



Madrid, 23 May 2016

Subject: Implementation of UNGA Resolution 61/105.

Protection of Vulnerable Marine Ecosystems (VMEs) in the South West Atlantic

Dear Director General Machado Aguiar,

I am writing to you to express our concern for an issue that has been discussed within LDAC Working Group 3 (International Waters) regarding the protection of marine biodiversity and vulnerable marine ecosystems (VMEs).

The measures that have been implemented in the last few years to protect VMEs are set in UNGA Resolution 61/105, adopted on 8 December 2006 by the General Assembly, containing in paragraphs 83-91 an international mandate to establish by the end of 2008 measures to protect vulnerable marine ecosystems on the seabed, their biodiversity and habitat, applicable as of 2009¹.

In those areas where there is an RFMO, the resolution makes the organisations themselves responsible for these obligations. While, in those areas where there is no RFMO, the responsibility relies on the flag state. The Commission immediately identified ASW among the latter, indicating the urgent need to translate this resolution into specific measures for the European fleets usually fishing in this area².

¹ Resolution 61/105 approved by the General Assembly on 8 December 2006. Sustainable fisheries, even through the 1995 Agreement on the implementation of provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 related to conservation and management of straddling fish stocks and highly migratory fish stocks, and related instruments.

² Communication from the Commission to the European Parliament, the Council, The European and Social Committee and the Committee of the regions, on "Destructive fishing practices in the high seas and the protection of vulnerable deep sea ecosystems" de 17.10.2007, COM(2007) 604 final:
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). However, the EU does count a sizeable presence of bottom trawlers in the southwest Atlantic. The longstanding dispute between the United Kingdom and Argentina over the Falkland/Malvinas Islands has made it impossible to agree on the establishment of a regional management regime for straddling stocks in this area, and it is unlikely that these difficulties can be overcome in the near future. There is a potential risk for deep water corals and structure-forming sponges likely to occur in the outer edges of the continental slope where the EU vessels that operate in this region deploy their bottom gears. As noted in Section 1.2, this is an area where the international governance system is weak and therefore requires stringent measures by flag States to prevent these risks while awaiting the establishment of an RFMO or arrangement. The EU must therefore respond to the UN calls by adopting regulations in respect of its fleets.



This issue was discussed at LDRAC WG3 meetings held in December 2007 and April 2008 but no resolution was adopted.

Finally, considering it an obligation to respond to the international call made by UNGA and to take special measures to protect deep water corals and sponges in areas where international governance is weak, the Commission published Council Regulation (EC) No. 734/2008, of 15 July 2008³, on the protection of vulnerable marine ecosystems in the high seas from bottom fishing.

For its part, aware of the fact that paragraph 86 of the UNGA Resolution calls upon flag states to adopt measures, the Spanish government initiated an important series of actions to implement all the requirements of the latter, including research campaigns with oceanographic vessels, seabed mapping, establishment of criteria for VME identification, interim and final precautionary measures to protect VMEs, analysis of the state of stocks that had been exploited by the Spanish fleet in the area and an impact assessment of the activity, sufficiently in advance so that everything would be ready by the deadline set by the UN, as it was the case⁴.

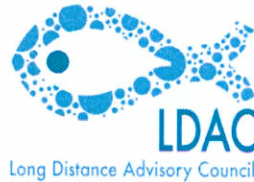
FAO strongly contributed as well to the implementation of the requirements of the United Nations Resolution, drafting the document "International Guidelines for the Management of Deep-sea Fisheries in the High Seas" (FAO Deep-sea Guidelines). Attention should be drawn to the fact that the fishing activities carried out by Spanish vessels in ASW do not fall under the definition of deep-sea fisheries provided in this document, since they are performed on the continental shelf, on soft seabed of silt and sand and carried out on species with medium and high levels of productivity.

As a result of all these legislative movements and developments of the EU and the Spanish government, the European fleet fishing in ASW was subject to a series of new obligations as of 2009 that started as interim but later, once the areas that can contain vulnerable marine ecosystems were identified, became final. The interim measures were jointly presented in public to the Industry and the NGOs (Greenpeace, Océana and WWF-Adena) by the Director General for Fisheries of Spain at a meeting in the Ministry on 24 July 2008, and the final measures at a specific event on 4 April 2011, attended by the aforementioned organisations and Pew at the headquarters of the Spanish Ministry of Agriculture and Fisheries, together with the rest of actions of IEO in the Atlantic Ocean.

³Council Regulation (EC) No 734/2008, of 15 July 2008, on the protection of vulnerable marine ecosystems in the high seas from bottom fishing. Official Journal of the European Union No. L 201 of 30 July 2008.

⁴ Attention should be drawn to the work carried out by Spain through its research institute, IEO, in the development and implementation of technologies for seabed mapping and VME identification, that was not restricted to the South West Atlantic, but also covered other areas of the Atlantic Ocean waters:

- NEAFC area: ECOVUL/ARPA Project. Pablo Durán (IEO, Spanish Oceanographic Institute)
- ASW area: ATLANTIS Project. José Luís del Río (IEO)
- NAFO area: NEREIDA Project. Enrique de Cárdenas (SGM, General Secretariat of the Sea)
- Activities in SEAFO. Luís López Abellán (IEO)



These measures basically involved the following:

- Freezing the trawling area and additional closures in areas that, according to biological and geological criteria, could contain VMEs. (Out of more than 50,000 km² of explored territory, 9 marine areas were closed, with a total surface of 41,300 km²)
- Obligation to have a control observer onboard 100% of the vessels. (This measure was extended by the Commission in its review of the Regulation in spite of the industry's request for it to be softened, in order to make more compatible the boarding of IEO scientific observers, who have followed the fishery from the beginning)
- Monitoring and control of the evolution of the capacity of the fleet and the effort developed in the fishing ground, with data related to the species caught, including sizes, CPUE, etc., to prove that a sustainable and demonstrable activity is under development.

The European industry accepted the conditions imposed and has been complying with them since 2009. Nevertheless, it has been observed that the rest of fishing fleets of other nationalities, mainly Asian countries (China, Taiwan and South Korea) have not adopted any equivalent specific control measures for the areas although for the case of South Korea some progress has been made since the implementation in 2015 of permanent satellite control and monitoring (VMS) of their long distance vessels' activity. Therefore, these fleets keep fishing freely in the areas designated as VMEs.

This implies the lack of a level playing field that has important and negative socio-economic consequences for the European fleet. Therefore, in successive WG3 meetings, the need to find a formula enabling to extend equivalent rules to the rest of fleets has been put forward. The Commission expressed at the time its will to work on this matter in bilateral meetings, and a few years ago we were informed about the EC initiating contacts with South Korea, that had showed some willingness to collaborate.

Ideally, an RFMO should be set up to manage these waters with the ability to impose management measures equivalent to those with which the European fleet has been complying. But this is not something that can be expected in the medium term, since there is still a dispute between the United Kingdom and Argentina over the sovereignty of these waters.

In the light of the foregoing, the LDAC requests the EU to demand at the relevant international fora (UN, FAO), as well as in commercial negotiations and bilateral fisheries agreements that it might reach with affected third countries, that the implementation of UNCLOS Resolution 61/105 be extended to all fleets fishing in the South West Atlantic in order to promote good international governance of oceans and seas and ensure a level playing field for EU fleets and foreign fleets alike.

We look forward to receiving your response to our request.

Yours sincerely,

Juan Manuel Liria Franch, LDAC Acting Chair