

**Opinion of the European Economic and Social Committee 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 and 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**

COM(2007) 605 final — 0227/0224(CNS)

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(2008/C 224/17)

On 4 December 2007, the Council decided to consult the European Economic and Social Committee, under Article 37 of the Treaty establishing the European Community, 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.*

On 17 October 2007, the European Commission decided to consult the European Economic and Social Committee, under the Cooperation Protocol signed on 7 November 2005, on 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.*

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 29 April 2008. The rapporteur was Mr Espuny Moyano, and the co-rapporteur was Mr Adams.

At its 445<sup>th</sup> plenary session, held on 28 and 29 May 2008 (meeting of 29 May), the European Economic and Social Committee adopted the following opinion by 101 votes in favour, with one abstention.

## **1. Conclusions and recommendations**

1.1 The EESC supports the general policy orientation set out by the Commission in this Proposal and Communication but believes the content, effectiveness and impact of the proposed regulation could be improved by incorporating the recommendations set out in sections 4 and 5 of this Opinion.

## **2. Introduction**

2.1 It has become clear in recent years that ecosystems in deep waters can be the source of immense biodiversity and abundant marine life. They are one of the world's last remaining, significant groupings of natural resources. Cold water reefs, seamounts, corals, hydrothermal vents and sponge beds are increasingly at risk from human activities. Such systems exist in much less productive environments than those found in shallow waters and consequently may take centuries to regenerate. Hydrocarbon exploration, cable laying, waste dumping and particular types of bottom fishing activity <sup>(1)</sup>, as well as other human activities, can have negative effects. Cold-water corals are also found in continental shelf areas in temperate latitudes <sup>(2)</sup>.

<sup>(1)</sup> These include bottom trawls, dredges, bottom-set gillnets, bottom-set longlines, pots and traps. See Friewald, A., Fosså, J.H., Koslow, T., Roberts, J.M. 2004. *Cold-water coral reefs*. UNEP-WCMC, Cambridge, UK.

<sup>(2)</sup> Ibid.

2.2 Bottom fishing requires highly specialist gear, which generally can be used without serious damage where the sea bed is sandy or muddy. However, some types of gear are necessarily heavy and robust and in fragile deepwater ecosystems can severely degrade habitats and destroy ancient and largely irreplaceable structures, particularly coral.

2.3 As is often the case with global environmental issues it was understood that only by introducing balanced, effective, enforceable measures on a worldwide basis could this problem be comprehensively tackled. The UN General Assembly has been discussing the problems posed by high seas fishing practices since 2004. On 8 December 2006, it adopted Resolution 61/105 on Sustainable Fisheries, which issued a strong call for action by states and organisations with authority over bottom fisheries on the high seas to regulate such fishing to protect vulnerable marine ecosystems from damage <sup>(3)</sup>.

2.4 This Opinion deals with two Commission documents on the protection of vulnerable marine ecosystems. The first, (COM (2007) 604), details the general policy orientation which it is proposed should guide and inform specific actions to be taken by the EU. This results from FAO recommendations developed

<sup>(3)</sup> UN General Assembly resolution 61/105, Paragraphs 83-86.

after extensive consideration of this issue by the UN General Assembly <sup>(4)</sup>, in which the EU played a major role. The second document (COM(2007) 605), is a proposed Council regulation which will apply to EU vessels operating in the high seas not covered by a Regional Fisheries Management Organisation (RFMO) and should be seen as a direct legislative response.

2.5 It is in the long-term interest of both the industry and the conservation community to see seabed habitats protected to ensure the long-term sustainability of fish stocks as well as the conservation and protection of marine biodiversity.

### 3. Summary of the Commission's general approach (COM(2007) 604) and specific proposal (COM(2007) 605)

3.1 The two key elements of the framework for the management of bottom fisheries on the high seas are the prior environmental impact assessment of a proposed fishing area as a condition for the authorisation of individual fishing activities and the ability to demonstrate no significant adverse impacts as a condition for continued fishing. In support of this, improved research and data collection must be developed to identify the known or likely locations and ecological dynamics of vulnerable systems.

3.2 A particularly valuable measure is the adoption of geographically-based closures or special management areas. This would take place, by agreement, within an RFMO. Protection outside an RFMO is the responsibility of individual States in respect to vessels which carry their flag.

3.3 The proposed Regulation will impose the stringent control of high seas bottom fishing through measures similar to those already adopted by nations fishing on the high seas in the Northwest Pacific, South Pacific and Antarctic waters and which have been tabled for adoption in RFMOs in the North and Southeast Atlantic, the Antarctic and the Mediterranean.

3.4 The Commission received wide-ranging representations from member States, industry and environmental conservation bodies during the three years the issue was under negotiation at the UN General Assembly. It promoted a regulatory approach (as opposed to a ban) with the intention that this be applied by flag States through RFMOs and by flag States where their vessels operate on the high seas in areas where no RFMO currently exists.

3.5 In the proposal, the management of deep sea fisheries will largely be left to EU member states and linked to the

issuing of special fishing permits. When applying for a permit, a vessel will have to submit a fishing plan setting out where it will be fishing, which species it will target, the depth at which it will fish and a bathymetric profile of the seabed in the area. The authorities will then have to assess the fishing plan and its potential impacts on any vulnerable marine ecosystems, relying on the best scientific information available.

3.6 The proposal also sets out a few clear limitations. Use of bottom gears at depths beyond 1 000 metres shall be prohibited. Use of bottom gears at depths beyond 1 000 metres shall be prohibited. Fishing vessels encountering vulnerable marine ecosystems will be required to cease fishing immediately and will only be allowed to resume fishing five nautical miles or more away from the site. The responsible authorities should be informed of the location of the encounter, and may then decide to close the area for fishing with bottom gears. All vessels will also be required to use satellite-based Vessel Monitoring Systems (VMS) as well as have scientific observers onboard.

3.7 Member States will be required to report to the Commission on the implementation of the Regulation every six months. The Commission will then prepare a report to the European Parliament and the Council before June 2010, including proposals for any necessary amendments.

### 4. General comments

4.1 The EESC supports the general policy orientation set out by the Commission which is consistent with its previously expressed position on halting the loss of biodiversity (NAT/334).

4.2 In recent years the EESC has thoroughly explored in various opinions <sup>(5)</sup> the positive and problematic issues arising from the objectives of the Common Fishing Policy (CFP), and how to sustainably exploit aquatic resources in the context of sustainable development, taking account of the environmental, economic and social aspects in a balanced manner. These aspects should all be taken into account when analysing the Commission's proposal for a Regulation.

4.3 Both the Communication and the Commission staff working document assessing the impact of the proposed Regulation mention that it will apply at present only to Community bottom trawlers fishing in the Southwest Atlantic (SWA) outside Argentina's Exclusive Economic Zone (EEZ).

<sup>(4)</sup> Resolutions 59/25 (2004) and particularly 61/105 (paras. 80-95) of 8 December 2006.

<sup>(5)</sup> NAT/264 — Regulation on the European Fisheries Fund (OJ C 267, 27.10.2005); NAT/280 — Regulation establishing Community financial measures for the implementation of the common fisheries policy and in the area of the Law of the Sea (OJ C 65, 17.3.2006), NAT/316 (OJ C 318, 23.12.2006), NAT/333 (OJ C 168, 20.7.2007), NAT/334 — Halting the loss of biodiversity (OJ C 97, 28.4.2007); NAT/364 — Regulation concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy (OJ C 10, 15.1.2008).

4.4 This fishing is carried out by around 30 Community vessels in the Southwest Atlantic (SWA), where a RFMO has not yet been set up, owing to the long-standing political conflict between the United Kingdom and Argentina over the Falkland Islands. This fishing activity can be described as follows:

- The high seas portion of this fishery is conducted on the continental shelf and upper slope of the Patagonian Shelf. It has existed for 25 years and the fishing industry and scientists assure that it covers the same sandy and flat bottom areas. Two types of fish are caught: shortfin squid (*Illex*) and common squid (*Loligo*), and hake (*Merluccius hubbsi*). None of these species are classified as deep-water fish: classification is based either on the criterion of depth <sup>(6)</sup> (now rejected by the FAO) or biological nature (high longevity, late maturity, slow growth or low fecundity <sup>(7)</sup>), which argues against additional protection. <sup>(8)</sup> In other words, it involves species of medium and high productivity, without significant by-catches, in areas which are not thought to contain especially vulnerable ecosystems.
- This fishing began thanks to EU funding of exploratory fishing voyages intended to redistribute the Community fleet. These voyages took place with on-board observers, and the European Commission should have comprehensive information about them.
- The Commission has also funded assessment studies, and Spain — through the Spanish Oceanographic Institute (IEO) — has run a programme of on-board scientific observers over the entire period to provide continuing information on these fishing activities, in addition to other information. <sup>(9)</sup>
- The species caught incidentally (by-catch) are minimum, the main ones being pink cusk-eel or conger eel (*Geniptyrus blacodes*) and rock cod; the latter is a non-commercial species and attempts are being made to introduce it to the Community market.
- All the Community vessels work with special fishing permits issued by individual Member States and controlled by satellite (VMS). Moreover, around 20 % of the fleet carries scientific observers on board.
- Both fishing for cephalopods (shortfin and common squid) and hake takes place in two small high-sea areas that are part of a much larger area of fishing activity that includes both the Argentinean and Uruguayan EEZs, as well as the area controlled by the Falklands government, where

around 100 vessels from Argentina, third-countries and the Falklands <sup>(10)</sup> operate.

- Of the deep-water species listed in Annexes I and II of Council Regulation (EC) No 2347/2002 establishing specific access requirements and associated conditions applicable to fishing for deep-sea stocks <sup>(11)</sup>, only wreckfish (*Polyprius americanus*) live in Patagonian waters, but no captures of this species have been recorded either by the IEO or by the Community fleet.
- The jobs and wealth generated by these vessels are concentrated in a region of the Community that is highly dependent on fishing <sup>(12)</sup>.

4.5 In view of the above, the EESC suggests that should the comprehensive oceanographic survey of this area being presently conducted conclusively demonstrate no evidence of vulnerable marine ecosystems then the area (specifically geographically defined) should be exempted from the requirements of the proposed regulation.

4.6 Moreover, the EESC considers that the Commission's proposal does not ensure effective application and harmonisation of the regulations by Member States. As a result, the EESC calls on the Commission to play a more prominent role in coordinating and ensuring the effective implementation of the regulation by Member States.

4.7 The EESC considers that the Commission should encourage independent scientific assessments in addition to the impact studies provided by the Member States. To this end, it should make provision for the necessary funds to cover these assessments.

4.8 Lastly, the EESC points out that the FAO is drawing up a series of International Guidelines for the Management of Deep-Sea Fisheries in the High Seas, and suggests that the Commission take into consideration the conclusions thereof.

## 5. Specific comments

5.1 The EESC considers that Article 1.1 of the proposal for a Regulation refer to Community fishing vessels which carry out fishing activities with bottom gears on virgin, unexploited fisheries in the high seas and that should take into account what is mentioned in point 4.5 above.

<sup>(6)</sup> Data collected by the Spanish Oceanographic Institute (IEO observers), which is consistent with satellite information from 'blue boxes', show that over 95 % of fishing by the Spanish bottom trawling fleet fishing on the high seas of the Patagonian shelf takes place at depths of less than 400 metres.

<sup>(7)</sup> Study by Koslow et al., published in 2000 in the ICES Journal of Marine Science: J.A. Koslow, G.W. Boehlert, J.D.M. Gordon, R.L. Haedrich, P. Loran and N. Parin, 2000. Continental Slope and deep-sea fisheries: implications for a fragile ecosystem.

<sup>(8)</sup> See recital (10) of the proposal for a Regulation.

<sup>(9)</sup> See point 2.2. of the Commission Staff Working Document.

<sup>(10)</sup> Korea, Japan, China, Taiwan and Uruguay

<sup>(11)</sup> OJ L 351, 28.12.2002, p.6.

<sup>(12)</sup> Input-output tables on the fish-canning industry in Galicia, published by the regional government, show that of the 74 activities comprising the Galician economy, 61 are dependent on fishing.

5.2 The EESC believes that the definition of 'vulnerable marine ecosystem' in Article 2 of the proposal for a Regulation is vague and unclear, and could cause problems of interpretation. The work being carried out by the FAO could help to clarify it.

5.3 Under Article 4, paragraph 5, the EESC is concerned to ensure that any amendments to fishing plans should also be reviewed to make certain there are no significant adverse impacts — i.e. that the amendments effectively address the potential problems identified in the impact assessments. The EESC is also concerned that the system set up will not be flexible enough to adapt to fishing activities, which can be very changeable and hard to predict.

5.4 The EESC believes that Article 5 could also be confusing, as it does not differentiate between expiry and withdrawal of the permit. The special fishing permit is an administrative authorisation that will be valid if the procedures required for its issue by the competent administration are met, as long as it is not suspended or withdrawn by this administration. The administration should expressly inform the permit-holder of the withdrawal or suspension of the fishing permit, and grant him/her a hearing. Therefore, the EESC proposes the following wording: 'The special fishing permit provided for in Article 3(1) shall be *withdrawn* if the fishing activities fail to conform at any time to the fishing plan submitted in accordance with Article 4(1)'.

5.5 Consequently, the second sentence of Article 5(2) should read 'The competent authorities shall examine such alterations and *may only modify the conditions* of the permit if they do not entail a relocation of the activities to areas where vulnerable marine ecosystems occur or are likely to occur.'

5.6 Article 6 proposes that the use of bottom gears at depths beyond 1 000 metres be prohibited. The EESC believes that this provision should be deleted because there is not sufficient scientific evidence to back this restriction, as has emerged from the FAO's discussions on the International Guidelines for the Management of Deep-Sea Fisheries in the High Seas. The fact that there is currently no fleet operating at depths beyond 1 000 metres does not mean that the Regulation should prevent this in the future, as long as the activity is sustainable. Moreover, as the Commission itself acknowledges, this measure is not recommended by Resolution 61/105 of the UN General Assembly.

5.7 The EESC is concerned about the ambiguity of Article 8 of the proposed regulation. There seems no guarantee that all

areas where vulnerable ecosystems occur, or are likely to occur, will be closed to fishing with bottom gear. There is no clear obligation on Member States, having identified likely vulnerable areas, to close them to their flagged vessels.

5.8 Article 10 (as is the case with Article 5) confuses expiry with the revocation or withdrawal of a permit. The EESC therefore suggests the following wording for Article 10(1): 'Failure to conform to the fishing plan provided for in Article 4(1) in circumstances other than those specified in Article 5(2) shall entail the *withdrawal* of the special fishing permit issued to the fishing vessel concerned. Any fishing activities carried out from the time of *withdrawal of the special fishing permit* shall be considered as fishing without holding a fishing permit ...'.

5.9 With regard to Article 12, proposing the assignment of observers on board 100 % of fishing vessels, the EESC considers this measure disproportionate, unnecessary and, in some cases, unenforceable, as not all vessels are equipped to accommodate an extra person on board. Moreover, this aspect would mean a further increase in running costs for enterprises. On the whole, scientific bodies consider that a specific percentage of on-board observers is sufficient to meet the proposed objectives.

5.10 With regard to Article 14, the EESC would also recommend that the Commission provide a report to Council and Parliament by 30 June 2009 as opposed to 30 June 2010, the date currently stipulated in the article. The UN General Assembly has agreed to review the implementation of the 2006 resolution in 2009 and it would be important for the Commission to provide a report in time for the UN General Assembly Review.

5.11 The EESC believes that the timeframe for entry into force (seven days after publication in the Official Journal of the European Communities) is not sufficient to allow vessels to submit fishing plans and the Commission to assess and approve them, and therefore proposes that a reasonable, realistic deadline be set, making it possible for the obligation to be complied with and the permit granted by the Commission.

5.12 Finally, the EESC considers that the regulation should incorporate a provision or article requiring that an assessment be conducted to ensure that the regulation of the fisheries will provide for the long-term sustainability of the fish stocks and the conservation of bycatch species. The former is called for in the UN General Assembly resolution and both the former and the latter are obligations contained in the 1995 UN Fish Stocks Agreement for fisheries on the high seas.

Brussels, 29 May 2008.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS