

EN

EN

EN



EUROPEAN COMMISSION

Brussels, 10.11.2010
COM(2010) 651 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the implementation of Council Regulation (EC) No734/2008 on the protection of
vulnerable marine ecosystems in the high seas from the adverse impacts of bottom
fishing gears**

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the implementation of Council Regulation (EC) No734/2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears

Under the terms of Article 13 of Council Regulation (EC) No 734/2008, the Commission is to submit to the European Parliament and to the Council a report on the implementation of this Regulation before 30 June 2010, which may be accompanied by proposals for amendments if deemed necessary.

1. Background

1.1. Characteristics of vulnerable marine ecosystems

Features of the deep seabed such as seamounts, coral reefs and hydrothermal vents are known to act as biodiversity hot spots and also to attract large numbers of fish. These ecosystems are extremely vulnerable for a number of reasons including the low growth rates associated with great depths as well as the fragility of the organisms, such as corals and sponges, which provide structural support to the habitats. Although scientific research on these organisms and ecosystems has increased in recent years, including through projects supported by the EU such as the Hermes, Hermione and Coralfish projects, more information is still required on their biology, location as well as the associated fisheries. These vulnerable ecosystems are threatened by natural causes such as climate change and ocean acidification, as well as by a variety of anthropogenic activities, which include deep-sea bottom fishing, deep-sea mining, bio-prospection and deep-sea tourism. While these activities generate economic benefits, they contribute to the destruction of these habitats which results in a continuing loss of marine biodiversity

1.2. International and EU action

The impact of destructive fishing practices, including bottom trawling, on vulnerable marine ecosystems (VMEs) on the high seas has long been of concern to the international community. Discussions on this issue have been taking place at the United Nation General Assembly (UNGA) since 2004. This process culminated in 2006 with the adoption of UNGA Resolution 61/105, to which the then European Community brought a major contribution.

In response, the EU adopted Council Regulation (EC) N° 734/2008 on the protection of VMEs in the high seas from the adverse impacts of bottom fishing gears. This transposed the measures contained in UNGA resolution 61/105 into Union law but also went further than the UNGA Resolution in certain respects. The EU was the first Regional Organisation or State which has adopted such rules, for ships flying flags of its Member States, for those areas of the high seas where no RFMO had been established or where no interim measures were put in place during negotiations for the establishment of an RFMO. This Regulation was deemed necessary since a considerable number of EU bottom trawlers are active in areas where there is no established RFMO, particularly the South West Atlantic.

The Proposal for a Council Regulation was accompanied by an Impact Assessment which proposed three options: not transposing UNGA Resolution 61/105,

implementing a unilateral prohibition of deep-sea bottom fishing activities by EU vessels or implementing the Resolution through a Council Regulation. The latter option was chosen as it would ensure the continuation of deep-sea fishing activities, if they were environmentally sound, while ensuring the protection of vulnerable marine ecosystems and thus following from the commitments taken by the EU at the UN.

On the international front, in the meantime, the European Union has pushed for similar measures to be adopted in the context of the relevant RFMOs, despite opposition from other contracting parties. For this reason, it was not always successful in ensuring that all measures including closure of areas and threshold levels were taken on board as proposed.

1.3. Main features of UNGA Resolution 61/105

Paragraphs 80 to 91 of UNGA Resolution 61/105 establish that:

- a) States and RFMOs should sustainably manage deep-sea fish stocks and protect vulnerable marine ecosystems from destructive fishing practices, in accordance with the precautionary approach and ecosystem approaches.
- b) RFMOs and flag States, in areas beyond national jurisdiction where there were no RFMO/As with the competence to regulate bottom fisheries or where no interim measures had been put in place had, by 31 December 2008, to assess the impacts of all types of bottom fishing on the high seas, and either ensure that significant adverse impacts on vulnerable marine ecosystems were prevented, or if not, had to prohibit these fisheries.
- c) RFMOs and flag States, in areas beyond national jurisdiction where there were no RFMO/As with the competence to regulate bottom fisheries or where no interim measures had been put in place, had to close areas of the high seas where vulnerable marine ecosystems were known or likely to occur, to all bottom fishing activities, unless or until they were able to establish conservation and management measures to prevent significant adverse impacts on vulnerable marine ecosystems.

1.4. Recent developments

i) FAO Guidelines

The FAO "International Guidelines for the management of deep-sea fisheries in the high seas" were developed at the request of the FAO Committee on Fisheries in order to assist States and RFMO/As in the implementation of UNGA Resolution 61/105, with regards to the protection of vulnerable marine ecosystems and to the long term management of deep-sea fisheries in the high seas. They were adopted in September 2008.

These voluntary Guidelines provide guidance on the whole spectrum of measures required for a proper management of deep-sea fisheries ranging from the appropriate regulatory framework; data collection, reporting and assessment; identification of VMEs and assessment of significant adverse impacts; enforcement and compliance and measures necessary to ensure the conservation of target and non-target species, as well as affected habitats.

ii) 2009 UNGA Resolution on Sustainable Fisheries 64/72

A review of the implementation of measures taken by States and RFMO/As in response to paragraphs 83 to 90 of the UNGA Resolution 61/105 was held at the

2009 session of the UN General Assembly in accordance with Paragraph 91 of this Resolution.

The final text of the 2009 Resolution reflected the concerns expressed by the EU and some other parties that the implementation of the measures in the UNGA Resolution 61/105 concerning the protection of VMEs had been insufficient, particularly those regarding the conduction of assessments prior to the authorisation of bottom fishing activities and the protection of deep-sea fish stocks.

The new UNGA Resolution 64/72 called upon RFMO/As, States participating in negotiations to establish RFMO/As and flag States to urgently adopt and implement measures with regards to:

- a) Prior assessment of bottom-fishing activities before authorisation of bottom-fishing activities,
- b) Establishment of protocols for encounters with VMEs based on the best available scientific advice
- c) Adoption of conservation and management measures for deep-sea stocks to ensure their long-term sustainability.

Furthermore, the Resolution also established that a further review of the implementation of these measures will take place in 2011.

In addition, the Resolution also called upon States to implement the FAO Deep-sea Fisheries Guidelines and to ensure that the implementation of the measures included in the Resolution were consistent with the Guidelines.

1.5. Member States' reports

According to the provisions of Article 12 paragraph 1 of Council Regulation (EC) No 734/2008, Member States are required to communicate to the Commission for each half calendar year within three months of the expiry of that period, a report on:

- a) Catches;
- b) Compliance by fishing vessels;
- c) Measures taken to remedy and sanction instances of non-compliance and serious infringements;
- d) Their implementation of area closures.

Member States were also required to submit all impact assessments carried out prior to issuing the special fishing permits pursuant to Article 4 paragraph 2.

Less than half of the Member States responded within the stipulated deadline (10 for the period January to June 2009 and 11 for the period July to December 2009). However, the required information was finally provided after repeated reminders from the Commission. From the information received, only vessels from one Member State fell under the scope of this Regulation.

2. Assessment of the implementation of the measures contained in Council Regulation (EC) No 734/2008

2.1. Information received

The assessment of the implementation of these measures is based on the information provided by the authorities from the concerned Member State in line with article 13 of the Regulation.

- a) Vessels were obliged to comply with the rules of Council Regulation (EC) No 734/2008 and had to be in possession of a special fishing permit as required by the Regulation for the duration of their activities.
- b) The special fishing permit was of limited duration, specified the zones where bottom fishing activities could be carried out, the authorised species, the fishing gear and the depths at which it could be deployed.
- c) The concerned Member State restricted the area where bottom fishing activities could be carried out by their vessels to two specified areas in the South West Atlantic where such activities had been carried out for at least two years.
- d) Due to the fact that the fishing footprint was restricted to areas where bottom fishing had been carried out for at least two years, the concerned Member State did not carry out any specific impact assessment as it considered that it would be improbable that these areas contained vulnerable benthic ecosystems which could be damaged by bottom trawling gears.
- e) No instances of non-compliance with the fishing plans were registered.
- f) Fishing vessels were not authorised to carry out bottom fishing activities in unassessed areas.
- g) No fishing activities were registered in closed areas.
- h) The indicators used to signal unforeseen encounters with vulnerable marine ecosystems were those established by NEAFC i.e.100 kg of live Corals and 1000 kg of live sponges per fishing haul.
- i) No unforeseen encounters with vulnerable marine ecosystems were registered and thus, no remedial measures were implemented.
- j) No serious infringements were detected and consequently no sanctions were implemented.
- k) An observer scheme was obligatory for all vessels.

2.2. Discussion

Article 4 paragraph 1 of the Regulation specifies that fishing operators, when applying for a special fishing permit need to submit detailed fishing plans specifying their intended location of activities. This requirement was introduced in the Regulation to ensure the implementation of the principle of prior impact assessments with a view to allow "ex-ante" evaluation of the potential impact of these fisheries as requested in UNGA Resolution 61/105. This was not implemented by the concerned Member State.

Instead, the concerned Member State utilised a system in which authorised fishing vessels were limited to fishing zones established by the competent authorities, thereby restricting its fishing footprint for bottom fishing activities in the South West Atlantic to previously fished areas. This was based on the assumption that it would be improbable that these areas contained vulnerable benthic ecosystems which could be damaged by bottom trawling gears and thus, only a very limited impact assessment was produced. However, no distinction was made between areas where bottom fisheries were well established and areas where such activities had been carried out over a shorter period. Such a distinction is requested in Article 4 paragraph 4 of the Regulation, similarly to paragraph 48 of the FAO Guidelines, since areas which have experienced lighter trawling episodes could still possibly contain VMEs, which if protected, even though damaged, could recover or regenerate. A more stringent application of the precautionary approach should have been implemented. The Commission will continue consultations with the concerned Member State to remedy this situation and to ensure compliance with the obligation by its vessels to provide a fishing plan when applying for the fishing permit in order to be able to carry out a correct ex ante evaluation of the impact of these fisheries.

A comprehensive mapping exercise was carried out by the concerned Member State, to map the international waters of the Southwest Atlantic with depths of less than 1 500 m with the aim of establishing the location of VMEs in those areas, as required by the UNGA Resolutions. However, the results of this mapping exercise were still not available in June 2010. The Commission would like to encourage the dissemination of such studies as this will ensure that the greatest possible benefits can be obtained since this will lead to the adoption of better management measures to protect the VMEs.

In conclusion, it is the Commission's opinion that more stringent and accurate implementation of Regulation (EC) No 734/2008 is required to ensure that the measures prescribed in UNGA Resolutions 61/105 and 64/72 are fully implemented by EU Member States flagged vessels fishing under the scope of the Regulation.

3. Way forward

In light of developments since the adoption of the Regulation, particularly the 2008 FAO Guidelines for the management of deep-sea fisheries in the high seas and the 2009 UN GA Resolution on Sustainable Fisheries 64/72, but also the advice given by the International Council for the Exploration of the Seas (ICES) with regards to the management of these fisheries, the following amendments to the Regulation should be considered:

3.1. Scope

The current scope of the Regulation does not extend to areas under the responsibility of an RFMO or where interim measures have been established by participants in the negotiations on a new RFMO.

Some RFMOs have been criticised for not having implemented adequate measures for the protection of vulnerable marine ecosystems, ignoring scientific advice and the precautionary approach. In some cases, measures (for example lower threshold levels for indicator species) requested by the European Union have been rejected by other parties to the organisation.

Consequently, the scope of this Regulation could be extended to allow the adoption of unilateral measures applicable to EU fishing vessels fishing within RFMO regulatory areas, and going further than those adopted by the RFMO, in cases where the EU considers that measures adopted by an RFMO do not fully implement the measures in the UN Resolutions. Such a move would allow the EU to meet more fully the commitments undertaken in the context of UNGA Resolutions 61/105 and 64/72. Although, this could be perceived as resulting in the lack of equal treatment between EU vessels and third country vessels operating in the same area, this would ensure that a level playing field is established among EU vessels undertaking bottom fishing activities in different areas. In addition, once the EU considers that certain measures should be adopted by an RFMO, and consequently proposes these measures but which are rejected by the other parties, unilateral adoption of the measures would demonstrate that the EU acts consistently with its own advice. Furthermore, this would allow the EU to continue leading by example, as has been done in the past by the adoption of the current Regulation.

3.2. Limitation of capacity or effort

In order to ensure that capacity or effort is not transferred to deep-sea fisheries, covered by the scope of the Regulation, from other fisheries, a provision should be included limiting fishing capacity and effort in deep-sea bottom fishing activities to the average level established for a determined period for the different areas.

3.3. Impact assessments

The carrying out of impact assessments prior to the authorisation of bottom fishing activities was one of the main issues during the negotiations on the review of the measures contained in UNGA Resolution 61/105 and was considered a radically innovative principle in fisheries management at the time. However, from the information published prior to the negotiations on the 2009 UNGA Resolution, it emerged that very few such assessments had been carried out; and that the quality of performed assessments was not satisfactory.

Clear criteria have been provided on the use of impact assessments in the FAO Guidelines, particularly in paragraphs 17 – 20, 42, 47 and 48. Paragraph 119 of the UNGA Resolution 64/72 exhorts flag States and RFMOs that impact assessments conducted prior to the authorisation of bottom fishing activities should be consistent with these Guidelines. Specific reference could be made to the above-mentioned paragraphs of the Guidelines within the Regulation, while full incorporation within the Regulation of the text of paragraph 47 of the Guidelines (reproduced below) could be used to ensure improvement of the quality of impact assessments carried out by the Member States.

47. Flag States and RFMO/As should conduct assessments to establish if deep-sea fishing activities are likely to produce significant adverse impacts in a given area. Such an impact assessment should address, inter alia:

- i. type(s) of fishing conducted or contemplated, including vessels and gear types, fishing areas, target and potential by-catch species, fishing effort levels and duration of fishing (harvesting plan);*
- ii. best available scientific and technical information on the current state of fishery resources and baseline information on the ecosystems, habitats and communities in the fishing area, against which future changes are to be compared;*
- iii. identification, description and mapping of VMEs known or likely to occur in the fishing area;*
- iv. data and methods used to identify, describe and assess the impacts of the activity, the identification of gaps in knowledge, and an evaluation of uncertainties in the information presented in the assessment;*
- v. identification, description and evaluation of the occurrence, scale and duration of likely impacts, including cumulative impacts of activities covered by the assessment on VMEs and low-productivity fishery resources in the fishing area;*
- vi. risk assessment of likely impacts by the fishing operations to determine which impacts are likely to be significant adverse impacts, particularly impacts on VMEs and low-productivity fishery resources; and*
- vii. the proposed mitigation and management measures to be used to prevent significant adverse impacts on VMEs and ensure long-term conservation and sustainable utilization of low-productivity fishery resources, and the measures to be used to monitor effects of the fishing operations.*

The current Data Collection Regulation 199/2008¹ as well as the accompanying Commission Decision (2008/949/EC)² establishing a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy stipulate the obligations to collect data referring to indicators of the effects of the fisheries sector on the marine ecosystem. This data should be therefore a substantial part of the impact assessments.

3.4. Unforeseen encounters with vulnerable marine ecosystems

No definition of what constitutes an encounter with vulnerable marine ecosystems is provided in the current Regulation. This has permitted the use of very high thresholds for VME indicator species by the concerned Member State (100 kg of live Corals and 1000 kg of live sponges per fishing haul). This is similar to the thresholds previously utilised by some RFMOs to establish encounters with VMEs, particularly NEAFC and NAFO, and which had been criticised by ICES as being too high.

Retention of a species in a net depends on its size and fragility; thus small sized species or one that could easily fragment into small pieces are less likely to be retained than a large resilient species. The retention efficiency of deep-water fishing nets in relation to corals and sponges is still unknown. Using current guidelines and a

¹ Council Regulation (EC) No 199/2008 of 25 February 2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the Common Fisheries Policy

² 2008/949/EC: Commission Decision of 6 November 2008 adopting a multiannual Community programme pursuant to Council Regulation (EC) No 199/2008 establishing a Community framework for the collection, management and use of data in the fisheries sector and support for scientific advice regarding the common fisheries policy

hypothetical retention efficiency of 10%, at least 1000 kg of coral (or 10 000 kg of sponges) would need to be affected to trigger the encounter thresholds.

In its advice given in 2009 to NEAFC, ICES declared that it was unlikely that a single threshold level would be suitable for all species as an indicator of the presence of a VME, since this carried the assumption that all species indicating the presence of VMEs were equally likely to be retained in a fishing net. However, ICES also stated that the current thresholds were likely to be too high for both fragile and rare coral or sponge species and that more precautionary thresholds should be used.

Thus, while the inclusion of a definition of what constitutes an encounter with a VME, based on the currently best available scientific advice, would improve the effectiveness of the Regulation to ensure the protection of these ecosystems, it should be ensured that such thresholds can be amended regularly to take into account the latest scientific advice. Furthermore, in order to achieve greater accuracy, more than two sample taxa should be used as the indicators of structural habitat VMEs.

In addition, once the set thresholds for VME indicator species are met and reports to the authorities as required by Article 7 paragraph 3, this should trigger immediate (and at least temporary) closure of the site to allow any assessment of the area to be made. Unless such a closure is implemented immediately, subsequent passes by trawler nets could lead to the destruction of the VME.

3.5. Move-on rule

Article 7 of the Regulation establishes that if a vessel encounters a VME, it has to move to a minimum distance of 5 nautical miles from the site of the encounter. In NEAFC and NAFO, the required distance is only 2 nautical miles, which were considered to be more appropriate in the areas concerned.

Due to the lack of key information (patch size of corals and sponges and tow length of trawls), ICES has not been able to evaluate the scientific appropriateness of these provisions in the NEAFC Area. However, taking a mean value for tow time of 4 hours and a mean trawling speed of 3.5 knots, this would result in the trawl net covering a distance of over 9 nautical miles. This makes it impossible to establish where the encounter with the VME took place, as this could have happened anywhere along the passage of the net, and to establish from which point the 5 nautical mile move should apply.

ICES has indicated that an acceptable alternative would be to establish all areas where fishing has already occurred (or has occurred in the period for which records are available). It can then be assumed that all other areas still contained vulnerable marine ecosystems and thus, prohibition or restriction of fishing activities in these areas would then protect these ecosystems. The move-on rule would be limited to areas where fishing has already taken place, particularly for more lightly fished areas, though the use of this should be accompanied by lower thresholds for VME encounters and larger move-on distances. Better implementation of this rule will necessitate the collection of the information, including tow-lengths, required to model suitable distances for the move-on provisions

3.6. Observer coverage

Article 11 of Regulation (EC) No 734/2008 established 100% coverage for all vessels; and a review was foreseen by 30 July 2009. However, this review was postponed in order to obtain Member States' experiences with the scheme in the context of the information provided in accordance with the Regulation.

A workshop on Data and Knowledge in Deep-Sea Fisheries in the High Seas was held in Rome, Italy (5–7 November 2007) to discuss the current state of knowledge in these fisheries. The Recommendations from this workshop included that 100 percent observer coverage should be required in these fisheries. Furthermore, paragraph 55 of the FAO Guidelines specifies that higher levels of observer coverage were required for fisheries taking place outside the regulatory area of a RFMO/A. In addition, SPRFMO has established in its interim measures that there should be 100% coverage of bottom-fisheries by trained observers. This was deemed necessary for the correct implementation of the move-on rules requiring a trigger as it allowed for real-time observation of the catch from each individual tow. This is being implemented by New Zealand.

In view of the above and in light of the fact that prior impact assessments meeting the criteria established in paragraph 47 of the FAO Guidelines have not yet been carried out, 100% coverage by observers of deep-sea bottom fisheries covered by the scope of the Regulation should continue for the time being. This requirement could be reviewed every three years.

4. Conclusions

Over the past years, the EU has been on the forefront of the fight to ensure the global protection of vulnerable marine ecosystems and associated deep-sea fisheries. The adoption of Regulation (EC) No 734/2008 transposing the measures contained in UN GA Resolution 61/105 of 2006 was meant to ensure that vulnerable marine ecosystems were properly protected from bottom-fishing trawling activities. In view of the new recommendations included in UNGA Resolution 64/72 of 2009 and its forthcoming review scheduled for November 2011, the FAO "International Guidelines for the management of deep-sea fisheries in the high seas" and newly available scientific advice, the Commission is of the opinion that it is necessary to amend the Regulation, and intends to do so possibly by the beginning of 2012, to bring it in line with these developments so that enhanced measures for the protection of such ecosystems, based on the most up-to-date scientific advice, can be put in place in order to ensure their protection.