



North Western Waters Regional Advisory Council

RESPONSE

**To European Commission Consultation Procedure on Modernization and Reform of the
Control System of the Common Fisheries Policy**

5th of May 2008

Introduction & Overview

NWWRAC is pleased to acknowledge this opportunity to comment on the Consultation Paper on Control. The timescale associated with the consultation process has proved problematic and more time for the process would have been appreciated. The findings of the Court of Auditors report are noted and comment is informed by attendance at a briefing hosted by the Commission on 16 April 2008.

NWWRAC acknowledges the need for simplification and harmonisation of rules and regulations. Whilst the NWWRAC would like to see a more harmonised and effective regime, the Commission must be reminded that the broad-brush approach is not appropriate and we should be wary of increased centralisation of the Control System. Differing legal systems and procedures and sovereignty issues create their own barriers and efforts to achieve full harmonisation may be overly ambitious, certainly in the short term. However NWWRAC does recommend that the Commission should continue to seek utilisation of administrative sanctions for all Member States and to continually strive for the introduction of equitable harmonised sanctions.

At the outset it must be appreciated that Industry participants are victims of a system that is clearly not working. The shared goal of all stakeholders is to achieve a profitable, sustainable, legal industry and change must be managed in such way as to ensure that participants, in particular fishers, are not simply forced out of the industry through economic circumstances outside of their control. Clearly over capacity is an issue that must be addressed.

NWWRAC acknowledges the need for change in the control system. The most compelling issue is the perceived lack of a 'level playing field', in context of enforcement and uniformity of regulations.

The need to foster a Culture of Compliance underpins the entire proposal. It is necessary to analyse what is meant by 'Culture of Compliance'. The existing culture is one of 'Top Down' Control within which many stakeholders have little confidence. This lack of confidence is derived from a lack of uniformity or 'level playing pitch', excessively complicated regulations and an imbalance between fishing capacity and TAC.

The process of establishing TACs, in particular where decisions are made with inadequate scientific data, compound these frustrations. In order to foster a 'Compliance Culture' the importance of the 'bottom up approach' must be recognised and addressed.

Enhanced involvement by stakeholders incorporating Administrators, Scientific community, NGOs and Industry, in the decision making process can help foster a culture of compliance.

The Industry members of the NWWRAC emphasise its strong support for the current system of quota swaps between MS and expresses its objection to a suggestion from the Commission at a recent seminar for stakeholders on control system¹, of an intention to restrict or remove this process.

¹EC Seminar for stakeholders on the reform of the control system of the Common Fisheries Policy, which was held on the 10th of April 2008 in Brussels.

NWWRAC notes the problems associated with alleged illegal importation of Fish into the Community and its adverse affect on markets and prices, which ultimately lead to a decrease in profitability and adversely affects sustainability of stocks. Clearly this distortion of the market must be addressed.

Margins of tolerance have been repeatedly raised as a problem area where there is a range of practical obstacles that prevents vessels from meeting percentage limits, especially where the quantities are small, as in by-catch species. The first rule of an effective control system is that the rules must be capable of being complied with and the present arrangements do not meet this criterion

It would appear that whereas there is stated intention to switch the focus of inspections from sea to land-based inspections, progress on inter State cooperation appears to be confined to sea inspections. NWWRAC considers that suspicions over variations in standards on the conduct of land inspections is a barrier to the introduction of a culture of compliance and recommends that this apparent shortcoming be addressed.

NWWRAC recommends that coastal states should have detailed access to the quota management arrangements used by Member States operating in its waters

Primary responsibility for control must remain as a responsibility of the MSs and the Commission must avoid any tendency to engage in micro management. The role of the Commission should be focused on overall control, audit, cross checking and facilitation of coordinated campaigns.

Questionnaire

OBJECTIVE 1.- Develop a new approach as regards inspections and control

NWWRAC supports the general thrust of the proposal. It cautions against engaging in excessive micro management. The role should be one of overall coordination and audit of inspection processes.

It is essential that if the main focus of inspection is switched from sea inspections to land based inspections, that appropriate resources and procedures are put in place. However, sea inspections should not be disregarded or dismissed, insofar as they currently are the only method where fishing activities and gear usage including TCMs, mesh size, etc. can be appropriately monitored.

It appears that progress has been made in operating coordinated campaigns at sea but there is little evidence of developments in this area on the land side.

NWWRAC favours harmonisation of conversion factors. Such change may cause some initial difficulty; accordingly it may be necessary to introduce the change incrementally. Progress has already been made in pelagic rules. It is essential that differing sectoral or regional requirements are recognised.

The benefits of extending controls to all chains of activities are recognised and will help engender confidence in the system.

The notion of “high risk” activities should be accurately defined: for instance will it consist of writing down a list of activities which would then be prioritised? If so, what requirements would be used to prioritise these activities? The NWWRAC can see merit in prioritising certain species or fishing gears to be assessed for compliance, however members feel that the process of identifying “high risk” activities should not encourage a situation where fingers will be pointed and where certain fleets are judged as a whole by the illegal activities of a few.

Proposals to introduce a ban on all transshipments are considered to be unnecessary and disproportionate. In certain well controlled situations their continued use should be authorised. Identification of sectors deemed appropriate for engagement in transshipment should be subject to further evaluation.

Concerning the extension of competencies for the CFCA, the NWWRAC suggest that the CFCA could include a ‘helpdesk’ service where Member States, the RACs or professional organizations could go to query the extent and meaning of the Regulations.

OBJECTIVE 2. - Rationalisation of the Rules

NWWRAC supports the proposal as outlined and considers simplification of rules to be a primary objective. Overly complex rules that are often perceived to be unworkable undermine confidence in the system and do little to foster a culture of compliance.

Rationalisation of the existing 20 regulations is deemed to be an essential requirement.

A process of testing the workability or practicality of rules prior to their adoption should be developed.

It is essential that stakeholders are fully involved in the formulation of regulations. Regulations must be proportionate to the objective; they must be workable and enforceable.

It is important that rationalisation or consolidation of rules does not result in the introduction of an additional policy, and it must be primarily focused on replacing existing regulations.

OBJECTIVE 3. - Strengthen the capacity of the Commission

NWWRAC supports some increase in the powers of the Commission. Increased powers of intervention are deemed necessary in order to provide for 'a level playing field'. However, any reinforcement of Commission competencies should be matter of further discussion between the fishing industry and the Member States.

The NWWRAC recommend that the Commission carry out an assessment of the existing monitoring procedures in the Member States for managing their quota. It would also be useful to understand Commission procedures used to monitor Member States management of quotas and in particular procedures put in place to agree a closure of a certain fishery.

Suspension of community aid should only apply to serious infringement and be used as a last resort. It would be inappropriate to use suspension of community aid as a routine method of sanction

It is essential that any increase in powers must be limited and clearly specified and sovereignty concerns on the part of MSs must be addressed.

An increase in powers on the part of the Commission necessitates an increase in resources; otherwise such rules would be unworkable.

Any increases in the powers of the commission should be subject to ongoing verification and accountability to the Council of Ministers and European Parliament.

Management of 'real time closures' should be a regional / Member State issue. The capacity to promulgate such decisions in a timely manner is an essential component.

The proposal that the Commission should be able to carry out on the spot inspections 'without restriction' appears vague and requires more detailed clarification. Other phrases such as 'provide direct assistance', 'redefinition of Inspectors powers' also require more detailed clarification.

OBJECTIVE 4 Harmonising Sanctions

NWWRAC favours the harmonisation of sanctions. Different legal systems are a barrier to uniformity. The Commission has however repeatedly favoured the introduction of Administrative Sanctions as a Community wide initiative. NWWRAC endorses this approach and encourages the Commission to robustly pursue this policy. Harmonisation would contribute to the development of a culture of compliance.

Sanctions must be proportionate and fair.

Enforcement should NOT be entirely dependent on sanctions and NWWRAC encourages the adoption of rewards system to act as a compliance stimulus.

OBJECTIVE 5 Strengthening of Cooperation and of Assistance

NWWRAC concurs with the proposal as set out. It notes the need to amend the mandate of the CFCA.

Progress in developing joint deployment plans at sea has been noted. It would however appear that similar progress in the case of on land inspections does not appear to be as well developed. Suspicions about varying standards in relation to land inspections can only be addressed through the introduction of transparent on land inspections that are subject to external verification and audit.

It is necessary that the CFCA mandate should be clearly defined where the focus should be on verification of control standards rather than direct control. CFCA should be mandated to verify training standards and conduct work-shops and seminars. Exchange programmes between member state control agencies and between CFCA and MS control agencies are strongly encouraged. Exchange programmes to enable national administrators work at Commission level are also recommended.

OBJECTIVE 6 Develop a Culture of Control

NWWRAC favours the adoption of **Culture of Compliance** rather than Culture of Control. Control is seen as a 'top down' initiative whereas the requirement is to generate a 'bottom up' ownership in order to generate a positive ownership of the CFP in its entirety.

Developing a Culture of Compliance is the cornerstone of any effective reform of the control system.

The need to foster a Culture of Compliance underpins the entire proposal. It is however important to analyse what precisely is meant by this statement and to understand what culture is currently in place. The existing culture is one of 'Top Down' control within which many stakeholders have little confidence. This lack of confidence is derived from a lack of uniformity or 'level playing pitch', excessively complicated regulations and an imbalance between fishing capacity and TAC. In many instances there is a significant lack of confidence in the CFP and reform must address this critical shortcoming.

The process of developing a culture of compliance would be greatly assisted through the use of positive incentives such as extra 'days at sea', (or other rewards) in return for participation in schemes such as; use of more selective gears, support for real time closures, participation in stock avoidance plans. This is only an indicative list but its importance in fostering a culture of compliance should not be underestimated.

No proposed positive incentive should jeopardize the management targets for catching effort and fish mortality. As mentioned further above over capacity is an issue. The over capacity problem should be solved with regards to the available TACs but also reduced to a level where the use of 'positive incentives' can take place without adverse effects for the CFP's obligations with regards to sustainability.

The cautious policy adopted when establishing TACs where inadequate scientific data exists compound frustrations with the CFP. This is particularly felt in situations where fishers observe the stock of a particular fishery to be in a healthier state than formally acknowledged arising from an inability to deliver formal scientific assessments due to a lack of data.

Enhanced involvement of all stakeholders in the decision making process can also help foster a culture of compliance. This involvement must be transparent and wholesome, and incorporate consultation prior to drafting of regulations, and involvement in preparation of ICES and other scientific reports. There is a need to develop a coherent partnership between Administrators, Scientific community, NGOs and Industry. This process can convey a sense of ownership to all participants and help foster a bottom up 'buy in' to a **Natural Cultural of Compliance**.

The Commission must use its best endeavours to ensure that this culture is adhered to by all international partners and other waters where MSs operate.

OBJECTIVE 7 Use of Modern Technologies

NWWRAC supports the introduction of best practise modern technologies but emphasises that the cost burden must not be borne by the industry. Funding should be also reviewed to ensure that adequate support is in place in each Member State that encourages industry to put in place technologies that promote and incentivise best practices.

OBJECTIVE 8 Increase cost effectiveness

CFCAs mandate must reflect a need for cost efficiency. Tasks must be prioritised and focus on high risk areas. The emphasis must be on quality rather than quantity. The temptation to create a highly costly inefficient bureaucracy must be avoided.

OBJECTIVE 9 Adapt the mandate of the Agency

NWWRAC concurs with the proposal. Inter State cooperation is an essential tool in enhancing confidence in the CFP and its control measures. It is a key aspect of developing a level playing field and allaying any suspicions of unequal application of laws and regulations. CFCA should be mandated to develop cooperative measures particularly for 'on land inspections' given the focus to be placed on transferring inspection effort from sea based inspections to land based.

Conclusions

- NWWRAC considers that the overarching aim is to provide for a level playing field and remove suspicions of varying levels of enforcement.
- Adopting a bottom up approach of stakeholder involvement is central to developing a Culture of Compliance.
- Harmonisation of sanctions and in particular the adoption of administrative sanctions is strongly supported.
- Simplification of rules through collation of existing rules is considered to be an essential strategy.
- Industry members of NWWRAC are opposed to any restrictions on existing arrangements for quota swaps and to any reductions in existing arrangements on margins of tolerance
- Finally the NWWRAC believes that an effective control system is one where the rules are capable of being complied with; hence the NWWRAC feel that present arrangements should be reviewed and those that do not meet this criterion should be amended accordingly.