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**COMMISSION STAFF WORKING DOCUMENT**

*Accompanying document to 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**

**IMPACT ASSESSMENT**

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**Lead DG:** Fisheries and Maritime Affairs

**Other involved services:** DG Environment, DG External Relations, Legal Service, SG.

**Agenda planning or WP reference:** Agenda planning ref. 2007/FISH/018

**1. EXECUTIVE SUMMARY:**

This report concerns possible Commission initiatives to be taken following a two-year international process in the framework of the United Nations General Assembly. The Commission has represented the Community in this process in accordance with a position defined through continuous consultation with Member States. It also requested and received feedback from stakeholders and studied the large amount of scientific expertise and literature brought to the attention of participants by NGOs, the fishing sector and the UN Secretariat. The process therefore allowed the Commission to carry out an on-going assessment of the best options to address the problem of destructive fishing practices in accordance with the basic tenants that inform the impact assessment approach. Presently, the Community must envisage providing adequate follow-up to its international commitments.

The UN General Assembly (UNGA) drew attention to the destruction of deep sea coral reefs and other fragile habitats already in 2004, through its Resolution 59/25. There was then a call for urgent action in respect of destructive fishing practices that threaten these vulnerable ecosystems, and a commitment to review progress made in 2006. In November 2006, this review led to the formulation of specific recommendations on how to regulate bottom fisheries to address this sensitive issue. The Commission, in representation of the European Community, was instrumental in brokering the set of recommendations agreed in UNGA Resolution 61/105 of 8 December 2006. The results of this international debate have thus been considered satisfactory inasmuch as they confirm, to a large extent, the soundness of the position held by the Community.

This report assesses the options available to the Community to provide an effective response to the calls made by the UNGA. It suggests that the Commission should adopt a policy document (a Communication to the Council and European Parliament) to clearly define a strategy to address the problem, in light of the Community's responsibilities as a major international fisheries player and as the primary regulatory authority of fisheries in Community waters.

The report also suggests that, among the measures envisaged in such a strategy, there is one that should be tabled without delay: a regulation applicable to the EU fleets operating in areas of the high seas not regulated by a Regional Fisheries Management Organisation or Arrangement (RFMO), and directed essentially to the Falkland/Malvinas fishery in the South West Atlantic. For such "non-RFMO covered" areas, the UNGA has rightly emphasised the responsibility of flag States in a context where the international fisheries governance system remains weak. This justifies addressing the threats to fragile deep sea ecosystem in these areas as a matter of the highest priority.

## **2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES**

### **2.1. Consultations**

The Commission's possible proposals assessed here would seek to implement recommendations agreed by the UNGA on the basis of a consensus negotiation process. It is therefore relevant to report on how the position defended by the Commission was elaborated taking into account the views of Member States, the EP, stakeholders and on the basis of technical input from the scientific community.

The gravity of destructive fishing practices and the weakness of the international fisheries management system denounced by the great majority of environmental NGOs, made this issue and the UN process a politically charged one. This induced the Commission to take particular care in ensuring feedback from the fishing sector, relevant NGOs and the other EU institutions in preparation and in the course of the negotiation process:

- During 2005 and 2006, the Commission appeared before the Advisory Committee on Fisheries and Aquaculture on 5 occasions, either in plenary or in the various Committee working groups (18/02/2005, 17/10/2006, 9/11/2006, 7/12/2006), and once in the Committee NGO contact group (5/07/2006). In 2007, the Commission debriefed the ACFA and informed them on its ideas for implementation on 2 occasions (31/01/2007 and 25/04/2007). In this context, the Commission received oral feedback and a position paper from the fishing sector (EUROPECHE).
- The Commission appeared before the European Parliament – Fisheries Committee, to debrief and inform on forthcoming negotiation strategy in two occasions (19/04/2005 and 23/05/2005) and attended an EP Conference on the subject on 10/11/2005. It also replied to two written questions on the issue (E-2166/06 and E-4822/06).
- The negotiation process was prepared at Council in three different working parties (Fisheries, WPIEI and COMAR), with the Fisheries Working Party as lead and with one or two discussions before each negotiation round or connected UN meetings (including the May 2006 Review Conference of the UN Fish Stocks Agreement and the June 2006 7<sup>th</sup> session of the Informal Consultative Process on Oceans and the Law of the Sea).
- With regards to feedback from environmental NGOs, the following meetings were held:
  - 11/02/2005 – IUCN
  - 22/02/2005 – Oceana and Greenpeace
  - 30/05/2005 – Deep Sea Conservation Coalition (DSCC – NGO collective)
  - 18/05/2005 – WWF
  - 12/05/2006 – NGO Conference at the initiative of the Commission
  - 10/11/2006 – Greenpeace

All these NGOs lobbied the Commission services to support a U.N. moratorium of high seas bottom trawling. They were openly opposed to the Commission services' stance, in favour of a more balanced approach. Towards the end of the process, however, the feedback received by the Commission from these organisations was much more positive, in light of how the debates proceeded in the UNGA context and the role that the Community played in brokering a consensus decision.

- The above exchanges were provided background through the publication of relevant documents: on 28/04/2006, the Commission submitted to the UN a report on *Actions taken by States and Regional fisheries management organizations and arrangements to give effect to paragraphs 66 to 69 of resolution 59/25 of the General Assembly on Sustainable Fisheries, including through the 1995 UN Fish Stocks Agreement, regarding the impacts of fishing on vulnerable marine ecosystems*. This document, drafted in accordance with the relevant internal and inter-institutional procedures, was placed on the Europa website<sup>1</sup> and prompted feedback from the NGO collective (exchange of correspondence with DSCC – July 2006).
- On 29/09/2006, the Commission published a Staff Working Document following consultation of the associated services. It was also placed on the Europa Website<sup>2</sup> and circulated to Member States in Council. The document outlined the substantive proposals that the Community should support at the UNGA. This document was endorsed by the Council Fisheries Working Party. It also prompted correspondence with the fishing sector (EAPO, 6/10/2006) and NGOs (Greenpeace and Seas At Risk, 2/10/2006). This correspondence was also addressed to – and replied by – Commissioner Dimas.
- It is also worth reporting that the Commission services took also care to engage in informal consultations with major international counterparts in this UN process, including Canada, Australia, New Zealand, Japan, the USA, Chile and Mexico. A number of bilateral contacts were organised notably in the second half of 2006, in preparation for the UN discussions.

## 2.2. Scientific and technical input

The Commission has at its disposal a substantial amount on studies pertaining to deep sea ecology, impacts of fishing and deep sea fisheries management constraints. They date back to the holding in 2003 of the international Conference sponsored by New Zealand, Australia and the FAO "Deep sea: Conference on the Governance and Management of Deepsea Fisheries"<sup>3</sup>. This event greatly established the state of scientific and technical knowledge in this field and gave access to the abundant scientific literature available. Another relevant source of input is the Report elaborated by the UN Secretary General (A/61/154) as a background document for the review process. Specific sources of scientific information on impacts of bottom

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<sup>1</sup> [http://ec.europa.eu/fisheries/publications/factsheets/legal\\_texts/ec\\_report59-25paras66to69final.pdf](http://ec.europa.eu/fisheries/publications/factsheets/legal_texts/ec_report59-25paras66to69final.pdf)

<sup>2</sup> [http://ec.europa.eu/fisheries/press\\_corner/press\\_releases/archives/com06/com06\\_60\\_working\\_doc\\_en.pdf](http://ec.europa.eu/fisheries/press_corner/press_releases/archives/com06/com06_60_working_doc_en.pdf)

<sup>3</sup> <ftp://ftp.fao.org/docrep/fao/008/y5890e/y5890e00.pdf>

fishing on vulnerable marine ecosystems published in recent years have been also relied on<sup>4</sup>.

As regards the key Falklands/Malvinas fishery, the Commission carried out an assessment of that fishery in 2002<sup>5</sup>. Current data on fishing activities in the area are available via the Spanish Instituto de Estudios Oceanograficos<sup>6</sup> and of the Government of the Falkland Islands' Fisheries Department<sup>7</sup>. For the Northern Atlantic, there is substantial work underway by the International Council for the Exploration of the Sea (ICES) for advice to the Community and the North-East Atlantic Fisheries Commission<sup>8</sup>.

A technical meeting with scientists working on the HERMES<sup>9</sup> project was held on 6/03/2007 which provided a basis for cooperation and exchange with specialist deep-sea ecology and fisheries scientists.

Finally, the Commission has also a valuable source of input in on-going work at FAO, including: Report and Documentation of the Expert Consultation on Deep-sea Fisheries in the High Seas (November 2006), the Report of the Workshop on Vulnerable Marine Ecosystems and Destructive Fishing (June 2007). Work by FAO on technical guidelines for the management of deep sea fisheries and their environmental impacts is scheduled to continue with the target date for adoption of the guidelines by early 2009. The Commission will participate in this process already at the expert consultation phase starting September 2007.

### **3. PROBLEM DEFINITION**

#### **3.1. A call for international urgent action to address destructive fishing practices**

The UNGA has called on States and RFMOs to implement rigorous regulatory measures in respect of bottom fisheries, each in their respective areas of competence. It has provided four fundamental elements that must inform such measures. The relevant paragraphs of Resolution 61/105 (Paragraph 83) read as follows: States and RFMOs are called to adopt and implement measures

*(a) To assess, on the basis of the best available scientific information, whether individual bottom fishing activities would have significant adverse impacts on*

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<sup>4</sup> Inter alia: 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; Koslow, J.A., Boehlert, G.W., Gordon, J.D., Haedrich, R.L., Lorange, P., Parin, N., 2000, Continental slope and deep-sea fisheries: implications for a fragile ecosystem. *ICES Journal of Marine Science* 57, 548-557.

<sup>5</sup> "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).

<sup>6</sup> See, with regard to the South West Atlantic fisheries <http://www.ieo.es/proyectos/pesquerias/atw2.htm>  
<sup>7</sup> <http://fis.com/falklandfish/>

<sup>8</sup> <http://www.ices.dk/marineworld/seamounts.asp>; <http://www.ices.dk/marineworld/deepseacoral.asp>

<sup>9</sup> HERMES (<http://www.eu-hermes.net>) and OASIS (<http://www1.uni-hamburg.de/OASIS/>), are projects financed under the 6<sup>th</sup> EC Framework Research Programme among about 13 R+D initiatives in the field of deep sea ecosystem conservation and fisheries impacts.

*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.*

As an active participant in the UNGA process, the EU must presently do its homework and respond to these calls, both through international initiatives and, where necessary, through measures in respect of the EU fleets.

### **3.2. Destructive fishing practices**

There is no agreed definition of destructive fishing practices. Virtually all fishing gear has some environmental impact but this often depends more on the way the gear is utilised and the intensity of use. Some fishing practices are inherently destructive, such as the use of poisons or explosives, and these are already banned in Community law<sup>10</sup>. But others, particularly bottom trawling and dredging and, in some situations, gillnetting, may qualify as destructive in fragile environments or in some specific circumstances, e.g. when large by-catch of non-marketable species is expected.

There is still much to be learned about deep sea ecosystems, and dedicated research is underway, including significant efforts under EU auspices<sup>11</sup>. We know enough to say that certain deep sea ecosystems may constitute true hot spots of marine biodiversity<sup>12</sup>. 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

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<sup>10</sup> Technical Measures Council Regulation (EC) No 850/98 of 30 March 1998, as amended, Article 31.

<sup>11</sup> Reference is made, among various others, to the projects HERMES (<http://www.eu-hermes.net>) and OASIS (<http://www1.uni-hamburg.de/OASIS/>), financed under the 6<sup>th</sup> EC Framework Research Programme among about 13 R+D initiatives in the field of deep sea ecosystem conservation and fisheries impacts. Reference is made also to abundant work carried out by the International Council for the Exploration of the Sea (ICES) <http://www.ices.dk>.

<sup>12</sup> See, inter alia, 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.

habitat, such as cold water corals, structure-forming sponges and invertebrate communities that thrive around hydrothermal vents<sup>13</sup>. Their location in deep waters implies that many of such hotspots are located in waters beyond national jurisdiction. Bottom fishing gears deployed on such ecosystems are documented to have ravaging effects, particularly when bottom trawls are used.

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<sup>14</sup>. Once such reefs are destroyed, they take an extremely long time to recover, if they recover at all. It is therefore reasonable to assume that bottom fishing may be destructive when taking place in areas where such habitats occur. Studies such as those quoted here provide compelling evidence of the gravity of the problem and of the urgent need to take decisive protective action.

It is important to note that these threats are not limited to the high seas. Deep water fisheries on seamounts and on the deep slopes of the continental margin can take place within the limits of the 200 nautical-mile EEZ and thus under the jurisdiction of the coastal State. In the case of the Community, measures have already been taken to protect certain areas of the Atlantic where deep corals have been located<sup>15</sup>.

### 3.3. High seas governance

The protection of these ecosystems is urgent as they are threatened by the trend registered in the last 20 years to relocate activities to the high seas as a result of dwindling fishery resources in coastal areas. The problem is particularly evident when such high seas fisheries take place in areas of the ocean for which States have not yet established an international body (RFMO) empowered to regulate them. There is, as a result, no international management regime for these activities. Although the Law of the Sea establishes the duty of flag States to ensure that their nationals fish responsibly in such areas (Article 117 UNCLOS), the system of international governance is considered weak as there is no organised framework to ensure a coordinated conservation effort through common fishing rules and, most importantly, control and enforcement systems. Also the absence of an international management regime, it is not easy to exert reciprocal peer review – and where appropriate, pressure – on the manner in which flag States discharge their duties.

This is the essential reason why the great majority of environmental NGOs have been campaigning since 2004 for the adoption by the UNGA of a moratorium of the use of

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<sup>13</sup> Growth rates of deep water coral species have been estimated between 4 and 25 mm yr<sup>-1</sup>, depending on species. Freiwald, A., Fossa, J.H., Grehan, A., Koslow, T. Roberts, J.M., 2004. *Cold-water coral reefs*. UNEP-WCMC, Cambridge, UK.

<sup>14</sup> Freiwald *et al.*, *op.cit.*; 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.

<sup>15</sup> Council Regulations (EC) No 602/2004 of 22 March 2004 (Darwin Mounds), (EC) No 1568/2005 of 20 September 2005 (Azores, Madeira, Canary Islands).

bottom trawls in the high seas. As initially formulated, the proposal sought to extend this ban to all high seas areas, even those placed under the responsibility of an existing RFMO. In the course of the debate, the proposal focused on areas for which no such organisation exists, on account of the governance weaknesses discussed above. This affects mainly the South West Atlantic. There, important bottom fisheries take place in the Falklands Fisheries Conservation zones under UK regulation, but there are also activities in the high seas just off the Argentinean EEZ. The Community is a major player in this fishery. The long-standing territorial dispute between the UK and Argentina has stood in the way of the establishment of such an RFMO in this area, despite multiple efforts. NGOs have suggested that these high seas fisheries are largely unregulated and that responsible States should therefore refrain from authorising them. This view was supported by some UN members, notably Pacific Island States, the USA, Australia and Norway. However, major fishing nations opposed the moratorium proposal, such as Japan, Russia, China, Canada, Namibia and Iceland. In this debate, the two positions were quite confrontational due to high media attention which raised the political temperature of the debate. The EU sought to play a mediating role and to promote a consensual decision.

As for areas covered by RFMOs, the role and responsibilities of these organisations has been confirmed, while highlighting the need for them to implement management regimes that take fully into account the ecosystem approach.

### **3.4. Links to the strategy against Illegal, Unreported and Unregulated (IUU) fishing and the development of a Maritime Policy for the Union**

This initiative is closely linked and fully consistent with the development of a Future Maritime policy of the Union, as stemming from the Commission's Green Paper and the forthcoming Blue Paper and Action Plan. Policy integration is a crucial element in this context.

With regard to IUU fishing, this initiative contributes to reinforcing the international fisheries governance system, as it commits the EU to continue intervening proactively in RFMOs so that their regulatory regimes address the issue of destructive fishing practices effectively and also commits the EU to adopt rules under the CFP to ensure that its fleets operating in non-RFMO areas do not engage in such practices. Violations to such rules (whether adopted by RFMOs and implemented in Community Law or adopted unilaterally by the EU for its fleets) may be dealt with in the framework of the EU rules under development regarding IUU fishing. This is subject to the criteria that will be developed in this framework to define the gravity of infringements that will engage the mechanisms to prevent, deter and eliminate such violations.

## **4. OBJECTIVES**

### **4.1. General objective: Protecting vulnerable deep sea ecosystems through eliminating destructive fishing practices**

The elimination of destructive fishing practices is a commitment that the European Community took up at the Johannesburg World Summit on Sustainable Development

in 2002. As already noted in section 3.1, measures to address practices that are inherently destructive have been adopted. There are also various prescriptions on the use of towed gears and limits on driftnets (notably the ban of nets over 2.5 km in length). The problem at stake here, however, is quite specific and urgent, as there is increasing evidence that bottom fishing seriously damages deep corals and other fragile benthic habitats. These habitats take extremely long time to recover, if at all.

#### **4.2. Operational objective: Consistency and coherence with other main EU policies and strategies.**

The EU is under a Treaty obligation to ensure proper integration between the CFP and the environmental policy. The Commission has clearly made this point in its Communication COM(2001) 143 to the Council and the European Parliament - Elements of a Strategy for the Integration of Environmental Protection Requirements into the Common Fisheries Policy.

The Common Fisheries Policy, as a whole, is an integral element of the EU's overall commitment to Sustainable Development. Sustainable fisheries can no longer be understood as determined only by stock dynamics. Indeed, fishing for deep sea species is in itself a challenging management issue. Just as the other organisms of the deep, deep water fish are slow-growing, late-maturing species and are therefore extremely vulnerable to exploitation. These challenges are well known in the framework of the Common Fisheries Policy, which includes a regulation specifically on deep water stocks that covers the North and Central Atlantic, both high seas and Community waters. The implementation and effectiveness of this Regulation, No. 2347/2002<sup>16</sup>, is currently under review<sup>17</sup>. These Community rules are, however exclusively focused on stock management issues. While the reformed CFP takes more account of the impact of fisheries on the environment, there is a need to ensure full implementation of the instruments that the new regulatory framework provides for.

#### **4.3. Operational objective: ensuring a leading role for the EU in the international fisheries governance fora**

There are few stakeholders in the international scene with a global fisheries presence. The Community is one of them. We have fleets operating in virtually every region of the World's oceans and are member or cooperating party to virtually all existing RFMOs (the only exceptions are the North Pacific RFMO, still under negotiation, and the Donut Hole Pollock Arrangement, where Poland is still a member and whose situation must be addressed as a result of the enlargement).

Our global fisheries presence provides considerable advantages, as we dispose of the best experience in international fisheries cooperation and can thus advantageously promote the Community's interests on each front. At the same time, however, this position carries an increased responsibility. We must demonstrate the ability and will to push for ever more efficient management regimes in RFMOs and ensure that the

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<sup>16</sup> 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).

<sup>17</sup> Communication from the Commission to the Council and the European Parliament - Review of the management of deep-sea fish stocks - COM(2007) 30.

EU fleets operate in full compliance with the conservation and management measures that are adopted by these bodies. The Community must also lead in the effort against Illegal, Unregulated and Unreported (IUU) fishing, and comprehensive proposals are being elaborated to this end.

The European Community not only has the opportunity, but also the political imperative to lead in international processes aimed at improving ocean and fisheries governance. In the framework of this particular UNGA process, the Community must lead by example in reinforcing the role and responsibilities of flag States in cases where the governance system is weak, as it is for areas not regulated by an RFMO.

#### **4.4. Specific objective: Addressing international governance gaps by 2009**

As already noted, the absence of RFMOs in certain areas has been one of the key issues discussed by the UNGA. The moratorium proposal is based on the assumption that this absence makes fishing in the high seas inherently irresponsible. The Community has contested this argument and pleaded in favour of three solutions to the problem: first and foremost, States must do their utmost to overcome the political difficulties standing in the way of global RFMO coverage. Secondly, the need for practical arrangements such as interim voluntary cooperation regimes for the conservation and management of resources until such global coverage is formally achieved on the basis of binding international conventions. Thirdly, the need for enhanced flag State jurisdiction, transparency and peer review for non-regulated areas. The UNGA Resolution calls for action in these fronts at the latest by end of 2008 and foresees a review of action taken in 2009. The EU should therefore make every effort to address these issues in the two years ahead. This should dimply actively contributing to the adoption of measures in RFMOs and in the FAO context and, where necessary, the adoption of unilateral measures in respect of the EU fleets, where required.

### **5. POLICY OPTIONS**

Any action taken by the Community to implement the UNGA recommendations falls within the scope of the Common Fisheries policy. Therefore, the principle of subsidiarity does not apply in the present context.

It is also important to note that the policy options open to the Community are constrained by the fact that the Community not only has subscribed an international commitment within the UN General Assembly, it was indeed a major contributor to the formulation of the GA's recommendations. Although such recommendations do leave some margin as to the manner in which they can be implemented, they are nevertheless quite precise. Essentially, the Community needs to analyse whether or not to provide specific follow-up action, and if yes, whether to go beyond these recommendations and apply stricter measures unilaterally.

#### **5.1. Option 1: No further action**

The Resolutions adopted by the UNGA are not legally binding instruments. The Community is therefore under no **legal** requirement to transpose it. Whether such option is politically sound is, however, another question (discussed in section 6).

The Community is already addressing the problem of destructive fishing impacts on vulnerable deep sea ecosystem in Community waters, through area-based measures that have already been mentioned. The implementation of Environmental Policy instruments such as the habitats directive and the Natura 2000 network is also contributing decisively to this objective.

It has implemented a proactive policy in existing RFMOs to advance the implementation of the ecosystem approach and to establish area-based measures. Measures of this kind have been adopted, most of them based on EU proposals, by all RFMOs with competence over demersal (bottom) fisheries, namely NEAFC, NAFO, SEAFO, GFCM and CCAMLR. The Community is also active in the FAO technical work on deep sea fisheries.

As for non-RFMO covered areas, the EU fleet operating in the south West Atlantic is doing so in accordance with basic Common Fisheries Policy requirements pertaining, inter alia, to licensing, Vessel Monitoring System by satellite, logbook and landing declarations and scientific monitoring. There is, however, no specific CFP regulation applicable to them, notably in respect of impacts on vulnerable marine ecosystems.

## **5.2. Option 2: Going farther than the UNGA: implementing a moratorium unilaterally**

This option would entail adopting a regulation establishing a fishing ban of either bottom trawling or all bottom fishing gears, applicable to EU vessels operating in the high seas, possibly limited to areas for which no RFMO is in place. It would be taken on the basis of the principle that the UNGA recommendations are not binding and in no case prevent any party from taking a more stringent stance.

The option would need full acceptance of its unilateral nature, given that there was no consensus in the UNGA in favour of a blanket ban approach. The Community would therefore take this option in cognisance that other nations will continue their fishing activities.

## **5.3. Option 3: Clear policy definition and stringent regulation implementing the UNGA recommendations**

This option reflects the stance supported by the EU in the UNGA process. It aims at enhancing the CFP strategic approach and rules, taking as a basis the general recommendations of the UNGA, but ensuring that clear policy guidelines (Communication) and operational rules in priority areas (Regulation) are implemented on a Community-wide basis.

These principles should, under this option, be implemented by the Community through a proactive stance within existing RFMOs, and also through direct regulation of EU vessels in non-RFMO covered areas. In the first case, the outcome of the Community's initiative is subject to consensus collective decisions and cannot be pre-determined. The Community keeps its full authority to establish, in respect of its vessels operating in non-RFMO areas, a regime that takes these recommendations to their full potential.

The recommendations issued by the UNGA are constructed around a key element, which is that of the assessment of potential impacts of fishing on vulnerable marine ecosystems as a condition for fishing authorisations. This is the crucial component of a rigorous regulatory approach based on the reversal of the burden of proof. Contrary to what is current practice in most fisheries, impacts must be assessed prior to fishing. As already stated, the destructiveness of bottom fishing is defined by whether or not the activity takes place on vulnerable marine ecosystems. In practice, therefore, flag States should assess the location of the fishing activities and evaluate if, on the basis of the best scientific information and advice, destructive impacts are likely.

This prior assessment can be carried out by requiring fishermen to submit fishing plans. Making this requirement a condition for applications for fishing permits is an effective legal tool to ensure compliance. Sticking to approved fishing plans may then become the condition for the continued validity of the permit. In order to make the system work, EU rules should state the consequences if the fishing permit becomes invalid and also establish adequate monitoring and control rules to allow enforcement (VMS, observers and catch declarations). Violations of these provisions should also receive specific treatment in the framework of CFP rules on serious infringements, and by the same token, in the framework of CFP rules relating to IUU fishing.

Regulation (EC) No 2347/2002 establishes the specific regime of deep sea fisheries on the basis of the requirement of a special fishing permit (whose basic regime and requirements are in turn established in Council Regulation (EC) No 1627/94<sup>18</sup>). For reasons of legal consistency, these requirements should also be implemented in respect of bottom fishing by the EU fleets in non-RFMO covered areas.

The adoption of a Commission Communication to the Council and the European Parliament would represent, on the other hand, an opportunity to establish a clear policy outline, including also on the need to increase our efforts to address this problem in Community waters. This is an area which, despite the considerable advances reflected in the UNGA recommendations, will require considerable political will and proactiveness by the Community in the coming years. It would be therefore important for the Commission to communicate effectively on its policy orientations with the other EU institutions, stakeholders, the civil society and our international counterparts. It will also support an effective leading role for the Community in the forthcoming international processes. In this regard, it is worth noting that the UNGA itself will carry out a second review on progress made in 2009.

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<sup>18</sup> OJ L 171, 6.7.1994, p. 7.

## 6. ANALYSIS OF IMPACTS

### 6.1. General remarks

#### – Uncertainties affecting the analysis

As a preliminary remark, it is worth drawing attention to the uncertainty affecting the analysis below. The first one relates to the difficulty in distinguishing fleets that operate in the high seas from those operating in exclusive economic zones. The data collection systems that support fisheries management are evolving, but they are still largely based on the schemes created, notably by the FAO, that do not collect data separately for the high seas (FAO statistical areas do not foresee this distinction). This comes from a time when practically 100% of fishing activities were taking place in EEZs. Over the last 20 years, high seas fisheries have developed in response to declining coastal stocks, but the bulk of activities remains localised in EEZs and that makes for slow change. The evolution is largely driven by the need to improve high seas governance, but the challenge also remains that fleets are mobile and deploy their activities often in both EEZs and the high seas. For example, the EU fleets of the Southwest Atlantic operate indistinctly in the Falklands Fisheries Protection Zones and in the high seas.

These same difficulties affect our ability to identify with precision the socio-economic effects of the measures proposed. It can only be certain that introducing rules where there were previously none usually results in costs for both administrators and economic operators. In this case, the specific, foreseeable administrative constraints of the different options do not appear in a void, but rather in a highly regulated context such as that of the CFP and any such measures will rely on established administrative structures and to a large extent, on already existing procedures (e.g. issuance of fishing permits, controls and reporting). The level of uncertainty faced is therefore of relatively lower weight to the certainty of the threat to vulnerable marine ecosystems posed by bottom fishing, which is well documented.

#### – Aspects affecting all options

International cooperation: The Community will need to push for an implementation of the UNGA recommendations in RFMOs that is consistent with its own approach. However, the Community is not in control of the final decisions taken by these multilateral bodies and will need to evaluate the need for compromise to secure progress.

Community waters: If the requirement of a prior assessment of potential destructive impacts appears fully justified in respect of high seas fisheries, the focus of the policy in Community waters responds to a different context. Our internal policy can be expected to develop as a reinforcement of both research investments in the identification and location of vulnerable marine ecosystems and continued work on area closures through fishery instruments and the Natura 2000 framework.

The initiatives discussed in this report maintain a focus on the high seas because of the crucial governance component attached to the protection of vulnerable ecosystems in waters beyond national jurisdiction. In Community waters, the

Community counts a number of well established instruments that can effectively address the problem. Policy reinforcement in the external dimension of the CFP will also facilitate progress in Community waters.

## 6.2. The fleets concerned

As already noted, it is quite difficult, on the basis of available EU instruments and databases, to distinguish between vessels operating in the high seas from those operating in Community waters other than through rough estimates. Many vessels operate indistinctly between the two. The reform of the CFP licensing requirements currently in preparation will solve that problem by adding precise licensing information to the databases. At this time, however, and on the basis of Commission Regulation (EC) No 26/2004, the Community Fleet Register (CFR) does not contain information on geographical activities.

The fleet that would be most likely affected by measures to implement UNGA Resolution 61/105 is that of the large trawlers. It is generally assumed that vessels over 24 metres in length are **able** to engage in high seas fisheries. So, to provide a rough approximation to the basic fleet data that might feel an impact in this context, the number of EU vessels over 24 and declared with bottom trawls as main or secondary gear is **2238** with a standing fishing license, and a further **56** listed in the CFR without a standing license<sup>19</sup>. Licensed vessels add to a summary tonnage of **635 807 GT**. In numbers, these large trawlers represent about **58%** of the total EU fleet over 24 m (3834 vessels).

The Commission has sought to compile information on key economic parameters of bottom trawling activities and found that such information is not comprehensively available. The Annual Economic Report (2004, 2005) can nevertheless shed some light on the economic performance of a selected number of Member State fishing fleets using bottom trawl, as tabulated below. Note that these data, contrary to those provided earlier, apply to all sizes and not only to vessels over 24 m in length.

MS	Year	Fleet	Main species	No. of vessels	Value of landings (€ mill)	Employment (FTE)
France	2003	Atlantic bottom trawl	Anglerfish, nephrops, cod	555	339	2,879
Italy	2004	Mediterr. trawlers	Shrimp, hake, mullet, nephrops, cuttlefish	3,049	621	10,209
Spain	2004	N and NW trawlers	Hake, megrim, anglerfish, nephrops, horse mackerel	130	66	1,123

Source: Annual Economic Report: Economic Performance of Selected European Fishing Fleets (2004, 2005), Q5CA-2001-01502 and EC Tender FISH/2005/12.

Important bottom trawl operations are also carried out by Dutch, German and UK vessels in the North Sea (EU and Norwegian waters), catching saithe, haddock and redfish. The aggregated nature of economic data, however, does not allow for a further specification of the socio-economic contribution of these fleet segments.

<sup>19</sup> Source: CFR as on 31 May 2006- EUR 25 data.

Despite the fragmentary nature of the data cited above, we can provide **a state of play for the fisheries concerned that is sufficiently relevant in light of the policy objectives** discussed in this Report: 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 the already noted Community deep sea stocks management regime through Council Regulation (EC) No 2347/2002. 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).

This places the urgency in adopting EU regulatory measures on the remaining areas where the EU fleets operate under in the high seas under no RFMO management regime: the Community counts a sizeable presence of bottom trawlers in the southwest Atlantic. The EU fleet present in this area operates both within the Falklands Islands Conservation Zones and in the high seas. **There are about 20 EU trawlers** (flagged to Spain, one flagged to Estonia with an occasional presence in the fishery) **active in bottom trawl fisheries targeting mainly hakes** (*Merluccius hubbsi*, *M. australis*) **and squid** (*Illex argentinus*, *Loligo gahi*). **The GT of this fleet ranges between 696 and 1.819 t, with an average of about 1.190 t.** 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 Commission in 2002<sup>20</sup> reports three main harvesting areas, two of which are in international waters bordering the Argentine EEZ. At these points the seabed falls abruptly from 200 m to 1 000 m. This description corresponds to a location where deep water corals and sponges are likely to 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.**

Based on data available to the Commission, **high seas catches of hakes represents about 93% of the total catches in the fishery** (the other 7 % of catches is made within the Falklands Conservation Zones)<sup>21</sup>. Hakes and illex squid are the main species caught in the high seas areas, so this indicator provides a useful suggestion as to the economic importance of high seas catches in this fishery.

Other important catches are instead located in the Falklands plateau (Hoki, southern blue ling and to lesser extent rockcod, Patagonian toothfish and grenadiers). These

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<sup>20</sup> 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.

<sup>21</sup> According to the Study cited in fn 16, Spanish catches of hakes in the whole area amounted to 21 367 tonnes. Falklands Islands FD data for the same year count Spanish catches within the conservation zones (i.e. other than high seas) at 1 522 tonnes.

other fisheries and their economics would not be affected by any EU follow-up to the UNGA Resolution, as they remain under the UK Falklands fisheries management.

### **6.3. Option 1: "No action"**

The fact that the Community might not provide a specific, formal follow-up to the UNGA recommendations would not change the fact that these recommendations are likely to be implemented by RFMOs, but it would then be at the initiative of any other Party. The Community would in any case be bound to participate proactively in these processes and implement agreed international measures so decided. These decisions and measures will impact on the EU fishermen by imposing additional operational (and therefore cost) constraints. These are impossible to evaluate at this time, as the outcome of such negotiations can not be predetermined and each RFMO is sovereign to decide on the precise manner in which it provides follow-up to the recommendations.

As for the EU fleet operating in non-RFMO areas, the current national regulatory regime would continue. It would be entirely at the discretion of Member States to reinforce their regimes in accordance with the UNGA recommendations and assume fully any resource or financial constraints involved.

### **6.4. Option 2: a unilateral moratorium**

This option would affect the activities, essentially, of the Falkland/Malvinas fishing fleet, which would need to withdraw from their high seas fishing grounds. The fleet would, in that case, need to limit their activities to the Falklands Fisheries Conservation Zones<sup>22</sup>.

In terms of the protection of vulnerable marine ecosystems, this option would as a matter of course prevent any risks derived from EU fishing activities. Even, if its unilateral nature means that it does not prevent other States from continuing their activities, it is also true that the EU fleet is the most important player in the high seas fisheries concerned. The measure could also be expected to have a positive impact in ensuring a very rigorous implementation of environmental protection objectives in the CFP framework.

However, it would difficult to impose a prohibition to EU fishermen in a context where the absence of consensus within UNGA about the moratorium allows other nations to continue fishing in the areas from which they would have to withdraw. They could claim that a "sacrifice" is being imposed on them that can be nullified by continued activities of other fleets that could not be deemed to violate international standards. It is in these conditions that measures can have the effect of encouraging EU vessels to change flags and escape a perceived unfair measure (in this case one could expect that the fleets would pass under Falklands or Argentinean registries), also because other fleets would benefit from reduced EU competition in the fisheries concerned. This is a well-known situation in international fisheries management that pleads strongly in favour of agreed, consensual measures for the high seas rather than

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<sup>22</sup> A chart of these zones can be found in the Falklands Island Government Fisheries Department website at this link: <http://fis.com/falklandfish/>.

unilateral approaches that can ultimately be counterproductive in terms of governance.

Whether this option would reinforce the EU position in international fisheries fora is uncertain. These fora are certainly striving to ensure effective governance under the constraint of consensus decision-making. But it is far from certain that a non-consensual approach would be more effective. The EU could claim that it is ready to contribute to consensus but reserves in any case the right to apply stricter rules for itself than those agreed collectively. This right is certainly there, and could be perceived as proof of determination to making progress in addressing the international challenges. Other countries, however, may perceive this action as inconsistent, given the position we held in the UNGA on the moratorium issue (which we did not support), and this might therefore affect the credibility of the EU in future negotiations.

With regard to the effectiveness of the measure in addressing governance gaps, views were expressed by some States within the UNGA that a moratorium is precisely right in addressing such gaps. It was claimed that where no RFMO is in place, the only proper governance consists in refraining from fishing. This argument is attractive, but its weakness lies in the fact that the moratorium does not actually resolve the actual gap, which can be only solved when countries agree to set up an appropriate RFMO or arrangement. In the present case, the situation in the remaining non-RMFO areas is such that it cannot be expected that an RFMO will be put in place in the near or mid-term at least. Accordingly, a moratorium would not be quite an interim measure, but a rather permanent one. As stated by the EU, other arrangements are possible, on the basis of the duties imposed on flag States by the UNCLOS to exert effective jurisdiction and ensure that their fishermen operate responsibly. Together with a continued role of UNGA to monitor action taken by States and commitment to transparency, States can palliate the absence of an RFMO in a given area by ensuring adequate cooperation.

In any event, the impact of a unilateral moratorium on the socioeconomics of the fleet are extremely difficult to evaluate, but the loss of fishing grounds would in any case result, in the short term, in decreased returns for the fishermen concerned proportionate to the catches not made. As noted, these are estimated to represent over 90% in the case of hake, which together with illex squid, represents the most important commercial species in the whole fishery.

#### **6.5. Option 3: a regulatory regime based on the UNGA recommendations**

Assessing fishing impacts can be understood in various ways. This will depend on whether the assessment is carried out as a condition for authorising the fisheries (analysis of individual fishing activities) or as a background principle for a regulatory regime based only on area-closures (fleet-wide measures). Fleet-wide measures assume that if areas known to contain vulnerable marine ecosystems are closed to fishing, then fishing in other areas is safe.

The Community pressed in the UNGA context for a system that makes maximum use of both approaches: prior assessment, i.e. for flag States to assess the activities as a condition for their authorisation together with a commitment to continue a programme of identification of ecosystems and area closures. Implementing this

approach will certainly be demanding in terms of administrative resources at Member State level. Member States – not the Commission – issue the fishing permits and the assessment process will therefore fall upon them. However, this approach has the advantage of requiring a more precautionary incorporation of scientific information and advice into the fishery management and control process. It also promotes a more committed investment in scientific advice and research.

The impact of the prior assessment requirement on fishermen will be increased operational costs, linked to the presentation of fishing plans. There will be reluctance to comply with this requirement due to the risk of unveiling sensitive information on fishing grounds, which is often considered as a competitive asset. Member States will need to provide sufficient confidentiality safeguards to overcome this difficulty. Also, there could be some risk that certain vessels re-flag to States whose implementation of the UNGA recommendations would not be so rigorous. This risk, however, is relatively lower than that attached to a blanket ban as in option 2.

Another risk present in this option is that the implementation of a prior assessment of potential impacts on marine ecosystems might not be rigorous or effective if Member States allege they lack the necessary scientific advice to pronounce themselves. The risk is, in practice, that authorisations would be issued despite the fact that there is not enough evidence that the activities will be environmentally sound. This risk will need to be addressed by the Commission through careful monitoring of the implementation of the system, including a review process.

As for area closures: certain deep sea species are targeted specifically in sensitive areas such as seamounts (e.g. orange roughy, alfonsinos, oreos). Other deep sea species targeted by the fleets are frequently associated with deep water corals (e.g. blue ling). Area closures will no doubt significantly restrict catches of these species. Fishermen targeting them are bound to see their returns diminished. The measures will, however, result in more than compensating benefits from the conservation of invaluable marine biodiversity and genetic resources, and also as reserves where fishery resources can thrive and replenish the stocks.

With regard to scientific research, Member States will be bound to invest in scientific research in support of the assessment of fishing environmental impacts. Those most concerned are already enhancing their research programmes to this end. Coordinated efforts are also being enhanced in NAFO and ICES, and the EU's 6<sup>th</sup> and 7<sup>th</sup> Framework Research Programmes include considerable investment in marine biodiversity, deep sea science and fishing impacts, as already noted. The establishment of a prior assessment regime will support this trend by making it especially relevant in operational and regulatory terms, without necessarily increasing costs and human resources already allocated by those Member States to this task.

Finally, regarding the monitoring, surveillance and control requirements that this option foresees, a VMS regime like that applied today to deep-sea fisheries in Community waters consists in increasing the frequency of position reporting and will entail extra costs but not considerable. All EU vessels over 15m in length are already required to operate VMS. As to on-board observers, this is the requirement that would entail the most significant economic impacts on the fleet. Observer programmes are costly and often publicly funded, at least partially. A 100%

coverage of the fleet will represent a considerable extra cost in operational terms. Although the fleet concerned already implements an observer programme, its coverage is only partial. Member States will be required to arbitrate with the fishing sector and possibly assume some of the financial burden of the programme resulting from the Regulation.

The positive effects of these control requirements are, however, considerable. They are, indeed, crucial to the effectiveness of the system. The South West Atlantic is a long-distance fishing area and this in itself entails particular control needs. The very nature of the substantive requirement at stake – avoiding fishing on vulnerable marine ecosystems – makes it practically indispensable to have observers on board to monitor the activities. Observers are also key in collecting scientific data for the identification of the ecosystems and their subsequent protection through area-based measures.

As an ancillary measure, it could be proposed to establish a depth limit to the use of bottom gears. Such measure has been agreed for the Mediterranean by the General Fisheries Commission for the Mediterranean and has been transposed into Community law. It sets a "depth-based" protected area (below 1000 m) that can be effective in securing the conservation of deep water corals. Its extension to other RFMO areas, however, is dependent on the profile of the fishing activities that take place in such areas and it is not certain that the Community may always be successful in having such a restriction agreed by other RFMO members. However, the Mediterranean measure provides a precedent that should be explored. For the same reasons, and as a matter of consistency, it would be appropriate to include such a restriction in any regulation applicable to EU vessels operating in non-RFMO areas.

## 7. COMPARING THE OPTIONS

The table below presents the key elements that define the adequacy of each of the three options presented in section 5 to attain the policy objectives at stake.

	<b>Option 1: no further action</b>	<b>Option 2: a unilateral moratorium</b>	<b>Option 3: implementing the UNGA recommendations into Community Law (Communication + Council Regulation)</b>
General objective: Protecting vulnerable deep sea ecosystems through eliminating destructive fishing practices.	<u>Inadequate</u> : this objective requires proactive action. The Community has the powers to act. Under this option, it would be leaving the initiative to Member States and other international counterparts.	<u>Adequate</u> , even if only partially. Other bottom fishing gears would not be covered. Lack of level playing field and lack of enforcement legal basis or peer review mechanisms question whether the objective can effectively be met if other nations continue fishing.	<u>Adequate</u> : A regulatory regime based on prior assessment of potential destructive impacts may have the same effects as a moratorium, as it results in excluding fishing in sites where vulnerable marine ecosystems are related, while allowing the continuation of fishing in other areas (with the necessary safeguards). The implementation of an UNGA consensus decision allows a better basis for reciprocal peer review and thus international transparency and compliance.
Operational objective: Consistency and coherence with other main EU policies and strategies.	<u>Inadequate</u> , as no integration effort is made.	<u>Unbalanced</u> , as environmental objectives to protect localised ecosystems are sought through a blanket ban of a fishing gear in the relevant ocean region as a whole.	<u>Adequate</u> : this solution seeks to establish a working balance between fishing and environmental protection through an approach that has proven effective in other economic areas. It allows environmentally-sound fishing activities to proceed and eliminates those that have potential destructive effects on a precautionary basis.
Operational objective: ensuring a leading role for the EU in the international fisheries governance fora.	<u>Inadequate</u> : absence of action by the EU in response to the UNGA would be detrimental since the EU was instrumental in the elaboration of the recommendations. It would negatively affect the credibility of the Community in the UNGA Sustainable Fisheries forum.	<u>Partially adequate</u> : such option would align the Community with certain nations (those which supported a moratorium during the UNGA discussions) but at the same time would decrease its credibility among most UN Members, since the EU did not hold this position in the UNGA.	<u>Adequate</u> : the adoption of a policy document that communicates on the EU broad strategy is a strong basis for effective international interventions. The adoption of rules in respect of the EU fleets is a token of credibility as it demonstrates a true will to address this problem in practice and provide an effective response to the calls made by the international community through the UNGA.

<p>Specific objective: Addressing international governance gaps by 2009.</p>	<p><u>Inadequate.</u> If no further action is taken, other States and organisations will take the initiative to propose measures and decisions, the role of the EU will be passive and we would make no contribution to an objective shared by the international community as a whole, whereas the EU is an major fisheries player and has specific responsibilities in this context, as noted under the previous objective.</p>	<p><u>Adequate inasmuch as</u> the withdrawal of EU fleets from certain fishing areas eliminates radically the risk that EU fishermen could pose a governance problem. However, the implementation of a moratorium can be perceived as a gesture that the EU does not consider RFMOs or interim arrangements proper governance solution and would have some negative impact on our ability to influence the reinforcement of these bodies, which is crucial to ensure adequate governance.</p>	<p><u>Adequate:</u> the Communication would commit the EU to a firm policy strategy over the coming years and would therefore allow the Community to bank on its influence to move governance forwards. In addition, if the EU adopts measures to discipline its own fleets in non-RFMO areas, it will decisively palliate the spatial gaps affecting the governance system in these areas.</p>
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The following table summarily analyses the advantages and drawbacks of each option.

	Advantages	Drawbacks
<b>Option 1: no further action</b>	<ul style="list-style-type: none"> <li>– Maintains current levels of administrative burden</li> </ul>	<ul style="list-style-type: none"> <li>– Questions EU international credibility – diminished role in future discussions.</li> <li>– Represents an abandonment of duties incumbent upon the Community under the Common Fisheries Policy.</li> <li>– Relies on Member States and other RFMO members to take the initiative to protect vulnerable marine ecosystems.</li> <li>– Likely to undermine the Community's perception by the civil society.</li> </ul>
<b>Option 2: a unilateral moratorium</b>	<ul style="list-style-type: none"> <li>– Radically eliminates threat from a fishing gear that is considered the most potentially destructive for seabed organisms.</li> <li>– Would be consistent with environmental NGO proposals and would therefore prompt active support on this front.</li> </ul>	<ul style="list-style-type: none"> <li>– Entails the closure of an important EU fishery in the SW Atlantic.</li> <li>– Questions the value and role of flag State responsibility as a key element of fisheries governance, thus creating a precedent (e.g. for non-consensual third-party high seas boarding and arrests).</li> <li>– Likely to prompt EU fleet to re-flag to third countries.</li> </ul>
<b>Option 3: implementing the UNGA recommendations into Community Law (Communication + Council Regulation)</b>	<ul style="list-style-type: none"> <li>– Communicates effectively on Community policy and demonstrates the Community's commitment to the global sustainability and biodiversity objectives.</li> <li>– Enhances the Community credibility vis-à-vis international counterparts, and therefore our negotiation stance in RFMOs and other fisheries and environmental organisations.</li> <li>– Brings the SW Atlantic trawl fishery fully under CFP regulation.</li> <li>– Establishes an operational framework sufficiently precise to be effectively implemented at Member State level.</li> <li>– Provides a balanced solution between environmental protection and fishing interests: If properly implemented, it will ensure that fishing is not carried out in a destructive way.</li> </ul>	<ul style="list-style-type: none"> <li>– Likely to entail increased administrative burden at Member States level. Will also require periodical review by the Commission.</li> <li>– Costly on-board observer programmes.</li> <li>– Possible resistance from fishing sector in respect of the communication of detailed fishing plans – unveiling of information having commercial value.</li> </ul>

Option 1 would assume that the management regime implemented by the Community under the CFP already complies with the standards that stem from the UNGA recommendations. Although to a certain extent this is correct, the need must be acknowledged to reaffirm our political will to act decisively to eliminate destructive fishing practices. There is also a need to bring the Southwest Atlantic bottom fisheries fully under the CFP regime. Finally, there is a need to implement specific recommendations made by the UNGA that represent a substantial qualitative improvement of the regulatory regime, notably with regard to submitting fishing authorisations to a prior assessment of impacts on vulnerable marine ecosystems. This approach is not yet present in any EU fisheries regulation in a clearly defined manner. This option would not allow satisfying these three needs.

The implementation of a moratorium according to option 2 would be a courageous choice and would gain the Community much good press. But its main weakness lies on the fact that it would be a unilateral measure. It would be disproportionate to impose such a radical restriction to our fishermen in a situation where the fisheries would not be subject to a level playing field. One of the main arguments against this option within the UNGA context was that in the absence of a consensus decision – impossible with respect to the proposal – the moratorium would be ineffective. This is why a consensus decision on a stringent and precautionary regulatory regime was and remains the best solution.

In light of the previous considerations, option 3 represents the best choice among those examined. It will entail certain constraints in terms of administrative investment to implement a regime based on prior assessments. But it should be recalled that this principle has been accepted as a necessary element in other economic contexts, to the point that it is now a crucial element of the EU environmental regulatory framework. In this context, it has been assumed that the extra costs and administrative burden involved were outweighed by the need to ensure sound integration of environmental considerations into the management of economic activities. If we are ready to assume these costs and constraints in respect of, for instance, offshore gas and oil prospecting and the establishment of extraction platforms, it should be clear that the same rationale applies to fishing activities that can have ravaging impacts on invaluable, fragile marine ecosystems unless properly managed.

## **8. MONITORING AND EVALUATION**

The General Assembly agreed in Resolution 61/105 to review action taken in response to its calls in 2009. At that time, the Community will be requested to provide a report, along with all other participants in this process (the Commission acts in this context as the representative for the whole Union on the basis of CFP exclusive competence, in accordance with a practice long established in the UN framework). Similar to the report submitted prior to the 2006 UNGA review, the Commission will render this document public and prompt feedback from stakeholders and the civil society at large. In this report, the Commission will need to examine to what extent the axes of its strategy have been implemented effectively. The indicators to this end are:

- Measures taken by RFMOs at the initiative of the Community or with its support, such as area closures, increased scientific research and the introduction of methods to assess the impact of bottom fishing. The report will also need to present the results of the review made by RFMOs of the effectiveness of area closures and other measures adopted since 2004.
- Measures to implement interim arrangements in areas where an RFMO is being established, and which would apply while waiting for the formal entry into force of the establishing conventions and the setup of the relevant governing bodies. The Community is already involved in such a process in the South Pacific and will need to contribute to a similar process in the Southern Indian Ocean. Interim measures agreed in the framework of these processes on a voluntary basis should be transposed into Community law.
- Adoption and implementation of a regulation applicable to the EU fleets operating in areas not covered by an RFMO or interim arrangements (essentially SW Atlantic). This regulation is part of option 4 and will contain the obligation of Member States to provide an annual report to the Commission on the operational follow-up provided at national level. This will provide the Commission with the elements to monitor and evaluate the effectiveness of the proposed approach based on prior impact assessment of fishing plans in this long-distance fishery. The Commission would then report on the Regulation's implementation to the Council and the European Parliament two years after its entry into force. At this time, the Commission should be able to evaluate the progress made in protecting vulnerable marine ecosystems in the areas to which the regulation applies.
- At internal level, measures taken as a continuation of its policy to protect vulnerable marine ecosystems in Community waters through the CFP and environmental policy instruments available.

This process therefore comprises as key elements a) reporting to our international counterparts in 2009 through the UN review process and b) reporting to Council and the European Parliament specifically on the implementation of unilateral Community instruments. In both cases, this reporting would be carried out in a transparent manner by making the reporting documents publicly available and inviting feedback. The evaluation contained in these documents will take as indicators measures effectively taken, but will also look into the scope and substantive effectiveness of such measures in respect of the basic objective of ensuring that fishing with bottom gears is carried out without destructive effects over vulnerable deep-sea ecosystems such as deep coral reefs, hydrothermal vents, seamounts and deep-water sponge beds. Essentially, this process sets 2009 as a target date for the review, and if needed, the revision of the Community strategic policy in this field.