



Birdlife Europe, CAPE-CFFA, ClientEarth, the Environmental Justice Foundation, Greenpeace, Oceana, the Pew Charitable Trusts, Seas At Risk and WWF welcome the opportunity to provide feedback on a potential amendment of the Union fisheries control system to simplify it, to make it more effective and efficient and to ensure full compliance with the reformed Common Fisheries Policy (CFP).

Together with the Regulation establishing a system to combat Illegal, Unregulated and Unreported (IUU) fishing¹ and the soon-to-be adopted Regulation on the sustainable management of external fishing fleets,² the Control Regulation³ is the cornerstone of the European Union (EU) fisheries control system. Having in place a set of efficient and coherent rules which ensure the appropriate level of control of the fishing activities and set the obligations that competent authorities have to respect to ensure that these rules are complied with is central to a successful CFP.

Since 2010, the EU has been leading the international fight against IUU fishing, notably through the implementation of the IUU Regulation. Under this legislation, third countries wishing to export fish into the EU seafood markets must certify that it was caught legally, in accordance with all applicable laws and regulations. If third countries fail to respect their legal

¹ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing.

² This new Regulation will repeal Council Regulation No 1006/2008 of 26 September 2008 concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters.

³ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy.

obligations to fight IUU fishing, the EU can in turn list them as non-cooperating third countries and prohibit EU import of fish caught by third country vessels.

To ensure a level-playing field between EU and third countries' fishing vessels, it is however of utmost importance that this IUU policy is matched with a strong internal fisheries control policy. In particular, the Control Regulation is fundamental for ensuring that EU vessels apply technical management measures, including to minimise and, where possible, mitigate their impact on the marine environment, within EU and outside EU waters.

While we acknowledge significant gaps in the implementation of the Control Regulation, we are not convinced that a fast revision will improve some of the most serious shortcomings in the control system.

The success of the CFP and of the fight against IUU fishing depend largely on the provisions and full implementation of the Control Regulation. One of the Commission's primary concern should be the Member States' failure to comply with existing provisions, a full eight years after its entry into force.

Any revision of this legislation must follow due process and carefully weigh the need for reform against the risk of opening and diminishing the scope and subject of existing provisions. This process must notably implement the following critical areas:

- Collecting and presenting comprehensive data and evidence to support a clear set of options to be considered prior to any legislative initiative;
- Providing a comprehensive assessment of the impact of the policy options on stakeholders, including any potential revision of the existing rules; and
- Undertaking a full consultation of all stakeholders affected by the policy options and potential revision in order to gather sufficient views on what the EU fisheries control system should look like.

It is a well-recognised principle of EU law-making that “*stakeholders should always be consulted when preparing a Commission legislative or policy initiative or when performing an evaluation or fitness check and on Communications which launch a consultation exercise or Green Papers*”.⁴ This principle is based on Article 11 of the Treaty on the European Union according to which “*the European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent*” and on Protocol No. 2 on the application of the principles of subsidiarity and proportionality which states that “*before proposing legislative acts, the Commission shall consult widely*”.

It is compulsory under the Better Regulation Guidelines to conduct a 12-week internet-based public consultation for initiatives accompanied with an impact assessment. The only exception to that rule refers to situations where the evaluation and impact assessment are prepared in parallel.⁵ This is however not the situation for the current dossier, as the REFIT evaluation of the Control Regulation was conducted before the Commission announced its decision to revise the Regulation.

The consultation strategy described by the Commission in its Inception Impact Assessment fails to mention the mandatory online public consultation. Instead, it underlines that “*an extensive public consultation was conducted in the framework of the REFIT evaluation in 2016, with 462 contributions received*”. **The 2015/2016 public consultation on the REFIT evaluation of the Control Regulation cannot and should not substitute for a public consultation responding to the recent evaluation report and Inception Impact Assessment and potential legislative initiative on fisheries control.**

It is clear that the 2015/2016 public consultation sought to address different issues than the ones at stake under the current legislative initiative of the Commission. The questions raised on this occasion focused on the **implementation** of some of the key parts of the Control Regulation and did not consider or consult on the possible **changes** that may be brought to

⁴ Commission Staff Working Document SWD (2017) 350 of 7 July 2017, Better Regulation Guidelines, p.70.

⁵ Commission Staff Working Document SWD (2017) 350 of 7 July 2017, Better Regulation Guidelines, p.16.

the system. At the time, the three policy options presented by the Commission in its Inception Impact Assessment were not defined nor presented in a public document. In addition, the number of contributions received (462) is not an indication of the representativeness of the stakeholders who contributed to the consultation, as 68% of the replies came from only one Member State, Ireland, on a specific topic (super trawlers operating in the Irish seas).

Neither the announced “targeted” consultations during the last quarter of 2017 nor the workshop on 16 November 2017 can substitute for the mandatory online public consultation. The workshop itself will not allow those represented to provide in-depth replies to the policy options that will be considered by the Commission in its impact assessment, as is prescribed by the principle according to which *“a consultation strategy should be designed, keeping in mind the need to consult on all key IA related-issues”*.⁶ These key IA related-issues are not known to-date, and stakeholders are therefore unable to provide any sort of feedback on such issues directly to the Commission.

Moreover, one crucial principle for carrying out an impact assessment is that *“the most appropriate methods should be identified to collect data and analyse impacts. Where necessary, external studies may be contracted out to provide input on specific elements”*.⁷

It is evident that the Commission is not allowing for the appropriate time to collect data and analyse impacts on the likely crucial priorities of the reform of the fisheries control system, in contradiction with the Better Regulation Guidelines.

In this respect, the Commission noted in its REFIT evaluation report on the implementation of the Control Regulation that *“monitoring and catch reporting tools for vessels below 12 meters require particular attention”*.⁸ To further investigate options on how to deal with the reporting of small-scale fisheries, the Commission launched a call for tenders on “Monitoring

⁶ Commission Staff Working Document SWD (2017) 350 of 7 July 2017, Better Regulation Guidelines, p. 17.

⁷ Commission Staff Working Document SWD (2017) 350 of 7 July 2017, Better Regulation Guidelines, p. 17.

⁸ Report from the European Commission to the European Parliament and to the Council COM (2017) 192 final, p. 9.

small-scale fisheries” during the spring of 2017, whose aim was, amongst others, to propose *“the design of a system that would be suitable for future development”*. The contractor is to *“propose an outline of a prototype system for SSF monitoring, suitable for further development and possibly testing”*.⁹ This study is scheduled to start at the end of 2017 and would take one year to complete. **Under the Commission’s current timeline for revision of the control system, the outcomes of this project will not be used to prepare the impact assessment and any legislative proposal of the Commission.** This is alarming, as the Commission itself has identified monitoring and reporting of small-scale fisheries as one of the biggest shortcomings of the current Control Regulation during its REFIT evaluation process. It should therefore take the time to collect experts’ advice and to develop a sound and credible proposal on this important topic, which is of concern to the vast majority of EU fishers.

Similarly, a call for tenders was also issued in spring 2017¹⁰ to determine *“whether the control of engine power is a good indicator for controlling the fishing effort of the fleet”*. This is to provide *“the Commission with risk criteria and best practices on sampling and power measurement that will help consolidate the existing rules on the system of control of engine power”*. Its outcome would also be highly beneficial to the work of the Commission on the revision of the Control Regulation. Yet it is unlikely to be ready for consideration given the currently proposed consultation timeframe.

In light of all these concerns, Birdlife Europe, CAPE-CFFA, ClientEarth, the Environmental Justice Foundation, Greenpeace, Oceana, the Pew Charitable Trusts, Seas At Risk and WWF respectfully ask the European Commission to revert to the normal law-making procedure, as foreseen in the Better Regulation Guidelines, in order to: (i) allow all interested stakeholders to provide their opinion on all key impact assessment related issues within an appropriate and reasonable timeframe; and (ii) take enough time to collect data and

⁹ Call for tenders, Monitoring small-scale fisheries, EASME/EMFF/2017/011, Tender specifications.

¹⁰ Call for tenders, Study on engine power verification by Member States, EASME/EMFF/2017/006, Tender specifications.

analyse impacts on key issues relating to the EU fisheries control system, such as the monitoring of small-scale fisheries and the verification of engine power.

Should you have further questions or comments on this submission, please contact Elisabeth Druel (edrue@clientearth.org).

Transparency Register Numbers:

Birdlife Europe: 1083162721-43

CAPE-CFFA: 440395221847-89

ClientEarth: 96645517357-19

Environmental Justice Foundation: 817535514065-10

Greenpeace: 9832909575-41

Oceana: 47937943241-80

The Pew Charitable Trusts: 46834536998-79

Seas At Risk: 95261732139-73

WWF: 1414929419-24