

Annex 2. On a Council Regulation establishing a Community system for inspection, monitoring, control, surveillance and enforcement applicable to the Common Fisheries Policy (COM(2008)721)

There is general agreement that unreported landings are a significant threat to the sustainability of EU fish resources. Among other things, they make scientific assessments more difficult, distort market prices and have a negative effect on consumer confidence. Unreported catches and landings need to be eliminated or at the least minimised. The current Commission proposal for a new Control Regulation would, if adopted, be a significant step in the right direction.

The Commission's proposal is long and very detailed, touching on virtually all areas relevant for better control. In the proposal, we consider the following issues to be essential for an effective EU control system: strengthening and harmonising fisheries inspection and control; harmonising penalties and their application in such a way that they effectively deter infringements; creating a traceability system for the entire production chain; and fostering a culture of compliance within the sector. A key issue for the sector is the establishment of a level playing field across the EU – something that is also strongly supported by environmental NGOs.

The Fisheries Secretariat (FISH) and Seas At Risk (SAR) therefore urge you to support the proposal in general, and in particular the sections mentioned above.

The costs and benefits of this proposal have been discussed at length in many countries. The EU is facing a recession and most Member States (MS) feel reluctant to take on any additional administrative costs. According to the Commission's impact assessment, the new control system will have clear economic benefits. This is questionable at first sight, since a number of initial investments will be necessary. However, a more effective control system is likely to increase the returns through stock improvements, higher profits in the [legal] sector and, in the longer term, higher employment. We hope that the initial investments will not prevent MS from supporting this proposal.

SUMMARY OF RECOMMENDATIONS

- We urge you to overcome the political, legal and administrative obstacles to the harmonization of control, inspection, monitoring and surveillance standards as well as sanction levels in MS, without which the conservation and management objectives of the CFP cannot be fulfilled, as well as to avoid discrepancies between MS and the possible discrimination of fishermen (articles 21, 22, 61–64, 65–80, 82–85).
- Despite the obvious conflicts with the principle of subsidiarity, we ask you to support the adoption of the proposed additional measures, enabling the Commission to ensure that

MS are fulfilling their obligations towards the EU and to take swift action to ensure better implementation (articles 27, 45, 70, 88–94 and 96–101).

- The measures proposed in Article 95 provide for the suspension of EU fisheries aid when a MS fails to meet its obligations under the CFP regulations, but only when there is a breach so severe that it may seriously affect the conservation of marine resources. This proposal has been challenged but would be a first step towards use of cross-compliance measures in the CFP – something which is commonly used in the EU Common Agriculture Policy (CAP).
- We encourage the extension of Vessel Monitoring System (VMS) on fishing vessels of 12 metres or more and the use of Automatic Identification System (AIS) (articles 9–10), as this will simplify effort control and make targeted control activities easier. This measure was initially intended to cover smaller vessels as well. While this may not be feasible, we ask ministers to reconsider how to best control boats of less than 12 metres of length and come back to this issue in the near future.
- We urge you to support the proposed extension of the logbook obligation for vessels of 10 metres or more (article 14), and the electronic transmission to fishing monitoring centres for vessels of 12 metres or more (article 15), as this would allow for better and more direct monitoring of daily fishing activities and fish stocks. We also ask you to support and plan for the obligation for MS to monitor, on the basis of sampling, the activities of fishing vessels, which are not subject to the requirements specified in articles 14 and 15, since in some MS a substantial part of the fishing fleet consists of vessels measuring less than 10 metres (article 16).
- We ask you to support the proposed prohibition of all transshipment operations in EU waters, and that transshipment declarations become mandatory in those cases where transshipments are allowed (articles 18–19, 30–32).
- We welcome the efforts of this Regulation to improve traceability and better enable consumers to safely choose fisheries products knowing that they come from a legal, well-managed resource (articles 48–58).

DETAILED COMMENTS ON THE CONTROL PROPOSAL

Our more detailed comments and recommendations have been divided into sections based on the articles in the proposal. At times, it is more appropriate to comment on larger sections, i.e. entire titles.

Article 9 Vessel Monitoring System (VMS)

It has come to our knowledge that this article has gradually changed from the originally proposed application to boats of 10 metres or more, to boats of 12 metres. In some MS, a large part of the fleet consists of boats smaller than 10 metres, rendering this measure less effective than it was intended. In Poland, for example, more than 60% of the fishing fleet consists of boats below 10 metres.

Preferably, all community fishing vessels should be equipped with a VMS. While asking you to support the principle of this, we do acknowledge that it may be impractical. Some open boats may not even have electricity onboard. At the same time, there are plenty of modern vessels with significant catches that are smaller than 10 metres.

We ask you to strongly support the extension of VMS on fishing vessels of 12 metres or above, and as a matter of urgency to consider ways of expanding the monitoring system to smaller vessels.

Article 10 Automatic Identification System (AIS)

Since 31 December 2004, all ships involved in international traffic are equipped with AIS and as of 1 July 2007, also all ships involved in national traffic. In addition, all passenger ships are obliged to be equipped with AIS regardless of size. We believe that it would be beneficial, for safety as well as identification, if it applied to fishing vessels as well. Maybe in the longer term, it could even replace VMS as this is known to have been tampered with.

We ask you to support this proposal.

Articles 14–17 Completion and submission of the logbook

The proposed extension of the logbook obligation down to vessels of 10 metres or more, as well as the electronic transmission of fishing data to fishing monitoring centres for vessels of 12 metres or more, would render monitoring of the daily fishing effort easier and simplify the streamlining of control efforts. It would also enhance the ability to perform cross-checks between landings and sales declarations. According to the European Commission, this could increase the detection of infringements related to assigned quotas by 70%¹. This may also help in providing scientists with better and more accurate data for stock assessments.

We therefore urge you to support both the proposed extension of the logbook obligation and the electronic transmission of fisheries data.

¹ Commission Summary of citizens consultation on control reform, available online at: http://ec.europa.eu/fisheries/pdf/citizens_summary_control_en.pdf Pg 2

We also ask you to welcome the proposed obligation for MS to monitor, on the basis of sampling, the activities of fishing vessels not subject to the requirements specified in Articles 14 and 15, as in some MS vessels of less than 10 metres constitute a substantial part of the fishing fleet.

Article 18 and 19 Transshipment operations and declarations

Transshipments at sea makes it easier for vessels involved in illegal, unregulated and unreported (IUU) fishing to avoid detection as reporting of catch is avoided.

We therefore ask you to support the proposed prohibition of all transshipment operations in EU waters, and that transshipment declarations are made mandatory in cases where transshipments are allowed. This is also in accordance with the Food and Agriculture Organization of the United Nations' (FAO) international plan of action to combat IUU².

Article 21 and 22 Landing declarations

Currently, more resources are used for controls at sea than for landing controls, even though the latter has been shown to be more cost-effective. According to the Commission, increasing levels and quality of landing controls is crucial in many MS in order to prevent the entry of illegally caught fish into the EU's processing and marketing chain.

A 2003 report on fisheries enforcement by the United Kingdom Comptroller and Auditor General shows that the probability of infringements being detected at sea is estimated to be 1/600 as opposed to 1/60 at landing point and 1/6 at sales point³.

We ask you to support the proposal to harmonize and extend the obligation for vessels to complete landing declarations to vessels of 10 metres or more, as this is the first in a series of steps needed to perform effective control on land. We also stress the importance to support the proposal of article 22, stating that the activities of the vessels exempt from this obligation are monitored by each MS through sampling.

Article 30–32 Engine power

One of the main reasons for the current problem of overfishing in EU waters is that the European fishing fleet is much larger than it needs to be in order to catch the available fish resources. The problem with over-capacity is exacerbated by the frequent manipulation of the engine power of fishing vessels, one of the parameters used to calculate effort in the management system.

² FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. Available online at: <http://www.fao.org/fishery/ipoa-iuu/en>

³ Report by the Comptroller and Auditor General: Fisheries Enforcement in England (3 April 2003): http://www.nao.org.uk/publications/0203/fisheries_enforcement_in_engla.aspx.

According to the Commission, the engine power of EU fishing vessels is often much greater than declared⁴. A previous study of engine power on Spanish fishing vessels operating in the Mediterranean Sea showed that the majority of vessels had an engine power 2.5 times higher than declared in official documents⁵.

Getting accurate reporting on the engine power of vessels is notoriously difficult, as it is relatively easy to modify settings before inspections. Ideally, the whole concept of capacity, including engine power, needs to be reviewed in the context of the ongoing CFP reform.

For now, however, we ask you to support the proposal to harmonize the standards for the verification, monitoring and the declaration of engine power.

Article 39 Control of fishing restricted areas

An important measure in order to safeguard fish stocks is to set aside certain areas where fishing activities are prohibited or limited. Such areas usually consist of habitats important for the breeding or spawning of a particular species. Vulnerable bottom habitats, for example seamounts and corals, which may be damaged by fishing activities, such as bottom-trawling, also need to be protected. In order to maintain marine biodiversity, the restriction of fishing in these areas must be respected.

The control measures suggested in article 39 include alarm systems alerting the ship master when entering a restricted area, as well as systems enabling MS fisheries monitoring centres to detect vessels entering a restricted area. The proposal would apply to vessels that are 12 metres or more, but should preferably include smaller vessels as well.

We ask you to support the proposal to control vessels entering fishing restricted areas established by the Council.

Articles 43–45 Real time closures

A way to prevent excessive capture of spawning and juvenile fish is the provision of real time closures. Such closures are already in place on a voluntary basis in for example Scotland to protect North Sea cod stocks⁶. The method has received a positive response from fisheries stakeholders and managers.

We therefore ask you to support the proposal to make such closures mandatory within EU waters.

⁴ Briefing from the Commission for meeting on engine power between Director Generals for fisheries of the Member States, March 31 2006. Document can be sent upon request.

⁵ WWF (2003) Subsidios pesqueros europeos y medio ambiente marino - Caso español, Madrid: WWF/Adena. Online at: http://www.infoecologia.com/ultimo/2006/mayo20065/motores_pesca200605090101.htm

⁶ <http://www.scotland.gov.uk/Topics/Fisheries/Sea-Fisheries/COMPLIANCE/closures>

Title VI, articles 61–64 Surveillance

Proper surveillance at sea is important in order to safeguard the quality of fisheries control. The harmonisation of surveillance standards in the MS is of great importance for many reasons, and in particular for creating a level playing field among fishermen. It would also simplify the work of the Commission in evaluating MS control standards.

We call upon you to support the harmonisation of surveillance procedures as proposed in articles 61–64 under title VI.

Title VII, articles 65–80 Inspections and Proceedings

The section on inspections and proceedings is one of the most important sections of the proposal. Currently there is no EU legislation setting out how inspections should be carried out, which leads to discrepancies between MS and possible discrimination of EU fishermen. The EU Court of Auditors pointed this out as one of the main reasons for the failure of the current EU fisheries control system⁷.

In the proposal, articles 65–80 establish the basis for the carrying out inspections at sea and on land, as well as the proceedings when infringements are encountered. However, there is a need to further develop clear guidelines that would have to be followed by all EU inspectors.

We urge you to support this important development and call upon the Commission and the Council, in cooperation with the Control Agency, to establish a legally binding set of inspection standards.

Articles 82–85 Sanctions for serious infringements

In order for sanctions for serious infringements to be effective, they need to be sufficiently severe to eliminate the economic benefits of the illegal activities and to serve as a deterrent. This could include financial penalties (fines), confiscation of catches, gear and/or vessels, or a withdrawal of the fishing licence.

Today, the sanctions used for serious infringements in many MS do not provide any real incentives to comply with the rules of the CFP. They are commonly too low, in terms of fines, to prevent recurring offences, or do not have severe enough consequences – for example, repeat offenders may only receive low fines rather than losing their licences to fish.

In 2006, the Commission came to the conclusion that penalties imposed by MS do not, overall, serve as effective deterrents. In many cases, the fishing industry simply considers fines applied

⁷ European Court of Auditors Special Report No. 7/2007 on the control, inspection and sanction systems relating to the rules on conservation of Community fisheries resources.

after infringements as ordinary running cost⁸. The Commission also concluded that there are significant differences between the sanctions imposed by the various MS for the same type of offence.

The penalty points proposed by the Commission would contribute to a more equal and clear system for applying sanctions, but a strengthening and harmonisation of the level of fines is also necessary.

We urge you to overcome the political, legal and administrative obstacles to the harmonisation of enforcement procedures, such as sanctions systems and levels, without which the conservation and management objectives of the CFP cannot be fulfilled. We also ask you to ensure that sanctions are severe enough to act as a deterrent for illegal activities.

Title X Evaluation and control by the Commission

According to the Court of Auditors report, MS implementation of CFP rules is very poor. It recommends that “*To reinforce the Commission’s capacity to put pressure on the Member States, it is desirable that the Community legislator [...] examine whether strengthening the powers of the Commission inspectors and broadening the mandate of the Community Fisheries Control Agency would be appropriate; and lastly introduce more responsive instruments of sanction such as, for example, the capacity to suspend payments of Community aid in the fisheries sector if a Member State fails to respect its control obligations*”⁹.

This is also supported by the Advisory Council for Fisheries and Aquaculture (ACFA) which noted in its submission to the Commission¹⁰ during the consultation on the reform of the control system that: “*The reinforcement of the Commission’s possibilities to ensure the application of the decisions taken by the Council should be encouraged*”.

We ask you to support the adoption of the proposed measures enabling the Commission to take swift action to ensure better implementation of the CFP by MS.

Article 95 Suspension and cancellation of EU aid

Article 95 would give the Commission the ability to cancel aid, under the European Fisheries Fund (EFF) for example, when a MS floats regulations or fails to implement the rules. The measure proposed could potentially be crucial in promoting a culture of compliance in the fisheries sector. The measure puts serious pressure on MS to meet their obligations under the

⁸ Communication from the Commission to the Council and the European Parliament (Nov 2008) - Reports from Member States of serious infringements of the rules of the Common Fisheries Policy in 2006.

⁹ Special Report No 7/2007 on the control, inspection and sanction systems relating to the rules on conservation of Community fisheries resources – paragraph 133.

¹⁰ Advisory Committee for Fisheries and Aquaculture (ACFA) - EP(08)88final.

proposed regulation as it provides for the cancellation of EU aid up to 18 month in cases where a MS does not live up to its' requirements in terms of fisheries control.

The fisheries sector is possibly the only sector covered by Community law where funds are still distributed to MS, and on to the final recipients, without being conditioned upon compliance with control rules. The proposed measure, introducing cross-compliance, already exists under the Common Agricultural Policy¹¹. In fact, even the European Fisheries Fund already stipulates that financial aid should be conditioned upon compliance with the Community rules¹². Article 95 is putting this into practice by suspending and reducing financial aid in cases in which MS continue to show no intention of stopping persistent and serious infringements.

We call upon you to support article 95 and welcome the introduction of cross-compliance measures in the CFP.

Article 101 Emergency measures

Already today, the Commission can take emergency measures, either in response to a formal request from a MS or on its own initiative, if fisheries resources or marine ecosystems are under serious threat. It is now suggested to include this measure into the new Control Regulation.

We ask you to support this proposal, enabling the Commission to decide on emergency measures if there is evidence that fishing activities and/or measures adopted by a MS undermine the conservation and management measures adopted in the framework of multi-annual plans, or threaten the marine ecosystem, and this requires immediate action.

¹¹ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy Article 17 and 27.

¹² Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund, Article 89 and 97.