

Mr Franz Fischler
Commissioner for Fisheries
Fax: 02 295 9225

Re: The UN General Assembly process to address the threat to deep-sea biodiversity in areas beyond national jurisdiction from bottom trawl fishing on the high seas

Dear Commissioner Fischler,

We are writing you in regard to the European Union position and the UN General Assembly negotiations currently underway to address the threats to marine biodiversity beyond areas of national jurisdiction. We understand that a consultative process under the auspices of COMAR is coordinating the preparation of the European Union position in relation to the UN negotiations. We further understand that there has been some discussion within the Commission and amongst some Member States of the role of the UN FAO and regional fisheries management organizations in relation to the UN General Assembly's consideration of the threats to deep-sea biodiversity on the high seas from bottom trawl fishing.

The threat posed by bottom trawl fishing to the biodiversity of the deep-sea on the high seas is reflective of a fundamental lack of effective governance over high seas areas, a situation which can best be remedied through a coordinated approach by the international community through the United Nations General Assembly. While the Regional Fisheries Management Organizations (RFMOs) and the UN Food and Agriculture Organization have a role to play, we would be deeply concerned if the European Union were to advocate that the UN FAO and/or Regional Fisheries Management Organizations take the lead in resolving this issue.

In our view, the UN General Assembly must play the lead role in resolving this issue, consistent with Decision VII/5 of the Seventh Conference of Parties to the Convention on Biological Diversity in February 2004. Paragraph 61 of Decision VII/5 called directly on the UN General Assembly to urgently take short-term, medium-term and long-term measures to protect the biodiversity associated with seamounts, cold-water corals, and other vulnerable ecosystems on the high seas, through, among other measures, consideration of the use of interim prohibitions on destructive practices.

RFMOs

First, most high seas areas of the world's oceans are not covered by RFMOs with the legal competence to regulate bottom fisheries. Any bottom trawl fishing on the high seas in the Indian Ocean, the Pacific Ocean and the Central and Southwest Atlantic Ocean is unregulated high seas fishing. There are simply no RFMOs in these areas to regulate these fisheries. Establishing RFMOs that could do so is a long-term process. In the meantime, the General Assembly has the mandate to initiate a course of international

action to protect biodiversity and the rights and interests of the international community as a whole in these unregulated high seas areas.

Secondly, in those few areas where such RFMOs exist – the northern North Atlantic Ocean, the Southeast Atlantic Ocean, and the Southern Ocean – the four RFMOs concerned (NAFO, NEAFC, SEAFO and CCAMLR), with the exception of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), have not regulated any bottom trawl fisheries for the impacts on deep-sea corals and other vulnerable deep-sea ecosystems within their area of competence. Indeed, in the North Atlantic, the failure of the Northwest Atlantic Fisheries Organization (NAFO) and the North-East Atlantic Fisheries Commission (NEAFC) to regulate the impact of bottom trawl fishing on deep-sea ecosystems is a long-standing failure given the fact that bottom trawl fisheries have taken place in the high seas areas covered by these RFMOs for most of the past four decades or more. The Southeast Atlantic Fisheries Organization has yet to regulate any bottom trawl fisheries - it has only recently entered into force and its Commission and related infrastructure have yet to be fully established.

UN FAO

The UN FAO has the competence to advise governments on the exploitation of deep-sea species on the high seas. However, it does not have sufficient expertise to recommend actions necessary to identify and protect the biodiversity of deep-sea areas on the high seas. In recognition of this point, in 2002 the UN General Assembly, in paragraph 56 of Resolution 57/141 “Oceans and the Law of the Sea” urged a range of intergovernmental organizations, including the International Hydrographic Organization, the International Maritime Organization, the International Seabed Authority, the United Nations Environment Programme, the World Meteorological Organization, the secretariat of the Convention on Biological Diversity and the United Nations Secretariat (Division for Ocean Affairs and the Law of the Sea), in addition to the UN FAO and the RFMOs, to urgently consider the risks to the biodiversity of deep-sea areas.

The General Assembly reiterated this approach in 2003, in paragraphs 51 and 52 of Resolution 58/240, through inviting “*the relevant global and regional bodies, in accordance with their mandate, to investigate urgently how to better address, on a scientific basis, including the application of precaution, the threats and risks to vulnerable and threatened marine ecosystems and biodiversity in areas beyond national jurisdiction*”.

Furthermore, if a political process to address this issue is established under the auspices of the UN FAO, it must be clear that this cannot be a substitute for short-term action by the UN General Assembly. For example, if the UN FAO Committee on Fisheries, which meets in March 2005, were to agree to hold a Technical Consultation to draft a “Code of Conduct” or “International Plan of Action” for deep-sea fisheries on the high seas, this process would take at least two years to complete (assuming adoption of the code or plan by COFI in 2007) and in the end produce a voluntary instrument which, though potentially helpful, would not solve the problem. Any process established under the

auspices of the UN FAO must be viewed as a contribution to long-term solutions to the problem of the threat posed to the biodiversity of the deep-sea by high seas bottom trawl fishing. Under no circumstances should an FAO process be seen as a substitute for, or a constraint upon, short-term action by the General Assembly itself.

There is a clear need for UN General Assembly action and coordination to protect the interests of the international community in ensuring sustainable deep-sea fisheries and the protection of rare, vulnerable and fragile ecosystems on the high seas. Neither the UN FAO nor any other single intergovernmental organization is in a position to resolve the problem alone; the RFMOs, where they exist, have not demonstrated the capacity to protect high seas biodiversity from deep-sea trawling; and most importantly, most high seas areas are entirely unregulated insofar as deep-water bottom fisheries are concerned.

There are a number of intergovernmental organizations, UN agencies and organizations, and regional bodies with the expertise to address the protection of deep-sea biodiversity. The UN FAO, the United Nations Environment Programme, the Intergovernmental Oceanographic Commission and the International Hydrographic Organization, along with others, all have a role to play in advising the General Assembly and the international community on long-term solutions to the problem. Their collective efforts, to be effective, must be well coordinated and we are advocating the establishment of a process under the auspices of the UN General Assembly to do so and to promote more effective oceans governance on the high seas. However, this process will take some time and, in the meantime, a UN General Assembly moratorium on bottom trawl fishing on the high seas is the most effective means of addressing the immediate, significant, and global threat posed by high seas bottom trawl fishing to the biodiversity of deep-sea areas on the high seas.

High seas bottom trawl fisheries and international law

We would further like to draw your attention to the fact that, in our view, most bottom trawl fisheries on the high seas are conducted in a manner inconsistent with international law, in particular with the 1995 UN Fish Stocks Agreement, of which the Community and Member States are parties. The 1995 UN Fish Stocks Agreement, in its Articles 5 and 6, contain a number of provisions which obligate states to (1) prevent overfishing, (2) assess the impact of fishing on other species in the ecosystem, (3) minimize bycatch and the impact of fishing on non-target, associated and dependent species, (4) protect habitats of special concern, (5) apply the precautionary approach, and (6) protect biodiversity in the marine environment. Based on information available on the current status and management of bottom trawl fisheries on the high seas, together with scientific assessments of deep-water bottom trawl fisheries on the high seas and their impacts on the marine environment by ICES and other bodies, it seems clear that these fisheries not only fail to fulfill most or all of the requirements of the conservation provisions of the 1995 UN Fish Stocks Agreement but, with few exceptions, they fail to comply with virtually any of the abovementioned provisions of Articles 5 and 6 of the UN Fish Stocks Agreement.

In a similar vein, we would argue that these fisheries are also inconsistent with the political commitments undertaken by the European Union in relation to the Bremen Declaration of the joint OSPAR/HELCOM Ministerial level meeting in 2003, the UN FAO Code of Conduct for Responsible Fisheries, and the Plan of Implementation of the World Summit on Sustainable Development.

Finally, we would like to commend the Commission for recent legislative proposals designed to protect certain sensitive marine habitats from the effects of bottom trawl fishing within Community waters.

We look forward to further discussing this issue with you, your successor and the Directorate General of Fisheries. In this regard, members of our respective organizations would be pleased to meet with you and/or the staff of DG Fisheries at your convenience.

Kind regards

Matthew Gianni
International Oceans Network

Julie Cator
Oceana-Europe

Karen Sack
Greenpeace International

Also on behalf of:
Seas at Risk
Marine Conservation Biology Institute

cc. Mr Joe Borg, incoming Commissioner Fisheries
Mr Jorgen Holmquist, Director General Fisheries, European Commission