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ADVICE

on the policy options proposed by the European Commission on the revision of the EU Fisheries Control System

29 January 2018

Background

The NWWAC attended the consultation meeting organised by the Commission (EC) to gather stakeholders' views on the policy options proposed in the inception impact assessment¹, in order to tackle the shortcomings identified by the evaluation of the EU fisheries control system (16th November, Brussels). At the meeting, the NWWAC stressed that there had been insufficient time in advance of the consultation meeting to produce an NWWAC opinion but highlighted the importance of the topic, as it had enormous implications for fishermen. The NWWAC presented the written comments that were produced earlier in the year² to the meeting.

On 11th January 2018, the NWWAC discussed the EC proposals in greater detail at a meeting of the NWWAC Focus Group on Control and Compliance and thereafter, continued this process by correspondence. The following advice has been produced as result of this interaction.

General remarks

The NWWAC reiterates that the Commission's consultation process is insufficient, particularly given the Control Regulation's implications for fishermen and its role in ensuring the success of the CFP. As this is a legislative initiative accompanied by an Impact Assessment, the Commission should have provided for a much longer consultation period to ensure that stakeholders' views are properly sought on all of the key questions, and should have also conducted a proper, internet-based, 12-week, public consultation covering all the key, impact-assessment related issues before the publication of the proposal. The previous public consultation regarding the evaluation of the Control Regulation was not sufficient in this context. The NWWAC would also like to highlight that, while the existing Control Regulation does have some shortcomings, many of the problems stem from a lack of implementation and enforcement at Member State level and this must be addressed.

¹ The inception impact assessment on the EU Fisheries Control System ([Link](#) in English only)

² The NWWAC opinion on specific issues relating to the implementation of the Control Regulation (EU 1224/2009) [Link](#) [Lien](#) [Enlace](#)

Considering the importance of the topic, having enormous implications on fishermen, the NWWAC would like to emphasise that the proposal should be given sufficient consideration during the negotiations and wonder if sufficient time will be available considering other important subjects like Brexit and the upcoming election of the European Parliament.

Three policy options proposed by the European Commission

The NWWAC supports policy option three, regarding the role of EFCA and electronic catch certificates and the comments on the options covered in policy option 2 as outlined in this advice.

The members of the Other Interest Groups (OIG), however, would like to stress that they do not support policy option three in as much as it relates to the IUU enforcement position. They believe that the Commission has neither taken nor given the time for stakeholders to properly assess the cost/benefit balance of re-opening this legislation and that risks are high that, if pursued, this option will be used to weaken enforcement provisions in both the IUU and Control Regulations.

Evaluation of specific remarks

1. Enforcement rules

The NWWAC agrees with the description of the problem and is in agreement with the majority of the proposed amendments, subject to the concerns and questions outlined below. The NWWAC would, however, like to highlight the following issues:

1. As specified in previous NWWAC advice², the current control regulation (EC No 1224/2009) is unclear as to how different Member States deal with penalties for infringements and does not guarantee a level playing field. According to Art. 90(1), the competent authority of Member States can determine what constitutes a serious infringement. Defining unequivocal criteria to define the gravity of the infringements may improve the harmonised and equitable implementation (i.e. a level-playing field) of the EU fisheries control policy (EC No 1224/2009 preamble (4),(9)).
2. According to Art. 89(1), Member States shall ensure that appropriate measures are taken, including administrative action or criminal proceedings, against persons suspected of a breach of any of the rules of the common fisheries policy. The NWWAC would like to highlight the different judicial systems in each Member State, which poses problems for the application of immediate enforcement measures in the different Member States, e.g. Ireland. In this respect, the NWWAC requests clarification on the definition of 'immediate action' in the EU regulation on IUU fishing (EC No 1005/2008, e.g. Art. 43 and 46).

In previous advice², the NWWAC suggested that further detail and explanation should be provided for the criteria, which define a serious infringement to ensure that Member States apply effective sanctions, which are equitable between Member States and provide a level-playing field for EU operators. In this respect, the NWWAC industry members agree with the proposed list of points, which include defining serious infringements and suggest an amendment of the IUU regulation to reference this list and the definitions of a serious infringement as laid down in the amended Control Regulation, to ensure that there is agreement between the two regulations. However, the OIGs are concerned that this re-opening of the IUU regulation could be used to weaken the enforcement provisions and therefore cannot support this element of policy 3.

The NWWAC would like to stress the need for an equitable (i.e. a level-playing-field) level of sanctioning for infringements, applicable to third countries, like Norway and the Faroe Islands, operating in EU waters.

5. The NWWAC requests further clarification on the appointment of the penalties in the case where the master and licence holder are the same person, will double points apply to the same person? Whereas Article 92(2) specifies that in case of a serious infringement, penalty points shall be assigned to the holder of the fishing licence, these points shall be transferred to any future holder in case the vessel is sold, transferred or otherwise changes ownership after the date of infringement. Article 92(6) specifies a point system should be established to assign the appropriate number of points to the master of a vessel, as a result of a serious infringement committed by him.
6. The NWWAC agrees with the proposal to establish an EU system to exchange data on infringements and sanctions in cooperation with EFCA and Member States.

7. The NWWAC agrees with the proposal to digitalise inspection reports using an Electronic, Inspection Report System.

2. Data availability, quality and sharing

2.1 Reporting and tracking for vessels <12m

The NWWAC agrees with the description of the problem and supports the proposed solution for increased control and monitoring of vessels below 12m along with their catches and sales. The NWWAC would like to highlight that different initiatives are ongoing to develop easy and cost-effective control systems in several Member States³, but warns of the inapplicability of a one-size-fits-all solution for the monitoring of all types and sizes of fishing vessel.

The NWWAC notes that the provisions in the regulation allow for derogations and exemptions, which hinder the quality of data collection and jeopardise full compliance with the CFP. The NWWAC recommends that careful consideration should be given to deleting exemptions that exist for vessels under 12m in order to ensure equitable implementation. Where monitoring and reporting requirements are applied to these vessels, the NWWAC recommends that the rules developed should be adaptive and flexible to take into account the specificities of such vessels.

2.2 Control of recreational fisheries

The NWWAC agrees with the description of the problem as presented, which identifies the need and calls for further control measures. The NWWAC requests that unambiguous definitions of recreational and commercial fishing activities are stipulated.

Furthermore, the definition of small scale coastal fisheries is unclear and may lead to semi-subsistence fishing. It is the responsibility of individual Member States to identify if semi-subsistence fisheries exist and to ensure that such fisheries are correctly labelled, counted and managed as either recreational or commercial fisheries. In some cases, additional sample frames may have to be developed to cover these data and develop approaches for management.

The NWWAC would like to emphasise that catches from recreational fisheries cannot be sold, as this is considered an illegal act according to Article 55(2). In some Member States however, marketing of catches is not considered to be the same as the sale of catches. To avoid confusion, the NWWAC proposes that the wording of Article 55(2) is amended to 'the selling of catches from recreational fisheries shall be prohibited'

2.3 Weighing, transport and sales

The NWWAC would like further clarification as to why weighing currently represents a problem and questions whether there is an issue with the implementation and enforcement of the current regulation or whether there is a problem in a specific area.

³ NWWAC opinion on specific issues relating to the implementation of the Control Regulation (EU 1224/2009)

The NWWAC strongly advises the EC to consider the logistic dimension of the proposed actions, which may:

1. Limit the landing of catches to a small number of ports in a Member State,
2. Create additional costs associated with new equipment and the training of personnel,
3. Delay distribution, as each (set of) fish box (es) has to be weighed after landing.

2.4 Monitoring of the fishing capacity

The NWWAC does not agree with the description of the problem and requests clarification on the problem with reference to the current regulation. The NWWAC has concerns over the need for such revision, as significant changes to the effort regulation have occurred since the control regulation was adopted in 2009 which significantly reduces the importance of monitoring, control and certification of power. Hence the requirements for additional measures beyond articles 39, 40 and 41 has be questioned.

Furthermore, the NWWAC is of the opinion that changes in the monitoring of engine power and certification could require amendments to Regulation (EU) 2017/1130 defining the characteristics for fishing vessels, which may delay the process of amending the Control Regulation.

2.5 Data management and sharing at EU level

The NWWAC welcomes the idea of electronic data monitoring and calls for the revision of Art.15.8 and Art.9.3 to allow electronic data transmission to flag and coastal states at the same time.

3. Control of the Landing Obligation

As stated in previous NWWAC advice², the NWWAC agrees that there is a need for full control of high-risk vessels. The risk categories, however, should be defined (it remains unclear on how this should be achieved).

Assuming that high-risk vessels can be identified, the NWWAC suggests that in order to ensure the detailed and accurate documentation of catches of all fishing trips, tools should be selected which are cost effective and appropriate to those vessels. Such tools could include: observers, closed-circuit television (CCTV), VMS, sea, air and onshore controls, amongst others.

The NWWAC identifies that:

- Dedicated programmes to measure compliance should be implemented to assess compliance with the landing obligation;
- Appropriate methodologies for data gathering and analyses should be developed to allow for the development of a compliance evaluation process.

The NWWAC requests that it is involved in the process of determining sensible programs and methodologies and in the evaluation process.

As an element of remote electronic monitoring (REM), CCTV may be seen as a controversial tool by some fishermen. As such, the NWWAC suggests that good communication will be needed to ensure buy-in on the use of this technology by the industry. Additionally, the use of CCTV and the distribution of footage must comply with EU and national privacy laws.

4. Increased synergies with other policies

4.1 Environment

The NWWAC supports the Commission's attempts to align the Control Regulation with environmental legislation but questions remain as to whether extending Article 50 is the most appropriate method. The Commission must ensure that this does not result in a conflict with, or an impediment to, rules being introduced in marine protected areas at regional and individual Member State level, in particular through Article 11 of the CFP Basic Regulation.

The industry members of NWWAC want to emphasise their concerns that increasing VMS transmission would cause an increased cost for the industry, that the obligation to lash and stow prohibited gear when passing through an MPA would create an increased burden on the crew, especially for multi-purpose vessels and in areas such as the Channel, where there are many MPAs, and that the minimum 6 knots speed requirement for crossing a zone would close zones to small scale fishing vessels that rarely speed over 6 knots. On this basis they view extending the scope of article 50 as problematic.

In considering this amendment the Commission should also note that fishing is not restricted in all marine protected areas and in certain areas measures to introduce fishing restrictions have not yet been finalised or discussed. The NWWAC requests that the Commission provides further information as to how it will address these points.

4.2 Food law

The NWWAC agrees with the proposed solutions.

4.3 Market Control and Traceability

The NWWAC considers this topic to be under the scope of the Market Advisory Council.

Additional proposal as brought forward in previous NWWAC² advice from April 2017

Article 10: Automatic Identification System (AIS)

The NWWAC recognises that this obligation, originally put in place for merchant shipping vessels, applies to fishing vessels exceeding 15 metres length overall. Article 10 specifies “that AIS shall be fitted and maintained in operation meeting the standards drawn up by the International Maritime Organisation (IMO)”.

The NWWAC understands that the original intention of the AIS system onboard vessels is to enhance the safety of navigation, as indicated in IMO (Regulation 19 of SOLAS Chapter V). The NWWAC requests clarification on the purpose of having this regulation included in the fisheries Control Regulation. The NWWAC would also like to emphasise that the AIS system is a freely available online system and should not be used for control purposes.

Article 14: Completion and submission of the fishing logbook

Article 14(3) states that the permitted margin of tolerance in estimates recorded in the fishing logbook of the quantities in kilograms of fish retained on board shall be 10 % for all species. The NWWAC seeks clarification on the use of estimations, considering that the actual weight of catches must be contained in official documents such as: the landing declaration, transport documentation and sales notes.

Regarding the margin of tolerance of 10%, the NWWAC notes that for small quantities and on the occasion when fishing occurs in challenging circumstances (e.g. rough weather), the accuracy and precision of weighing equipment decreases and this margin may not be met.

Article 15: Electronic completion and transmission of fishing logbook data

Vessels of 12 metres length overall or more are required to electronically transmit all data referred to in article 14 to the competent authority of the flag Member State at least once a day. The NWWAC notes that Member States use different formats to collect these data. Even though the Omnibus Regulation (EU 2015/812) includes amendments specifying the data entries which are required in the fishing logbook, it does not specify a description of the format of the logbook. The NWWAC stresses the need to update the reporting systems to take account of the new requirements of the landing obligation and to harmonise the logbook format and content across Member States.

Article 15 specifies that the information referred to in Article 14 shall be sent electronically, at least once a day, to the competent flag state authority. Art. 15(2) further requires that a vessel will transmit data: upon the request of the competent authority of the flag Member State; after the last fishing operation has been completed and before entering port.

Article 15(8) states, however, that *“the competent authorities of a coastal Member State shall accept electronic reports received from the flag Member State containing the data from fishing vessels”* as described above.

The NWWAC notes that, unlike Art. 9(3) regarding the vessel monitoring system, Art. 15 concerning the Electronic completion and transmission of fishing logbook data, does not contain a similar obligation to provide coastal Member States with data from vessels operating in their jurisdiction.

Article 17: Prior notification

This article requires that any vessel of 12 metres length overall or more fishing on stocks subject to a multiannual plan, shall notify the competent authorities of their flag State at least 4 hours before the estimated time of arrival at port.

Industry members of the NWWAC note that a prior notification time of 4 hours can be a problem for certain fisheries, e.g. small-scale fisheries, inshore fisheries, day fisheries. Although Art. 17(3) indicates that a vessel can enter a port earlier than the estimated time, the coastal Member State needs to provide permission to that vessel. For such fisheries, however, some industry members note that this may not provide the flexibility needed. OIG members believe that Art. 17(3) and the multiannual plans provide sufficient flexibility.

Article 44: Separate stowage of demersal catches subject to multiannual plans (MAP)

According to this article, all catches shall be kept according to a stowage plan that describes the location of the different species in the holds. Further and in accordance with Art. 44(3), it is prohibited to mix in any box, compartment or container any quantity of catch of demersal stocks subject to a MAP with other fisheries products.

The NWWAC:

1. Recommends a standardised stowage plan is developed for the EU that clearly defines what should constitute a stowage plan;
2. Highlights that there may be associated safety and stability issues depending on how separate stowage on board is interpreted by control authorities (e.g. 'storage of clearly identifiable species in separate boxes or compartments').
3. Notes that Art. 49(a) of the Omnibus Regulation specifies the separate stowage of catches under the minimum conservation reference size in such a way that they are identifiable from other boxes, compartments or containers, and stipulates that those catches shall not be mixed with any other fishery products. Likewise, this may give rise to safety and stability issues depending how the stowage requirement is interpreted by the competent authority of the coastal Member States.