



The Fisheries Control Regulation

1.0 Introduction and Background

- 1.1 To ensure that rules of the Common Fisheries Policy are followed in practice, the EU has established a control system. The system is laid down in the Control Regulation No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (CFP) which was adopted by the Council November 2009 and entered into force on 1 January 2010.
- 1.2 The control system is designed to ensure that rules are applied to all fisheries in the same harmonised way across the EU; that only the allowed quantities of fish are caught and that fishery products can be traced back and checked throughout the supply chain.
- 1.3 The need for achieving a fisheries buy-in with regulations and for a level playing field is generally accepted. It is important that new controls do not make the industry less efficient and do not simply move costs from the control authorities to the industry. Not only managers and other stakeholders are asking for control and better enforcement of the CFP – also the fishing industries want the fisheries rules to be applied in an equal manner throughout the EU – that the same constraints are applied equitably to all.

2.0 The setbacks of the control regulation

- 2.1 Since the entry into force the Commission and Member States have implemented the different rules in the control regulation. However, the adoption by the Council took place in high speed without an in-depth analysis of the technical and economic consequences and without seriously taking into account the interventions from the stakeholders.
- 2.2 Specifically in the North Sea area Member States there is still work on issues like transportation and traceability. However, unfortunately many fishermen have lost confidence in the control policy. The implementation of the control provisions has in several ways caused heavy economic burdens and red tape in the fishing sector and

the processing industries. Especially the one-size-fits-all-approach – not considering whether it concerns a small or large economic unit - is lacking proportionality.

- 2.3 It is necessary to react to the state of play. Adjustments – though simple - are needed on a number of provisions in the control regulation to restore the acceptance of rules and secure high compliance. Not to weaken the fisheries control policy but to improve and have better, more intelligent control rules. Proportionality must be secured - the burden of cost and red tape must be reduced.
- 2.4 The Commission tabled 18 January 2013 a proposal for an amendment of Regulation No 1224/2009. The aim of the proposal is an alignment of the Control Regulation on the decision-making rules of the Treaty of the Functioning of the EU. It does not respond to the call for improvement from principal stakeholders.
- 2.5 Furthermore, with the reform of the CFP and the introduction of the discard ban in the coming years it is essential that the control regulation – and control measures in general - are amended following the new policy. Not just from practical reasons but certainly also to make sure that fishing and processing of fish products can continue to be a viable economic activity – without facing heavy bureaucratic and economic burdens.

3.0 Six initiatives to improve the control regulation

- 3.1 Following analysis and discussions in the NSRAC it is the general perception that the following provisions in the Control Regulation No 1224/2009 particularly is having an adverse and negative impact on the fisheries industry:

Control Regulation No 1224/2009 of 20 November 2009	
Article 14:	The logbook provisions
Article 17:	Provisions on prior notifications
Article 24:	Provisions on landing declaration data
Article 58:	Provisions on traceability
Article 60:	Provisions on weighing of fishery products
Article 92:	Point system for serious infringements

- 3.2 While sympathizing with the need for control regarding fisheries and fisheries products, the NSRAC must stress the need for a realistic and practical perspective and not make requirements overly complex and burdensome for the industries.
- 3.3 Bigger enterprises have the capacity to handle complex set of rules; this is often not the case for the many SME's operating fishing vessels. There is a need to improve the impact of the provisions not least for the SME's both in fisheries and small processing industries - the provisions should be more proportional and flexible than the current ones. The NSRAC is convinced that with changes to these provisions focussing on the practical aspects – and as such not the content – the legitimacy of the control regulation can be restored.

3.4 The problems with the 6 articles are highlighted in the following together with the NSRAC proposals for solutions:

4.0 Article 14: The logbook provisions (the permitted margin of tolerance)

4.1 It follows from article 14 that fishing vessels > of 10 meters' length shall keep a fishing logbook, indicating specifically all quantities of each species kept on board > 50 kg live-weight. The permitted margin of tolerance in estimates recorded in the logbook shall be 10 % for all species.

4.2 However, for many vessels the 10 % margin of tolerance is causing problems every day. The margin is simply too low – this can be the case when catches are small; when data has to be submitted (in high speed) or when change of waters etc. or when large catches of related species (difficult to distinguish from each other). On daily basis many fishermen – unintended cannot comply with the 10 % rule – and this is certainly a problem in Member States where this is seen as an infringement of the rules having the consequence that fishermen are being punished.

4.3 This is an example of the lack of proportionality. The logbook estimates is there first of all to give the fishing vessel estimates of the catches. In this respect it does not make sense to punish fishermen for failing to comply with a limited 10 % margin of tolerance. It is only reasonable to (re-)introduce the logbook tolerance at level of 20 % for all species.

Article	Problem	Solution
14	The permitted margin of tolerance in estimates in the logbook is <u>10 %</u> for all species.	The permitted margin of tolerance in estimates in the logbook shall be <u>20 %</u> for all species.

5.0 Article 17: Provisions on prior notifications

- 5.1 It follows from article 17 that fishing vessels > of 12 metres' length engaged in fisheries on stocks subject to a multiannual plan, shall notify the authorities at least 4 hours before the estimated time of arrival at port. Most Member States apply this rule for catches of more than 300 kilos of the relevant species.
- 5.2 The prior notification makes it possible for the authorities to monitor the landings at port. It does make sense in some fisheries, however, for much of the fisheries in the waters of the NSRAC the 4 hours rule is a practical problem – many vessels fishing close to their port and do not have 4 hours of steaming back to the port. Member states can apply the Commission for derogation from the 4 hours rule and some have done that now applying a 2 hours rule on prior notification. However, even 2 hours is still a problem for many fishermen and they may have to wait outside ports to comply with the rules.
- 5.3 Therefore, prior notification 2 hours before landing should only be applied for larger quantities of the management plans. Fishermen should not be forced to sit and wait in their vessels outside ports just because of small amounts of catches.

Article	Problem	Solution
17	Prior notifications for fishing vessels > 12 meters catching stocks subject to a multiannual plan, shall take place at least <u>four hours</u> before the estimated time of arrival at port.	Prior notifications for fishing vessels > 12 meters catching more than 1 tons of stocks subject to a multiannual plan, shall take place at least <u>two hours</u> before the estimated time of arrival at port.

6.0 Article 24: Provisions on landing declaration data

- 6.1 It follows from article 24 that fishing vessels > of 12 metres' length by electronic means within 24 hours after completion of the landing operation shall send a landing declaration to the authorities. The aim of this provision is to enable Member States to monitor the activities of the fishing industries.
- 6.2 For many fishermen the landing declaration is unnecessary and duplication of work. Already, the vessel has to fill in the electronic logbook for the fishing trip and this has to be verified. Furthermore, the vessel needs the sales notes from the auction to fill in the landing declaration and especially around weekends they are not always available within 24 hours. However, given different records the data in the landing declaration might differ accidental from other data like the ones in the e-logbook.
- 6.3 Given that the value of the landing declaration is limited and out of proportionality with the burden that follows from it, the obligation for the landing declaration should be dropped.

Article	Problem	Solution
24	The vessel shall send a landing declaration to the authorities.	Omission of the article.

7.0 Article 58: Provisions on traceability

- 7.1 It follows from article 58 that all lots of fisheries and aquaculture products shall be traceable at all stages of production, processing, distribution, from catching or harvesting to retail stage.
- 7.2 NSRAC fish processing companies already have in place traceability systems complying with requirements in terms of food safety. These traceability systems enable operators to match lots with immediate suppliers and buyers, ensuring full traceability through a “one step forward, one step backward” approach. This approach of going up or down the chain enables food operators to deliver the required information of the lot during inspection while maintaining commercial confidentiality.
- 7.3 The requirements under the control regulation do not take into account the difficulties that arise when lots are split, mixed and merged to form new lots. Tracing these newly formed lots back to the level of detail as set in the regulation, causes spectacular administrative burden for operators, who in many cases may no longer be able to identify the lot of origin, but a set of lots that has formed the new lot.
- 7.4 Taking the example of the Netherlands, problems start at auction level, where different lots arriving from the vessels are split according to size. Processing companies buy multiple lots from different auctions and merge them together at processing level to form new lots. In this process, newly formed lots receive a new ID number through which the set of original ID numbers comprising the new lot can be identified. When subject to controls, companies may retrieve the desired information through the new ID number: Information attached to the original ID numbers can be retrieved back at the auction (one step back). Administrating all the information fixed to each original ID number requires extra manpower and considerable changes in technological systems that may not be cost effective. Subsequently, companies may pass on the new ID number to the next step in the supply chain (one step forward), but most are unable to forward the detailed information list both on the invoice and ‘physically accompanying the lot’ as this requires new technological systems and costly manpower to physically label new lots. The physical labelling of new lots can in some cases be a practical impossibility when volumes of lots are huge.
- 7.5 Many companies do not have the capacity to design new complex systems capable of sustaining the level of detail required, resulting in un-harmonised systems being made between different companies, within different Member States. We foresee problems at the border controls because systems may not match.
- 7.6 The NSRAC believe the requirements of traceability could be met if properly aligned with, and complementing existing food safety traceability systems. Sharpening the

control on the illegality of fish may well be possible within existing systems, and not by setting requirements that can only be met by creating new and highly advanced electronic systems. In this respect it should also be taken into consideration that creating, installing and making advanced electronic systems operational not only is costly; it also requires length of time.

Article	Problem	Solution
58	The requirements for traceability do not take into account the difficulties that arise when lots are split, mixed and merged to form new lots (in that respect the definition of a lot is also a problem).	The requirements of traceability could be met if properly aligned with, and complementing existing food safety traceability systems.

8.0 Article 60: Provisions on weighing of fishery products

- 8.1 It follows from article 60 that all fishery products shall be weighed on landing prior to the fisheries products being held in storage, transported or sold. The background for this is to make sure that it is as rightly figures as possible being used for the quota statistics.
- 8.2 However, fish will be losing weight as soon as they get out of the water. 1 kilo of fish freshly caught will not weight 1 kilo when landed; when being sold at the auction or when arriving at a processing industry. Therefore, the more often the catches of fish have to be weighed the more different numbers of the catches you will have – the figure in the logbook estimates; the sales notes; from the weighing on landing and upon arrival at the auction. Weighing can also be an issue when fish is landed in one port to be transported to another port for the sorting. The different numbers are a source for disputes not just between fishermen and authorities but also between the fishing industries and the processing industry.
- 8.3 There are possibilities for derogations from the weighing provisions; however the provisions on weighing are in reality unnecessary given all the other controls on the catches. Therefore the provisions on weighing should be more flexible – they could be written in such a way that the sale notes could be used providing the numbers needed for the quota statistics. The re-weighing of catches which have been weighed and packed onboard must be avoided at all costs as this will have a seriously detrimental impact on the quality of that fish.

Article	Problem	Solution
60	Fishery products shall be weighed on landing prior to the fisheries products being held in storage, transported or sold.	The weight shall follow from the sales notes.

9.0 Article 92: Point system for serious infringements

- 9.1 It follows from article 92 that Member States shall apply a system for serious infringements on the basis of which the holder of a fishing license is assigned the appropriate number of penalty points as a result of an infringement on the rules of the common fisheries policy. It follows that the penalty points shall be assigned to the holder of the fishing license.
- 9.2 The implemented provisions give incidental problems in the fisheries sector. First of all – what is to be understood by serious? – there seems to be different interpretations as in some Member States even what should be small infringements leads to assignment of penalty points. Secondly, the restriction that the points are only deleted after 3 years are very tough and almost unreachable when even small incidents are considered as serious infringements. Thirdly, the fact that points are following the holder of the license and not the vessel with a threat of having the license suspended does in some cases have a negative impact on the access to financial services. Furthermore, these provisions create some legal problems in some Member States. Fourthly, beside the point system, some Member States also punish the fishermen for infringements according to national rules – so they get a “double up” on infringements.
- 9.3 With minor changes the point system could be improved - points shall be given for “serious” infringements following deliberate actions. Furthermore, penalty points following an infringement of a rule shall expire after 3 years and finally there must not be a “double up” on infringements. This will make more sense and bring back some proportionality into the point system.

Article	Problem	Solution
92	The point system for serious infringements are punishing too hard.	Points shall be given for “serious” infringements following deliberate actions. Points for an infringement shall expire after 3 years and there must not be a “double up” on infringements - one should be penalized only once for an infringement.

10.0 Conclusion

- 10.1 Due to difference in interpretation in different Member States or due to the different languages there might be more (tiny) adjustments that may lead to a higher buy-in and compliance, and to a better achievable level playing field

The NSRAC therefore proposes to the Commission to organize a seminar at which the details of the control regulation can be discussed in order to increase the achievement of the objectives of such regulation.

10.2 With what are in fact small changes in the Control regulation, basic support from the fishing industries could be restored. Higher degree of compliance, co-operation and co-responsibility from the fishing industry requires more intelligent and pragmatic control rules - it cannot be repeated often enough that the fishing industries are not arguing for less or no fisheries control at all.

The NSRAC therefore encourage the Commission, the Council and the Parliament to respond constructively to these findings and make the necessary changes to the control regulation.

10.3 Furthermore, with the introduction of the discard ban in the coming years it is essential that the control regulation – and control measures in general - are amended. Not just from practical reasons but certainly also to make sure that fishing and processing of fish products can continue to be viable economic activities. The NSRAC is of course willingly to contribute constructively to this discussion.