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COMMISSION STAFF WORKING DOCUMENT

accompanying the

Proposal for a

COUNCIL REGULATION

**establishing a Community control system for ensuring compliance with the rules of the
Common Fisheries Policy**

SUMMARY OF THE IMPACT ASSESSMENT

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SUMMARY OF THE IMPACT ASSESSMENT

In preparing its proposal for reform of the control regime under the current Common Fisheries Policy (CFP), the Commission has carried out this in-depth Impact Assessment with the aim of analysing the possible consequences of several options to address the current shortcomings in the EU fisheries control regime. The CFP control system currently suffers from substantial failures, identified by both the European Commission¹ and the European Court of Auditors (CoA)², and it is not as efficient or as effective as it could be. It is therefore important to establish a coherent and effective control system to secure full implementation of and proper compliance with the CFP rules in order to ensure the sustainable exploitation of living aquatic resources.

The Commission has consequently proposed a number of changes to bring about improvement, and this report is an assessment of the probable impacts of those changes upon the effectiveness and efficiency of control and compliance and the likelihood of ensuring optimum benefits from existing and future investment, particularly in stock recovery, in order to preserve a sustainable industry.

In order to gain the information necessary to properly develop and analyse different options, and in order to allow all stakeholders to contribute to the discussion at an early stage, a wide consultation involving Member States, the fishing sector, and all interested parties was held. Moreover, the Commission made use of external expertise for a case study based on seven stocks, most of which are subject to recovery plans, to support some of the arguments in the present report.

In this report, the following options were considered:

- *Option 1: No policy change. Continue current policy and focus on implementation and enforcement of existing framework*

Sub-option 1: No policy change, continuation of the current situation

The main assumption for this sub-option is that current control policy is sufficient to ensure compliant behaviour in line with the objectives of the CFP, and that the core issue is poor implementation of the existing regulatory requirements by Member States. On numerous occasions, the Commission has raised serious concerns as to the lack of sufficient action by Member States to this end³. In order to address these concerns, the emphasis could be put on better implementation of the already existing legislation. However, the substantial shortcomings of the existing system, such as the complexity of the legal framework, the absence of common inspection standards, the lack of a harmonised and sufficiently deterrent sanctions system or the limited capacities of the Commission, could not be addressed under this option and the situation is unlikely to improve.

Sub-option 2: Implementation and enforcement of existing framework through implementation regulations

The main assumption for this sub-option, as an alternative to the simple continuation of the current situation, is that the emphasis could be put on the adoption of

¹ Report from the Commission to the Council and the European Parliament on the monitoring of Member States' implementation of the Common Fisheries Policy 2003-2005 - COM(2007) 167, 10.4.2007.

² Special Report No 7/2007 of the Court of Auditors on the control, inspection and sanction systems relating to the rules on conservation of Community fisheries resources.

³ COM(2007) 167.

outstanding implementing legislation. The fact that many implementation regulations have not been adopted clearly prevents the initial control regulation from having its full impact. However, this approach means additional layers of rules being added in an uncoordinated manner to the existing web of complexity in response to isolated political demands or emergency situations in fisheries. Even if all implementation regulations were to be adopted, this would not allow a new approach to control and inspection to be developed. Additional provisions would instead exacerbate the fragmentation of the current rules and lead to an even more complex legal framework. The vicious circle of poor data not allowing reliable scientific advice, leading to unsustainable management decisions and resulting in over-exploitation of stocks, would continue. Apart from possibly a couple of recovery stocks subject to specific conditions, the downward trend in quotas would generally continue. The capacities of the Commission and its inspectors would remain limited. This incapacity of the Commission would continue to be matched by the continued leniency of national legal systems towards infringements, unsatisfactory follow-up for legal or procedural reasons and incomplete information on sanctions and previous non-compliance.

- *Option 2: Recast of the Control Regulation, combined with a Code of conduct*

The development of an approach in which reform is implemented through a consolidated legal framework in combination with a steering instrument, such as a 'Code of Conduct' or 'Best Practice Guidance', could contribute to a certain extent to improving the current control system. As this approach would build on initiatives developed by Member States over the years, the coordination of inspection and surveillance activities by national authorities at Community level would be improved, based on the adoption of inspection and surveillance strategies by the Commission and the pooling of national inspection resources for joint deployment. National inspection resources would thus be used as rationally and as effectively as possible. Some fisheries might recover as a result of unilateral action in a segment of the fleet or groups of fleet segments, but, overall, this approach does not change the content of the current provisions or add any new legal instruments, and relies too heavily on voluntary implementation by the Member States. Even with a recast of the existing provisions, Member States would still need a new legal framework that provides new, mandatory tools to ensure effective application of the CFP rules. Consequently, a combination of consolidation and steering measures would be insufficient.

- *Option 3: Regulatory instrument in the form of a new binding regulation*

The third option presented for assessment is the implementation of the reform package through a regulatory instrument binding at EU level. This approach aims to create a level playing field in the EU, a goal strongly demanded by the Member States and in particular by the sector itself. It would ensure uniform application of the CFP rules across the EU and non-discriminatory treatment of all fishermen. The regulatory instrument would meet the objectives of a truly global and integrated control policy, as it would encompass all levels of control, from 'net to plate'. The implementation of adequate control measures would also bring about some necessary structural adjustments to the fleet. On the one hand, effective and reinforced control of effort regimes would reduce current overfishing, which artificially maintains the profitability of the fleet and hence creates an incentive for non-compliance with the rules. On the other hand, overcapacity would be addressed by the introduction of

effective tools to better control the capacity of fishing vessels. The establishment of common control and inspection standards would provide a common basis and thereby help bring about a level playing field. Harmonised sanctions would also help to achieve a level playing field by establishing penalties proportionate to the gain from illegal activities and comparable in all Member States. A mandatory regulatory framework would enable the Commission to ensure effective application of the CFP rules. First, the capacity of the Commission to respond proportionately to non-compliance by Member States would be improved. Strengthened competences for Commission inspectors would make it more difficult for Member States to hide shortcomings in the implementation of CFP rules. Second, the strengthened capacity of the Commission would in particular enable it to ensure better management of fishing possibilities and make it easier for it to close down fisheries in real time on its own initiative to avoid overfishing.

Indicative qualitative and quantitative analyses show that, while some of the proposed elements of the package are more significant than others, the package is most likely to be effective in achieving a high level of compliance when implemented in full with a binding rather than a voluntary instrument similar, for example, to the FAO Code of Conduct for Responsible Fishing.

If the proposals are implemented by a binding regulation and if Member States apply this regulation alongside existing multiannual recovery plans, then the incremental net benefits to the industry as a result of recovered and better protected stocks can be in the order of EUR 10 billion over 10 years. Such economic benefits are likely to be accompanied by net increases in employment of up to 4 000 new jobs across all sub-sectors. Increased fish production can be a significant factor in creating new jobs on a sectoral and regional basis.

With a fully binding regulation, catches from all stocks could increase by some 270 000 tonnes of high-value species. This would go a long way to securing market supplies and a sustainable industry.

Underlying the catch increases will be the considerable environmental benefits of improved fish stocks, particularly under recovery plans — these alone are likely to yield an increase of 830 000 tonnes in the ‘spawning stock biomass’ over the period analysed. Moreover, the analysis has demonstrated that this increase in the biomass of key species would reverse the current trend of decline in the ecosystem as a result of ‘fishing down the food chain’.

- *Option 4: Centralisation of CFP control policy at EU level, with increased competences for the Commission and the Community Fisheries Control Agency (CFCA)*

The Commission and the CFCA would concentrate the inspection resources of the Member States, and develop universally accepted standards with the long-term goal of setting up some kind of European coastguard system. This would ensure uniform application of the CFP rules and non-discriminatory treatment of all fishermen across the EU. The Commission would have policing and enforcement powers, which would also facilitate the collection of information on possible infringements, and therefore enhance the overall efficiency of the system. This would require a substantial increase in human and technical resources at the Commission and the Agency and massive financial investment.

This option had to be discarded at an early stage, however, for several reasons. In particular, the reallocation of tasks between the Commission and the Member States would exceed what is provided for in the Treaty. The Commission would itself implement and enforce the rules it lays down. That would also entail the Commission exercising jurisdiction over Community fishing vessels. Moreover, it is difficult to conceive that Member States would suddenly accept giving up such powers to a supranational body. In addition, the approach might even go against the principles of proportionality and subsidiarity. Finally, such an option would have a dramatic impact on the EU budget in terms of staff and operational deployment costs, which would be impossible to afford.

Conclusions

The report recommends that, since the reform package can be shown to be likely to deliver high compliance, with resulting benefits across the industry, particularly from recovering stocks, it is best implemented with a binding regulation, since the analysis of more voluntary, non-regulatory options suggests that they would be ineffective.

The Impact Assessment has shown that no significant improvements can be expected under option 1, since one of the major shortcomings of the current system, namely the complexity of the legal framework, which is spread over several regulations and has undergone various amendments during the last year, would not be addressed under this option, while the additional implementing provisions considered under sub-option 2 are likely to exacerbate the fragmentation of the current rules.

Option 2 would provide a simplified legal framework and bring about partial improvements to the control system in some Member States. However, since shortcomings in the current legal provisions would not be eliminated and since improvements would rely mainly on voluntary action by the Member States, this option would neither lead to a global approach to control nor create a level playing field for all stakeholders.

A complete reform of the current fisheries control regime based on a binding Regulation as considered under option 3 would not only consolidate and simplify the existing legislation, currently spread over a number of different regulations. It would also allow us to develop a new, harmonised approach to inspection and control covering all aspects from 'net to plate', to develop a common culture of compliance and to ensure the effective application of CFP rules. The outcome would be a truly global and integrated control system able to restore the confidence of stakeholders in the CFP.