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DIRECTORATE-GENERAL FOR MARITIME AFFAIRS AND FISHERIES

The Director General

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North Western Waters RAC
Bord Iascaigh Mara
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Ireland

Subject: Consultation on the initiatives proposed by the Commission to modernise and reform the control system of the Common Fisheries Policy

Dear Mr Lambourn,

Thank you for the valuable contribution of the Long Distance RAC to the consultation on the initiatives proposed by the Commission to modernise and reform the control system of the Common Fisheries Policy.

The Commission will now examine carefully your comments, proposals and concerns. In the meantime, I would like to give you some preliminary information on the main results of the consultations.

There were a total of 25 contributions received in response to the Commission's invitation for public consultation from a wide range of stakeholders including *inter alia* associations from the industrial sector – of fishermen, producers, fisheries control technology stakeholders; advisory bodies, a public authority, NGOs and individuals.

The main results of the consultation can be summarised as follows:

- The initiative of the Commission and its main objectives were widely endorsed by the participants in the consultation. All unanimously agreed on the need of reform of the control system and expressed appreciation at the opportunity to take part in the decision-making process through the consultation. They also confirmed that the 9 objectives set out by the Commission in the consultation paper are the main points of interest in the overall assessment of the reform.

- Along with the overall support of the 9 objectives, the stakeholders raised a number of important considerations to be taken into account by the Commission, made some valuable and creative suggestions for possible solutions to those concerns and all stressed on the need of a continuous dialogue and cooperation between all parties involved in the control process.

- Many of the participants emphasised for instance that it is the culture of compliance that should be the main objective of the reform as opposed to the culture of control. The industry also called for a "bottom-up" as opposed to "top-down" approach in the decision-making process, with more active involvement of stakeholders, scientists, NGOs and national administrations, leading to greater transparency, clarity and broader support. There were also a number of suggestions for public training initiatives, especially for fishermen.

- The majority of the concerns were related to the objectives of strengthening the capacity of the Commission and to the potential costs and administrative burdens that use of modern technologies might incur. They underlined that the principles of proportionality and subsidiarity ought to be observed in these respects. Another important concern expressed was the risk of over centralisation of the control of the CFP and the risk of infringing Member States' sovereignty.

- Notably, all stakeholders supported the introduction of harmonised administrative sanctions by the Commission, simplification and rationalisation of the rules and strengthening of cooperation and assistance. An important point was raised on cooperation with developing countries. A major concern raised was on non-discrimination between EC vessels fishing outside Community waters and third country fleets.

- Even though stakeholders generally agreed that on-land inspections should be further developed and utilised, all of them emphasised the importance of sea inspections as the only means to assess the compliance of fishing gear, engine size, illegal discarding etc. Some suggested that the Community Fisheries Control Agency (hereinafter CFCA) should play a constructive role in that respect.

- NGOs and public authorities particularly supported the reform as an efficient tool from an environmental sustainable fisheries perspective.

There are some concrete proposals of particular interest:

- The creation of a "help desk service" on the Regulation by the Commission for Member States, RACs and professional organisations was proposed.

- Recommendation to highlight and share best practice by Member States, notably in the field of traceability.

- The introduction of a warning system involving communication between the Commission, Member States and the fishing sector as a tool for prevention was proposed by some stakeholders.

- Some operators proposed the introduction of positive incentives regime (i.e. allocating supplementary fishing days for enhanced observer coverage) to complement the sanction system and encourage operators to report perpetrators.

- Another suggestion was to use positive incentives in return for participation in schemes for use of more selective gears, support for real time closures, and participation in stock avoidance plans.

The Commission services have started to work on the next phases to prepare the reform of the CFP control policy. The issues and questions dealt with by the consultation as well as suggestions made have been taken into consideration in the preparation of the Impact Assessment Report that was prepared by the Commission. The Commission intends to come forward with a Communication and proposal for a Council Regulation in October 2008.

Yours sincerely,

Fokion Fotiadis

Enclosure: Report on the public consultation

Cc: Management Committee

ANNEX: REPORT ON THE PUBLIC CONSULTATION

On the initiatives proposed by the Commission to modernize and reform the control of the Common Fisheries Policy

The Commission carried out a broad stakeholder consultation to assess the effectiveness of the envisaged measures, their impact on operators and administrations, and to form an integral part of the impact assessment report. All interested parties were invited from February to May 2008 to express their views on the nine fields of action identified in the consultation paper, as well as to present their opinions as to what further measures would be appropriate to strengthen the control system of the Common Fisheries Policy.

I. GENERAL OBSERVATIONS

There were a total of 25 contributions received in response to the Commission's invitation for public consultation from a wide range of stake holders including *inter alia* associations from the industrial sector – of fishermen, producers, fisheries control technology stakeholders; advisory bodies, a public authority, NGOs and individuals. The geographical range was also a broad one including French, German, Portuguese, Polish, Spanish, British, Belgian and Dutch parties.

The initiative of the Commission and its main objectives were widely endorsed by the participants in the consultation. All unanimously agreed on the need of reform of the control system and expressed appreciation of the opportunity to take part in the decision-making process through the consultation. They also confirmed that the 9 objectives set out by the Commission in the consultation paper are the main points of interest in the overall assessment of the reform.

Along with the overall support of the 9 objectives, the stakeholders raised a number of important considerations to be taken into account by the Commission, made some valuable and creative suggestions for possible solutions to those concerns and all stressed on the need of a continuous dialogue and cooperation between all parties involved in the control process.

Many of the participants emphasized for instance that it is the culture of compliance which should be the main objective of the reform as opposed to the culture of control. The industry also called for a bottom-up as opposed to "top-down" approach in the decision-making process with more active involvement of stakeholders, scientists, NGOs and national administrations, leading to more transparency, clarity and broader support. There were also a number of suggestions for public training initiatives, especially for fishermen.

The majority of the concerns were related to the objectives of strengthening the capacity of the Commission and to the potential costs and administrative burdens that use of modern technologies might incur. They underlined that the principles of proportionality and subsidiarity ought to be observed in these respects. Another important concern express was the risk of over centralization of the control of the CFP and the risk of infringing Member States' sovereignty.

Notably all stakeholders supported the introduction of harmonized administrative sanctions by the Commission, the simplification and rationalization of the rules and the strengthening of cooperation and assistance. An important point was raised on the cooperation with developing countries. A major concern raised was on the non-discrimination between EC vessels fishing outside Community waters and third country fleets.

Even though stakeholders generally agreed that on-land inspections should be further developed and utilized, all of them emphasized the importance of sea inspections as the only means to assess the compliance of fishing gear, engine size, illegal discarding etc. Some suggested that the Community Fisheries Control Agency (hereinafter CFCA) should play a constructive role in that respect.

NGOs and public authorities particularly supported the reform as an efficient tool from an environmental sustainable fisheries perspective. It is interesting to note the innovative contribution of the FishPop Trace Consortium- a mixed association financed under the EU Seventh Framework Programme, drawing the attention to the development and implementation of modern technologies such as biotechnology, genetics, chemistry and forensics in optimizing control mechanisms.

II. SUMMARY OF THE CONTRIBUTIONS RECEIVED BY CONSULTATION ISSUES

1. Objective No. 1 Develop a new approach as regards inspection and control

All parties to the consultation strongly agreed on the urgent need of new approach towards inspection and control, drawing the attention to the Court of Auditors Report as well as to the need of level playing field and a degree of harmonisation. The majority of contributions stressed on the need not to abandon nor undermine the inspections at sea.

However many raised concerns towards the way of achieving harmonisation especially with regard to the conversion factors. It was underlined that it should not damage any Member State, should be based on sound scientific analysis and adopted in close cooperation with stakeholders and Norway. Some representatives of the industry noted the difficulty and risk in fixing an absolute conversion factor which can not take into account the differences depending on the fish stock, season, regional and fleet particularities.

Another important consideration noted was the constraint posed by certain Member States wishing to maintain the control over their fleets. Parties and especially the industry emphasized the need of consistent implementation, monitoring and regulation in all Member States. In this connection, some requested clarification on the definition of "high risk activities", proposing the creation of a list of them and/or the guiding criteria in their assessment such as prioritizing certain species and fishing gears for assessment. The creation of a "help desk service" on the Regulation by the Commission for Member States, RACs and professional organizations was also proposed.

All endorsed the harmonization at EC level of the inspection procedures in sea and on land as a guarantee of equal treatment and fair competition. It was observed that so far cooperation between states was confined to sea inspections whereas land inspections were very divergent. Some contributors noted that it is precisely the role of the Commission to propose and promote these standards throughout the chain of commercial

exchanges starting from harbours and including the imports. Others advocated for a "bottle neck" approach to inspection meaning verifying catches where caught. The industry suggested that the Commission should take account of their potential impacts on the logistical organisation of the fishing enterprises so as not to overburden them with control at too many stages before placing the product on the market. A few contributors encouraged the expansion of onboard observer programmes and even the placing of cameras on vessels for specific high risk fisheries.

There were a few proposals for drafting a separate regulation or guidelines on the control harmonization elaborating in further details the main articles but also giving an authoritative guideline on their uniform interpretation for all inspectors and operators. Other contributors suggested that a traceability system for fish and fish products should be developed and implemented from the point of landing until they reach the consumer-best practices already in place in member states were given as an example i.e. in UK.

2. Objective No. 2 Rationalisation of the rules

There was a broad consensus on this objective. Most of the stakeholders viewed it as the main prerequisite for the development of a culture of compliance. Transparency and broad acceptance were underlined as fishermen and other operators have to be able to understand and rely on the rules in order to apply them. The drafting of an evolving "jurisprudential guide" of authentic interpretations to the articles in the regulation given by the Commission and the Member States' authorities was proposed.

A concern was raised that rationalization of the rules should not mean complete unification since account should be taken of the differences in the fishing zones, vessels etc. It was strongly recommended by a number of contributors that implementing regulations should be adapted to the particularities of the main fishing zones. Another concern noted was on the interaction between the control regulation and the IUU Regulation proposal and the proposal on authorisation. Some stakeholders from the industry suggested all these should be merged in one single regulation.

The industry also called for reassessing some of the existing obligations in particular the ones concerning the declaration of all commercial transactions for all fish bought by approved first buyer as it created an excessive administrative burden for operators. It was proposed to simplify this obligation while at the same time still guaranteeing the traceability of the transported products by extending control over the commercial exchanges, in borders and at ports. One stakeholder suggested that the document required should be an invoice as opposed to a declaration. The obligation to declare the fishing zone in the documentation was also put in question as difficult to verify and duplicating the information already contained in the logbook.

The stakeholders from the industry requested more flexibility in the multi-annual management of TACs and quotas, especially regarding the tolerance margins granted in fixed % as it was very sensitive for certain species and differed according to the fleet specificities. Some disagreed with the current 8 % margin, proposing one of 10 % as an acceptable compromise for some species. Another proposal in this respect was to ensure that quota reductions and other management measures resulting from breaches of the CFP are targeted only towards the Member States responsible in a proportionate manner.

Finally, all agreed that the new single control regulation should be workable and enforceable in order to be applied effectively. To this end some proposed further

involvement of the stakeholders in the drafting process and a prior testing in practice of the rules before their adoption.

3. Objective No. 3 Strengthen the capacity of the Commission

This objective was overall supported by the contributors. However important clarifications were made by the industry on the constraints before it. There was also an underlying concern about touching upon Member States' sovereignty and the principle of subsidiarity was called for.

Many underlined the need of redefining the cooperation between Member States and the Commission in this respect. Stakeholders also insisted that they should have part in this process according to the bottom-up approach.

The possibility of transferring the decision making capacity on Real Time Closures to the Commission raised many concerns and reservations in the industry. It was pointed out that the Commission already has the possibility to announce interruptions in the fishery. The stakeholders called for prior consultation with them before any measures of this character are taken, stressing the risk of the entire fishery industry paying the price for isolated breaches. Many took the position that this competence should remain for the Member States and/or professional organizations. Public authorities and NGOs on the other side supported the strengthening of the Commission's capacity to act on its own initiative for fisheries resources management in teal time except in the area of inshore waters.

Clarification was requested by the industry about whether it will have to pay the cost of the sanctions imposed by the Commission or is this for the Member State, in particular in cases of suspending Community aid. In any case stakeholders called for transparency and proportionality in this process. NGOs strongly favoured the introduction of more and flexible instruments to the Commission for timely intervention targeted precisely at the fisheries sector. The measures proposed included *inter alia* suspension of aid payment in the fishery sector, excluding operators and vessels from Fisheries Partnership Agreements, access to European Fisheries Fund, reducing future fishing rights in cases of non-compliance, reimbursement of subsidies received by non-complying companies and individuals etc. As justification for these measures NGOs drew the attention to examples of overfishing, IUU fishing and the need of promoting an overall ecosystem approach.

The introduction of a warning system involving communication between the Commission, Member States and the fishing sector as a tool for prevention was proposed by some stakeholders. The possibility of the Commission to intervene in the data submitted by Member States was also promulgated. All agreed that the infringement procedures should be revisited to make them faster and more efficient. There were a number of proposals to harmonize and redefine the competences of inspectors and also to increase the number of EC inspectors, especially in sensitive fishery zones, allowing them to operate without prior notice.

4. Objective No. 4 Harmonise sanctions

This objective was broadly endorsed by all contributors. It was noted by many stakeholders that the when harmonising, the Commission will have to take due account of the opinions and practices in all Member States in this respect. All stakeholders strongly favoured the introduction of administrative sanctions in particular as a way of ensuring fair competition and equal treatment of all EU fishermen. It was agreed unanimously that these sanctions should be dissuasive and depriving the perpetrators of the economic benefit from the infringement thus giving confidence in the system to all players.

An important concern raised by the industry was that of ensuring uniform interpretation of the sanction rules in all Member States and notably, by all inspectors in charge. A special training programme coordinated by the Agency was proposed as a way to reach this goal. Stakeholders also noted that fishermen were often unaware, especially when fishing in the EEZ of Member States other than their Flag, of the sanctions and procedures applicable under the respective national legislation so it was suggested that they were made accessible in all Community languages.

A few contributors questioned the competence of the Commission to harmonise and impose sanctions in the light of the principle of subsidiarity. Other concerns raised in this connection were about the specificities (i.e. aggravating and attenuating circumstances) of each infringement, the need of individualization by national courts, the appeal possibility and the case-by-case approach. Many other stakeholders however took the position that the Commission does indeed have this competence, putting forward the conclusion of the Council Legal service from 16 April 2008 that:"The Community is competent to establish a sanctions scheme"'.

Some operators proposed the introduction of positive incentives regime (i.e. allocating supplementary fishing days for enhanced observer coverage) to complement the sanction system and encourage operators to report perpetrators. Other stakeholders underlined the importance of introducing licence points system for CFP infringements operating in parallel to the other penalties and envisaging a "black list" of persistent offenders, subjected to increased monitoring.

One contributor advocated for the introduction of trade sanctions in addition to the administrative ones as it is necessary to impose sanctions on both companies that commercialize illegal fish products and countries allowing those activities. NGOs promulgated the strengthening of sanctions for serious infringements of the CFP so as to include monetary penalties but also confiscation of catches, gear and even vessels.

5. Objective No. 5 Strengthening of cooperation and of assistance

All operators strongly favoured the enhancing of cooperation between the Commission, fishery control authorities in Member States and operators from the whole chain of production including the transport, market, small scale fishermen etc. All agreed that the Agency should play a more important and constructive role in this respect. There were proposals put forward for it to verify control and training standards, to conduct workshops, seminars and exchange programmes.

Some recommended the strengthening of cooperation aiming at harmonizing the methodology of inspections at sea and even more on land, taking into account the best practices existing in Member States. It was noted that currently operators have suspicions

about the varying standards of inspections which can be addressed by creating a transparent methodology subject to external verification and even audit.

Special emphasis was put on the cooperation with competent authorities from third countries, in particular developing ones. Some stakeholders proposed the establishment of cooperative arrangements to ensure that developing states have the means and competence to control fishing activities in their waters.

One of the individual academic contributors stressed on the efficiency of encouraging cooperation between fishermen and their professional organizations in the form of consortium so as to manage certain fisheries zones and to control each other in doing so. Italy and its shell fishing were given as an example of such decentralized approach towards control.

6. Objective No. 6 Develop a culture of control

Generally all contributors agreed with this objective and identified it as a key one. The majority of the industry stakeholders however put the emphasis on the development of a culture of compliance rather than control. Contributors proposed that the Commission should assist Member States who are primarily responsible for informing the fishery sector of the rules.

Many contributors noted that to achieve this objective the credibility of the whole system ought to be increased and fishermen have to understand and believe in the ratio of the applicable rules. To this end it was proposed that fishermen, scientists and producers are more involved in a "bottom-up" decision-making process for instance with respect to quota management giving the examples of US, Canada, Norway and Iceland where this is already applied. Furthermore, representatives of the industry suggested that the implementation of the CFP and control rules including inspections and sanctions should be made in close cooperation with the stakeholders so that the effort to comply comes from the bottom.

The industry also underlined the need to define on EC level the powers and obligations of national inspectors and standardise the procedures including the right of the vessel to be informed of its rights and legal assistance available so as to enhance transparency and their credibility for operators. It was suggested that some data bases should be made available to the public online.

Advisory bodies proposed the introduction of an efficient intervention system through RFMOs and within the CFP in order to improve the confidence of fishermen that the control rules apply equally and in the same manner to all operators. Another suggestion was to use positive incentives in return for participation in schemes for use of more selective gears, support for real time closures, and participation in stock avoidance plans.

7. Objective No. 7 Use of modern technologies

This objective was broadly endorsed with the specification by the industry however that it is the Commission who should bare the main cost of the implementation. Many noted that technical equipment should be introduced only when and where necessary so as not to create disproportionate financial and administrative burdens.

The industry underlined that the cost of the new technologies, the data transmission and their maintenance should not be at the expense of fishermen but of specialized funds. It was strongly advocated that these measures should not apply to vessels smaller than 15 meters. It was also stressed that the commercially sensitive data should remain strictly confidential and be used only for the purposes of control.

Some contributors came in with innovative ideas on this objective such as the implementation of non-collaborative type of control technologies allowing to detect non-reporting actors and biased reports as well as to provide evidence for further investigation. It was suggested that in addition and to complement the VMS system airborne surveillance, coastal radars, space-borne sensors like Synthetic Aperture Radar are used to improve coverage, availability, accuracy, integrity and cost. The attention was also drawn to the new generation of SARSAT COSPAS beacons and the future MEOSAR capabilities like GALILEO, GPS and GLONASS as providing return link and reducing false alarm rates.

Another interesting proposal on this objective was made by the above mentioned mixed FishPop Trace consortium. They suggested the development of framework incorporating strict forensic validation based on molecular biology to complement the Monitoring, Control and Surveillance in the fisheries sector. It was underlined that these applications are available but there is still a lack of cooperation between scientific institutions, control authorities and policy makers. An example of a project working in the area was given- The Global Fish Barcode of Life Initiative for identification of fish species from sample of tissue or fish products on the basis of DNA sequence library. One of the stakeholders proposed the establishment of reference laboratories in Member States and one at a Community level.

8. Objective No. 8 Increase of cost effectiveness

This objective was broadly favoured. Many stakeholders took the view that introduction of modern technologies can reduce the cost of operations. The simplification of the rules in a common regulation was also seen as a tool to this end. The main concern raised by stakeholders was that the reduction of costs does not lead to reduction of controls at sea. Many proposed that it is quality rather than quantity which is important in this respect and thus the focus should be on high risk activities.

9. Objective No. 9 Adapt the mandate of the Agency

All contributors unanimously agreed on the need to adapt and broaden the mandate of the Agency. The industry also called for increase of the transparency and dialogue in its operation by giving the stakeholders an observer status in its working bodies.

Many viewed that the Agency should play a greater role in developing and harmonizing on land control procedures, in analyzing Member States best practices in this respect and encouraging inter state cooperation. It was also suggested that the Agency should be allocated more human resources to conduct inspections at sea, in particular in sensitive areas. The creation of EU corps of inspectors with full range of inspection powers was broadly encouraged.

Some viewed it as a potential mediator in the communication between Member States and the Commission. Others recommended that it is given the competence to standardize control of fisheries around offshore Natura 2000 and other nature conservation sites, including the ability to establish buffer zones for the protection of the sites.

III. CONCLUSIONS

- All stakeholders welcomed and unanimously supported the Control reform. Valuable proposals were made for its optimization.
- Generally all agreed with the main 9 objectives of the reform and particularly favoured the introduction of harmonized administrative sanctions and inspection procedures on EC level.
- Stakeholders clearly advocated that they want this constructive dialogue between them and the Commission to continue both for the decision-making and for the implementation process.