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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**

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1. INTRODUCTION

1.1. Scope and general context

The destruction by human activity of vulnerable marine habitats in the high seas is one of the 'hidden' environmental catastrophes of our time. Although these ecosystems are not well understood – indeed, many still remain to be located and identified – the damage which can be wrought upon them, in particular by certain fishing practices, is increasingly well documented.

Available scientific evidence also suggests that the biodiversity of the deep seas is not evenly distributed but instead, it is concentrated in and around discrete features of the seabed such as seamounts, coral reefs and hydrothermal vents. These constitute real biodiversity hot spots in the midst of vast expanses of relatively desert seabed. For this very reason, such ecosystems also tend to attract large numbers of predators, including fish, and thus they inevitably receive the lion's share of attention from commercial fishermen, as well as from other interested human beings (such as bio-prospectors, or deep-sea tourists). While real benefit is undeniably extracted through such activities, the wealth that may be simultaneously destroyed, not only in biological, but also in economic terms, is incalculable. It is recognised that this ongoing destruction of vulnerable marine habitats in the high seas puts at serious risk the achievement of the global objective 'to significantly reduce the rate of biodiversity loss by 2010' agreed by the Johannesburg Summit on Sustainable Development .

On 8 December 2006, the United Nations General Assembly adopted its Resolution 61/105 on Sustainable Fisheries. In this resolution, the UN issued a strong call for action by states and organisations with authority over the deep seas to regulate fishing on vulnerable marine ecosystems so as to protect them from damage. The European Commission played a leading role in the adoption of this Resolution, and once it was passed, the Commission immediately announced that it would be promptly proposing a strategy to translate this call into action.

1.2. Governance mechanisms currently in force

In coastal areas, it is the coastal states which are empowered to take action to guard against the impact of bottom fishing on fragile ecosystems. Many of them have already taken some initiatives to that end, including the European Union and its Member States. In international waters, and where they exist, Regional Marine Conventions have general responsibilities for the protection of the marine environment, while Regional Fisheries Management Organisations (RFMOs) adopt

measures for the conservation and management of living marine resources and regulate the impacts of fishing on vulnerable ecosystems. While some voices have been critical of their procedures and questioned their effectiveness, RFMOs have one inestimable advantage over rival arrangements: they have the authority necessary under the Law of the Sea to take concrete and binding measures, and back them up with a compliance and enforcement system. The European Union is therefore a strong supporter of RFMOs, though not an uncritical one, and an activist for their empowerment. In fact, most of the area-based measures to protect deep sea ecosystems adopted by RFMOs around the world have been based on proposals tabled by the EU.

The persistence of areas of the high seas where there is no regulatory body yet in place represents, however, a major weakness in the international system of marine governance. It amounts to an open invitation to the continuation and possible intensification of destructive fishing practices, especially given the risk of displacement of effort once they have been effectively banned elsewhere. In Resolution 61/105 the UN explicitly calls on individual states to accelerate the establishment of RFMOs in these areas, and to implement interim measures to protect vulnerable ecosystems in respect of their own vessels. Thus the EU intends to be in the vanguard, in terms both of advancing the creation of RFMOs in all currently unregulated areas where its vessels operate (chiefly, the South-West Atlantic), and of agreeing without delay on interim spatial restrictions to protect marine biodiversity in these areas until such regulatory bodies are in place. A map illustrating the current coverage of the world's oceans by RFMOs is presented in the appendix.

1.3. Objectives and challenges

This Communication reviews and analyses the principles which have recently crystallised out of the international debate on destructive fishing practices in the deep seas. It also describes the deficiencies of the present context and outlines an ambitious course of action which takes account of the multilateral, regional and the high seas perspective, in order to deliver on the Community's international commitments.

2. DESTRUCTIVE FISHING IN THE HIGH SEAS: DEEP-SEA ECOSYSTEMS AT RISK

At the Johannesburg World Summit in 2002, the international community included “*the elimination of destructive fishing practices*” among the core requirements of any serious strategy for sustainable development.

The Johannesburg commitment places the problem of destructive fishing practices in a global context and makes it a shared challenge for all the world's nations. Fisheries should no longer be dealt with in isolation, but must be fully integrated with a broader understanding of the sustainability of the world's oceans. The Commission

has formally adopted this holistic approach with its recent proposals for an Integrated Maritime Policy¹.

The global nature of the challenge we are facing is particularly evident with regard to the high seas. The fundamental principles governing the freedoms and duties of the high seas, as established in the UN Convention on the Law of the Sea (UNCLOS), require the adoption of internationally agreed measures for the conservation of marine living resources in waters beyond national jurisdiction.

On the other hand, the focus on the high seas also places the emphasis on the unique marine ecosystems to be found in deep waters, since the great majority of the maritime space beyond the national jurisdiction of coastal States consists of just such deep waters. Other fishing practices considered destructive, such as the use of explosives or cyanide, are in principle restricted to shallow coastal areas and have already been banned by the EU.

There is still much to be learned about deep sea ecosystems, and dedicated research is underway, including significant efforts under EU auspices². We know enough to say that certain deep sea ecosystems may constitute true hot spots of marine biodiversity. We also know that these ecosystems are extremely vulnerable because of the low growth rates that characterise life at great depths. This fragility is particularly evident in the case of organisms providing structural support to the habitat, such as cold water corals, structure-forming sponges and invertebrate communities that thrive around hydrothermal vents. Fishing with bottom gears can be extremely detrimental to the integrity of these ecosystems, as has been demonstrated by a growing body of scientific studies. Observed and potential sources of damage include bottom trawls, dredges, bottom-set gillnets, bottom-set longlines, pots and traps. Their effects can easily be aggravated when combined with the impact of non-fishing activities, such as hydrocarbon prospection, laying of submarine cables, or waste dumping. Actual damage to deep coral reefs has been documented in the Northeast Atlantic, the West Atlantic, the Tasman Sea and other areas. Once such reefs are destroyed, they take an extremely long time to recover, if they recover at all. Studies such as these provide compelling evidence of the gravity of the problem and of the urgent need to take decisive protective action.

3. THE INTERNATIONAL RESPONSE AND THE ROLE OF THE EU

Already in 2004, Resolution 59/25 of the UN General Assembly issued an explicit call for urgent measures to eliminate destructive fishing practices in the high seas and committed to review in 2006 what action had been taken by States and RFMOs in response to such call. The EU was a substantial contributor to this review, including through its April 2006 report³ on measures it has taken in response to the UN call, both in the context of international cooperation, and in European waters.

¹ Communication from the Commission "An Integrated Maritime Policy for the European Union" - COM(2007) 575, 10.10.2007.

² Among others, projects HERMES (<http://www.eu-hermes.net>) and OASIS (<http://www1.uni-hamburg.de/OASIS/>), financed under the 6th EC Framework Research Programme. Cf. also the work carried out by the International Council for the Exploration of the Sea (ICES) <http://www.ices.dk>.

³ http://ec.europa.eu/fisheries/publications/factsheets/legal_texts/ec_report59-25paras66to69final.pdf

Following this review, on 8 December 2006, the General Assembly adopted Resolution 61/105. Paragraphs 80 to 95 provide guidance to States and RFMOs as to the key elements that must be taken into account when adopting measures to tackle destructive fishing practices that threaten vulnerable marine ecosystems.

The work carried out within the UN Convention on Biological Diversity (CBD) should also be highlighted in this context. Already in 2004, the Parties to the CBD recognised in its COP Decisions VII/5 and VIII/21 the serious threats to biodiversity in marine areas beyond national jurisdiction and stressed the need for rapid action to address these threats, in particular in areas with seamounts, hydrothermal vents or cold water corals. Likewise, Regional Marine Conventions have agreed to list such deep sea habitats with a view to taking adequate measures for their protection in their areas of competence.

Finally, the Food and Agriculture Organisation (FAO) has also been working to develop technical guidelines for deep-sea fisheries within the framework of the Code of Conduct for Responsible Fishing. A detailed work plan to this end was agreed in March 2007.

In all these organisations, the EU has played a leading role, actively providing constructive input to a very complex and at times controversial debate. This is as it should be. The EU is active in fisheries in the vast majority of the world seas. This wide-ranging involvement confers a particular responsibility on the Community both to promote progress in international processes and to lead by example through the discipline which it itself imposes on its international fleets. The EU has also used its influence for good purpose. The current international consensus reflects the balanced approach promoted by the EU. This approach is founded on decisive action in all waters, irrespective of their legal status, (within and beyond national jurisdiction) but without penalising fishers whose activities can be shown to be environmentally sound uses of the ocean.

UN Resolution 61/105 builds on these different international initiatives and therefore provides the international community with an excellent basis on which to work. The fact that its recommendations were able to command a consensus, despite the difficult negotiations involved, is a very strong feature. Some measures for which the EU argued positively in favour, such as an immediate freeze on the 'footprint' (spatial extent) of current bottom fishing activities were not retained. However, the consensual elements that remain have real authority and will be strong enough to prompt radical changes in the way that bottom fishing is managed and, in particular, in the way in which the precautionary principle is henceforth translated into practice.

The most important challenge now is to implement these measures in practice.

4. THE GENERAL ASSEMBLY RECOMMENDATIONS: A BALANCED, EFFECTIVE APPROACH

Resolution 61/105 calls on RFMOs and States "*to adopt and implement measures, in accordance with the precautionary approach, ecosystem approaches and international law (...) as a matter of priority*", in accordance with a package of key elements that constitute a rigorous management regime for high seas bottom

fisheries. The General Assembly calls for the adoption and implementation of these measures by 31 December 2008 at the latest (31 December 2007 in the case of interim arrangements, cf. Section 5.3).

The full text of the Resolution can be downloaded at following link:
http://www.un.org/Depts/los/general_assembly/general_assembly_resolutions.htm.

In this section, these different elements are analysed with a view to defining steps for their practical implementation.

4.1. Prior assessment of fishing impacts: a radical innovation in fisheries management

The requirement of an environmental impact assessment as a condition for the authorisation of individual fishing activities is the first and indeed the lynchpin of the set of recommendations issued by the General Assembly. *This represents a radically innovative principle in fisheries management.* In contrast with other resource exploitation activities carried out in the oceans and seas, where it is established practice to require prior impact assessments (e.g. installing offshore oil or gas platforms), the effects of fishing on marine habitats are generally assessed only after the fact, if at all. The General Assembly's recommendations will therefore help bringing the management of sensitive bottom fisheries up to the environmental standards of other maritime activities.

In practice, fishing operators will need to submit fishing plans that identify their intended fishing areas with some degree of precision. On this basis, the flag State authorities will then have to examine the spatial coverage of the intended activities and assess, in light of the scientific advice and data available to them, the potential risks for vulnerable marine ecosystems known or likely to occur in the intended fishing grounds.

4.2. Identification of vulnerable marine ecosystems through improved research and data collection

If the authorities concerned are to provide adequate impact assessments, they will need to improve the information and analysis they have access to. Identifying vulnerable marine ecosystems means not only ascertaining their location, but also improving our knowledge of their composition, ecological features and dynamics of the environmental constraints that result from these, and thus of their likely response to different impacts. Particular attention needs to be given to the development of modelling techniques that can help predict the location of deep water corals and other vulnerable marine ecosystems.

Another important implication of the recommendation is that new and exploratory fisheries must be regulated so that they implement appropriate research and data collection schemes in order to contribute to the identification effort.

4.3. Closing sensitive areas to bottom fishing

Finally, it clearly stems from the General Assembly's recommendations that the primary tool to protect vulnerable marine ecosystems is the adoption of

geographically-based closures or special management areas. Such closures can be adopted and enforced by the collective decision of States within the context of an RFMO. RFMOs with competence to regulate bottom fishing (see Appendix) have significantly increased their efforts to implement area closures in recent years. They will need to rigorously review the effectiveness of these measures and consider whether those agreed so far are indeed sufficient in number and extent to achieve their desired objectives. The task is also very important for fishers, as it will help to eliminate current uncertainties over safe fishing grounds. By making the protection of habitats from destructive fishing an integral component of a sound fisheries management regime, RFMOs will be building significantly on their traditional remit, and updating their standards to meet society's current expectations. This is a development that the EU wholeheartedly supports and will do all it can to encourage.

With regard to those areas beyond national jurisdiction which are not presently regulated by an RFMO, in the absence of a collective international authority to decide on closures, it falls upon individual States, according to Article 117 UNCLOS, to apply spatial restrictions in respect of their flagged vessels, by making compliance with such restrictions a condition for the validity of their fishing permits. Given the absence of specific compliance review mechanisms such as those operating within RFMOs, the General Assembly has called for the FAO to ensure the transparency of the measures adopted by flag States, by keeping a comprehensive database of the location of vulnerable marine ecosystems. States will thus be able to benefit from this information on the location of ecosystems which they share with other flag States in any given area, and will also be able to peer review the action taken by other States to restrain where appropriate their respective fleets.

5. HOW TO IMPLEMENT THE GENERAL ASSEMBLY RECOMMENDATIONS

5.1. The EU must continue to stimulate the international debate

- Over the next two years, the political will and ability of States will be put to the test as their response to the UN's call for action comes under close scrutiny through the 2009 review process. The EU must use its influence as a major global fisheries player to ensure that a rigorous and honest review lives up to the rightful expectations of citizens.
- To ensure steady and continued progress in response to the calls made by the General Assembly, transparency and peer review regarding the measures taken by States and RFMOs will play an essential role. The UNGA has emphasised the importance of these aspects, and of the role that the FAO should have in producing technical guidelines and in compiling and disseminating information. The EU must support and facilitate these processes, starting by ensuring that adequate access is given to information on its own initiatives and measures.
- The EU must continue to support and contribute actively to the work of the Convention on Biological Diversity (CBD) and Regional Marine Conventions regarding the establishment of marine protected areas in waters beyond national jurisdiction.

Actions:

- Submission, in early 2009, of a report to the UN Secretary General, providing the EU views on progress made in addressing destructive fishing practices and proposing ways and means to make further progress. Preparations shall include a call for views from stakeholders and civil society.
- Assist FAO in its efforts to collect and disseminate information on measures taken by States, the establishment of data bases on protected areas or closures, and the development of technical guidelines on deep sea fisheries.
- Assist CBD and Regional Marine Conventions in their efforts to identify ecologically or biologically significant marine habitats in need of protection in open ocean waters and deep sea habitats.
- Engage consultations and demarches with UN counterparts to promote a rigorous review process in 2009.

5.2. Implementation at RFMO level

Most of the area-based ecosystem protection measures adopted by RFMOs to date have been based on proposals tabled by the EU. This proactive stance must continue. However, the General Assembly is clearly asking the international community to go well beyond this particular kind of action. RFMOs should consider developing schemes to facilitate the incorporation of environmental impact assessments into their regulatory systems. They should intensify their joint efforts in scientific research so as to progressively establish a reliable basis for spatial management. Any new or exploratory fisheries should be subject to strict regulations, with rigorous scientific, data collection and monitoring requirements. Progress by 2009 should be marked by evidence that the RFMOs' approach to managing environmental risks in their areas of competence incorporates the principles and objectives identified by the General Assembly as an integral part of any satisfactory regulatory system. The EU must be instrumental in bringing about these changes.

It is important to underline that RFMO members can choose to apply stricter rules to their vessels and operators if they so wish. The EU should aim at ensuring that RFMO measures attain a high degree of protection and effectiveness in preventing destructive fishing impacts. However, the EU must reserve itself the right to adopt stricter rules for itself if it considers that the RFMO measures do not go far enough in this respect.

Actions:

The actions below should become an integral part of a steady policy for the EU over the coming years, subject to a first review in 2009:

- Implement a consistent agenda in all RFMOs to which the EU participates aimed at ensuring the implementation of an ecosystem approach to fisheries management. Key elements in this respect will be a) the strengthening of the mechanisms for the provision of scientific advice to include environmental

considerations and specific ecosystem protection measures and b) the introduction of the environmental assessment concept in the management of bottom fisheries.

- Promote the completion of procedures for the review of the performance of RFMOs and for the identification of vulnerable marine ecosystems occurring in each regulatory area with a view to their protection.

5.3. Interim arrangements

In the last few years, there have been significant advances towards achieving global coverage of the world's oceans by RFMOs with competence to regulate bottom fisheries. This progress has been marked by the establishment of the South-East Atlantic Fisheries Organisation (SEAFO) which is already operational in its area, the adoption of the Southern Indian Ocean Fisheries Agreement (SIOFA), and the on-going process to establish new RFMOs in the southern and northern Pacific.

Given the length of the legal proceedings required before international agreements can enter into force, States should not delay the discharge of their responsibilities, and should therefore agree to cooperate on an interim basis for the conservation and management of the relevant areas. The EU has strongly promoted this concept, which is now fully endorsed by the General Assembly.

Interim measures recently adopted (April 2007) in the framework of the negotiations towards the South Pacific RFMO demonstrate just how easily this approach can be put into practice. These measures were decided by the participants in full cognisance and acceptance of the General Assembly's recommendations. The EU must now go on and contribute actively to the development of interim arrangements in the Indian Ocean. It must then commit to implement into EU law the measures agreed within these frameworks, notwithstanding their voluntary nature. In parallel, the EU must actively promote the completion of the necessary formal procedures so that these Organisations can become operational as quickly as possible.

Actions:

- Transposition of the interim measures adopted for the South Pacific into Community Law by the end of 2007.
- Negotiation of interim measures for the Southern Indian Ocean while awaiting the entry into force of the SIOFA Agreement, late 2007 / early 2008. Conclusion of the Agreement in 2008. Initiation of demarches to promote participation and speed up the entry into force of this instrument.
- Renewal of exploratory demarches with potentially interested third States towards the establishment of regional arrangements in areas where no RFMO is yet in place.

5.4. European vessels conducting bottom fishing in areas of the high seas not regulated by an RFMO

5.4.1. Definition of problem

The EU fleets that target deep-sea stocks in the high seas are principally deployed in the north east Atlantic, with some operations extending south to the eastern central Atlantic. These fisheries are subject to a Community deep sea stocks management regime which includes the setting of Total Allowable Catches (TACs), restrictions on fishing effort, technical measures and specific control and enforcement provisions⁴. These fisheries are thus extensively regulated, and the effectiveness of the management regime is currently under review⁵. Where the environmental impact of these fisheries is concerned, they fall under the scope of various EU measures, including in particular those implementing the area closures and other technical requirements that have been adopted by NEAFC since 2004.

Outside these areas, the activity of EU fleets on deep sea species in the high seas is relatively limited, and takes place in areas where a competent RFMO is in place (SEAFO and CCAMLR).

However, the EU does count a sizeable presence of bottom trawlers in the southwest Atlantic. The longstanding dispute between the United Kingdom and Argentina over the Falkland/Malvinas Islands has made it impossible to agree on the establishment of a regional management regime for straddling stocks in this area, and it is unlikely that these difficulties can be overcome in the near future.

There is a potential risk for deep water corals and structure-forming sponges likely to occur in the outer edges of the continental slope where the EU vessels that operate in this region deploy their bottom gears. As noted in Section 1.2, this is an area where the international governance system is weak and therefore requires stringent measures by flag States to prevent these risks while awaiting the establishment of an RFMO or arrangement. The EU must therefore respond to the UN calls by adopting regulations in respect of its fleets.

5.4.2. Policy Proposal

The EU must bring fully under the conservation and management regime established under the Common Fisheries Policy any fishing activities by its vessels that take place in high seas waters not regulated by an RFMO or where an RFMO has not decided relevant management actions. To this end, the Commission is proposing a Council Regulation that implements, in respect of these vessels, the principles set out by the General Assembly, by building on general CFP requirements and establishing appropriate authorisation, monitoring and surveillance provisions.

In particular, the regulation will rigorously implement the recommendations of the General Assembly on the crucial element of prior environmental impact assessment

⁴ Council Regulation (EC) No 2347/2002 of 16 December 2002 establishing specific access requirements and associated conditions applicable to fishing for deep-sea stocks (OJ L 351, 28.12.2002).

⁵ Communication from the Commission to the Council and the European Parliament - Review of the management of deep-sea fish stocks - COM(2007) 30.

as a condition for issuing fishing authorisations. It will also establish ancillary requirements, notably relating to monitoring and control of fishing activities. These should include, in the Commission's opinion, full on-board observer coverage and stringent VMS provisions. In addition, a 1 000 m depth limit for the deployment of bottom fishing gears should be established to create a precautionary depth-based protected area⁶. Although such stipulations are not included among the General Assembly's recommendations, the Commission believes that they are necessary in order to ensure that EU measures in this area can provide effective protection for vulnerable ecosystems whose precise location has yet to be established.

Action:

– Adoption – as soon as possible and in any case by December 2008 at the latest – of a Council Regulation implementing the recommendations of the General Assembly in respect of EU vessels operating in the high seas in areas not regulated by a Regional Fisheries Management Organisation. The proposal for this regulation shall be tabled by the Commission simultaneously to the adoption of this Communication.

6. CONCLUSION: THE CHALLENGE AHEAD

The UN General Assembly will carry out in 2009 a review of progress made in addressing the problem of destructive fishing practices in response to its call for measures in Resolution 61/105. The EU should fix itself a similar task by reviewing, around the same period, the effectiveness of the policy and specific actions envisaged in this Communication. The proposed Council Regulation referred to in Section 5.4.2 shall contain a review clause for this same purpose. The Commission will therefore evaluate in 2009 the results of these different measures, report on its findings to the Council, the European Parliament, stakeholders and civil society, and make proposals to move this policy forward in light of such findings and the views provided by the different actors involved in the review process.

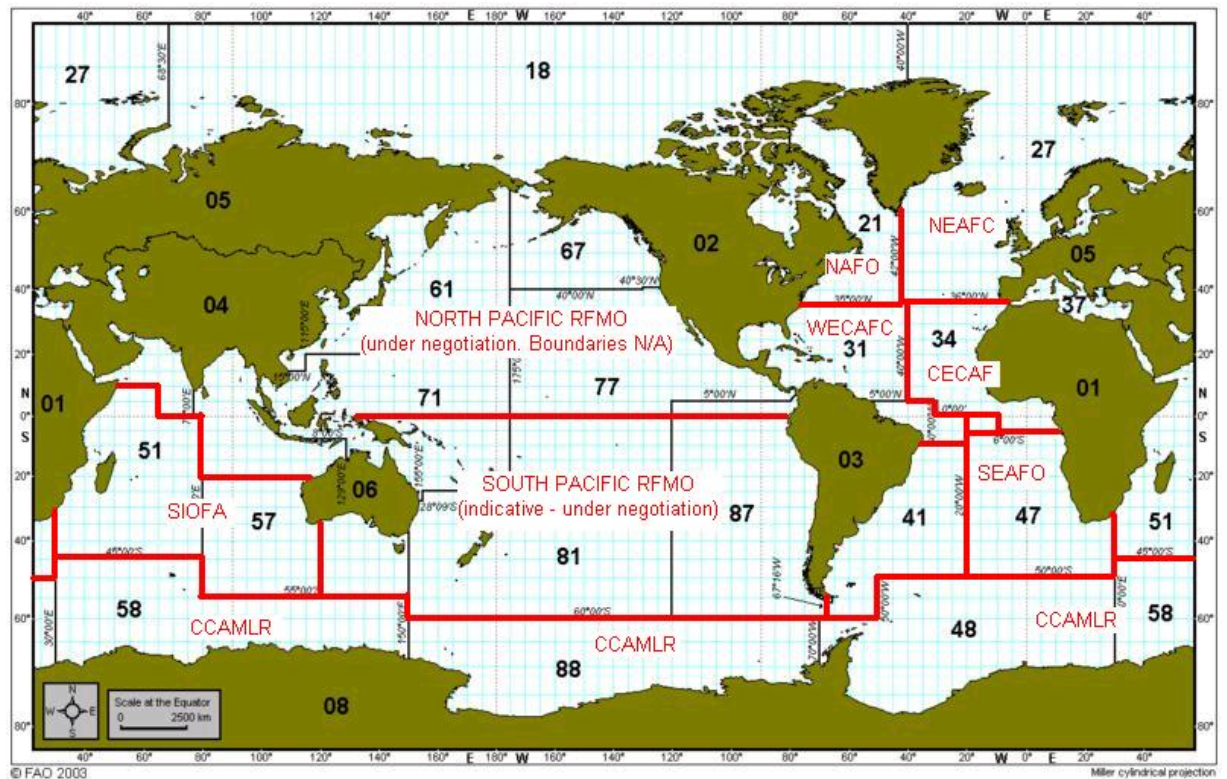
Grand declarations of intentions will not stop the destruction of fragile and precious deep-sea marine ecosystems. The considerations laid out in this communication are intended to set the scene for a determined policy push from the European Union. In 2009, the EU will have the opportunity, and the obligation, to demonstrate before the international community that it can follow up on its commitments and that it can be a true leader in bringing about the end of destructive fishing. The only way we can do this is through concrete action, both in our own waters, and in the high seas.

The Commission therefore calls on the Council and the European Parliament to endorse the policy orientations and specific actions outlined in this Communication. It further calls all the European Institutions and stakeholders to join with it in working to meet this challenge.

⁶ See in this regard Recommendation GFCM/29/2005/1 on the management of certain fisheries exploiting demersal and deepwater species.

APPENDIX

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.

- NAFO: Northwest Atlantic Fisheries Organisation
- NEAFC: North East Atlantic Fisheries Commission
- WECAFC: Western and Central Atlantic Fishery Commission (Consultative)
- CECAF: Fishery Committee for the Eastern Central Atlantic
- CCAMLR: Commission for the Conservation of Antarctic Marine Living Resources
- SEAFO: South East Atlantic Fisheries Organisation
- SIOFA: Southern Indian Ocean Fisheries Agreement