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DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES  
THE DIRECTOR-GENERAL

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NSRAC Secretariat  
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**Subject: Comments on the proposal for reform of the control policy**

Dear Mr Anderson,

The Commission would like to thank the North Sea RAC for its latest comments on the proposed control regulation. We feel we have been engaged in a constructive dialogue with various actors in the field with a view to achieving a final text that ensures that the rules of the Common Fisheries Policy will be effectively respected in the future. In light of discussions in the Council, we have amended the text on several occasions to take into account the specific situations of certain Member States and certain fisheries. The Presidency, in close contacts with the Commission, is currently preparing a compromise in view of a political agreement in the October Council. With this in mind, I would like to respond to provide the following answers to the points raised in your letter:

*Live weight thresholds and discards*

The proposal contains a differentiation of quantities to be entered in the logbook, a transshipment declaration and other relevant documents according to which 15 kg of live weight equivalents for species subject to multiannual plans have to be registered while the threshold for other species is 50 kg. As you know, species subject to multiannual plans are in a particularly critical situation and need therefore specific measures for their protection. The first management plans are beginning to show some positive signs but the management measures for these plans must be reinforced by ensuring that quantities are not exceeded and that there is a thorough understanding of the situation of the stock. For this reason, the registration of data on these stocks should be as precise as possible. The Commission continues to believe that the 15 kg amount for entries into logbooks as well as for the application of other documents, to be a right balance between what is necessary for the protection of the stock and what is still technically feasible. This approach also applies to discards for which the Commission has embarked on a policy that aims at their reduction, if not eradication. Developing a good data base on such discards will be vital and I would like to refer to the specific wording of the registration of discards - their

amount only needs to be estimated. Such estimations would not necessarily involve the exact weighing of the discarded fish.

#### *Margin of tolerance and submission of logbook information*

The proposed margin of tolerance of 8% for species subject to management plans is not new. On the contrary, the 8% margin of tolerance is the normal standard for such species. It is not the intention of the Commission to fall behind on the current level of control as the reliability of data was precisely one of the main critical points of the Court of Auditors' special report No 7/2007 on the fisheries control system.

As to the submission of logbook information, it should be recalled that under the current rules, a fishing vessel equipped with an electronic logbook has to transmit the logbook information daily. For that reason it seems logical to foresee a similar rule for the paper logbook once the vessel is in port.

#### *Fishing Restricted Areas*

The rules proposed in the new control regulation establish a general control framework to ensure that these areas are respected by all fishermen. These rules do not preclude the consideration of technical specifications for individual areas to be decided by the Council on a case by case basis. Such specific rules can't be anticipated at this stage. In this context, the speed of 6 knots is supposed to ensure that no fishing activities occur during a transit through fishing restricted area. In this regard it is to be emphasised that the minimum speed of 6 knots would not apply in the case of force majeure and adverse conditions and that it will only apply to vessels above 12m.

#### *Recreational Fisheries*

The Commission notes with some satisfaction that the NSRAC recognises the need for better accounting of the catches of recreational fisheries. In this context, the Commission would like to emphasise that the measures are only supposed to apply to stocks subject to recovery plans. As far as this regulation is concerned, this also applies to the collection of data on these stocks. The Commission is convinced that in view of the particularly vulnerable state of the stocks which characterises the very essence of recovery plans, the Common Fisheries Policy cannot afford to ignore this important activity. As the measures foreseen in article 47 will only apply to a very small number of stocks, the overall administrative burden will be limited. Before any measures can be decided, the relevant stocks will be subject to an intensive evaluation by STECF. It goes without saying that such an evaluation would be a holistic one that would not exclude the past impact of recreational fisheries on the stock nor any possible consequences for the TACs for the stocks concerned by taking these fisheries into account. Such measures would also apply to charter boats as their catches are taken in connection with recreational activities. In general, this measure will apply to all vessels which at the moment of pursuing a recreational fishery, are registered in a Member State or in a third country.

#### *Real time closures*

The new control regulation only provides for a very general framework for real time closures. It is justified by the fact that the protection of the resource is at the very heart of control. The proposal takes full account of the negotiations with Norway in this respect and leaves the door open for further developments in the system. It also includes the specifics of various regions and stocks in the implementing rules. Fishermen are involved in the process as information on changes of the catching area for exceeding a trigger catch level may be used by the competent authorities.

### *Serious infringements*

The definition of high-grading in Article 82 as a serious infringement does not place the fishermen in a legally untenable situation. The wording clearly states that it will be only considered as a serious infringement not to land any species subject to a quota caught during a fishing operation if the landing of the catch is legal. It would only apply therefore in cases where a fisherman still has a quota available for the stock concerned. The prohibition of high-grading is not new in Community law. Point 5b of annex III of Regulation (EC) No 43/2009 already contains such a prohibition for the North Sea and the Skagerrak. The wording of that provision inspired the text of the relevant provision of article 82 of the proposal.

### *Article 10 (AIS)*

The Commission agrees that AIS is a safety tool in the first place. However, the data it produces can be of importance in a data evaluation system based on systematic cross-checks. When assessing the usefulness of AIS, it should not be forgotten that the introduction of AIS for all fishing vessels above 15m at the latest by 31 May 2014 has already been decided by Article 1 No 18 of *Directive 2009/17/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system*. If AIS were not included in the new control regulation, no financial assistance for the acquisition of these devices would be available for fishermen irrespectively of their general obligation to have it installed by 2014.

### *Article 21 (Landing declaration)*

The Commission considers the landing declaration as an important document to establish the actual quota uptake. It is at the moment of landing that the landed amounts are precisely ascertained by way of weighing. The landing declaration is also an important element in the traceability chain and in the operation of the data evaluation system.

### *Article 34 (Designated ports)*

The concept of designated ports has so far not yielded the expected results as landings can take place when there is no control presence in these ports. For this reason the Commission considers it necessary to strengthen the concept of such ports. In the course of the discussions, it turns out that full inspection coverage will be difficult for some Member States. For this reason, the criterion of full inspection coverage will be replaced by the requirement for the Member State concerned to establish inspection and surveillance procedures for these ports. In the same context, the Commission is also considering how to ensure that the control activities concentrate on the ports with certain relevance for stocks subject to a management plan. The idea to apply less strict rules on designated ports for vessels with an observer on board is interesting even though the Commission considers its application in the framework of this regulation as being slightly premature. In this respect, I would like to emphasise that Member States can be exempted from the provisions laid down in Article 34 paragraph 4, points c) and d) if a national control action programme ensures a satisfactory level of control. Naturally, an observer scheme can be a part of such a programme.

### *Article 50 (Traceability)*

In the Commission's view, traceability has enough elements so as to warrant its inclusion into the control regulation. Within the new data evaluation system based on a systematic cross-check of data, the consistency of data along the production chain will be particularly important to discover illegal behaviour. However, in order to take account of

the needs of the industry, it will be clarified in the text that lots may be merged or split after the first sale on the condition that they can be traced back to the catching or harvesting stage.

*Article 63 (Control observers)*

Article 63 has been clarified in order to distinguish clearly between those observers that have a control function and those that have a scientific one. By clearly identifying the observers in the context of the control regulation as those linked to control tasks, the role of scientific observers and their good cooperation with the industry will not be affected. Without this clarification, the clear distinction of these two forms of observers could have been blurred.

*Article 71 (Inspections of fishing vessels outside of the waters of the inspecting Member State)*

The rules on the inspection outside of the waters of the inspection Member State are not new as they are already contained in Article 28, paragraph 3 of Regulation (EEC) No 2847/93 and are already subject of Commission Regulation (EC) No 1042/2006. The only essentially new element is that the coastal Member State may only deny such inspections on compelling grounds of national security. This being said, the Commission recognises the need to clarify the procedure in case an infringement is found in the course of such an inspection. In the Commission's view, the competence of the coastal Member State should apply in such a case. The Commission is reflecting on how to establish this approach in the text. In this context, the Commission notes with satisfaction the disposition of the NSRAC to consider CCTV systems as possible control tools. The use of such CCTV systems will be the subject of future developments in the field of control. The possibility to introduce modern technologies, by an appropriate decision of the Council, is already foreseen in Article 13 paragraph 2 of the proposal.

As already mentioned above, the proposal is now entering its final stage of discussion. We are optimistic that the more technical issues will be clarified and that the more political aspects will be solved in the Council meeting of 18 and 19 October 2009. During the whole process, the Commission has tried to take on board the legitimate concerns of all of the Member States and the sector without comprising the overall objective of bringing about a new control regulation which is to make the best possible use of modern technologies and finally ensure that the rules of the Common Fisheries Policy will be equally respected by all actors in the field.

Yours sincerely,



Fokion Fotiadis