



## Comments of the NSRAC on the proposed Control Regulation

### 1. Introduction

- 1.1 The new proposal from the Commission is evidently intended as a response to the adverse comments contained in the 2007 Report of the Court of Auditors. That report was highly critical of the control, inspection and sanction systems in force. The report underlined the need to improve catch data, to expand electronic monitoring, to introduce more effective sanctions and to reinforce the Commission's powers to deal with defaulting Member States.
- 1.2 The starting point of the proposed new Control Regulation is that the control measures currently in force are sufficient to produce the required result if only they are fully and more widely implemented. There is no recognition that the system itself is flawed, or that current control measures have not been universally successful. We are especially disappointed at the highly prescriptive approach which has been adopted by the Commission. Reinforcing or strengthening existing control rules is not the way to ensure that operators will take them on board. Moreover, this approach is quite different to the previous ambition of the Commission to 'achieve a culture of compliance'.
- 1.3 At a Conference in 2008 organised by the NSRAC, the Scottish Government and the new Community Fisheries Control Agency, to discuss and debate control and compliance, it was concluded that the help of fishers, processors, and ports & auctions was essential if control and compliance were to be improved. The main thrust should be simplification of the regulations and fostering better understanding by fishers. The solution to making better rules lay in involving professionals in their development. Only through cooperation could we ensure that measures achieve full buy-in, a higher rate of compliance and greater effectiveness. A full 'culture of compliance' could only be nurtured through mutual trust and dialogue. The RACs volunteered their services in bringing together the right expertise. However, those conclusions from the Peterhead Conference have largely been ignored by the Commission. A Proposal for a new Control Regulation has emerged with all the hallmarks of having been prepared exclusively by control specialists. The anticipated dialogue has not taken place.

- 1.4 The RACs and others are currently engaged in discussions with the Commission on reforms to the Common Fisheries Policy. That debate is focusing on the need for major changes to the CFP. In its initial advice to the Commission the NSRAC has emphasised that the current system of management through a centralised command and control approach must change. The development of very large body of highly prescriptive and complex rules must be avoided. Detailed and inappropriate management measures greatly undermine the legitimacy of the CFP and lead to poor compliance. The system of management must take account of regional or fleet diversity and there must be greater devolution of management to the appropriate level. New forms of governance must be put in place to give effect to greater participation by stakeholders in decision making, as advocated by the Commission's own paper on governance.
- 1.5 The new proposals on control are part of the old CFP. They are based on the top-down and now largely discredited command and control approach which led to failure of the CFP and to the critical report from the Court of Auditors. The new control proposals do not reflect the changes which are now taking place in the world around us and in the markets for fish and fish products. We are disappointed that the opportunity to break new ground has not been taken forward in drafting this new control regulation.
- 1.6 The current control and enforcement arrangements do not provide assurance that infringements are effectively prevented and detected, or that this is done in an equitable manner. The new Community Fisheries Control Agency has been established to improve control and enforcement. The work of that agency has only just begun, and it will be necessary as part of the review of the CFP to consider whether it has resulted in any improvements to the control, inspection and sanction systems. In the absence of such a review, the drafting of a Proposal for a new Control Regulation is inevitable premature.
- 1.7 The report of the Court of Auditors drew attention to the high costs of control and enforcement and, indeed, the high costs of fisheries management. Those high costs are not only borne by the Commission and Member States, they are also a heavy burden upon the fishing industry. There is a need to make control and enforcement more cost effective. The proposed control regulation, with its more detailed and prescriptive measures, is likely to increase the costs for all parties.
- 1.8 'Double-thinking' is evident in the new proposals. New technology is being introduced without clearing out old technology. Paper work measures are being imposed in a digital era. The burden upon industry is unacceptably high.
- 1.9 The proposals extend beyond problems of control and enforcement and introduce measures and subjects which are already covered by existing regulations. It is not sensible for a control regulation to attempt to resolve major policy issues outside the sphere of control and enforcement. The wide scope of the proposals has resulted in unnecessary overlap which will lead to confusion. Many of the comments on wider issues are naive and ill-informed. The widening of the scope of control and enforcement to include all the recreational fisheries is a matter for discussion as part of the reforms to the CFP, and should not be anticipated in this regulation. The scope of the proposed regulation must be confined to control issues.

## **2. Key issues**

### **2.1 Article 4: Definitions.**

2.1.1 § 7 and 8 (and **Article 7**): The need to differentiate between a fishing licence and fishing 'authorisation' has not been clearly established. The purpose and the definitions themselves require clarification. The NSRAC is opposed to introduction of 'authorisation' unless it can be shown to be necessary.

2.1.2 § 10: The definition of a marine protected area proposed in this article is not the one commonly accepted. An MPA is not a 'reserved area', which would imply that no activities at all can be carried out there. If the rest of the regulation is only intended to cover areas closed to fishing then the term 'prohibited zone' or a similar term should be used. In any case, the NSRAC suggests that MPAs are to be established and managed through other regulations, and in some cases these areas will have their own management plans. It is our view that it is not appropriate for the control regulation to supersede, interfere with or overlap with other more relevant regulations. See also section 2.12 below.

2.1.3 § 16: The definition of a 'lot' differs from the one commonly accepted, especially in relation to food hygiene. An attempt must be made to harmonize definitions and to make the regulations more transparent to the whole industry.

### **2.2 Article 9: Vessel Monitoring Systems**

2.2.1 *This Article reiterates the existing requirements for vessels over 15 m to have a VMS system; vessels from 10 – 15 m will be required to operate such a system from 1 January 2012.*

In spite of the fact that there are exemptions for those vessels that do not spend 24 hours or more away from port (which the NSRAC supports), there are a number of problems with this Article in so far as it affects the inshore fleet. It is likely to be expensive, may be disproportionate depending on the particular fishery, and it is not always practicable to install extra electronics in all small vessels. There are supply and maintenance problems in some countries where there is only one, or a limited number of, equipment suppliers. As technology changes we accept that it may be possible to extend electronic monitoring to small vessels, but technology has not yet reached that stage and there may soon be better alternatives to VMS for smaller vessels.

### **2.3 Article 10: Automatic Identification Systems.**

2.3.1 *In addition to VMS, vessels over 15 m will be required to carry an AIS so that the member States can cross-check VMS data.*

This article is proposing an unnecessary duplication of systems involving additional expense. AIS is essentially a safety system, used by marine vessels of all types. It does not provide any information that VMS does not. The regulation should concentrate on achieving a workable electronic monitoring system. A back-up system would only be acceptable if it enabled vessels to go to sea when the VMS was out of commission.

## 2.4 **Article 14: Logbook**

- 2.4.1 *§ 1: Fishing vessels are to record all quantities of over 15kg of species kept on board (previously 50kg.). The quantities of fish discarded at sea are also to be recorded.*

Whilst applying 15kg has the advantage of uniformity with the Mediterranean, the fisheries are not the same. Applying 15kg in a multi-species demersal fishery creates an unnecessary burden that is disproportionate to any benefits. A figure of 100 kg would be more acceptable in a North Sea context. Furthermore, to record the quantities of fish discarded at sea would be a considerable undertaking, which would not be without consequences. By way of example, would it be necessary to weigh (or estimate the weight of) all species even if they are not commercial (small crustaceans, starfish, etc.)? In addition, this provision cannot be put into general application immediately as it could mean considerable extra on-board work for crews. Last year the Commission launched a consultation on the best way to manage discards and it is not acceptable to anticipate the results of that consultation in a separate control regulation.

- 2.4.2 *§ 3: The margin of tolerance is set at 5% for estimates recorded in the logbook.*

The 8% margin of tolerance associated with recovery stocks has given rise to major problems of compliance as there can be considerable weight loss from some fish if they are held at sea for several days. It has been shown to be impossible to estimate to the 8% level of precision on a consistent basis, especially with small quantities of fish. To now seek to impose 5% is wholly impractical given the conditions normally prevailing in the North Sea. Moreover, where fish are weighed on landing there is no point in imposing a margin of tolerance for weighing onboard. It appears that this figure may have been inserted for presentational and negotiating reasons.

- 2.4.3 These paragraphs provide examples of where dialogue with the RACs on striking the right balance between compliance and practicality would have been advantageous. There has already been substantial correspondence on the margin of tolerance point but, perversely, the Commission has not been prepared to engage in a dialogue with the RACs.

## 2.5 **Article 17: Prior Notification**

- 2.5.1 *The provision as it stands reads that every vessel has to give 4 hours notice before landing*

This provision is unworkable. Many inshore vessels are not out for four hours. There are safety issues in bad weather. With electronic logbooks, vessels automatically notify the control centre, and 1 hrs notice or less is feasible.

- 2.5.2 This provision can also be linked with the Authorisation to Land provisions in **Article 20**. The latter proposal is unmanageable. The NSRAC is not against notification of landing, but is against vessels having to wait for authorisation. The provision appears to have been included simply to reduce administrative tasks for control officers, without realising the disproportionate burden it will place upon fishers.

## 2.6 **Article 18: Transhipment**

### 2.6.1 *Transhipment at sea is prohibited.*

Such a requirement will be difficult to apply to the deep sea fleet and to pair trawling. The approach adopted must recognise that there are circumstances where transhipment is a legitimate activity.

## 2.7 **Article 20: Authorisation to land and to tranship**

- 2.7.1 See above, under 2.5.2.

## 2.8 **Article 21: Landing Declarations**

- 2.8.1 *Landing declarations must be made within two hours of landing. It is recognised that the under 10 m fleet may not land in a port where it can file a declaration and the time that may elapse before the declaration is made is fixed at 24 hours.*

Fishers maintain that the 2 hour restriction is unworkable. No distinction is made between fresh and frozen fish and the different ways in which fish are treated commercially. The NSRAC recognises that a landing declaration is appropriate for electronic logbooks and is already included as a feature. It is not appropriate for paperwork also to be required.

## 2.9 **Article 28: Corrective Measures**

- 2.9.1 § 1: The principle of including this Article is justified. If the Commission has wrongly closed a Member State's fishing opportunities then the latter is entitled to demand reparation.
- 2.9.2 § 2: This paragraph provides that, if the prejudice suffered by the State has not been removed, deductions will be made from the fishing opportunities of other Member States to compensate for the premature closure, regardless of whether they have over-fished. This provision is inequitable.

## 2.10 **Articles 33 & 34: Designated Ports**

2.10.1 *Criteria are set for a port to be considered as a designated port. These include restricted landing times, restricted landing places, full inspection coverage during landing times at all landing places. In addition the average annual weight of the relevant species must represent at least 5% of the total port landings.*

These restrictions would have the effect of reducing the number of places where species subject to Multiannual Plans might be landed and thus increase vessel owners' costs. The restrictions have negative implications for safety in the event of bad weather or emergencies. It is also unclear how this provision will apply to tidal ports. If designated ports are to be introduced more widely then there should be scope for new ports to be added. Ports of local significance would have to be recognised. It would be important for national authorities to decide on the level of control to be applied to designated ports.

2.10.2 With respect to **Article 33**, in ports with no facilities for the fishing fleet other than a berth, as is the case at some ports, landing will no longer be possible. Allowing transfer in trucks for onward transport to an 'allowed facility', under a customs seal or similar, observed by inspectors at their discretion, should be possible. Current commercial practices should be allowed to continue.

2.10.3 There is an important general point to be made here, which applies to many of the proposed Articles. Some fishing companies operate their vessels and unload their catches in one country and then transport them to another country for sale. An example is the landing by French vessels of catches at Lochinver, in Scotland, and their subsequent transport to Boulogne sur Mer in France, where they are sold. The Proposal for a new Control Regulation, dealing with aspects like prior notification, landings authorisation, landing declarations, designated ports, traceability, weighing & sorting of fish, transport documents, sales, etc, does not recognise these legitimate commercial practices. Fish are not sorted or weighed at the point of landing because the catch is going directly from the cargo hold of the vessel to a truck and is then being transported rapidly to the market which may be hundreds of kilometres away. There is a delay of many hours between the landing point and the sales point. The Proposal will create major problems for fleets which operate in this way, and would throw the whole commercial procedure into disarray. It is not a single Article which stands in the way of sound commercial practice. The whole array of Articles makes these practices difficult to continue with.

## 2.11 **Article 35: Separate stowage of recovery species**

2.11.1 *Separate stowage is to be provided for recovery species.*

Such a provision means added costs for the industry and in addition reduces the carrying capacity of the vessel thus raising the break-even point. Furthermore, separate storage can lead to safety problems with unstable storage. In addition, on smaller vessels there is neither the space, nor the facilities, to weigh, box and label fish. Shellfish, in fact, are usually bulked and kept best that way. The

provision is too prescriptive. Separate containers might be acceptable in some circumstances. Separate areas would not be possible.

## 2.12 **Articles 39 and 40: Marine Protected Areas**

2.12.1 **Article 39** conflicts with **Article 7 § 1**. **Article 7 and Article 40** imply that fishing would not be authorised in an MPA, whereas Article 39 appears to provide a basis for monitoring fishing activity in an MPA. The definition of a Marine Protected Area is therefore of crucial importance to these articles as outlined in paragraph 2.1.2.

2.12.2 MPAs may have very diverse objectives. A single fishery control system does not seem appropriate: the size of the MPA, its conservation objectives (deep coral or sandbanks) and its position (inshore or beyond 12 nautical miles) may all vary, arguing for the establishment of tailored, proportionate control systems that might therefore be very different from one to another. The NSRAC also has concerns about the feasibility of establishing an alarm system alerting vessels to the fact that they are entering an MPA, especially as regards inshore MPAs. Furthermore, the 6 knots provision is not realistic: some vessels will not be capable of doing 6 knots and some vessels may not be able to do 6 knots in heavy seas for safety reasons.

2.12.3 The title of Section 2 needs revision: it should not be "Monitoring of Marine Protected Areas" but "Monitoring of fishing activities in Marine Protected Areas". The Commission are reminded that this is a "fisheries" regulation and not an environmental regulation. As already mentioned in paragraph 2.1.2, MPAs will be established and managed through other regulations, and in some cases will have their own management plans. It will be important to integrate these different regulations and directives so that there are no contradictions.

## 2.13 **Article 41: Registration of Discards**

2.13.1 *All discards over 15kg live weight are to be recorded and declared to the relevant authorities as soon as possible.*

The 15kg live weight limit seems to be the new Commission threshold set to bring other areas into line with the Mediterranean. Such a limit is inappropriate for the multi-species demersal fisheries of the North Sea. It is also unclear whether this applies to a haul, a trip or a period, e.g. a month or a year. It is also not clear whether it will include all the marine organisms captured.

2.13.2 There is no query from the NSRAC about the need to provide information on discards, or indeed to reduce discards. The NSRAC also recognises that the control regulation needs to be able to enforce the likely changes to how discards are managed under a new CFP. However, it is not appropriate to finalise the control aspects at a time when the whole question of discarding is under discussion.

## **2.14 Articles 43 to 46: Real-time closure of fisheries**

- 2.14.1 This article anticipates the forthcoming discussions regarding the new Regulation on Technical Conservation Measures. Again, it is not appropriate to bring about these measures through a control regulation. Inconsistencies also arise with the provisions of the TAC and Quotas Regulation.
- 2.14.2 The agreement with Norway provides for an experts' meeting during 2009 to establish the principles for real-time zone closures to become operational in September 2009. The topic requires in-depth consideration which should involve the RACs. The draft control regulation anticipates the outcome of those discussions.

## **2.15 Article 47: Recreational fisheries**

- 2.15.1 There are a variety of fisheries which come under the heading of 'recreational fisheries' but this regulation does not distinguish between them. There are different kinds of recreational fisheries including sports fisheries, and subsistence fisheries (the latter often involving substantial catches, for example, by means of gill nets). The regulation on bluefin tuna draws a distinction between different types of fishery. There is certainly a need to distinguish between those fisheries which have a significant effect upon fish stocks, and those which do not. Some operators would agree that it is desirable to oblige some recreational fishermen to hold special authorizations to fish on certain fishing grounds (as is already the case for bluefin tuna) in order to improve control and monitoring of such fisheries. In other cases, where there is no impact upon fish stocks, such measures would be excessive and disproportionate. The data collection regulation does require information from the recreational fisheries. However, the collection of detailed information on all those fisheries would be a daunting and costly task. The imposition of strong control over all recreational fisheries would also be an immense and expensive task, which might not be justified.
- 2.15.2 The NSRAC suggests that the inclusion of recreational fisheries is a complex policy question which cannot and should not be resolved through a hastily conceived, poorly thought-out and premature control regulation. There is a substantial lack of data and understanding of recreational fisheries at an EU level. A longer time frame is needed to analyse the impact of recreational fisheries on important or vulnerable stocks and that can only be provided as part of the discussions on reforms to the CFP. Any measures adopted as a result of those discussions should be proportionate to the objectives.
- 2.15.3 The NSRAC accepts that if recreational fisheries have a large impact on stocks then they need to be included and reported, and taken into account in determining the TACs. However, the NSRAC cannot agree that recreational fishermen should be awarded a share of the current quota at the expense of other fishers. Historical series of catches would first have to be revised in order to include catches from recreational fisheries for those species where current assessments are based only on commercial catches. Scientific assessments would need to be redone where the recreational catches are significant, and where they have not been included, or have been poorly estimated in the past.

In some cases it would be necessary to revisit the 'unaccounted mortality' figures. Quotas would need to be revised.

The NSRAC recognises that for certain species, in particular areas, recreational catches can be significant and this makes it necessary to include their 'take' in both assessments and allocations. However, NSRAC would like these issues to be dealt with as part of the wider reforms planned for the CFP.

## 2.16 **Article 50: Traceability**

2.16.1 § 2-d: Simply stating the date of capture could be misleading. Specifying the date of landing or first sale, would be more appropriate, and would reduce the burden upon fishers.

2.16.2 Traceability is increasingly a requirement for market purposes, and it is therefore a sensitive issue, which needs much more careful thought and consideration if it is to be incorporated in a revised control regulation.

## 2.17 **Article 51: Consumer Information**

2.17.1 While NSRAC appreciates the need for greater provenance in terms of fish and fish products, we have concerns as to whether it is a matter for a control regulation. Obviously, there is a need to have some measure of where fish are caught, but the level of detail and its purpose would need to be completely different.

## 2.18 **Article 52 First Sale in Auction centres**

2.18.1 *Requires that the first marketing of species subject to quota or effort controls should only be sold and/or registered at an auction centre to registered buyers. Other fisheries products shall only be sold at an auction centre or to bodies or persons authorised by Member States.*

This Article is drawn up to cover one particular marketing model (sale through auctions). It does not provide for contracts drawn up outside auction centres. It is often appropriate for different kinds of commercial transaction; auction, pre selling, contract etc. to take place under a central roof, with detailed checks and controls and this may lead to good working practices. Centralising facilities for weighing and registration at a port does have huge advantages for the control system. However, direct sales and registration should be possible without fish passing through an auction centre. There is also a problem with defining what an 'auction centre' is. The NSRAC accepts that sales must be registered, but the control system imposed must be consistent with commercial realities and must recognise legitimate business practices. Custom made solutions in line with local best practice should be sought. There is already a regulation which deals with marketing and the registration of buyers and sellers.

## 2.19 **Article 53 Weighing of fishery and aquaculture products**

- 2.19.1 *Fish shall be weighed prior to the fish being sorted, processed, held in storage and transported from the place of landing resold.  
By way of derogation, fresh fish may be weighed within 20 kilometres of landing.*

20km is unacceptable. It is commonplace for fish to be transported more than 100-150 km from the place of landing before sorting and processing. In addition, there is an assumption that all fish is landed weighed, boxed and labelled which is not true in all fisheries. The disappearance of the 300 kg threshold for compulsory weighing is opposed.

## 2.20 **Article 63: Observers**

- 2.20.1 Until now, observers filled in forms and data sheets solely in connection with the programme or programmes for which they were hired. In the draft regulation, they are asked to check that the vessel complies with 'the rules of the Common Fisheries Policy'. This makes them no longer observers but 'on-board inspectors', which will not create the climate of confidence needed for observers to perform their tasks effectively. Moreover, we think it unrealistic to assume that observers have an accurate knowledge of all the rules of the CFP. Confusion between scientific observers and 'on-board inspectors' could jeopardize scientific programmes; the two functions need to be properly separated. In addition, the costs of surveillance cannot be borne by the operators themselves.

## 2.21 **Article 76: Enhanced follow-up with regard to certain serious infringements**

- 2.21.1 § 4: This paragraph introduces the notion of diverting the vessel. The rules need to be formulated so that they are compatible with the characteristics of the vessel and the port to which it is to proceed (particularly with regard to the shipping category and safety in general).

## 2.22 **Article 80: Corrective measures in the absence of prosecution by the Member State of landing or transshipment**

- 2.22.1 The NSRAC appreciates that Member States must take action and implement working control systems. There must be consequences if practices fall below the necessary standards. However, it does not seem at all appropriate to lower the quota of the Member State of transshipment or landing if that Member State has not taken the necessary measures to avoid illegal landing or transshipment. Reducing quotas in this way would penalize producers, whereas the fault lies with the Member State. The punishment most definitely does not fit the offence. Reducing quotas would penalise those producers who do comply with the regulations, which cannot be right.

## 2.23 **Article 82: Sanctions for serious infringements**

2.23.1 In § 4 the Member State can take into account the value of any prejudice caused to the environment. As the Commission is seeking harmonisation, particularly of sanctions, it is a pity to bring in proposals which cannot readily be evaluated and which threaten to introduce disparities between Member States. There is a risk of 'fisheries' offences being reclassified as 'environmental' offences. Moreover, what the Commission regards as advice might be interpreted as a legal requirement in some Member States.

## 2.24 **Article 84: Penalty Point System**

2.24.1 *The Regulation proposes a Penalty Point System. § 3 provides for fishing 'authorisation' to be suspended for six months once a certain level of points has been reached. If this level is reached a second time the authorisation is suspended for a year. When the level is reached a third time the licence is withdrawn permanently.*

*§ 1: In the event of serious infringement the points deducted shall be at least half the level mentioned in § 3.*

*§ 2: If there are no new infringements at the end of three years all the points are deleted.*

*§ 7. The penalty points system shall apply to masters and officers of vessels.*

It is crucial with this regulation that all Member States agree a common system. The current system is not clear and does not insure a harmonised strategy to be adopted by all MS. The legality of expropriating an asset and the right to compensation may cause problems in some Member States.

## 2.25 **Article 87: Specific Community control action programmes**

2.25.1 § 1: Mentions the need for concerted action by Member States, which is essential. However, the RACs have been overlooked. It is essential for the RACs also to be involved in guiding these control programmes. Their involvement within the Community Fisheries Control Agency underlines this.

## 2.26 **Article 95: Suspension and cancellation of Community financial assistance**

2.26.1 The references made in this regulation to the EFF (European Fisheries Fund) regulation are considered inappropriate by the fisheries sector. The EFF Article in question provides for suspension of payments of assistance if the State does not implement a sound policy in respect of the use of funds. It does not provide for suspension of assistance in the event of non-compliance with the rules of the CFP. The NSRAC suggests that the proposed provisions would have counter-productive implications in some circumstances. There is also a lack of clarity on the specific criteria which would lead to adopting this penal measure.

2.26.2 The NSRAC suggests that it is better to take legal action against individuals or Member States. There may also be an element of double-jeopardy in this provision (whereby the offender may be penalised twice for the same offence).

2.26.3 However, WWF has a difference of opinion from the above. It recommends excluding vessels and individuals who have a history of violations from benefitting from Community subsidies and public aid. Moreover, it proposes that aid granted in the past for each financing period should be recovered from those vessels and individuals who commit serial infringements.

## 2.27 **Article 97: Deduction of quotas**

2.27.1 These Article needs more careful consideration. It does not seem sensible to fail to provide any sanctions (other than withdrawal of approval) against professional organisations for failure to manage or mismanagement of quotas.

2.27.2 § 3: If a Member State takes catches from a stock for which it has not been allocated a quota, it is to suffer a quota deduction on another stock subject to a quota. In practice, we wonder what criteria will be used to select the stock to be 'charged'. Moreover, there is a risk of penalising a segment of the fleet that has been able to manage its fishing opportunities and of creating conflicts between sectors.

## 2.28 **Article 98: Deduction of quotas for failure to comply with the objectives of the CFP**

2.28.1 The NSRAC is not in favour of being able to penalize all infringements by means of deduction of quotas. The punishment must fit the offence. The text of the regulation is not explicit on what constitutes a serious threat.

## 2.29 **Article 99: Refusal of quota transfers**

2.29.1 *Points a) & b) say that transfer may be refused by the Commission if the quota to be transferred has been overfished by the Member State concerned in any one of the preceding two years, or one of the preceding five years in the case of "stock that is under a multiannual plan or is caught in association with a stock under a multi-annual plan".*

However, care should be taken to avoid duplicating sanctions: firstly the multiplying factor referred to in **Article 97** and secondly this Article. Furthermore, going back five years seems out of proportion, inasmuch as the State may have introduced effective measures to prevent this kind of overfishing.

## 2.30 **Article 100: Refusal of quota exchanges**

2.30.1 Given that exchanges can avoid overfishing, we do not think it appropriate to use prohibition of exchanges as a sanction when a State has overfished its quota by 10% in one of the preceding two years.

### 2.31 **Article 112: Amendment to CFCA detailed rules**

2.31.1 Expansion of the scope of the CFCA as detailed in § 1 is not in line with the Council conclusions from April 2008 following discussion of the ECA report. There is a need to thoroughly review the work of the CFCA and its effectiveness in improving MS control systems and improving collaboration across borders before changes are made.

## **3. Concluding Remarks**

3.1 The proposed Control Regulation appears to have been introduced without any attempt to address differences in the operating conditions between European fisheries. Much of the emphasis is inappropriate for the multi-species, demersal fisheries of the North Sea. Moreover, there appears to be a lack of appreciation of the ways in which commercial businesses operate, and the differences in the processing, sale and marketing of fish in different regions.

3.2 The general outcome will be to create a 'criminal atmosphere' for all fisheries. Yet the approach may not improve the position in those fisheries where a culture of compliance is lacking. The proposal is lacking in any incentives for changing attitudes.

3.3 Any simplification included within the proposed Regulation is aimed at reducing the tasks for fisheries administrations rather than reducing the burden upon operators of fishing enterprises. The proposed Regulation will involve the industry in considerable additional expense, with few benefits, at a time when profitability is under threat. An important point made during the Peterhead Conference was that compliance is greatest when the industry is profitable. Loading greater burdens upon the industry is most definitely not the way forward.

3.4 The Proposal fails to confine itself to control issues. It adopts a scatter-gun approach in trying to resolve a wide range of conservation issues which are already subject to other regulations. It is not within the power or remit of this regulation to resolve all the problems in achieving sustainable fisheries – a completely new system of governance is required to reach those wider objectives.

3.5 Throughout, there is a lack of concern for the safety of fishing vessels given the difficult circumstances in which they operate. Safety at sea must not be compromised for the convenience of shore-based inspectors.

3.6 Overall, the Proposal is a disappointing and backward looking response to the criticisms of the Court of Auditors which misses the opportunity to build compliance on the basis of a coherent and accepted body of rules through full

dialogue with stakeholders. The Proposal takes us no further forward in conveying greater responsibility for control and compliance to the fishing industry.