



The EU Proposal on High Seas Bottom Trawling Falls Short of Existing Commitments and Obligations to Protect Corals and the Biodiversity of the Deep Sea

The UN General Assembly (UN GA) is discussing proposals to provide urgent protection for the biodiversity of the deep seas from destructive activities, most specifically from high seas bottom trawl fishing. The European Union has proposed language that is significantly weaker than what it has already agreed to do within the context of the Northeast Atlantic. Moreover, the EU proposal fails to reflect the fundamental commitments and obligations of the European Union and its member States as parties to the United Nations Fish Stocks Agreement (FSA), the Law of the Sea Convention (UNCLOS), and the Convention on Biological Diversity.

EU Commitments

The threat posed by bottom trawl fishing to deep-sea corals and the biodiversity of deep-sea ecosystems on the high seas is currently under discussion at the UN General Assembly. This issue has been the subject of negotiation in a number of other fora involving the European Union over the past several years. The following examples are a few amongst the many commitments the European Union has undertaken to protect deep water corals and other vulnerable ecosystems and biodiversity.

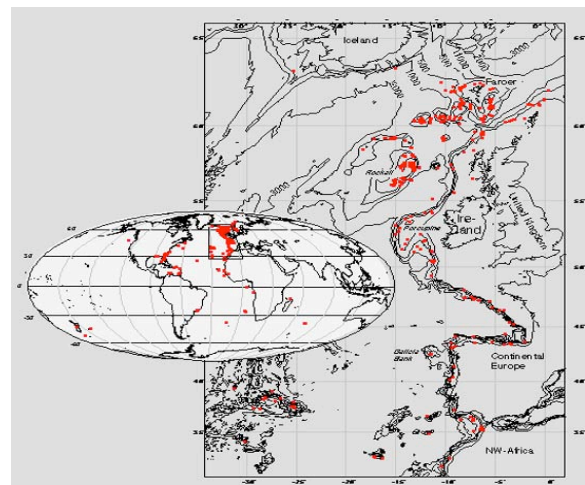
Bremen Statement - OSPAR

The European Union, together with Iceland and Norway, adopted the "Bremen Statement" at the June 2003 Ministerial Meeting of the OSPAR Commission for the Protection of the Marine Environment of the North-East Atlantic. The Bremen Statement in paragraph 12 commits these States to protect the cold-water corals in the region, including in high seas areas of the Northeast Atlantic. It states

"We are particularly concerned about the status of vulnerable cold-water coral reefs, many of which are threatened with destruction. Bearing in mind the ecological

importance of these reefs and the practical irreversibility of their damage, we shall take immediate measures to protect coral reefs from further damage due to use of active fishing gear on the reefs.

Furthermore, we shall ensure that steps are taken by 2005 to identify additional threats to the cold-water reefs and that measures are taken to protect the reefs against these threats."



Distribution of cold-water coral *Lophelia Pertusa* in the Northeast Atlantic. Map from Andre Freiwald, University of Erlangen, Germany, 1999.

Protection for the Azores, Madeira, and the Canary Islands

More recently, on 11 October 2004, the European Union's Council of General Affairs adopted a proposal for closing most of the EEZ surrounding the Azores, Madeira and Canary Islands in the Atlantic Ocean to deep-water bottom trawl fishing.ⁱⁱ The Council's decision recognized the urgent need to protect the highly sensitive cold water coral reefs and other deepwater habitats found in these waters: :

*“(1) According to recent scientific reports, and in particular the reports of the International Council for the Exploration of the Sea (ICES), **highly sensitive deepwater habitats have been found and mapped in the Atlantic. Those habitats host important and highly diverse biological communities and are considered to require priority protection. In particular, they are defined as habitats of Community interest in Council Directive 92/43/EC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora** (2). Furthermore, deep-water coral reefs have recently been included in a list of endangered habitats in the framework of the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention).*

(2) According to scientific evidence, recovery from damage to these habitats produced by trawl gear towed through the bottom is either impossible or very difficult and slow.”

The Council's Decision is in line with the advice given in December 2002 by the International Council for the Exploration of the Sea (ICES) in response to a request from the Directorate General for Fisheries of the European Commission, the Helsinki Commission, the OSPAR Commission on the impact of fishing on cold-water corals, among other environmental issues related to fisheries. The ICES Advisory Committee on Ecosystems stated:

“Recent information shows that deep-water trawling does take place in deep-water biogenic habitats. Any fishing gear physically impacting these habitats, by direct contact or by indirect effects such as wash or sedimentation, will cause an effect and therefore give rise to cause for

concern...There is sufficient information to suggest that the most effective way of mitigating the effect of trawling on these habitats is to close such areas to fishing.”

The report concluded that bottom trawling is the most serious threat to cold-water corals and recommended the following:

“ICES advises that the only proven method of preventing damage to deep-water biogenic reefs from fishing activities is through spatial closures to towed gear that potentially impacts the bottom.”ⁱⁱⁱ

UN Fish Stocks Agreement

The European Union, as a party to the 1995 United Nations Fish Stocks Agreement, is clearly obliged to take action with respect to deep water fish stocks that may straddle the EEZ and the high seas:

Article 5(g) **“protect biodiversity in the marine environment”** in establishing conservation and management measures for fisheries for straddling and highly migratory fish stocks and to **“apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks...in order to preserve the marine environment”** in Article 6.1. Under Article 6.2, the EU is under an obligation to ensure that **“The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures”**.

The UN FAO Code of Conduct for Responsible Fisheries contains provisions similar to these FSA standards that are applicable to all high seas deep-water fisheries, and not just those that straddle the EEZ and the high seas.

UNCLOS and the CBD

More generally, under UNCLOS Article 194.5, the EU is obliged **“to protect and preserve rare or fragile ecosystems and the habitat of depleted, threatened or endangered species and other forms of marine life”**.

The CBD further obliges the EU in Articles 3-5 to conserve biodiversity with respect to

activities under its control beyond the limits of national jurisdiction and to cooperate with other Parties to ensure conservation and sustainable use in such areas. The Hague Ministerial Declaration adopted by CBD Parties in 2002 committed Parties to strengthen efforts to halt biodiversity loss at all levels by 2010.

Plan of Implementation, World Summit on Sustainable Development

Finally, the European Union has also committed to the Plan of Implementation of the 2002 Johannesburg World Summit on Sustainable Development and its call to:

*“Maintain the productivity and biodiversity of important and vulnerable marine and coastal areas, including in areas within and beyond national jurisdiction” (32a); and
“the elimination of destructive fishing practices” (32c).*

The EU and the UNGA Resolutions on Fisheries and Oceans

In spite of its treaty obligations and commitments, the European Union is proposing a far weaker course of international action for the protection of corals and deep sea biodiversity at the United Nations General Assembly than that to which it is bound and has previously committed.

Specifically, the EU has proposed that the UN General Assembly:

OP 62 ter

“Calls upon States, either by themselves or by regional fisheries and management organizations, where these are competent to do so, to urgently implement on a case by case basis and where justified on a scientific basis, including the application of precaution, an interim prohibition of destructive practices by vessels under their jurisdiction that have an adverse impact on vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold water corals located beyond national jurisdiction;”

Shortcomings of the European Union Proposal

1. Calling on states individually to take action:

The UN General Assembly has been regularly calling on States individually to halt unauthorized or “IUU” fishing on the high seas since 1998.^{iv} In spite of this, Illegal, Unreported and Unregulated (IUU) fishing has continued to be a major problem in high seas fisheries. The ‘individual State action’ approach simply has not worked. A much stronger call to action by the UN General Assembly is needed to prompt the protection of deep sea biodiversity on the high seas. This is a task for the international community as a whole. It cannot be subject to potentially uneven implementation by individual States.

2. Relying on regional fisheries management organizations (RFMOs) to protect deep-water corals and other vulnerable deep sea ecosystems:

By far and away the most serious shortcoming of relying on the RFMO system is the fact that most high seas areas of the world’s oceans are not covered by RFMOs with the legal competence to regulate bottom fisheries. Bottom trawl fishing on the high seas in the Indian Ocean, the Pacific Ocean, the Central Atlantic and Southwest Atlantic Ocean is not covered by a regional management organization and, as such, constitutes unregulated high seas fishing.

Furthermore, in those few high seas areas where such RFMOs exist – the northern North Atlantic Ocean, the Southeast Atlantic Ocean, the Southern Ocean and the Mediterranean Sea, only the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) has taken steps to regulate bottom trawl fisheries for the impacts on deep-sea species on the high seas. Indeed, in the North Atlantic, the failure of the Northwest Atlantic Fisheries Organization (NAFO) and the North-East Atlantic Fisheries Commission (NEAFC) to regulate the impact of bottom trawl fishing on deep-sea ecosystems is a long-standing failure of the past four decades or more. The General Fisheries Council of the Mediterranean and the Southeast Atlantic Fisheries Organization have yet to regulate any deep-sea bottom trawl fisheries due to their relative newness

3. Implementing interim prohibitions on a ‘case by case basis and where justified

on a scientific basis, including the application of precaution’:

This is contrary to Articles 6.1 and 6.2 of the UN Fish Stocks Agreement as well as being inconsistent with the precautionary approach provisions of Article 7 of the UN FAO Code of Conduct for Responsible Fisheries. The scientific community has been increasingly discovering that cold-water corals and other bottom species and habitats vulnerable to bottom trawl fishing occur throughout continental slope and margin areas extending onto the high seas as well as on seamounts and other underwater features beyond the 200 nautical mile limits.

Articles 6.1 and 6.2 call for the widespread application of the precautionary approach and not solely on a ‘case by case’ basis where it can be proven that damage will be certain to occur. Rather, given the widespread distribution of deep sea corals, a moratorium on bottom trawl fishing on the high seas is required until such areas can be identified and mapped and measures can be put into place to ensure no damage occurs.

Conclusion

Firm decisive action by the European Union and a declaration by the UN General Assembly to establish a moratorium on all high seas bottom trawl fishing is the best course of action in the short term until legally binding regimes and regulations are implemented and enforced to ensure the protection of deep-sea corals and other vulnerable ecosystems on the high seas.

The European Union has already stated its commitment to take action to eliminate destructive fishing practices and protect biodiversity on the high seas in a variety of international fora. The European Union should support a UN General Assembly moratorium on bottom trawl fishing on the high seas; failure to do so calls into question the extent to which the EU will abide by its international commitments and obligations.

The UNGA must act now to put a temporary halt to bottom trawl fishing on the high seas. A UNGA moratorium on high seas bottom trawling is the only viable short-term measure that can effectively prevent the further destruction of these unknown worlds deep beneath the ocean surface. While such a moratorium is in place, a thorough scientific assessment of the extent of deep-

sea biodiversity and ecosystems must be undertaken (as per paragraph OP71 of the Chairman’s Draft version 2 with amendments). Furthermore, an inclusive process must be established to examine the necessary regimes to sustainably and equitably govern and conserve marine biodiversity and protect vulnerable marine ecosystems in areas beyond national jurisdiction, and to recommend concrete measures to be taken to achieve this on a time-bound basis.

ⁱ In this context “active fishing gear” refers to bottom trawling – towing a net along the ocean bottom – as opposed to “passive” fishing gear, a term generally used to describe longline, bottom gillnet/set net and other types of fishing gear which are set onto the bottom to fish and then retrieved without dragging them across the ocean floor.

ⁱⁱ COUNCIL REGULATION (EC) No 1811/2004 of 11 October 2004 amending Regulation (EC) No 2287/2003

ⁱⁱⁱ Report of the ICES Advisory Committee on Ecosystems, 2002. ICES Cooperative Research Report No. 254. International Council for the Exploration of the Sea, December 2002. pgs 28 & 32.

^{iv} A/RES/53/33 - Large-scale pelagic drift-net fishing; unauthorized fishing in zones of national jurisdiction and on the high seas, fisheries by-catch and discards, and other developments

For More Information

For further information on why a high seas moratorium is needed now, how it can be implemented, and why the action recommended by UNICPOLOS V in June is simply not good enough, visit our website at www.savethehighseas.org.

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