



**Comments on amendments to the Commission's proposal COM(2012)0371 for a regulation establishing specific conditions for fishing for deep-sea stocks in the Northeast Atlantic**

2<sup>nd</sup> October 2013

Dear Member of the Fisheries Committee,

We are writing in light of the current debate over compromise amendments to the proposal for the management of deep-sea fishing in the Northeast Atlantic and to respond to a number of the points that have arisen in the debate within the Committee on the status of deep-sea fish stocks and the impact of deep-sea fishing, specifically those referring to the North-East Atlantic Fisheries Commission (NEAFC) framework.

The recently agreed overarching principles for the basic regulation of the Common Fisheries Policy require, among other measures, establishing science-based catch limits, applying the precautionary approach when science is inconclusive, minimizing bycatch, and protecting vulnerable marine species and habitats. The current review of the EU deep-sea access regime provides an opportunity to ensure such principles, as well as the EU's obligations under United Nations General Assembly (UNGA) Resolutions<sup>1</sup>, are implemented in specific regions of the Northeast Atlantic containing vulnerable marine ecosystems (VMEs) and with species particularly at risk from overfishing.

A set of amendments<sup>2</sup> have been put forward in support of proposals from the Alliance of European Deep Sea Professionals. The stated aim of the amendments is to protect VMEs and the justification given for the amendments claims: *"In order to ensure protection of VMEs, it is essential to differentiate between areas currently fished and those that are not fished – this is the basis of the footprint approach. In addition, such an approach transposes the NEAFC framework into EU waters and underlines the catalogue of measures adopted for EU waters to those in the NEAFC framework. The amendment also allows for the appropriate designation of areas within the footprint if they are considered to contain a VME."*

However, analysis of this set of amendments reveals that they would not deliver on the stated objective, but rather would:

- Allow deep-sea bottom trawling (and other forms of deep-sea fishing) to continue within a very large 'footprint' in EU waters and on the high seas of the Northeast Atlantic - anywhere they have previously fished in the past ten years;

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<sup>1</sup> In particular Resolution 61/105 (2006), paragraph 83 and Resolution 64/72 (2009), paragraphs 119-120. [http://www.un.org/depts/los/general\\_assembly/general\\_assembly\\_resolutions.htm](http://www.un.org/depts/los/general_assembly/general_assembly_resolutions.htm)

<sup>2</sup> Amendments 205, 219, 221, 224, 227, 238, 242, 243, 320, 331 proposed by Stevenson et al.

- Allow deep-sea bottom trawling to continue without a full understanding of the impact on the seabed, since no requirements for carrying out impact assessments in the existing fishing areas are proposed;
- Establish a vaguely worded provisional ‘exploratory fishing’ protocol for fishing in ‘new’ areas outside of the footprint;
- Establish lax requirements for setting quotas for deep-sea species;
- Establish a definition of targeted deep-sea fishing (linked to a separation of deep-sea species into two annexes) that would provide a strong incentive for misreporting and non-reporting of deep-sea catches, provide incentives for discarding deep-sea species, allow the continued depletion of the vast majority of the species impacted by deep-sea fishing, be very difficult to monitor and enforce, and have the practical effect of exempting much, if not most, of the current deep-sea bottom trawling by EU vessels from being effectively covered by the regulation; and
- Not establish any mechanism to protect VMEs in existing fishing areas.

### **Protecting VMEs both inside and outside the ‘footprint’**

The logic behind the justification quoted on page 1 is flawed. Although we agree that protecting VMEs must be one of the key objectives of an effective deep-sea fisheries management regime, we strongly dispute the assertion that *“it is essential to differentiate between areas currently fished and those that are not fished... in order ensure protection of VMEs”*. A VME is a VME whether it occurs inside or outside of the fisheries footprint. To be effective, measures to protect areas where VMEs are known or likely to occur from the impact of bottom fishing, in particular bottom trawling, must apply both within and outside the bottom fisheries footprint. The same is true for requiring impact assessments – the only way to be sure that deep-sea bottom fisheries are managed to prevent significant adverse impacts to VMEs is to conduct a prior impact assessment. This has been clearly established in the UNGA Resolutions and UN FAO International Guidelines for the Management of Deep-Sea Fisheries in the High Seas<sup>3</sup>. Differentiating between ‘existing fishing areas’ and ‘new fishing areas’, and defining the footprint as anywhere the industry has bottom fished in the deep-sea over the past ten years, would allow continued fishing in a large area of the deep-sea with minimal constraints and would effectively exempt vessels operating in existing fishing areas from conservation measures to protect VMEs.

### **Would “transposing the NEAFC framework into EU waters” be the right model for the EU to follow?**

NEAFC has adopted a series of measures to manage the impact of bottom fisheries on VMEs in the international waters of the Northeast Atlantic.

UNGA resolutions, to which NEAFC member countries have committed, calls on States and regional fisheries management organisations (RFMOs) to manage bottom fisheries on the high seas to prevent significant adverse impacts on VMEs through requiring prior impact assessments of all bottom fisheries and closing areas where VMEs are known or likely to occur; and to ensure the long-

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<sup>3</sup> International Guidelines for the Management of Deep-Sea Fisheries in the High Seas; Food and Agriculture Organization of the United Nations; <http://www.fao.org/docrep/011/i0816t/i0816t00.htm>. (2008).

term sustainability of both target and non-target deep-sea species through the use of stock assessments and rebuilding depleted stocks. In response, NEAFC has implemented a number of 'representative' area closures to protect VMEs in new fishing areas, a number of closures in existing fishing areas, a provisional exploratory fisheries protocol for bottom fisheries in new fishing areas, a move-on rule in existing fishing areas, and quotas for orange roughy and deep-sea sharks. Nonetheless, measures adopted by NEAFC to date have only partially implemented the requirements called for in UNGA resolutions and the UN FAO International Guidelines for the Management of Deep-Sea Fisheries in the High Seas. In particular:

- NEAFC has so far only taken measures to protect corals and sponges, but no other types of VMEs;
- Not all areas where VMEs are known or likely to occur have been closed to bottom fishing;
- The UNGA calls for impact assessment for all high seas bottom fisheries but NEAFC does not require them for bottom fisheries in existing bottom fishing areas although some areas of corals and sponges within existing fishing areas have been assessed and in some cases closed, based on ICES advice;
- Impact assessments for new fishing areas are not clearly required; rather NEAFC has adopted a 'provisional' exploratory fisheries protocol for fishing in new areas which has not yet been tested, (no NEAFC Contracting Party has yet applied to fish under the exploratory protocol);
- NEAFC has set a 150 tonne quota for orange roughy for each Contracting Party in spite of ICES advice that there be a zero quota, (the EU has unilaterally set a zero quota for orange roughy in the NEAFC area for EU vessels);
- There is a 'zero quota' established for 17 species of deep-sea sharks but no measures in place to minimize or eliminate the bycatch of sharks in other fisheries;
- There are no quotas in place for the other 32 deep-sea species 'regulated' by NEAFC; and there are no recovery plans in place for any depleted deep-sea species regulated by NEAFC (such as orange roughy and deep-sea sharks).

Finally, NEAFC has established a 'move-on' rule<sup>4</sup> as the primary conservation measure in place to protect VMEs in existing fishing areas in the NEAFC Regulatory Area where bottom fishing is permitted. However, the move-on rule -- originally intended as a complement to, not a substitute for, prior impact assessments and area closures -- is a measure widely recognized by ICES and others to be ineffective in protecting VMEs. In 2010, the Joint Northwest Atlantic Fisheries Organization (NAFO) and ICES Working Group on Deep Water Ecology (WGDEC) conducted a comprehensive review of 'move-on' rules implemented by RFMOs, such as NEAFC, and concluded that *"reactionary management strategies such as the 'encounter clauses' and 'move-on rules' are of limited benefit to prevent significant adverse impacts because they still allow damage to occur which will gradually degrade ecosystems over time"*. WGDEC further stated that *"because the current encounter and move-on rules would still permit pervasive and cumulative destruction of VMEs in the NAFO and NEAFC management areas"* a new management strategy was needed based on a series of principles, including that *"bottom habitats at fishable depths within the North Atlantic are not inhabited by one*

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<sup>4</sup> To be noted that the provision for a 'move-on rule' is not included in the set of amendments tabled by Stevenson et al., but is reflected in AM 183 tabled (by Alain Cadec MEP).

*fauna that ranges over the whole region, thus there can be no uniform rule” and that “exploratory fishing with bottom contact gear in the deep sea is unacceptable because of the long-term damage such gear does to bottom habitats”<sup>5</sup>.*

It should also be noted that in some cases the measures adopted by NEAFC go further than those adopted unilaterally by the EU or proposed in the new Regulation. For example, NEAFC establishes a prohibition on the use of bottom gillnets below 200 meters; EU legislation only prohibits it below 600 meters.<sup>6</sup> In addition, whereas NEAFC has established an annual mechanism for receiving and reviewing scientific advice from ICES on managing bottom fisheries to protect VMEs and has in place an annual decision-making process to act on that advice (though it is important to point-out that NEAFC often fails to adopt measures consistent with ICES advice), the EU does not have a robust annual decision-making mechanism in place for the protection of VMEs in EU waters.

Although NEAFC Contracting Parties have committed to implement the UNGA resolutions for the management of deep-sea fisheries in the high seas, NEAFC members recognize that they have not been fully implemented. The regulations adopted by NEAFC to manage bottom fisheries are likely to continue to change in the coming years. Rather than attempting to transpose the current measures adopted by NEAFC to date, for all the reasons mentioned above, the Fisheries Committee should adopt a regulation that fully implements the measures called for in UNGA Resolutions and the UN-FAO International Guidelines for the Management of Deep-Sea Fisheries in the High Seas.

### **Phasing out the most destructive fishing practices**

Finally, amendment 251<sup>7</sup> proposes deleting Article 9 of the Commission’s proposal that would require a phase-out of the use of bottom trawls and bottom gillnets to target deep-sea species. Both types of gears are widely recognized to be non-selective, particularly harmful to deep-sea ecosystems, and numerous reports and studies, quoted over, highlight the destructive impact of bottom trawling compared to other gears.

In past years, the EU has acted to eliminate the most destructive deep-sea fishing practices in EU and international waters. Since 2007, bottom gillnet fishing below 600 metres is prohibited in EU waters, and NEAFC prohibited the use of bottom gillnets below 200 metres in 2006. In addition, bottom trawling and gillnetting below 200 meters is prohibited in EU waters of the Azores, Canary and Madeira Islands<sup>8</sup>. Several RFMOs have prohibited the use of bottom gillnetting in their regulatory areas; the General Fisheries Commission for the Mediterranean (GFCM) has prohibited<sup>9</sup> bottom trawling below 1000 metres and the Convention for the Conservation of Antarctic Marine

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<sup>5</sup> Report of the ICES/NAFO Joint Working Group on Deep-water Ecology (WGDEC), Page 52; The International Council for the Exploration of the Sea  
[http://www.ices.dk/sites/pub/Publication%20Reports/Expert%20Group%20Report/acom/2010/WGDEC/wgdec\\_final\\_2010.pdf](http://www.ices.dk/sites/pub/Publication%20Reports/Expert%20Group%20Report/acom/2010/WGDEC/wgdec_final_2010.pdf). (2010)

<sup>6</sup> Council Regulation (EC) No 1288/2009.

<sup>7</sup> Proposed by Stevenson et al.

<sup>8</sup> Council Regulation (EC) 1568/2005.

<sup>9</sup> Regulation (EC) 1343/2011

Living Resources (CCAMLR)<sup>10</sup> has prohibited all bottom trawling in the high seas of the Southern Ocean.

## **Conclusion**

We therefore urge the Fisheries Committee to reject amendments put forward by the Alliance for Deep Sea Fishing Professionals, and instead support amendments that will effectively:

- End deep-sea overfishing by ensuring that fishing be permitted only if the catch, including any bycatch or catch of non-target species, can be limited to sustainable levels based on a clear scientific understanding of the status of deep-sea stocks and associated precautionary science-based management;
- Ensure that deep-sea fisheries are managed to minimise and, where possible, eliminate the by-catch of non-target species and prevent the catch of the most vulnerable species; and requires that catches of all deep-sea species are reported, not only those of target species;
- Ensure that adverse impacts on vulnerable deep-sea ecosystems are prevented through appropriate management of all deep-sea fisheries, including through area closures to deep-sea bottom fishing;
- Require prior impact assessments for all deep-sea fisheries, including in existing fishing areas as well as new fishing areas, as a condition for authorization to fish and that the impact assessments be consistent with the global standard established by the UNGA and the FAO International Guidelines for the Management of Deep-Sea Fisheries in the High Seas;
- Strengthen the definition of deep-sea fisheries to ensure all bottom fisheries below 200 metres are effectively regulated for their impacts both on the seabed as well as on deep-sea species; and
- Phase out most destructive fishing practices.

Thank you for your consideration.

Yours,

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<sup>10</sup> Restrictions on the use of bottom trawling gear in high-seas areas of the Convention Area, for all areas; CCAMLR-XXVII, (2008)

## The challenge of managing deep-sea fisheries: a selection of excerpts from scientific reports from ICES, the UN Food and Agriculture Organization and the United Nations Environment Programme (UNEP)

### Bottom trawling vs. other bottom gears in the deep-sea

**ICES 2008:** *“the impact of bottom trawl is far more detrimental to the seabed than static gear such as gillnets and non-contact operations such as pelagic trawling.”*<sup>11</sup>

**UNEP 2010:** *“Mobile fishing gear that contacts the seabed, particularly trawling, is the fishing apparatus that poses the greatest threat to deep-water sponge grounds.”*<sup>12</sup>

**UNEP 2004:** *“Active gear that comes into contact with the sea floor is considered the greatest threat to cold-water coral reefs and includes bottom trawls and dredges.”*<sup>13</sup>

**ICES 2008:** *“Any gear that has bottom contact has the potential to damage vulnerable deep-water habitats. The degree of impact depends on the type of gear, the degree of contact with the seabed and the frequency of contact. Thus, even bottom gear with a low potential for damage per deployment can potentially cause significant impact if used intensively. **Of the types of fishing [within the NEAFC area], the greatest instantaneous physical impact on sensitive habitats is likely to be caused by towed otter trawls [bottom trawls] through the following effects: destruction of complex three-dimensional habitats (e.g., coral reefs/burrows/refuges); disturbance of sediment structure; changes in topography (tracks and grooves); resuspension of sediment/increased turbidity (clogging gills of filter-feeding animals); refluxing of chemicals (contaminants and nutrients).** Bottom-set gillnets and longlines would have a lesser impact per deployment on complex biogenic habitats.”*<sup>14</sup>

### Managing deep-sea fisheries for sustainability

**ICES 2012**<sup>15</sup>: *“...fisheries management must consider not only the direct effects on fishery targets, but also the impacts on biodiversity, marine ecosystem structure, functioning, and marine habitats.”*

**ICES: 2012**<sup>16</sup>: *“In the Northeast Atlantic the stock structure of black scabbardfish is uncertain.”*

*“In Subareas VI, VII, and XII, and Division Vb [EU and international waters west of Scotland and Ireland], black scabbardfish is mainly taken in mixed trawl fisheries along with roundnose grenadier and blue ling”*

<sup>11</sup> NEAFC request to evaluate the use and quality of VMS data; Book 9. Page 76; (ICES Advice 2008),.

<sup>12</sup> Hogg, M.M., et al.; Deep-sea Sponge Grounds: Reservoirs of Biodiversity; UNEP-WCMC Biodiversity Series No. 32, page 28.; UNEP-WCMC, (2010)

<sup>13</sup> Freiwald, A., et al. Cold-water Coral Reefs, page 37; UNEP-WCMC, (2004).

<sup>14</sup> NEAFC request on identification of vulnerable marine ecosystems, including definitions and assessment of fishing activities that may cause significant adverse impacts on such ecosystems; ICES Advice, Book 9.

<sup>15</sup> ICES Advice,; Book 1, page 13 (2012)

<sup>16</sup> ICES Advice, Book 9, page 272; Widely distributed and migratory stocks. Black scabbardfish (*Aphanopus carbo*) in Subareas VI, VII, and Divisions Vb and XIIb; (2012).

*“Due to the mixed nature of the trawl fisheries in Subareas VI, VII, XII, and Division Vb, any measure taken to manage this species in these areas should take into account the advice given for other species taken in the same mixed fishery... As this fishery is part of a mixed fisheries, effort on black scabbardfish also impacts other commercial and non-commercial deep-water species.”*

*“Deep-water trawls impact the ocean floor, causing potential damage to deep-water coral communities. This is mitigated in some areas by area closures to protect vulnerable marine ecosystems (VMEs).”*

### **Widespread depletion of deep-sea fish stocks in the Northeast Atlantic**

**ICES 2008**<sup>17</sup>: *“At depths between about 400 and 1,500m there may be between 40 and 50 demersal species present in [the catch] depending on gear type. Maximum species diversity occurs between 1,000– 1,500m before declining markedly with depth. Deep-water species are typically slow growing, long lived, late maturing and have low fecundity. Fishing has a greater effect on species with such life history traits, making them particularly vulnerable to overexploitation. This applies to both the target and non-target species. A large proportion of deep-water trawl catches (upwards of 50 percent) can consist of unpalatable species and numerous small species, including juveniles of the target species, which are usually discarded. The main species in the discards of the trawl fishery is by far the Baird’s smoothhead (*Alepocephalus bairdii*), however, a large number of other non-marketable benthopelagic species are discarded. The survival of these discards is unknown, but believed to be virtually zero due to fragility of these species and the effects of pressure changes during retrieval. Therefore such fisheries tend to deplete the whole fish community biomass.*

### **The Challenge of managing deep-sea fisheries**

**FAO 2007**<sup>18</sup>: *“The nature of deep-sea fisheries (DSF) often includes characteristics that make it harder for management to achieve sustainable use. These include:*

- a) many stocks caught by DSF aggregate in high densities; this leads to high initial catch rates but depletion may be rapid;*
- b) with greater uncertainty about stock size and very low sustainable harvest rates, errors in population estimates, even small ones which are very hard to detect, can lead to unreliable estimates of sustainable harvests;*
- c) with low target exploitation rates, weak compliance or unexpectedly high catch rates can rapidly result in serious overharvesting; and*
- d) governance difficulties...often make it difficult to implement incentive measures that promote responsible harvesting.*

<sup>17</sup> Report of the Working Group on the Biology and Assessment of Deep-Sea Fisheries Resources (WGDEEP); The International Council for the Exploration of the Sea; . Pages 70–71. (2008).

<sup>18</sup> Report of the Expert Consultation on International Guidelines for the Management of Deep-Sea Fisheries in the High Seas; .FAO Fisheries Report, No. 855 ;,page 39, paragraphs 20-22. (2008).

*“The problems ... with regard to sustainable use of the marine living resources targeted by DSF also apply to the protection of VMEs and marine biodiversity, and are often even greater. Particular concerns include:*

*a) the sensitivity and vulnerability of some species, communities and habitats to direct and indirect impacts of fishing (easily perturbed);*

*b) the extreme longevity (100s to >1 000 years) of individuals of some types of organisms (e.g. octocorals) or the long times over which some habitats develop – up to >8,000 years for cold water coral reefs (slow recovery);*

*c) the low resilience of species, communities and habitats as a result of low productivity, great longevity, unpredictable and usually low recruitment, and low growth rates (unpredictable recovery);*

*d) a high proportion of species encountered within some deep-sea ecosystems are endemic, and are found nowhere else (high risk of loss of biodiversity, including extinctions);*

*e) some vulnerable seafloor communities are distributed as spatially discrete units often within a small area relative to the overall area of the seabed (small perturbations may have significant consequences);*

*f) the connectivity between populations within geographic regions may be critical to the long term sustainability of biodiversity (fragmentation and risk of loss of source populations);*

*g) current knowledge of the ecosystem components and their relationships is generally poorly known and the gaps more difficult to fill (managing under greater uncertainty).”*

**Dr. John Gordon, preeminent deep-sea fish biologist, Scottish Association of Marine Scientists:**

*“There is general agreement among scientists, the fishing industry and the politicians that the fragile deep-water stocks are seriously over-exploited, but political imperatives dictate that uncertainties and inconsistencies in the scientific assessment and advice are used to postpone the urgent action that is required.”*

*“It is perhaps not much of a consolation, but at least in the Rockall Trough, we know a lot about the ecosystem that is being destroyed, while in other areas, such as the Hatton Bank, we will never know what is being destroyed”<sup>19</sup>*

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<sup>19</sup> From ‘End of the Line’ by Charles Clover, (2004).