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# **Submission to the Commission's Consultation on the Evaluation of the Fisheries Control Regulation**

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The Pew Charitable Trusts  
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The Pew Charitable Trusts is an independent non-profit, non-governmental organization, founded in 1948. Pew's mission is to serve the public interest by improving public policy, informing the public and invigorating civic life. Its work in the European Union focuses on enhancing fisheries management and ocean conservation.

## **Introduction**

1. The Pew Charitable Trusts welcomes the Commission's consultation on the evaluation of Council Regulation 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy ("the Control Regulation").
2. We note that this evaluation is required by Article 118 (3) of the Control Regulation five years after its entry into force on January 1<sup>st</sup> 2010. We also note the inclusion of the Regulation in the Regulatory Fitness and Performance programme (REFIT).
3. Paragraphs 9–32 below give comments on the five potential areas for assessment mentioned in the consultation document. In addition, we have provided some overall considerations that the consultation questions did not address directly.

## ***Overall comments***

4. The Control Regulation introduced an overhaul of the fisheries control system in the European Union in 2010. In the first five years of implementation member states and stakeholders had to deal with a series of innovations which have taken time and investment to implement. Some of these innovations are already bearing fruit. For others, more time will be needed to observe measurable results.
5. Revising legislation before its implementation has had the necessary time to demonstrate its full effectiveness risks undermining the credibility of the system and removing incentives for member states to implement and enforce legislation, and for industry to comply with it.
6. In 2014, the reformed Common Fisheries Policy (CFP) entered into force. It contains provisions that were not foreseen in the Control Regulation, such as the landing obligation. The Omnibus Regulation<sup>1</sup> made adjustments to the control regulation in an attempt to address these issues.
7. Legislative tools are only as effective as their enforcement. Many if not most of the effectiveness issues relating to the Control Regulation stem from insufficient or inadequate implementation and enforcement of the regulation itself, or from provisions included in other pieces of legislation (such as some discard plans) which are hard to control and enforce.
8. The European Commission must continue to ensure the application of European Union laws, holding member states and EU institutions accountable for the implementation and enforcement of EU legislation.

## ***Promotion of a level playing field***

9. Achieving a level playing field is important to promote a culture of compliance. Inconsistent implementation and enforcement of fisheries controls in different member states can lead to frustration and to a reduced willingness by other member states and

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<sup>1</sup> Regulation (EU) 2015/812 of the European Parliament and of the Council of 20 May 2015 amending Council Regulations (EC) No 850/98, (EC) No 2187/2005, (EC) No 1967/2006, (EC) No 1098/2007, (EC) No 254/2002, (EC) No 2347/2002 and (EC) No 1224/2009, and Regulations (EU) No 1379/2013 and (EU) No 1380/2013 of the European Parliament and of the Council, as regards the landing obligation, and repealing Council Regulation (EC) No 1434/98

fisheries operators to enforce and comply with the legislation. Nevertheless, the absence of a complete level playing field should not serve as an excuse not to fully enforce and comply with existing regulations.

10. Transparency is key to ascertain whether a level playing field exists. Information on whether and how member states are sanctioning different types of infringements, and whether sanctions are applied uniformly regardless of a vessel's flag, must be made available to stakeholders and the public.
11. Transparency will also allow an assessment of whether sanctions have a sufficient deterrent effect, for instance by bringing levels of recidivism to the fore.
12. The harmonized use of technology in the control system (such as VMS on vessels above 12 metres) is a welcome step towards better controls. Use of electronic systems has the potential to greatly facilitate the exchange of data and information among relevant authorities. It also has the capacity to make information readily available to the public, in the interest of transparency, science and fisheries management. This potential is yet to be fully realised for all vessels.
13. Concerns about the protection of personal data and professional and commercial secrecy can be addressed by only making anonymised data publicly available, with due regard to confidentiality requirements. Control authorities in the different member states should however have easy access to individual vessel data from other member states, possibly through a single database. Article 113 of the Control Regulation makes it clear that member states already have the discretion to make more data available.
14. Monitoring and control at sea remains a cornerstone of an efficient control policy. It is necessary to carry out sufficient controls at sea, since a number of infringements can more easily be uncovered *in situ*, such as illegal discarding or the use of inappropriate nets and meshes. Such controls should remain a complement to (and not be a substitute for) controls on land.
15. Legally binding inspection standards such as the specific inspection benchmarks for Multi-Annual Plans contained in Annex I of the Control Regulation are helpful in achieving a level playing field, but need to be strengthened.
16. The Control Regulation should complement the Council Regulation 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing ("the IUU Regulation") and the Council Regulation 1006/2008 concerning authorizations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters ("the fishing authorizations Regulation"); together these form the three pillars of the EU control system.

### ***Development of a culture of compliance and respect of the Common Fisheries Policy rules***

17. As stated in point 9 (above), establishing a level playing field among member states and fleets contributes to developing a culture of compliance. If there is a real or perceived imbalance in the application of the rules, fishers will regard the system as arbitrary and unfair and feel less of an incentive to comply. Nevertheless, unequal application of the regulations should be no reason for a member state to not fully comply with and enforce existing regulations.

18. A culture of compliance furthermore depends on the likelihood that an infringement will be detected. Adequate inspections, both on land and at sea, are crucial in this regard.
19. Applying a prioritised risk-based approach as required by the Regulation will ensure an effective use of resources, by focusing efforts on the potential harm due to non-compliance, and on those segments of the fishing fleet with higher probability of non-compliance. Effective risk management is thus dependent on a monitoring system that provides information on and detects changes in fishing operations.
20. An effective sanctioning system that is sufficiently dissuasive due to the likelihood of infringements both being detected and adequately sanctioned is required to create a culture of compliance. The points system for serious infringements is a good initiative in this regard, but lack of transparency in its application makes it hard to judge its effectiveness to date.
21. Transparency is key to achieving a culture of compliance and dissuading operators from infringing the rules of the CFP. Operators who are known to (repeatedly) break the rules are less likely to be well regarded by their peers and clients. Implementing provisions of the European Maritime and Fisheries Fund (EMFF), by denying financial aid to operators who have infringed the rules of the CFP, also helps in this regard.

#### ***New instruments of the Commission to ensure the implementation of the Common Fisheries Policy by Member States***

22. In addition to the increased powers given by the Regulation to the European Commission in terms of performing audits and carrying out autonomous inspections, the Commission has tools at its disposal to further ensure and incentivise the adequate implementation and enforcement of the Control Regulation by member states.
23. The EMFF provides substantial amounts of funding for member states to invest in control measures. Simultaneously, the fund requires that member states comply with the rules of the CFP in order to access funding. The Commission should avail itself of every opportunity to enforce this conditionality as a means to incentivise member states to adequately implement the CFP, including provisions relating to control.
24. The European Commission should play a much stronger role in ensuring that information on control and enforcement is available in a centralised location, in a comparable format. Preferably, this information should be made public. In accordance with Articles 111-116 of the Control Regulation, there is no reason why the Commission should not request, and member states should not grant, greater public access to anonymised data in the interest of transparency and effective implementation of the Regulation.

#### ***Simplification and reduction of administrative burden***

25. The use of Electronic Reporting Systems (ERS) for data recording and data exchange is essential to enable the planning and prioritisation of inspection activities and to move towards fully documented fisheries.
26. While these new systems may require investment at first, they will result in more effective control and enforcement in the long term.

27. Increased use of electronic systems for data recording and exchange also has the potential to benefit implementation of other CFP requirements, such as the landing obligation or data collection, and will also help in the EU's fight against IUU fishing.
28. EMFF funding should be made available to incentivise the installing of electronic equipment and to train operators in the use of such systems.

### **Others**

29. Of the changes introduced to the CFP during its 2013 reform, the introduction of the landing obligation may prove to be the most challenging from a control perspective.
30. However, the shortcomings in the control and enforcement of the progressive elimination of discarding primarily stem from decisions made regarding the implementation of the landing obligation itself. For instance, the phasing in of the demersal landing obligation by fishery (rather than by stock) makes the detection (and consequently the sanctioning) of infringements unnecessarily difficult. Multiple exemptions, differing between areas and gear types, place a large burden on control agencies to keep up to speed with the rules and to enforce them appropriately.
31. In light of the landing obligation, increased monitoring of activities at sea is needed. Full catch documentation is essential to such monitoring and to the control of the landing obligation, allowing operators to demonstrate that they are complying with the rules. Simultaneously, controls at sea are necessary to promote compliance with the landing obligation. Insufficient levels of control at sea could lead to continued discarding with the risk of increasing fishing mortality and jeopardising the achievement of Art 2.2. of the CFP.
32. Adequate implementation of Article 17 of the CFP would provide incentives for operators to demonstrate compliance with the rules, by giving preferential access to marine resources to those operators with a track record of compliance.

The Pew Charitable Trusts' contribution to this public consultation can be directly published with the organisation's information. The Pew Charitable Trusts consents to the publication of all information in this contribution, including the name of the organization. Nothing within this response is unlawful or would infringe the rights of any third party in a manner that would prevent publication. The Commission services can contact Andrew Clayton, Project Director, for further details on the information submitted.