf



5) VMS and Observers

In addition to the provisions contained in Articles 9 and 12, the master of the fishing vessel should be obliged to report its position at the point of commencing the fishing plan/arrival in the fishing grounds. This information should be transmitted to the competent authorities in real time, so that they can check VMS data more easily in relation to the fishing plan.

There should be two observers on a vessel crewed and geared up for 24 hour fishing to ensure that all hauls can be monitored.

In addition to the points made in this briefing, there are broader considerations that determine the effectiveness of observer schemes in general and on distant water vessels in particular. The proposed Directive insufficiently and inadequately addresses these.

6) Other provisions

The Member States should be provided with monitoring, control and surveillance targets, so that regular checks are implemented and enforcement ensured.

Under Article 14, the Commission is required to submit a report on the implementation of the Regulation to Council and European Parliament by 30 June 2010. This date should be revised to an earlier date, e.g. 30 June 2009, so as to match reporting and review requirements under the UN process. The UNGA has agreed to review the implementation of the Resolution 61/105 in 2009. It would clearly be unacceptable to miss the international review deadlines.