



Deep Sea Conservation Coalition critique of the European Union position on the impact of bottom trawl fishing on vulnerable marine ecosystems on the high seas

Critique of the European Union Statement on the conservation and sustainable use of Marine Biodiversity to the 6th UN Informal Consultative Process on Oceans and the Law of the Sea (9 June 2005)

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At the recent meeting of the United Nations Informal Consultative Process on Oceans and the Law of the Sea (6-10 June, 2005), the EU position was effectively one of paralysis on the issue of the impact of bottom trawl fishing on vulnerable deep-sea areas beyond national jurisdiction, until late in the meeting (Thursday) when the EU delegation, after negotiating all week long, finally agreed on its joint opening statement on fisheries. Far from providing leadership on this issue, at its best the EU statement merely asserted that the EU endorses the UN GA resolution (paragraphs 66-71 of UN GA resolution A/59/25) adopted in 2004. However, several elements of the EU statement are a real cause for concern - the EU appears to be signaling either an unwillingness to accept, or a disregard for, international fisheries law.

It is extremely important that the EU show global leadership on this issue given that European Union fishing fleets are responsible for a large portion of the fish catch taken by bottom trawl vessels operating on the high seas. The perception thus far is that the EU position on this issue is largely driven by the interests of the high seas distant water fishing industry and the EU is attempting to stall or prevent international action to protect deep-sea ecosystems and biodiversity on the high seas.

Following are several areas of concern regarding the EU statement to UNICPOLOS:

1. EU statement, paragraph 2: “We would like to emphasize the importance of an approach that is based on coherence between the protection and management of marine biodiversity within zones under national jurisdiction and the high seas.”

Here the European Union implies that the notion that any restrictions on fisheries on the high seas must be accompanied by similar restrictions in EEZs; and, conversely, that the EU will not feel under any obligation to take measures to protect deep-sea ecosystems from high seas bottom trawl fishing if a similar commitment is not made by some or all coastal states.

While deep sea ecosystems within and outside the EEZs are equally vulnerable to bottom trawl fishing, the legal regime to protect vulnerable deep-sea species and habitats do differ. There is ample legal possibility for coastal states to implement protection measures within the EEZs, but the regulatory framework for the conservation and management of bottom fisheries on the high seas currently either does not exist or is inadequate in most high seas areas. Furthermore, many, if not most, of the ecosystems (e.g. seamounts) impacted by bottom trawl fleets on the high seas are discrete ecosystems (they do not straddle boundaries between EEZs and the high seas) which are likely to be characterized by relatively high levels of endemism – hence, the protection of these ecosystems from bottom trawl fishing does not depend upon coastal state action but is solely dependent on the actions of high seas fishing nations.

More to the point, the European Union is under an obligation to protect the biodiversity of the deep-sea on the high seas from the harmful impacts of fishing by EU vessels and nationals under UNCLOS, the UN Fish Stocks Agreement and the Convention on Biological Diversity regardless of whether coastal states do so or not within their EEZs.

If the EU will not regulate its distant water fleets to protect biodiversity on the high seas unless one or more, or all, coastal states take similar action within their EEZs as seems to be implied, this would be an abnegation of the EU's obligations and responsibilities under the abovementioned instruments.

2. EU statement paragraph 4: "We believe that the international community should urgently consider ways to integrate and improve the management of all activities that affect or risk affecting the marine biodiversity of seamounts, cold water corals, hydrothermal vents and other vulnerable ecosystems. Measures should be taken on a case by case basis and should be based on the best available scientific information, the application of the precautionary principle, and should be in accordance with UNCLOS."

This merely repeats the language of UN General Assembly resolution A/59/25 adopted in 2004 (paragraph 66) and previous resolutions of the General Assembly. It adds nothing new to the discussion here.

At a minimum, the EU should define what is meant by 'case by case'. Does the EU mean seamount by seamount? Region by region? Underwater feature by underwater feature? For example, would the EU argue that the only seamounts that could potentially qualify for protection are the seamounts in the Atlantic, Pacific and Indian Oceans that have been studied to date (and which have been estimated to harbor rates of endemism ranging from 5-52% of the species sampled)? Or that no action should be taken to protect any of the other tens of thousands of seamounts worldwide which are located on the high seas that have not yet been studied in detail until each one individually has been studied on a 'case by case basis'? If so, then how does the EU justify allowing bottom trawl fishing to take place on any seamount on the high seas without having first studied the seamount and the fish stocks found in association with each seamount, on a case by case basis, to determine whether bottom trawling will have no negative impact and could be permitted to take place? A clarification of the meaning the EU assigns to the phrase "case by case" is needed.

3. EU statement, paragraph 4: "We note that the absence of adequate scientific information on certain parts of the oceans should not be used as a reason for postponing or failing to take conservation and management measures."

On certain parts of the oceans? Which ones are these and which areas are exempt?

It is worth recalling that Article 6.2 of the UN Fish Stocks Agreement, to which the EU is a party, states:

"the absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures"

Similarly, the EU commitment to the UN FAO Code of Conduct for Responsible Fisheries includes a commitment to Article 7.5.1 of the Code, which states:

"States should apply the precautionary approach widely to conservation, management and exploitation of living aquatic resources in order to protect them and preserve the aquatic environment. The absence of adequate scientific information should not be used as a reason for postponing or failing to take conservation and management measures."

Moreover, the EC Treaty (Article 174(2)) obliges Community policy to be based on the 'precautionary principle' as well as on the 'principle of preventative action' and the EU Common Fisheries Policy (CFP) also requires, in Article 2.1 that:

“...the Community shall apply the precautionary approach in taking measures designed to protect and conserve living aquatic resources, to provide for their sustainable exploitation and to minimise the impact of fishing activities on marine eco-systems. It shall aim at a progressive implementation of an eco-system-based approach to fisheries management.”

In Article 3(i) of the CFP, the precautionary approach is defined as follows:

“‘precautionary approach to fisheries management’ means that the absence of adequate scientific information should not be used as a reason for postponing or failing to take management measures to conserve target species, associated or dependent species and non-target species and their environment;”

None of the provisions of these international agreements or EU legislation limit the application of the precautionary approach to “certain parts of the ocean” only. The EU statement put forward at UNICPOLOS appears to contradict these provisions and implies that the application of the precautionary approach as required by the UN Fish Stocks Agreement, EU legislation, and as contained in the UN FAO Code of Conduct should be restricted to ‘certain parts of the oceans’.

4. EU statement, paragraph 5: “In the short-term, urgent action...must be taken.”... “we look forward to the review to be undertaken next year”. The EU implies that no further negotiation on the issue should take place at UNICPOLOS in 2005. Fortunately, this was not the view shared by all or even most other nations – and as a result, UNICP moved forward on this issue, in spite of obstacles placed by the EU, in the following areas:

The UNICPOLOS text contains the following key elements and recommendations:

- Reaffirms the call for action to protect vulnerable ecosystems on the high seas in UN GA resolution 59/25 adopted in 2004 and calls for “accelerated” progress in its implementation;
- Calls on states to “urgently accelerate their cooperation in establishing interim targeted protection mechanisms for vulnerable marine ecosystems” – a recommendation which largely applies to high seas areas where no RFMOs currently exist; and
- requests RFMOs “to implement spatial and temporal measures to protect vulnerable marine ecosystems...as a matter of urgency”

5. Finally, the fact that the EU argued for the deletion of the phrase “bottom trawling” from the draft negotiating text during the Friday negotiations at the conclusion of UNICP on 10 June implied a clear unwillingness to address the issue and was at best an awkward position to take after a week of discussions during which the problem of bottom trawl fishing on the high seas was raised numerous times, as Norway pointed out.

Even though the EU took the lead on, and was successful in, deleting the reference to the phrase “bottom trawling” from paragraph 11(a) of the advanced and unedited text of Part A of the work of the Consultative Process at its sixth meeting* (previously para 10(a) of the “Draft proposal by the Co-Chairmen, Part A”), nothing in the text agreed by UNICPOLOS changes the explicit reference made to bottom trawl fishing in the UN General Assembly resolution adopted last year.

Indeed, it is important to recognize that paragraphs 66-71 of resolution 59/25 adopted by the UN General Assembly in 2004, and reaffirmed by UNICPOLOS in 2005, calls on states and RFMOs to “take action urgently, and consider on a case-by-case basis and on a scientific basis, including the application of the precautionary approach, the interim prohibition of destructive fishing practices, including bottom trawling, which has adverse impacts on vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold-water corals located beyond national jurisdiction...”

* http://www.un.org/Depts/los/consultative_process/consultative_process.htm