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Subject: Revision of the Fisheries Control System

Dear Mr Machado,

Thank you very much for the Commission's consultation on the revision of the Fisheries Control System. I am pleased to submit in Annex I the Pelagic AC's advice on the matter which has been unanimously approved by the Executive Committee.

In case you have any questions, please do not hesitate to contact the Secretariat.

Kind regards,

A handwritten signature in blue ink that reads 'Jesper Raakjær'.

Jesper Raakjær
Chairman Pelagic AC



Annex I

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

5 February 2018

General remarks

The Pelagic AC appreciates the opportunity to provide comments on the Commission's consultation on the EU fisheries control system. The reform of the Common Fisheries Policy (CFP) and particularly the introduction of the landing obligation make a thorough, transparent, straightforward and above all equitable control system inevitable. A revision of the current Control Regulation is urgently needed to align this Regulation with the CFP and to ensure a coherent regulatory framework that supports the sustainable exploitation of marine resources.

Nevertheless, the Pelagic AC is of the opinion that the consultation process is insufficient, especially when considering the importance of the Control Regulation and the impact any changes might have. In order to adequately consult all members of the Pelagic AC the consultation period has to be sufficiently long to enable an iterative discussion process. Furthermore, the Commission 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 Pelagic AC 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.

Detailed recommendations

The consultation document sets out three Policy Options:

1. *Option 1: No policy change. Continue current policy and focus on implementation and enforcement of existing framework.*
2. *Option 2: Amendment of the Fisheries Control Regulation.*
3. *Option 3: Amendment of the Fisheries Control System.*

The current Control Regulation is not in line with the CFP and falls short particularly on dealing with the landing obligation and on integrating new technological developments in the field of monitoring and control. Furthermore, it is complex and highly prescriptive. To ensure a coherent regulatory framework for fishery management in the EU, a revision of the Control Regulation is therefore warranted. At the same time EFCA is an important agency to support the implementation of the CFP and its role should be strengthened. Therefore, the Pelagic AC supports Policy Option 3.

Policy Option 2: Amendment of the Fisheries Control Regulation.

A. Enforcement

Problem:

Lack of consistency and effectiveness of national sanctions for infringements of the CFP rules.

Pelagic AC comments:

1. 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 would improve the harmonised and equitable implementation of the EU fisheries control policy (EC No 1224/2009 preamble (4),(9)). It would also help develop respect for the regulation since fishermen would feel that they are treated equally across countries and sea basins.
2. The Pelagic AC would like to stress the need for an equitable level of sanctioning for infringements, applicable to third countries, like Norway and the Faroe Islands, operating in EU waters.
3. 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 CFP. The Pelagic AC 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.
4. The Pelagic AC 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.
5. The Pelagic AC agrees with the proposal to establish an EU system to exchange data on infringements and sanctions in cooperation with EFCA and Member States.
6. The Pelagic AC agrees with the proposal to digitalise inspection reports using an Electronic, Inspection Report System.

B. Data: availability, quality and sharing

Problem 1: Reporting and tracking for vessels < 12 m

Impossibility to monitor and control fishing activities and catches of vessels below 12 meters efficiently.

Pelagic AC comments:

The Pelagic AC supports the proposed solution for increased control and monitoring of vessels below 12m and their catches and would like to highlight that different initiatives are ongoing to develop easy and cost-effective systems in several Member States, but warns on the inapplicability of a one-size-fits-all solution for monitoring of fishing vessels.

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 Pelagic AC highlights that the tools should be adapted and flexible to take into account the specificities of such vessels. CCTV or monitoring through smart phone apps should be among the tools to be considered.

Problem 2: Control of recreational fisheries

Lack of control measures for recreational fisheries despite their possible significant impact on fish resources

Pelagic AC comments:

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

The Pelagic AC is of the opinion 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 Pelagic AC proposes that the wording of Article 55(2) is amended to 'the selling of catches from recreational fisheries shall be prohibited'

Problem 3: Weighing, transport and sales

Existing provisions related to post landing activities do not ensure that each quantity of each species landed are correctly accounted for by weighing and that the results are always recorded in mandatory catch registration documents. This jeopardizes quota uptake monitoring (thus the sustainability of the stock), undermining the legality of the fishing activities and subsequent data analysis.

Pelagic AC comments:

The Pelagic AC 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.

The Pelagic AC strongly advises the Commission 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.

Problem 4: Monitoring of the fishing capacity

Current provisions on physical verification of the engine power are not effective to detect differences between the real and the certified engine power. As a result, there is the risk that vessels with manipulated engines may exceed the engine power specified in their fishing licenses and that Member States may exceed their capacity ceilings as set in the CFP.

Pelagic AC comments:

Measuring fishing capacity has always been, and still is, very elusive and difficult to quantify, because a vessel's capacity strongly depends on non-numeric factors, such as electronic equipment and knowledge of the fishing grounds (Penas Lado, 2016¹). Nevertheless, the monitoring of fishing capacity is of importance, especially where species are not under the TAC regulation, which does not apply to the stocks under the remit of the Pelagic AC at present, and policy makers agreed on two easily quantifiable criteria to determine a fleet's fishing capacity: vessel engine power in kW and gross tonnage (GT). However, in fisheries that are regulated through quotas, monitoring fishing capacity is of limited use.

Furthermore, the European Court of Auditors in its 2011 report pointed out that:

*"There are examples of fleets which represent exceptions to these general problems, whose capacity in terms of GT and kW greatly exceeds that necessary to harvest the available quota (for example certain large-scale pelagic fisheries in the north-east Atlantic) but which can operate profitably while targeted fish stocks remain within sustainable limits."*²

Problem 5: Data management and sharing at EU level

Major shortcomings in the exchange of fisheries data between Member States, and limited access of the Commission to disaggregated fisheries data (resulting in difficulties for the Commission to assess the accuracy of the Member States' catch reporting).

Pelagic AC comments:

Disaggregated fisheries data are especially important in regards to implementing the landing obligation and finding solutions to choke situations. Establishing an EU Fisheries Control Data Center for an integrated European information system for fisheries management could address these shortcomings and greatly improve fisheries management in the EU. However, more information is needed on the kind of data foreseen to be collected and stored and on access rights to such data.

C. Control of the landing obligation

Problem:

Conventional controls, such as inspections at sea are not effective to control and enforce compliance of the landing obligation.

Pelagic AC comments:

¹ Ernesto Penas Lado (2016). The Common Fisheries Policy: The Quest for Sustainability. Wiley-Blackwell.

² European Court of Auditors (2011). Special Report No 12: Have EU measures contributed to adapting the capacity of the fishing fleets to available fishing opportunities?

Requiring CCTV on vessels purely because they have the potential to discard large quantities of fish is discriminating operators for reasons of convenience. An operator of a large pelagic vessel is no more likely to discard fish than a small-scale vessel operator. On the contrary, small-scale operators are more affected by the economic consequences of the landing obligation and therefore more likely not to comply with the rules. Rather than applying measures that put any large-scale operator under general suspicion, a fair and uniform control system should be developed and applied. Such a system could be supported by the mandatory collection and recording of gramme sizes. The Pelagic AC has already recommended real-time information on gramme sizes in the mackerel fisheries is a powerful control tool and advises that a system based on the collection and haul by haul transmission of gramme size information should be mandatory for all fleets involved, both EU and non-EU. Given the sensitivity of these data from a market aspect, however, there must be a clear understanding that these data have to be treated confidentially and should only be available to the control authorities and for risk analysis³.

D. Increased synergies with other policies

Problem 1: Environment

Lack of synergies with environmental legislation resulting in an inefficient control system.

Pelagic AC comments:

The Pelagic AC 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.

Problem 2: Market control (and traceability)

Traceability of fishery products is not effective and the type and level of implementation is uneven across the Member States. In addition, the current system is exclusively designed for EU fishery products, and does not allow the use of certain data on imported fishery products from Third Countries.

Pelagic AC comments:

The Pelagic AC views this topic to be under the scope of the Market Advisory Council which hence should provide detailed recommendations on this issue.

Problem 3: Food and feed safety

Some definitions (e.g. risk management or audit) and general principles (cooperation rules, responsibility of operators) are not aligned with the food law, thus creating confusion and posing problems to the authorities when enforcing the fishery and the food and feed control legislations.

Pelagic AC comments:

³ Pelagic Advisory Council (2015). 1516 PAC 12: Recommendations on control of the Landing Obligation. <http://www.pelagic-ac.org/media/pdf/1516PAC12%20Recommendations%20on%20control%20of%20LO.pdf>

The Pelagic AC agrees with the measures proposed by the Commission to better align the Control Regulation to the principles of the Food Law.

Policy Option 3: Amendment of the Fisheries Control System.

Policy Option 3 builds upon Policy Option 2, considering all the approaches proposed in Policy Option 2 plus the following (not implementable in Policy Option 2 as they need amendment of IUU Regulation and/or EFCA Founding Regulation)

Enforcement rules

Suggestion:

Amend the Control Regulation and the IUU Regulation to clarify, simplify and streamline the current rules. Move enforcement rules from the IUU Regulation to the Control Regulation to ensure one single enforcement system.

Pelagic AC comments:

The Pelagic AC supports an alignment between the IUU Regulation and the Control Regulation.

Increased synergies with other policies

Suggestion: Market control (and traceability)

Amend the Control Regulation so to apply it to products from Third Countries.

Pelagic AC comments:

The Pelagic AC views this topic to be under the scope of the Market Advisory Council which hence should provide detailed recommendations on this issue.

Problem: IUU

The IUU Catch Certification Scheme is paper-based and as a result it would not be compatible with a fully digitalized traceability system extended to imported products. It is therefore suggested to amend the IUU Regulation to digitalize the IUU catch certificate.

Pelagic AC comments:

The Pelagic AC supports digitizing the IUU catch certificate.

EFCA Founding Regulation

Problem:

Lack of alignment of the Founding Regulation with the Common approach on decentralized agencies, alignment with the CFP (LO, role of EFCA as regards the external dimension), alignment with the proposed amendments in the Control Regulation, need to follow-up on recommendations of the Administrative Board.

Pelagic AC comments:

The Pelagic AC supports the suggestions brought forward by the Commission and that the role of EFCA should be strengthened.

Additional recommendation

Article 14 of Council Regulation (EC) No 1224/ 2009 states the following:

Completion and submission of the fishing logbook

“1. Without prejudice to specific provisions contained in multiannual plans, masters of Community fishing vessels of 10 metres’ length overall or more shall keep a fishing logbook of their operations, indicating specifically all quantities of each species caught and kept on board above 50 kg of live-weight equivalent. “

However:

- The threshold of 50 kg live weight of each species to be estimated and recorded in the logbook with in a +-10% limit by masters of the fishing vessels when caught and kept on board is feasible to comply with in most fisheries where catches are sorted and boxed.
- However in those fisheries where the catch is stored fresh and unsorted in bulk in refrigerated tanks on board the fishing vessels, e.g. catches of pelagic and industrial species, it is impossible for the masters to accurately estimate the catches of each species in this lot of mixed fresh fish.
- Complying with the threshold and the tolerance on the logbook estimate even if a sampling is carried out on board the vessel is impossible. Sampling at sea is seldom used by the inspection authorities as it is known to be less accurate than sampling in port and during the landing. And it will in most cases not reflect the actual catch composition.
- In order to correctly sample a 50kg by catch of e.g. mackerel in a total catch of 1.000 t of herring, the master would have to take a sample of 500.000 kg. (50% of the catch) in order to be within the +-10% tolerance. This is practically impossible.
- In fact, the obligation violates the fundamental principle of proportionality as well as the fisherman’s legal rights. There is no practical way for a fisherman to comply with this rule. He is forced to fill out the logbook based on pure guesswork. The rule forces the fisherman to break the law.
- In principle the same rule forces authorities to fine almost pelagic vessels at every landing if enforced to the letter.
- The rule is both impossible to follow and to enforce

The above has been recognized in relation to the Baltic Sea fisheries where “workable” provisions have been put in place in the management plan for the basin. (REGULATION (EU) 2016/1139 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 6 July 2016).

Article 13 Margin of tolerance in the logbook

“By way of derogation from Article 14(3) of Regulation (EC) No 1224/2009, for catches which are landed unsorted 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 % of the total quantity retained on board.”

For fisheries outside the Baltic Sea article 14(3) has to be followed for all fisheries. The Pelagic AC proposes that the Control Regulation should be changed for unsorted catches only in accordance with the legislation for the Baltic Sea.