COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION

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

{SEC(2008) 2760}
{SEC(2008) 2761}

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. Context of the proposal

General context

The cornerstone of the Common Fisheries Policy (CFP) is to limit and control catch volumes by setting total allowable catches (TACs) and national quotas coupled with technical rules and effort schemes. The European fisheries control policy is at the heart of the CFP, because its credibility depends on effective application of this control policy. Despite some progress, the control system continues to suffer from substantial shortcomings identified by both the European Commission[1] and the European Court of Auditors (CoA)[2]. The current control system is inefficient, expensive and complex and does not produce the desired results. Continuing failure of the control policy will have significant consequences for the future of fisheries resources, the fishing industry and the regions dependent on fishing. Accordingly, the Commission proposes a substantial reform of the control system underpinning the CFP. This initiative is a core priority for the Commission in the field of fisheries in 2008.

Grounds for and objectives of the proposal

Due to its global and integrated approach, focusing on every aspect of the CFP, the reform of the control policy should not only improve control capacity and management of fisheries resources and establish a level playing field in the EU, but also have a positive structural impact on the fishing industry and on the market and, thus, combat the environmental, economic and social consequences of non-compliance. More specifically, the proposal aims to achieve:

A new, common approach to control and inspection
Introduction of harmonised inspection procedures and higher standards should ensure uniform implementation of control policy at Member State level, while taking account of and respecting the diversity and specific characteristics of different fleets.

A culture of compliance
The objective is to influence the behaviour of all stakeholders involved in the full cycle of fishing activities (catching, processing, distribution and marketing), so that compliance with the CFP policies and regulations is achieved not only by means of monitoring and control activities, but also as a result of a general culture of compliance where every part of the industry invests in compliant activities and the legitimacy of the CFP rules is restored.

Effective application of CFP rules
The objective is to strengthen the Commission's management powers and capacity to intervene proportionately to the level of non-compliance by the Member States. The responsibilities of the Commission and of the Member States will be clearly defined in order to avoid overlaps and to ensure that the Commission sticks to its core activity of controlling and verifying implementation of the CFP rules by Member States. The current system of microdecisions should be progressively replaced by a macromanagement-based approach.

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1 COM(2007) 167.
2 Special Report No 7/2007.

Existing provisions in the area of the proposal

The basis for the control policy is laid down in Council Regulation (EEC) No 2847/93 (the "Control Regulation"[3]) and in Chapter V of Council Regulation (EC) No 2371/2002 (the "Basic Regulation"[4]). The Control Regulation has been amended twelve times. The complexity caused by the numerous amendments to the Control Regulation is further exacerbated by the fact that a range of control provisions are contained in several other separate regulations.

Consistency with the other policies and objectives of the Union

The proposal will contribute to the overall objective of the CFP, namely sustainable exploitation of living aquatic resources. In addition, it will contribute to the Sustainable Development Strategy agreed by the European Council in June 2006, through its focus on protection of natural resources. It is also in line with the objectives established at the World Summit on Sustainable Development in 2002 regarding fisheries management[5] and the principle of striving for better ocean governance, which guides the current discussions on a future Maritime Policy for the Community. Moreover, the overall objective of the control reform comes under the four main areas identified by the Commission where there is currently room for improvement in application of Community law[6].

II. Consultation of the interested parties and impact assessment

Consultation of the interested parties

Consultation methods, main sectors targeted and general profile of respondents

In preparation of the proposal, several consultations were held with Member States (at Minister and expert level) and with representatives of the sector, advisory bodies and all other interested parties. The work on this proposal was given impetus by the establishment of an Inter-Service Steering Group (ISSG) to analyse the overall approach, with working groups on specific items.

1. The Member States

- The Commission produced a non-paper setting out the main aspects relevant to the relevant to the proposed reform. This was discussed at an informal meeting of Fisheries Ministers on 18 February 2008. A meeting with Member States' fisheries officials had previously taken place on 15 January 2008. A meeting with Member States' fisheries control experts was held on 1 February 2008 to present the objectives of the reform.

- DG MARE set up a working group of Member States' experts to define harmonised inspection procedures and control standards.

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3 Council Regulation (EEC) No 2847/1993 of 12 October 1993 establishing a control system applicable to the Common Fisheries Policy (OJ L 261, 20.10.1993).

4 Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ L 358, 31.12.2002, p. 59).

5 Report of the World Summit on Sustainable Development, Johannesburg, South Africa, 26 August-4 September 2002 (United Nations publication).

6 See COM(2007) 502, 5.9.2007 - "A Europe of results – applying Community law".

- A series of three meetings of technical experts on the Electronic Reporting System (ERS) took place in London, Madrid and Copenhagen. These in turn will contribute to better use of modern technologies under the new Control Regulation.

- Linked to the reform, Memoranda of Understanding have been signed with Member States (Greece, Italy, Poland, Spain and Sweden). They mark a change of approach, as they contain clearly defined benchmarks for improvements in the fisheries control systems in the Member States concerned.

2. The stakeholders' advisory bodies and the wider public.

- A one-day seminar was organised on 10 April 2008 with representatives of the Regional Advisory Councils (RAC) and the Advisory Committee for Fisheries and Aquaculture (ACFA) in order to get their views on the envisaged reform of the CFP control policy.

- DG MARE also took part in seminars on traceability, which will be an integral part of the reform, in the context of the Fish Populations Traceability project and DTU Aqua. DG MARE organised a workshop on the topic together with the Joint Research Centre in Brussels on 17 June 2008.

- The reform was presented to the High-Level Group of Independent Stakeholders on Administrative Burdens at its meeting on 18 September 2008. The chairman stated that the group very much appreciated the outline given by DG MARE and fully supported the proposed reform, given the envisaged reduction in the administrative burden for the sector.

- Wide public consultations were held between February and May 2008, based on a Commission staff working document published on the Commission website. The consultation paper prepared by DG MARE presented a brief analysis of the problem built around nine possible fields of action identified in the above-mentioned non-paper.

Summary of responses and how they have been taken into account

The moves by the Commission received positive feedback from the participants in the consultation process. Almost all the contributions stressed that it was appropriate to step up the Community action in this field. Twenty-five contributions were received from a wide range of stakeholders. All the contributions received were published on the official website of the Commission, indicating their authors and origin[7].

The Commission initiative and its main objectives were widely endorsed by those participating in the consultation. All unanimously agreed on the need to reform the control system. Many of the participants stressed that the culture of compliance should be the main target of the reform. In particular, all stakeholders supported the introduction of harmonised administrative sanctions, the simplification and streamlining of the rules and the strengthening of cooperation and assistance. NGOs and public authorities particularly supported the reform as an efficient tool from the perspective of environmentally sustainable fisheries. All agreed on the need to develop a new approach to inspection and control at EC level, providing a level

[7] http://ec.europa.eu/fisheries/cfp/governance/consultations/consultation_280208_contributions_en.htm

playing field and favouring enhanced cooperation between the Commission, fishery control authorities in Member States and operators all along the production chain. They agreed that the Control Agency should play a more important and constructive role in coordination and training. NGOs favoured giving more instruments to the Commission for timely intervention, whereas the industry was concerned whether the industry rather than the Member States would have to the bear the cost of measures against Member States and suspension of EC aid.

Collection and use of expertise

Scientific/expertise domains concerned

The Commission made use of external expertise to support some of the arguments in this report. The experts were asked to identify the likely positive and negative impacts of the proposed policy options, including trade-offs in achieving competing objectives, so that informed political decisions could be taken.

Main organisations/experts consulted

A specific contract was concluded (under framework contract FISH/2006/09 – Studies in the field of the CFP and Maritime Affairs – Lot 4: Impact assessment studies related to the CFP) between the Commission and the external consultancy MRAG.

Summary of advice received and used

- Indicative qualitative and quantitative analyses show that, whilst some of the measures proposed are more significant than others, fully implementing the package as a whole with a binding rather than a voluntary instrument similar, for example, to the FAO Code of Conduct for Responsible Fishing is likely to be the most effective means of achieving a high level of compliance.

- If the proposed measures are implemented by a binding regulation and if Member States apply this regulation and existing multiannual recovery plans, the incremental net benefits to the industry as a result of recovered and better protected stocks could 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 subsectors. The significant point is how the increase in fish production stimulates new jobs in the sectors and regions concerned.

- Generation of these benefits through implementation of a new regulation will depend on a shift in the emphasis of controls from the sea to more cost-efficient land-based operations which will initially require some increased investment in operational procedures rather than in means of control. Net benefits, however, should be generated rapidly, reducing relative costs progressively two or three years after implementation, as the culture of compliance is attained.

- As the control measures become more effective and efficiency increases, the gains in efficiency can be passed on to operators in terms of increased profitability of fishing and in the share available for crew and other operatives.

Means used to make the expert advice publicly available

The study will be made available on the DG MARE website.

Impact assessment

The Commission carried out an impact assessment of the proposal, resulting in a report which will be accessible on the DG MARE website. This report considered the following options:

- Option 1: No policy change. Continue current policy and focus on implementation and enforcement of the 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 deliver compliant behaviour in support of the objectives of the CFP and that the core issue is poor implementation of the existing regulatory requirements by Member States. The emphasis could be put on better implementation of the existing legislation.

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

As an alternative to simple continuation of the current situation, this sub-option could address adoption of the outstanding implementing legislation in order to provide a full set of technical rules as a basis for a comprehensive control system.

This "business as usual" approach means additional layers of rules being added in an uncoordinated manner to the existing web of complexity without developing a new approach to control and inspection. The incapacity of the Commission would continue to be matched by persistent leniency on the part 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

An approach combining a consolidated legal framework with a steering instrument, such as a "Code of Conduct", could help, to a certain extent, to improve the current control system. Some fisheries might recover as a result of unilateral action on one or more segments of the fleet, but, overall, this approach would not change the content of the current provisions or add any new legal instruments and would rely too heavily on voluntary implementation by the Member States.

- Option 3: Regulatory instrument, in the form of a new binding Regulation

The third option presented for assessment was implementation of the reform package by means of a regulatory text that would be binding at Community level. This approach is based on establishment of a level playing field in the EU. It would ensure uniform application of the CFP rules across the EU and non-discriminatory treatment of all fishermen. Increased capacity on the part of Commission inspectors would make it more difficult for Member States to hide shortcomings in implementation of CFP rules.

- Option 4: Centralisation of CFP control policy at EU level, with increased competences for the Commission and the CFCA

Under this option the Commission and the Control Agency would pool 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. However, this option had to be discarded at an early stage since the reallocation of tasks between the Commission and the Member States would go beyond what is provided for in the Treaty. Politically, it is inconceivable that Member States would accept suddenly giving up power to a supranational body. Moreover, such an option would involve a dramatic budgetary increase which the Commission is unable to bear.

III. Legal elements of the proposal

Content of the proposal
The basic idea of the proposal is that an efficient control policy should be global and integrated and cover all facets of the problem, from net to plate.

A new, common approach to control and inspection
Although the level of compliance by fishing vessels with technical measures should not be ignored, greater attention needs to be paid to comprehensive monitoring of catches. In this context, it is, in particular, necessary to achieve:

- Standardised, coordinated inspection activities and procedures at every link in the chain (at sea, in port, during transport and on marketing);

- general standards for specific control measures applicable to recovery and multiannual plans, marine protected areas and discards;

- introduction of a comprehensive traceability system;

- full use of modern technologies and efficient data validation systems in order to carry out systematic and comprehensive cross-checks of all relevant data;

- strategic programming, tactical targeting and sampling strategy; and

- use of information that makes it possible to identify risks and to streamline control.

A culture of compliance
In this context, it is necessary to focus on:

- simplification and streamlining of the legal framework;

- introduction of harmonised deterrent sanctions;

- introduction of a penalty point system for infringements committed by masters, operators or beneficial owners of a fishing licence;

- enforcement measures and accompanying sanctions;

- improved cooperation between Member States and with the Commission, including extension of the mandate of the Community Fisheries Control Agency (CFCA);

- a modern approach to transfers of data and exchanges of information, both between Member States and with the Commission or the CFCA via secure websites.

Effective application of CFP rules
In order to ensure effective application of CFP rules, the capacity of the Commission to intervene proportionately to the level of non-compliance by the Member States should be strengthened. At the same time, the management capacity of the Commission should be enhanced. The proposals include:

- redefinition of the powers of Commission inspectors;

- action plans for Member States to improve their implementation if need be;

- powers for the Commission to rectify catch figures of Member States;

- closures of fisheries on the Commission's initiative;

- more flexibility for the Commission to proceed with deductions from quotas in cases of poor quota management; and

- financial measures in cases of bad management.

Legal basis
Article 37 of the EC Treaty.

Subsidiarity principle
The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

Proportionality principle
The proposal complies with the proportionality principle for the following reasons: Addressing the current shortcomings of the CFP control system requires measures commensurate to the scale and adapted to the nature of the activities concerned. Sustainable exploitation of living aquatic resources is, by definition, an area that needs to be regulated at Community level and that cannot be administered by isolated measures at national level. In proposing a new framework for control of CFP activities, the Commission is responding to the requests from stakeholders and Member States to create a level playing field at EU level. Definition of harmonised inspection and control procedures is, by essence, an issue that has to be dealt with at EU level.

Choice of instrument
Proposed instrument: Regulation.

Other means would not be adequate for the following reasons: The CFP is an area of exclusive competence of the Community. The rules adopted at Community level should be uniform and binding in order to avoid the coexistence of different standards between Member States. It is therefore justified that the measures should take the form of a Regulation.

IV. Budgetary implication

The proposal has no implication for the Community budget.

V. Additional information

Simplification

The proposal will lead to simplification of the relevant legislation, together with improvements in the control system. Over the years the current CFP control policy has added layers of provisions, scattered across different regulations, some of them overlapping. One objective of this proposal is to bring clarity to the applicable control rules. However, control clearly remains a complex issue and a balance has to be found between the necessary obligations which have to be maintained and the need to clarify and reduce the administrative burden for the authorities and the private sector.

In this context, simplification has different facets:

- The system establishes a single ambitious framework laying down the principles governing all aspects of control, but leaving it to implementing regulations to establish detailed technical rules.

- The system sets up a single framework applying to Community operators and public authorities by standardising the rules on inspection and control (including introducing harmonised sanctions), thereby contributing to establishment of a level playing field in the EU.

Repeal of existing legislation
Adoption of the proposal will lead to the repeal of existing legislation.

Review/revision/sunset clause
The proposal includes a review clause.

2008/xxxx (CNS)

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

After consulting the European Data Protection Supervisor,

Whereas:

(1) The objective of the Common Fisheries Policy, as set out in Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of resources under the Common Fisheries Policy[8], is to ensure exploitation of living aquatic resources that provides sustainable economic, environmental and social conditions.

(2) Given that the success of the Common Fisheries Policy involves implementing an effective system of control, the measures provided for in this Regulation seek to establish a Community system for inspection, monitoring, control, surveillance and enforcement with a global and integrated approach so as to ensure compliance with all the rules of the Common Fisheries Policy in order to provide for the sustainable exploitation of living aquatic resources by covering all aspects of the policy.

(3) The experience gained in the application of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the Common Fisheries Policy[9] has shown that the current control system no longer suffices to ensure compliance with the rules of the Common Fisheries Policy.

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8 OJ L 358, 31.12.2002, p. 59.

9 OJ L 261, 20.10.1993, p. 1.

(4) Currently control provisions are spread in a wide number of overlapping and complex legal texts. Some parts of the control system are poorly implemented by Member States which results in insufficient and divergent measures in response to infringements of the rules of the Common Fisheries Policy thereby undermining the creation of a level playing field for fishermen across the Community. Accordingly the existing regime and all the obligations therein should be consolidated, rationalised and simplified, in particular through reduction of double regulation and administrative burdens.

(5) In view of the scale of the depletion of marine aquatic resources, it is vital for the European Community to adopt the necessary measures to develop a culture of compliance among all operators with the rules of the Common Fisheries Policy, and with the objectives set out by the World Summit on Sustainable Development in 2002 as well as the European Council's Sustainable Development Strategy. To achieve this aim, the rules for inspection, monitoring, control, surveillance and enforcement of conservation and resource management measures, structural measures and measures on the common organisation of the market should be reinforced, harmonised and strengthened. In addition, minimum levels of sanctions for specific serious infringements should be established as well as a system of penalty points for non-compliance.

(6) The allocation of responsibilities between the Member States, the Commission and the Common Fisheries Control Agency should be further clarified. Control of compliance with the Common Fisheries Policy rules should be first and foremost the responsibility of the Member States. The Commission for its part should ensure that Member States implement the rules of the Common Fisheries Policy throughout the Community in a consistent manner. To this end the current system of micro-decisions should be progressively replaced by a macro-management-based approach.

(7) Management of fishery resources at Community level is based in particular on total allowable catches (TACs), quotas, effort regimes and technical measures. Appropriate steps should be taken to ensure that Member States adopt the necessary measures to implement these management measures in an effective manner.

(8) The Member States' authorities should be able to monitor landings in their ports. To that end fishing vessels should be required to pre-notify those authorities of their intention to land in their ports.

(9) The information contained in the logbooks of fishing vessels should be verified at the time of landing. Accordingly, those involved in the landing and marketing of fish and fishery products should be required to declare the quantities landed, transhipped, offered for sale or purchased.

(10) For small fishing vessels under 10 meters an obligation to keep a logbook or to complete a declaration would constitute a disproportionate burden in relation to their fishing capacity. In order to ensure an adequate level of control over such vessels, Member States should monitor their activities by the implementation of a sampling plan.

(11) In order to ensure compliance with Community conservation and trade measures, steps should be taken to require all fishery products transported within the Community to be accompanied by a transport document identifying their nature, origin and weight.

(12) Member States should monitor the activities of their vessels in and outside Community waters. To facilitate effective monitoring masters of Community fishing vessels should be obliged to keep a logbook and submit landing and transhipment declarations.

(13) Transhipments at sea escape any proper control by flag or coastal states and therefore constitute a possible way for operators to carry illegal catch. To improve controls, transhipment operations in Community waters should be authorised only in designated ports.

(14) Where the management of TACs and quotas is complemented by an effort regime, measures should be put in place to ensure that the regime is properly implemented.

(15) In order to establish a comprehensive control regime the whole chain of production and marketing should be covered by such a regime. It should include a coherent traceability system supplementing the provisions contained in Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety[10], and an enhanced control of producer organisations. It should also protect the interests of consumers by providing the information concerning the commercial designation, the production method and the catch area at each stage of the marketing as contained in Regulation (EC) No 2065/2001 of 22 October 2001 laying down detailed rules for the application of Regulation (EC) No 104/2000 as regards informing consumers about fishery and aquaculture products[11]. It shall ensure the monitoring of producer organisations in accordance with Commission Regulation (EC) No 2508/2000 of 15 November 2000 laying down the detailed rules for the application of Council Regulation (EC) No 104/2000 as regards operational programmes in the fisheries sector[12].

(16) In view of the capacity requirements in the Community fishing fleet as contained in Article 13 of Regulation (EC) No 2371/2002, Council Regulation (EC) No 639/2004 of 30 March 2004 on the management of fishing fleets registered in the Community outermost regions[13], Commission Regulation (EC) No 1438/2003 of 12 August laying down implementing rules on the Community Fleet Policy as defined in chapter III of Regulation (EC) No 2371/2002[14] and Commission regulation (EC) No 2104/2004 of 9 December 2004 laying down detailed implementation rules for Council Regulation (EC) No 639/2004 of 30 March 2004 on the management of fishing fleets registered in the Community outermost regions[15], instruments should be introduced for the control

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10 OJ L 31, 1.2.2002, p. 1.
11 OJ L 278, 23.10.2001, p. 6.
12 OJ L 289,16.11.2000, p. 8.
13 OJ L 102, 7.4.2004, p. 9.
14 OJ L 204, 13.8.2003, p. 21.
15 OJ L 365, 10.12.2004, p. 19.

of the fleet capacity which should include the monitoring of the engine power and of the use of fishing gear.

(17) Clear, tailor-made specific control measures should be applied to multi-annual plans, marine protected areas and discards under a special regime. The procedure for the establishment and lifting of real time-closures for fishing grounds should be clarified.

(18) A new, common approach to control should be introduced that includes comprehensive monitoring of catches, with a view to ensuring a level playing field for the fishing sector that takes into account the differences across the segments of the fleet; to this end common criteria for the implementation of fisheries control and in particular standardised and coordinated inspection procedures at sea, on land and throughout the market chain should be established. A part of the new approach the respective responsibilities of the Member States, the Commission and the Community Fisheries Control Agency should be clarified.

(19) Control activities and methods should be based on risk management using cross-checking procedures in a systematic and comprehensive way.

(20) For the consistent and effective prosecution of infringements, provision should be made to enable inspection and surveillance reports drawn up by Commission inspectors, Community inspectors and officials of Member States to be used in the same way as national reports.

(21) Cooperation and coordination between Member States, with the Commission and the Community Fisheries Control Agency should be intensified in order to promote compliance with the rules of the Common Fisheries Policy, in particular through the exchange of national inspectors and the strengthening of the role and powers of Community inspectors.

(22) Data from the vessel monitoring system represent a valuable source for scientific advice. Detailed and aggregated data should therefore be made available to end-users as defined in Article 2 (i) Council Regulation (EC) No 199/2008 of 25 February 2008 concerning the establishment of a Community framework for the collection, management and use of data in the fisheries sector for scientific advice regarding the Common Fisheries Policy[16].

(23) Modern technologies should be fully exploited since they allow effective monitoring, systematic and automated cross-checks in a rapid and low cost manner, facilitate the administrative procedures for both the national authorities and the operators and thus allows timely risk analyses and global assessments of all relevant control information. The control system should therefore allow Member States to combine the use of the various control instruments to ensure the most efficient method of control.

(24) An integrated maritime surveillance network should be established between surveillance, monitoring, identification and tracking systems operated for the purposes of maritime security and safety, protection of the marine environment, fisheries control, border control, general law enforcement, and trade facilitation. The network shall have the ability to continuously make available information on activities in the

[16] OJ L 60, 5.3.2008, p. 1.

maritime domain in order to support a timely decision process. In turn this would allow, the public authorities engaged in surveillance activities to provide a more effective and cost efficient service. To this end Automatic Identification Systems, Vessel Monitoring Systems as referred to in Commission Regulation (EC) No 2244/2003 of 18 December 2003, laying down detailed provisions regarding satellite-based vessel monitoring systems[17] and Vessel Detection Systems data collected in the framework of this Regulation should be transmitted and used by other public authorities engaged in the surveillance activities above mentioned.

(25) Community nationals should be deterred from committing infringements of the rules of the Common Fisheries Policy. Since action taken following infringements of those rules differs widely from one Member State to another, thereby causing discrimination and unfair competition rules for fishermen and given that the absence of dissuasive, proportionate and effective sanctions in certain Member States reduces the effectiveness of controls, it is appropriate to introduce harmonised administrative sanctions in combination with a penalty point system to provide a real deterrent.

(26) The persistence of a high number of serious infringements against the rules of the Common Fisheries Policy within Community waters or by Community operators is to a large extent attributable to the non-deterrent level of fines laid down in the Member States' legislation concerning serious infringements of those rules. That weakness is compounded by the wide discrepancy in the levels of penalties between Member States, which encourages illegal operators to operate in waters or within the territory of the Member States where the penalties are lowest. It is therefore appropriate to harmonise the minimum and maximum levels of fines laid down for serious infringements against the rules of the Common Fisheries Policy, taking into account the value of the fishery products obtained by committing the serious infringement, any repetition of an infringement and the prejudice to the fishing resources and the marine environment concerned. Immediate enforcement measures and complementary measures should also be laid down.

(27) To ensure the achievement of the objectives of the Common Fisheries Policy the Commission should be able to take effective corrective measures; to this end the management capacity of the Commission and its capacity to intervene in a manner proportionate to the level of non compliance by a Member State should be strengthened. The Commission should be empowered to undertake inspections without prior notice and in an independent way, so as to verify the control operations carried out by the competent authorities of Member States.

(28) Appropriate means should be foreseen to address failures to discharge the duties incumbent on them under EC and international law as flag, port, coastal or market states and to make sure that Member States take appropriate measures to ensure compliance by their fishing vessels or nationals with CFP and control rules; these means should include the possibility to suspend or reduce financial assistance according to Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund[18] and Council Regulation (EC) No 861/2006 of 22 May 2006 establishing Community financial measures for the implementation of the Common

[17] OJ L 333, 20.12.2003, p. 17.
[18] OJ L 223, 15.8.2006, p. 1.

Fisheries Policy[19] in cases of an inadequate implementation of CFP rules by Member States.

(29) Powers should be conferred to the Commission to close a fishery when the quota of a Member State or a TAC itself is exhausted. The Commission should also be empowered to deduct quotas and refuse quota transfers or quota exchanges to ensure the achievement of the objectives of the Common Fisheries Policy by the Member States.

(30) The Commission or the body designated by it should be in a position to access directly the fisheries data of Member States to enable it to verify that Member States comply with their obligations and to intervene where inconsistencies are identified.

(31) The mandate of the Community Fisheries Control Agency should be adjusted and extended to cover audits, inspections of national control systems, organisation of operational cooperation, assistance to Member States and the possibility to set up emergency units where a serious risk to the Common Fisheries Policy is identified.

(32) This Regulation should not affect any national control provisions which fall within the scope of this Regulation but go beyond its minimum provisions, provided that such national provisions are in conformity with Community law.

(33) Given that Council Regulation (EC) No 1005/2008 of 29 September 2008 *establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing*[20], obliges the Member States to take appropriate measures to ensure the effectiveness of the fight against all IUU fishing and associated activities and given that Council Regulation (EC) No …/2008 of xx xx xx *concerning authorisations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters*[21] establishes provisions on authorisations for Community fishing vessels to engage in fishing activities outside Community waters and on authorisations for third country fishing vessels to engage in fishing activities in Community waters this Regulation should be complementary to these Regulations and ensure that there is no discrimination between Community and third country nationals.

(34) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[22]. All measures adopted by the Commission to implement this Regulation will comply with the proportionality principle.

(35) It should however be for the Council to decide on the obligation to use electronic monitoring devices and traceability tools such as genetic analysis and other fisheries control technologies. Since those technologies entail costs for national control authorities and for the sector concerned, it is appropriate that the Council should reserve for itself the right to exercise implementing powers directly in this specific

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19 OJ L 160, 14.6.2006, p. 1.

20 OJ L 286, 29.10.2008, p.1.

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22 OJ L 184, 17.7.1999, p. 23.

case. Since the Council decides on the introduction of multiannual plans it is also appropriate that the Council decides in this context on a threshold amount applicable to the live weight of species subject to these multiannual plans above which a vessel shall be required to land its catches in a designated port. Since the Council adopts the annual TAC and quota Regulation it is also appropriate that it determines in this context trigger by-catch levels for the establishment of real time closures.

(36) The confidentiality of the data collected and exchanged in the framework of this Regulation should be guaranteed. Such data will sometimes constitute personal data for the purposes of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Clear rules for the processing of personal data are needed for reasons of legal certainty and transparency, and to ensure the protection of fundamental rights, and in particular, the right to the protection of the private life of individuals.

(37) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data is intended to ensure the free movement of personal data in the Internal Market. It shall apply to the processing of personal data activities carried out by the Member State in application of this Regulation.

(38) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, shall govern the processing of personal data carried out by the Commission in the application of this Regulation.

(39) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of ensuring the effective implementation of the Common Fisheries Policy to establish a comprehensive and uniform system of controls. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty.

(40) In order to bring the Community legislation in line with this Regulation the following regulations should be amended:

- Council Regulation (EC) No 2371/2002 of 20 December 2002;

- Council Regulation (EC) No 768/2005 of 26 April 2005 establishing a Community Fisheries Control Agency and amending Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy[23];

- Council Regulation (EC) No 423/2004 of 26 February 2004 establishing measures for the recovery of cod stocks[24];

[23] OJ L 128, 21.5.2005, p. 1.

- Council Regulation (EC) No 811/2004 of 21 April 2004 establishing measures for the recovery of the northern hake stock[25];

- Council Regulation (EC) No 2166/2005 establishing measures for the recovery of the Southern hake and Norway lobster stocks in the Cantabrian Sea and Western Iberian peninsula and amending Regulation (EC) No 850/98 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms[26];

- Council Regulation (EC) No 2115/2005 of 20 December 2005 establishing a recovery plan for Greenland halibut in the framework of the Northwest Atlantic Fisheries Organisation[27];

- Council Regulation (EC) No 388/2006 of 23 February 2006 establishing a multiannual plan for the sustainable exploitation of the stock of sole in the Bay of Biscay[28];

- Council Regulation (EC) No 509/2007 of 7 May 2007 establishing a multiannual plan for the sustainable exploitation of the stock of sole in the Western Channel[29];

- Council Regulation (EC) No 676/2007 of 11 June 2007 establishing a multiannual plan for fisheries exploiting stocks of plaice and sole in the North Sea[30];

- Council Regulation (EC) No 1098/2007 of 18 September 2007 establishing a multiannual plan for the cod stocks in the Baltic Sea and the fisheries exploiting those stocks, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 779/97[31];

- Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas[32].

(41) As this Regulation will establish a new, comprehensive control regime Regulation (EC) No 2847/93 of 12 October 1993 establishing a control system applicable to the Common Fisheries Policy, and Council Regulation (EC) No 1627/94 of 27 June 1994 laying down general provisions concerning special fishing permits should be repealed.

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24 OJ L 70, 9.3.2004, p. 8.
25 OJ L 185, 24.5.2004, p. 1.
26 OJ L 345, 28.12.2008, p. 5.
27 OJ L 340, 23.12.2005, p. 3.
28 OJ L 65, 7.3.2006, p. 1.
29 OJ L 122, 11.5.2007, p. 7.
30 OJ L 157, 19.6.2007, p. 1.
31 OJ L 248, 22.9.2007, p. 1.
32 OJ L 115, 9.5.1996, p. 3.

HAS ADOPTED THIS REGULATION:

TITLE I
GENERAL PROVISIONS

Article 1
Subject matter

This Regulation establishes a Community system for control, monitoring, surveillance, inspection, and enforcement (hereinafter to be referred to as "Community control system") of the rules of the Common Fisheries Policy.

Article 2
Scope

This Regulation shall apply to all activities carried out on the territory of Member States or in Community waters or by Community fishing vessels or, without prejudice to the primary responsibility of the flag State, nationals of Member States, which relate to

(a) the conservation, management and exploitation of living aquatic resources,

(b) aquaculture,

(c) processing, transport and marketing of fishery and aquaculture products.

Article 3
Relationship with international and national provisions

1. This Regulation shall apply without prejudice to the special provisions contained in fisheries agreements concluded between the Community and third countries or applicable in the framework of Regional Fisheries Management Organisations (RFMOs) or similar arrangements to which the Community is a Contracting Party or a non-contracting Cooperating Party.

2. This Regulation shall apply without prejudice to any national control measures which go beyond its minimum requirements, provided that they comply with Community legislation and are in conformity with the Common Fisheries Policy. At the request of the Commission, Member States shall notify those control measures.

Article 4
Definitions

For the purposes of this Regulation, the definitions set out in Regulation (EC) No 2371/2002 shall apply. The following definitions shall also apply:

(1) *"Fishing activity"* means searching for fish, shooting, setting, hauling of a fishing gear, taking catch on board, transhipping, retaining on board, processing on board, transferring and caging of fish and fishery products;

(2) *"Rules of the Common Fisheries Policy"* means Community legislation on the conservation, management and exploitation of living aquatic resources, on aquaculture and on processing, transport and marketing of fishery and aquaculture products;

(3) *"Activities covered by the Common Fisheries Policy"* means conservation, management and exploitation of living aquatic resources, aquaculture and processing, transport and marketing of fishery and aquaculture products;

(4) *"Control"* means monitoring, surveillance, inspection and enforcement;

(5) *"Inspection"* means any on the spot check carried out by inspectors of compliance with the applicable provisions of the Common Fisheries Policy which is noted in an inspection report;

(6) *"Official"* means a person authorised by a national authority, the Commission or the Community Fisheries Control Agency to carry out an inspection;

(7) *"Fishing licence"* means an official document conferring on its holder the right, as determined by national rules, to use a certain fishing capacity for the commercial exploitation of living aquatic resources. It contains minimum requirements concerning the identification, technical characteristics and fitting out of a Community fishing vessel;

(8) *"Fishing authorisation"* means a fishing authorisation issued in respect of a Community fishing vessel in addition to its fishing licence, entitling it to carry out fishing activities in Community waters in general and/or specific fishing activities during a specified period, in a given area or for a given fishery under specific conditions;

(9) *"Automatic Identification System"*, means an autonomous and continuous maritime safety and vessel traffic broadcast system which provides a means for ships to electronically exchange with other nearby ships and authorities ashore ship data including identification, position, course and speed;

(10) *"Marine Protected Area"*, means any area which has been reserved by law, an internationally agreed measure or any other effective measure to protect part or all of the enclosed environment;

(11) *"Fisheries Monitoring Centre"* means an operational centre established by a flag Member State and having the technical capacity to monitor from a distance fishing vessels, to collect, store, validate and cross-check the data received via different communication systems and to make the information available, as appropriate, to the flag State inspection services or coastal State;

(12) *"Transhipment"* means the unloading of all or any fisheries or aquaculture products on board a vessel to another vessel;

(13) *"Risk"* means the likelihood of an event that may occur and would constitute a violation of the rules of the Common Fisheries Policy;

(14) *"Risk management"* means the systematic identification of risks and the implementation of all measures necessary for limiting the realisation of these risks. This includes activities such as collecting data and information, analysing and assessing risks, preparing and taking action, and regular monitoring and review of the process and its outcomes, based on international, Community and national sources and strategies;

(15) *"Operator"* means the natural or legal person who operates or holds any undertaking carrying out any of the activities related to any stage of production, processing, marketing, distribution and retail chains of fisheries and aquaculture products;

(16) *"Lot"* means a quantity of fishery products of a given species which has been subjected to the same treatment and may have come from the same fishing grounds and the same vessel or the same aquaculture activities;

(17) *"Processing"* means the process by which the presentation was prepared. It includes cleaning, filleting, icing, packing, canning, freezing, smoking, salting, cooking, pickling, drying or preparing fish for market in any other manner;

(18) *"Retail"* means the handling and/or processing of products of living aquatic resources and their storage at the point of sale or delivery to the final consumer, and includes distribution terminals, catering operations, factory canteens, institutional catering, restaurants and other similar food service operations, shops, supermarket distribution centres and wholesale outlets;

(19) *"Agency"* means the Community Fisheries Control Agency referred to in Council Regulation (EC) No 768/2005 of 26 April 2005;

(20) "*Integrated maritime surveillance network"* means a network of surveillance, monitoring, identification and tracking systems operated for the purposes of maritime security and safety, protection of the marine environment, fisheries control, border control, trade facilitation and general law enforcement;

(21) "*Vessel Monitoring System data*" means data on the fishing vessel identification, geographical position, date, time, course and speed transmitted by satellite-tracking devices installed on-board fishing vessels to the Fisheries Monitoring Centre of the flag State;

(22) "*Vessel Detection System data*" means data derived from remotely sensed images and collected by Fisheries Monitoring Centres that provide an overview of the presence of vessels in a given sea area;

(23) "*Multiannual plans*" means recovery plans as referred to in Article 5 of Regulation (EC) No 2371/2002, management plans as referred to in Article 6 of Regulation (EC) No 2371/2002 as well as other Community provisions adopted on the basis of Article 37 of the EC Treaty and providing for specific management measures for particular fish stocks for several years;

(24) "*Coastal state*" means the State in the waters under the sovereignty or jurisdiction or in the ports of which an activity takes place.

TITLE II
GENERAL PRINCIPLES

Article 5
General principles

1. Member States shall control the activities carried out by any natural or legal person within the scope of the Common Fisheries Policy on their territory and within waters subject to their sovereignty or jurisdiction, in particular fishing, transhipments, transfer of fish to cages or aquaculture installations including fattening installations, landing, import, transport, marketing and storage of fishery products.

2. Member States shall also control access to waters and resources and control activities outside Community waters carried out by Community fishing vessels flying their flag and, without prejudice to the primary responsibility of the flag Member State, by their nationals.

3. Member States shall adopt appropriate measures, allocate adequate financial, human and technical resources and set up all administrative and technical structures necessary for ensuring inspection, monitoring, surveillance and enforcement of activities carried out within the scope of the Common Fisheries Policy. They shall make available to their competent authorities and officials all adequate means to enable them to carry out their tasks.

4. Each Member State shall ensure that control, inspection, monitoring, surveillance and enforcement is carried out on a non-discriminatory basis as regards the sectors, vessels or persons chosen for inspection, and on the basis of risk management.

5. In each Member State, a single authority shall coordinate the control activities of all national control authorities. It shall also be responsible for coordinating the collection and verification of information on fishing activities and for reporting to, and cooperating with the Commission, other Member States and third countries.

6. The payment of contributions from the European Fisheries Fund pursuant to Council Regulation (EC) No 1198/2006 and of Community financial contributions to measures referred to in Article 8, paragraph a, of Council Regulation (EC) No 861/2006 shall be conditional upon respect by the Member States of their obligation to ensure compliance with and enforcement of the rules on conservation, control, inspection and enforcement under the Common Fisheries Policy related to, or having an impact on the effectiveness of, the measures being financed, and to operate and maintain an effective inspection, monitoring, surveillance and enforcement regime to this effect.

7. In accordance with their respective responsibilities, the Commission and the Member States shall ensure that the objectives of this Regulation are fulfilled in the management and control of Community financial assistance.

TITLE III
GENERAL CONDITIONS FOR ACCESS TO WATERS AND RESOURCES

Article 6
Fishing licence

1. A Community fishing vessel may be used for commercial exploitation of living aquatic resources only if it has a valid fishing licence.

2. For Community fishing vessels the flag Member State shall issue and manage the fishing licences. It shall ensure that the information contained in the fishing licence are accurate and consistent with those contained in the Community fishing fleet register referred to in Article 15 of Regulation (EC) No 2371/2002.

3. The flag Member State shall suspend temporarily the fishing licence of a vessel which is subject to temporary immobilisation decided by that Member State and which has had its fishing authorisation suspended in accordance with Article 45 paragraph 1 d) of Regulation (EC) No1005/2008.

4. The flag Member State shall withdraw permanently the fishing licence-of a vessel which is the subject of a capacity adjustment measure referred to in Article 11 (3) of Regulation (EC) No 2371/2002 or which has had its fishing authorisation withdrawn in accordance with article 45 (1) (d) of Regulation (EC) No 1005/2008.

Article 7
Fishing authorisation

1. A Community fishing vessel operating in Community waters shall only be authorised to carry out fishing activities insofar as it holds a valid fishing authorisation issued by the competent authorities of its flag Member State. A Community fishing vessel operating in Community waters shall be authorised to carry out specific fishing activities only insofar as they are indicated in its valid fishing authorisation when the fisheries or fishing zones are subject to:

   a) a fishing effort regime;

   b) a multiannual plan;

   c) a marine protected area;

   d) a scheme of progressive reduction of discards;

   e) experimental fishing;

   f) fishing activities with bottom gears in areas not under the responsibility of a Regional Fisheries Management Organisation;

   g) other cases laid down in Community legislation.

2. Where a Member State has a specific national fishing authorisation scheme, it shall send the Commission at its request a summary of the information contained in the authorisation applications and the related overall figures on fishing effort.

3. Where the flag Member State has adopted national provisions in the form of a national fishing authorisation scheme for the allocation to individual vessels of the fishing opportunities available to it, it shall send to the Commission at its request information on the vessels authorized to engage in a fishing activity in a given fishery.

4. A fishing authorisation shall not be issued if the vessel concerned does not have a fishing licence obtained in accordance with Article 6 or if its fishing licence has been suspended or withdrawn. A fishing authorisation shall automatically become null where the fishing licence corresponding to the vessel has been withdrawn permanently. It shall be suspended where the fishing licence has been suspended temporarily.

5. The format and the procedure for the issue of fishing licences and fishing authorisations shall be adopted in accordance with the procedure referred to in Article 111.

Article 8
Marking of the fishing gear

1. The master of a vessel shall respect conditions and restrictions relating to the marking and identification of vessels and their gear.

2. Detailed rules for the marking and identification of vessels and their gear shall be determined in accordance with the procedure referred to in Article 111.

Article 9
Vessel Monitoring System

1. Member States shall operate a satellite-based Vessel Monitoring System for effective monitoring of fishing activities of the fishing vessels flying their flag regardless where they are and of fishing activities in their waters. Member States shall ensure the regular monitoring of the accuracy of this data and shall act promptly whenever data are found to be inaccurate.

2. A fishing vessel exceeding 10 meters length overall shall have installed on board a fully functioning device which allows that vessel to be automatically located and identified through the Vessel Monitoring System by transmitting position data at regular intervals. It shall also allow the Fisheries Monitoring Centre of the flag Member State to poll the fishing vessel. For vessels exceeding 10 meters length and up to 15 meters length overall this paragraph shall apply as from 1 January 2012.

3. When a fishing vessel is in the waters of another Member State, the flag Member State shall make available the Vessel Monitoring System data of that vessel by automatic transmission to the Fisheries Monitoring Centre of the coastal Member States. The Vessel Monitoring System data shall also be made available upon request to the Member State in whose ports a fishing vessel is likely to land its catches or in the waters of which the fishing vessel is likely to continue its fishing activities.

4. If a Community fishing vessel operates in the waters of a third country or in areas of the high sea where the fishing resources are managed by an international organisation and if the agreement with that third country or the applicable rules of that international organisation so provide, those data shall also be made available to that country or organisation.

5. Member States shall make detailed and aggregated data available to end-users as referred to in Article 2 (i) of Council Regulation (EC) No 199/2008,[33] in order to support scientific analysis under the conditions laid down in Article 18 of that Regulation.

6. Community vessels up to 15 meters length overall may be exempted from the requirement to be fitted with a Vessel Monitoring System if they:

   a) operate exclusively within the territorial seas of the flag Member State or

   b) never spend more than 24 hours at sea taken from the time of departure to the return to port.

7. Third country fishing vessels operating in Community waters shall have installed on board a fully functioning device which allows automatically localising and identifying that vessel by Vessel Monitoring System by transmitting position data at regular intervals in the same way as masters of Community fishing vessels.

8. Member States shall establish and operate Fisheries Monitoring Centres, which shall monitor fishing activities and fishing effort. The Fisheries Monitoring Centres of a particular Member State shall monitor the fishing vessels flying its flag, regardless of the waters in which they are operating or the port they are in, as well as Community fishing vessels flying the flag of other Member States and fishing vessels of third countries to which a Vessel Monitoring System applies operating in the waters under the sovereignty or the jurisdiction of that particular Member State.

9. Each flag Member State shall appoint the competent authorities responsible for the Fisheries Monitoring Centres and shall take the appropriate measures to ensure that its Fisheries Monitoring Centres has the proper staffing resources and is equipped with computer hardware and software enabling automatic data processing and electronic data transmission. Member States shall provide for back-up and recovery procedures in case of system failure. Member States may operate a joint Fisheries Monitoring Centres.

10. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 111.

Article 10
Automatic Identification System

1. A fishing vessel exceeding 15 meters length overall shall be fitted with and maintain in operation an Automatic Identification System which meets the performance

[33] OJ L 60, 5.3.2008, p. 1.

standards drawn up by the International Maritime Organisation according to chapter V, Regulation 19, section 2.4.5 of the 1974 SOLAS Convention in its up-to-date version.

2. Member States shall use the Automatic Identification System data for the purpose of cross-checking with other available data in accordance with Articles 102 and 103. For that purpose Member States shall ensure that data from the Automatic Identification System for fishing vessels flying their flag are available to their national fisheries control authorities. Member States shall ensure the regular monitoring of the accuracy of those data and shall act promptly whenever data are found to be inaccurate.

Article 11
Vessel Detection System

1. Member States shall use a Vessel Detection System allowing them to match the positions derived by remotely sensed images sent to earth by satellites or other equivalent systems with the data received by Vessel Monitoring System or Automatic Identification System, in order to assess the presence of fishing vessels in the area. Member States shall ensure that their Fisheries Monitoring Centres possess the technical capacity to use a Vessel Detection System.

2. The Commission may require a Member State to use a Vessel Detection System for a given fishery and at a given time.

Article 12
Transmission of data for surveillance operations

Data from the Vessel Monitoring System, Automatic Identification System and Vessel Detection System collected in the framework of this Regulation may be transmitted to Commission agencies and other public authorities of the Member States engaged in surveillance operations for the purpose of maritime safety and security, border control, protection of the marine environment and general law enforcement.

Article 13
New technologies

1. The Council may decide on the basis of Article 37 of the Treaty on the obligation to use electronic monitoring devices, and traceability tools, such as genetic analysis. In order to assess the technology to be used, Member States, in cooperation with the Commission, or the body designated by it, shall carry out pilot projects on traceability tools, such as genetic analysis before 1 June 2013.

2. The Council shall decide on the basis of Article 37 of the Treaty on the introduction of other new fisheries control technologies when these technologies lead to improved compliance with the rules of the Common Fisheries Policy in a cost effective way.

TITLE IV
MONITORING OF FISHERIES

Chapter I
Monitoring Of The Use Of Fishing Opportunities

SECTION 1
GENERAL PROVISIONS

Article 14
Logbook

1. Without prejudice to specific rules, the masters of Community fishing vessels exceeding 10 meters length overall shall keep a logbook of their operations, indicating specifically all quantities greater than 15 kg of live-weight equivalent of each species caught and kept on board, the date and the relevant geographical area, expressed by reference to a sub-area and division or sub-division, or where applicable statistical rectangle in which catch limits apply pursuant to Community legislation, of these catches and the type of gear used. The quantities of each species discarded at sea shall also be recorded in the logbook. The accuracy of the data recorded in the logbook shall be the responsibility of the master.

2. In fisheries subject to a regime of fishing effort masters of Community fishing vessels shall record and account in their logbooks for the time spent in an area as follows:

   a) With regard to towed gear:

      i) entry into, and exit from port;

      ii) each entry into, and exit from maritime areas where specific rules on access to waters and resources apply;

      iii) the catch retained on board by species in kilograms live weight at the time of exit from that area or of entry into a port located in that area.

   b) With regard to static gear:

      i) entry into, and exit from port;

      ii) each entry into, and exit from maritime areas where specific rules on access to waters and resources apply;

      iii) the date and time of setting or re-setting of the static gear in these areas;

      iv) the date and time of the completion of fishing operations using the static gear;

v) the catch retained on board by species in kilograms live weight at the time of exit from that area or of entry into a port located in that area.

3. The permitted margin of tolerance in estimates recorded in the logbook of the quantities in kilograms of fish retained on board shall be 5 %.

4. To convert stored or processed fish weight into live fish weight the masters of Community fishing vessels shall apply the conversion factor established in accordance with the procedure referred to in Article 111.

5. Masters of third country fishing vessels operating in Community waters shall record the information referred to in this Article in the same way as masters of Community fishing vessels.

6. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 111.

Article 15
Electronic recording and transmission of logbook data

1. The master of a Community fishing vessel exceeding 10 meters length overall shall record by electronic means fisheries logbook information and shall send it by electronic means to the competent authority of the flag Member State at least once a day

2. Paragraph 1 shall apply to Community fishing vessels exceeding 15 meters length and up to 24 meters length overall as from 1 July 2011, and to Community fishing vessels exceeding 10 meters length and up to 15 meters length overall as from 1 January 2012. Community vessels up to 15 meters length overall may be exempted from paragraph 1 if they:

a) operate exclusively within the territorial seas of the flag Member State, or

b) never spend more than 24 hours at sea taken from the time of departure to the return to port.

Article 16
Vessels exempted from logbook requirements

1. Each Member State shall monitor, on the basis of sampling, the activities of fishing vessels which are exempt from the requirements specified in Article 14 in order to ensure compliance by these vessels with the rules of the Common Fisheries Policy.

2. To that end, each Member State shall establish a sampling plan based on the methodology adopted by the Commission in accordance with the procedure referred to in Article 111 and transmit it every year before 31 January to the Commission indicating the methods used for the establishment of this plan. The sampling plans shall be, as far as possible, stable over time and standardised within regions.

Article 17
Prior notification

1. Without prejudice to specific provisions contained in multiannual plans, masters of Community fishing vessels or their representatives shall notify the competent authorities of the Member State whose port or landing facilities they wish to use at least 4 hours before the estimated time of arrival at the port, unless the competent authorities have given permission for an earlier entry, of the following information:

   a) vessel identification;

   b) name of the designated port of destination and the purposes of the call, such as landing, transhipment, access to services;

   c) fishing authorisation or, where appropriate, authorisation to support fishing operations or to tranship fishery products;

   d) dates of the fishing trip and the areas in which the catches were taken;

   e) estimated date and time of arrival at port;

   f) the quantities of each species retained on board, including zero catches returns;

   g) the quantities for each species to be landed or transhipped.

2. A master of a Community fishing vessel, or his representative, who records logbook information by electronic means according to Article 15 shall transmit the prior notification referred to in paragraph 1 by electronic means to the competent authority of the flag Member State. The logbook information referred to in Article 14 and the prior notification referred to in paragraph 1 of this Article may be sent in one transmission if this transmission contains the required information regarding each of them.

3. When a Community fishing vessel intends to enter a port in a Member State other than the flag Member State and has transmitted the prior notification referred to in paragraph 1 by electronic means, the competent authorities of the flag Member State shall immediately upon receipt forward the prior notification referred to in paragraph 1 by electronic means to the competent authorities of the coastal Member State.

4. The Commission, in accordance with the procedure referred to in Article 111, may exempt certain categories of fishing vessels from the obligation set out in paragraph 1 for a limited period, which may be renewed, or make provision for another notification period taking into account, inter alia, the type of fishery products, the distance between the fishing grounds, landing places and ports where the vessels in question are registered.

Article 18
Transhipment

Transhipments at sea shall be prohibited in Community waters. They shall be allowed only subject to an authorisation in ports of Member States designated for this purpose, and under the conditions laid down in this Regulation.

Article 19
Transhipment declaration

1. The masters, or their representatives, of both the transhipping and the receiving vessel shall submit a transhipment declaration, as soon as possible and not later than 24 hours after transhipment,

   (a) to their flag Member State and

   (b) if the transhipment has taken place in a port of another Member State, to the competent authorities of the port Member State concerned.

2. The transhipment declaration shall be submitted if possible by electronic means. If the submission is by electronic means, the transhipment declaration shall be submitted only to the flag Member State even where the transhipment shall take place in a port of another Member State. The flag Member State shall forward immediately upon receipt the transhipment declarations to the port Member State concerned.

3. The transhipment declaration shall indicate the quantity of fishery products by species that has been transhipped, the date and place of each catch, the names of the vessels involved and the ports of transhipment and destination. Masters of both the vessels involved shall be held responsible for the accuracy of such declarations.

4. The Commission, in accordance with the procedure referred to in Article 111, may exempt certain categories of fishing vessels from the obligation laid down in paragraph 1 for a limited and renewable period, or make provision for another notification period taking into account, inter alia, the type of fishery products and the distance between the fishing grounds, landing places and ports where the vessels in question are registered.

5. Transhipment procedures and forms shall be determined in accordance with the procedure referred to in Article 111.

Article 20
Authorisation to land and to tranship

1. Community fishing vessels shall be granted authorisation to land or tranship only if the information referred to in Article 17 is complete.

2. Landing shall not commence until it has been authorised by the competent authorities of the Member State concerned.

3. Authorisation to commence landing or transhipment operations in port shall be subject to a check of the completeness of the submitted information as prescribed in paragraph 1 and, where appropriate, to the completion of an inspection.

4. When giving the authorisation to land, the competent authorities shall assign a unique landing number (ULN) to the landing and inform the master of the vessel thereof. If the landing is interrupted, permission shall be required before the landing recommences.

Article 21
Landing declaration

1. The master shall be responsible for the accuracy of the landing declaration which shall indicate, as a minimum, the quantities landed of each species stipulated in Article 14 and the area where and the date when they were caught.

2. Without prejudice to specific provisions contained in multiannual plans, the master or his representative of a Community fishing vessel exceeding 10 meters length overall shall transmit landing declaration data by electronic means to the competent authorities of the flag Member State within 2 hours after completion of the landing.

3. When a Community fishing vessel lands its catches in a Member State other than the flag Member State, the competent authorities of the flag Member State shall immediately upon receipt forward the landing declaration data by electronic means to the competent authorities of the Member State where the catch was landed.

4. Paragraph 2 shall apply to Community fishing vessels exceeding 15 meters length and up to 24 meters length overall as from 1 July 2011, and to Community fishing vessels exceeding 10 meters length and up to 15 meters length overall as from 1 January 2012. Community vessels up to 15 meters length overall may be exempted from the application of paragraph 2 if they:

   a) operate exclusively within the territorial seas of the flag Member State, or

   b) never spend more than 24 hours at sea taken from the time of departure to the return to port.

5. For vessels exempted from the requirement set out in paragraph 2, the master, or his representative, shall record upon landing and submit as soon as possible and not later than 24 hours after landing, a landing declaration to the competent authorities of the Member State where the landing has taken place.

6. Landing declaration procedures and forms shall be determined in accordance with the procedure referred to in Article 111.

Article 22
Vessels exempted from landing declaration requirements

1. Each Member States shall monitor, on the basis of sampling, the activities of fishing vessels which are exempt from the landing declaration requirements specified in

Article 21(1) and (2) in order to ensure compliance by these vessels with the rules of the Common Fisheries Policy.

2. To this end, each Member State shall establish a sampling plan based on the methodology adopted by the Commission in accordance with the procedure referred to in Article 111, and transmit it every year before 31 January to the Commission indicating the methods used for the establishment of this plan. The sampling plans shall be, as far as possible, stable over time and standardised within regions.

SECTION 2
RECORDING AND EXCHANGE OF DATA BY MEMBER STATES

Article 23
Recording of catches and fishing effort

1. Each Member State shall record all relevant data on fishing opportunities as referred to in this Chapter, expressed both in terms of catches and fishing effort, and shall keep the originals of that data for a period of three years or longer in accordance with national rules.

2. Before the 15th of each month, each Member State shall notify the Commission or the body designated by it, by computer transmission of all updated data referred to in paragraph 1 recorded during the preceding month.

3. All catches of a stock or a group of stocks subject to quota made by Community fishing vessels shall be charged against the quota applicable to the flag Member State for the stock or group of stocks in question, irrespective of the place of landing.

Article 24
Exchange of data

1. Without prejudice to Article 23, the Member States of landing shall provide, at the request of another Member State, by electronic means, data on landings, sales, transhipments or transport of fishery products carried out in its ports or waters under its sovereignty or jurisdiction by fishing vessels flying the flag of the requesting Member State.

2. This information shall at least consist of the name and the external identification mark of the vessel in question, the quantities of fish by stock or group of stocks landed, sold or transhipped by that vessel as well as the date and place of landing, sale, transhipment or transport. This information shall be transmitted within four working days following the date of the request by the Member State unless otherwise agreed between the Member States concerned.

3. The Member State where the landing, sale, transhipment or transport has taken place shall transmit to the Commission, at its request, by electronic means, this information at the same time as it is communicated to the flag Member State of the vessel.

Article 25
Data on the exhaustion of fishing opportunities

1. A Member State shall inform the Commission, without delay, when it establishes that:

   a) the catches of a stock or group of stocks subject to a quota made by the fishing vessels flying its flag are deemed to have exhausted 80 % of that quota, or

   b) 80 % of the maximum fishing effort level for a fishing area and applicable to all or part of the fishing vessels flying its flag is deemed to have been reached.

2. In such an eventuality, it shall provide the Commission, at the Commission's request, with more detailed and more frequent information than provided for in Article 23.

SECTION 3
CLOSURE OF FISHERIES

Article 26
Closure of fisheries by Member States

1. Each Member States shall establish the date from which:

   a) the catches of a stock or group of stocks subject to a quota made by the fishing vessels flying its flag shall be deemed to have exhausted that quota;

   b) the maximum fishing effort level for a fishing area and applicable to all or part of the fishing vessels flying its flag shall be deemed to have been reached.

2. As from the date referred to in paragraph 1, the Member State concerned shall prohibit fishing for that stock or group of stocks by vessels flying its flag as well as the retention on board, the transhipments and the landing of fish taken after that date and shall decide on a date up to when transhipments and landings or final declarations of catches are permitted.

3. The decision referred to in paragraph 2 shall be made public by the Member State concerned and immediately communicated to the Commission and other Member States. It shall be published in the Official Journal of the European Union (C series). As from the date that the decision has been made public by the Member State concerned, Member States shall ensure that no retention on board, landings, cagings or transhipments of the relevant fish by vessels flying the flag of the Member State concerned take place in their waters and on their territory.

4. The Commission shall keep available to Member States by electronic means the notifications received pursuant to this Article.

Article 27
Closure of fisheries by the Commission

1. Where the Commission finds that a Member State has not complied with the obligation to notify the monthly data on fishing opportunities as provided for in Article 23(2), it may set the date on which 80% of the fishing opportunities of that Member State are deemed to be exhausted and it may set the estimated date on which the fishing opportunities shall be deemed to be exhausted.

2. On the basis of the information under Article 26 or on its own initiative, where the Commission finds that fishing opportunities available to the Community or a Member State are deemed to be exhausted, it shall inform the Member States concerned thereof and shall prohibit fishing activities for the respective area, gear, stock, group of stocks or fleet involved in those specific fishing activities.

Article 28
Corrective measures

1. When the Commission has halted fishing because of the alleged exhaustion of the fishing opportunities available to a Member State or group of Member States, or to the Community and it transpires that a Member State has not in fact exhausted its fishing opportunities, the following paragraphs shall apply.

2. If the prejudice suffered by the Member State for which fishing has been prohibited before its fishing opportunities were exhausted has not been removed, measures shall be adopted with the aim of remedying in an appropriate manner the prejudice caused, in accordance with the procedure referred to in Article 111. These measures may involve making deductions from the fishing opportunities of any Member State which has overfished, the quantities so deducted to be allocated appropriately to the Member States whose fishing activities were halted before their fishing opportunities were exhausted.

3. These deductions and the consequent allocations shall be made taking into account as a matter of priority the species and zones for which the fishing opportunities were fixed. They may be made during the year in which the prejudice occurred or in the succeeding year or years.

4. Detailed rules for the application of this Article, and in particular for determining the quantities concerned, shall be adopted in accordance with the procedure referred to in Article 111.

Chapter II
Monitoring Of Fleet Management

SECTION 1
FISHING CAPACITY

Article 29
Fishing capacity

1. Member States shall be responsible for carrying out the necessary checks in order to ensure that the total capacity corresponding to the fishing licences issued by a Member State, in GT and in kW, shall at any moment not be higher than the maximum capacity levels for that Member State established in accordance with:

   a) Article 13 of Council Regulation (EC) No 2371/2002, and

   b) Council Regulation (EC) No 639/2004, of 30 March 2004[34], and

   c) Commission Regulation (EC) No 1438/2003 of 12 August 2003, and[35]

   d) Commission Regulation (EC) No 2104/2004 of 9 December 2004[36].

2. Detailed rules for the application of this Article may be adopted in accordance with the procedure referred to in Article 111, and in particular regarding

   a) registration of fishing vessels;

   b) verification of the power of fishing vessels;

   c) verification of the tonnage of fishing vessels;

   d) verification of the type, number and characteristics of the fishing gear.

3. Member States shall inform the Commission as part of the report referred to in Article 110 of the check methods used, together with the names and addresses of the bodies responsible for carrying out the verification referred to in paragraph 2.

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34 OJ L 102, 7.4.2004, p. 9.
35 OJ L 204, 13.8.2003, p. 21.
36 OJ L 365, 10.12.2004, p. 19.

SECTION 2: ENGINE POWER

Article 30
Monitoring of engine power

1. Fishing shall only be allowed with fishing vessels equipped with engines that do not have a power exceeding that stated in the engine certificate.

2. It shall be prohibited to manipulate an engine with the aim of increasing its power beyond the maximum power according to the engine certificate.

3. It shall be prohibited to use new or replacement engines that have not been officially approved by the Member State concerned.

4. Member States shall ensure that certified engine power is not exceeded. Member States shall inform the Commission as part of the report referred to in Article 110 on the control measures they have undertaken to ensure that the engine power is not exceeded.

Article 31
Certification of engine power

1. New engines, replacement engines and engines that have been technically modified shall be officially approved by the Member States' authorities for not being capable of producing more power than stated in the engine certificate. Such approvals shall only be issued if the engine is not capable of producing more than the stated power.

2. Member States' authorities may assign the certification of engine power to classification societies, manufacturers of motor engines or other operators having the necessary expertise for the technical examination of engine power. Those classification societies, manufacturers or other operators shall only certify engines as not being capable of exceeding the officially stated power if there is no possibility to increase the performance of the engine above the certified power.

Article 32
Cross checking of engine power

1. Member States shall undertake data cross-checks to verify the consistency of engine power with all the information available to the administration concerning the vessel technical characteristics. In particular they shall verify the information contained in

   a) Vessel Monitoring System records;

   b) the logbook;

   c) the Engine International Air Pollution Prevention (EIAPP) certificate issued for the engine in accordance with the provisions of Annex VI to the MARPOL 73/78 Convention;

d) class certificates issued by a recognized ship inspection and survey organisation within the meaning of Directive 94/57/EC;

e) the sea trial certificate;

f) the Community Fishing Fleet Register and

g) any other documents providing relevant information on vessel power or any related technical characteristics.

2. When there are indications that the power of the engine of a fishing vessel is greater than the power stated on its fishing licence, Member States shall proceed to a physical verification of the engine power.

Chapter III
Monitoring Of Multiannual Plans

Article 33
Transhipments in port

Community fishing vessels engaged in fishing activities in the fisheries subject to a multiannual plan shall not transfer their catches on board of any other vessel or vehicle without previously landing their catches in order to be weighed in an auction centre or other body authorised by Member States.

Article 34
Designated ports

1. The Council may decide, when adopting a multiannual plan, on a threshold amount applicable to the live weight of species subject to a multiannual plan, above which a vessel shall be required to land its catches in a designated port.

2. Where more than the threshold quantity of fish as referred to in paragraph 1 is to be landed, the master of a Community fishing vessel shall ensure that such landing is only made in a designated port in the Community. When the multiannual plan is applied in the framework of a Regional Fisheries Management Organizations, the landings may take place in the port of a contracting party of that organisation.

3. Each Member State shall designate ports in which landings referred to in paragraph 2 shall take place.

4. For a port to be determined as designated port, the following conditions shall be met:

a) restricted landing times;

b) restricted landing places;

c) full inspection coverage during landing times and at all landing places;

d) the average landed quantity by weight of the species subject to a multiannual plan must represent at least 5% of the overall quantities landed in that port. The reference period to calculate such average shall be the three immediately preceding years.

Article 35
Separate stowage of recovery species

1. It shall be prohibited to retain on board a Community fishing vessel in any box any quantity of a species subject to a multiannual plan mixed with any other fishery product.

2. Boxes with species subject to a multiannual plan shall be properly marked with a label indicating the FAO code of the species subject to a multiannual plan and shall be stowed in the hold in such a way that they are kept separate from other boxes.

Article 36
National control action programmes

1. Member States shall define a national control action programmes applicable to each multiannual plan.

2. Member States shall set out specific inspection benchmarks in accordance with Annex I. such benchmarks shall be revised periodically after an analysis has been made of the results achieved. Inspection benchmarks shall evolve progressively until the target benchmarks defined in Annex I are reached.

Chapter IV
Monitoring Of Technical Measures

SECTION 1
USE OF FISHING GEAR

Article 37
Fishing gear

1. Any fishing gear used in a fishery shall comply with the technical specifications laid down in the rules of the Common Fisheries Policy for this fishery.

2. In fisheries in which it is allowed to have more than two types of gear on board, the gear which is not used shall be stowed so that it may not readily be used in accordance with the following conditions:

a) nets, weights and similar gear shall be disconnected from their trawl boards and towing and hauling wires and ropes;

b) nets which are on or above deck shall be securely lashed and

c) longlines shall be stowed in lower decks.

Article 38
Catch composition

1. If catches which have been retained on board any Community fishing vessel have been taken with nets with different minimum mesh sizes during the same voyage, the species composition shall be calculated for each part of the catch which has been taken under different conditions. To that end, all changes from the mesh size previously used as well as the catch composition on board at the moment of any such change shall be entered into the logbook and the landing declaration.

3. In specific cases detailed rules on the keeping on board of a stowage plan, by species, of processed products, indicating where they are located in the hold, may be adopted in accordance with the procedure referred to in Article 111.

SECTION 2
MONITORING OF MARINE PROTECTED AREAS

Article 39
Vessel monitoring system

1. When a Marine Protected Area is defined, the position limiting the geographical polygon and the correspondent rhomb lines and vessel positions shall be measured in accordance with the applicable standard.

2. Fishing activities of Community fishing vessels in fishing zones where a Marine Protected Area has been defined shall be monitored by the Fisheries Monitoring Centre of the coastal State, which shall have a system to detect and record the vessels' entry into, transit through and exit from the Marine Protected Area.

3. An alarm system shall be available in the Fisheries Monitoring Centre of the coastal State that can automatically detect vessels entering in the Marine Protected Area. The alarm system shall also be on board the vessel so as to alert the master of the vessel if he is about to enter the Marine Protected Area.

4. Member States shall establish an alarm system when the vessel enters the control safety zone around the areas to be protected.

5. By way of derogation from Article 8 (2) of Commission Regulation (EC) No 2244/2003 of 18 December 2003 the frequency of data transmissions shall be of at least once every 15 minutes when a vessel enters the control safety zone and it shall be real-time transmission when the vessel enters in the Marine Protected Area.

Article 40
Transit through a Marine Protected Area

1. Transit through a Marine Protected Area is allowed for all fishing vessels subject to the following conditions:

   a) all gears carried on board are lashed and stowed during the transit; and

   b) the speed during transit is not less than 6 knots.

2. Masters of Community fishing vessels intending to transit a Marine Protected Area shall communicate the following data in the form of a transit report, to the authorities of the flag Member State and to the coastal Member State:

   a) the name of the vessel, external identification mark, radio call sign and name of the master of the vessel;

   b) the coordinates of the geographical location of the vessel to which the communication refers;

   c) the date and time of each entry into a Marine Protected Area, and

   d) the date and time of each exit from a Marine Protected Area.

SECTION 3
MONITORING OF THE REDUCTION OF DISCARDS

Article 41
Registration of discards

1. The master of a fishing vessel shall record all discards above 15 kg of live weight equivalents in volume and shall communicate, where possible by electronic means, this information without delay to its competent authorities.

2. Member States shall establish a special scheme to monitor fishing vessels flying their flag with a fishing authorisation under a scheme of progressive reduction of discards.

Article 42
Logbook checks

For vessels fitted with Vessel Monitoring System, Member States shall verify systematically that the information received at the Fisheries Monitoring Centre corresponds to activities recorded in the logbook by using Vessel Monitoring System data and where available to the data from observers. Such cross-checks shall be recorded in computer-readable format and kept for a period of three years.

SECTION 4
REAL TIME CLOSURE OF FISHERIES

Article 43
General provisions

1. When a trigger by-catch level has been reached the area concerned shall be temporarily closed to fisheries in accordance with the provisions of this Section. Such a real time closure shall be established for a fixed time not exceeding 10 days.

2. The trigger by-catch level shall be calculated as the percentage of the live weight of each species of the total catch in a haul, or, when the objective of the real time closure is the protection of juveniles of a certain species, the percentage of the number of juveniles of a defined species compared to the total number of specimen of that particular species in that haul.

Article 44
Real- time closure by Member States

1. When a trigger by-catch level has been detected by any fishery protection vessel of the coastal Member State or that is participating in a joint operation under a Joint Deployment Plan, the fishery protection vessel shall inform without delay the competent authorities of the coastal Member State.

2. Where the quantity of by-catches exceeds a trigger by-catch level in any one haul, the fishing vessel shall change the fishing area by at least five nautical miles from any position of the previous haul before continuing fishing and shall inform without delay the competent authorities of the coastal Member State. If at least three fishing vessels have had to leave a fishing area as a result of exceeding the trigger by-catch level, the information received from those vessels shall be used by the coastal Member State to establish a real time closure.

3. On the basis of the information received in accordance with paragraphs 1 or 2 the coastal Member State shall decide the real-time closure of the area concerned. It shall inform without delay the Commission, all Member States and third countries whose vessels are authorised to operate in the concerned area that a real-time closure has been established. Fishing activities in such an area are prohibited as defined in the decision establishing the real-time closure.

Article 45
Real-time closure by the Commission

1. On the basis of the information received demonstrating that a trigger by-catch level has been reached the Commission may determine an area to be temporarily closed if the coastal Member State has not itself established such a closure.

2. The Commission shall inform without delay all Member States and third countries whose vessels operate in this area and shall make available without delay on its

official website a map with the coordinates of the area temporarily closed, specifying the duration of the closure and the conditions governing fisheries in that specific closed area.

Article 46
Re-opening of a temporarily closed area

1. After a minimum of 60 hours after the defined area has been closed, and under the control of the inspection services of the coastal Member State, a limited number of vessels carrying on board a scientific observer, shall undertake trial fishing operations to verify the level of by-catches.

2. If these operations referred to in paragraph 1 do not reach more than 60% of the trigger by-catch level the coastal Member State shall lift the real-time closures that it has established. The coastal Member State shall inform the Commission, all Member States concerned and third countries whose vessels are licensed to operate in the relative zone, that the real-time closure has been lifted.

3. If the real-time closure has been established by the Commission in accordance with Article 45 the Commission shall be informed without delay by the coastal Member State of the results of the trial fishing operations referred to in paragraph 1. The Commission shall, if appropriate after examination of the information by the Scientific Technical and Economic Committee for Fisheries, lift the real-time closure if the operations referred to in paragraph 1 do not reach more than 60% of the trigger by-catch level. It shall inform all Member States concerned and third countries whose vessels are licensed to operate in the relative zone that the real-time closure has been lifted.

Chapter V
Monitoring of Recreational Fisheries

Article 47
Recreational fisheries

1. Recreational fisheries on a vessel in Community waters on a stock subject to a multiannual plan shall be subject to an authorisation for that vessel issued by the flag Member State.

2. Catches in recreational fisheries on stocks subject to a multiannual plan shall be registered by the flag Member State.

3. Catches of species subject to a multiannual plan by recreational fisheries shall be counted against the relevant quotas of the flag Member State. The Member States concerned shall establish a share from such quotas to be used exclusively for the purpose of recreational fisheries.

4. The marketing of catches from a recreational fishery shall be prohibited except for philanthropic purposes.

TITLE V
MONITORING OF MARKETING

Chapter I
General Provisions

Article 48
Principles for the monitoring of marketing

1. Each Member State shall be responsible for monitoring on its territory the application of the rules of the Common Fisheries Policy at all stages of the marketing of fishery and aquaculture products, from the first sale to the retail sale, including transport.

2. All lots of fishery and aquaculture products shall be traceable and the operators shall be able to identify the origin and destination of lots from catching or harvesting to final consumer.

3. Where a minimum size has been fixed for a given species, operators responsible for selling, stocking or transporting must be able to prove the geographical origin of the products expressed by reference to a sub-area and division or sub-division, or where applicable statistical rectangle in which catch limits apply pursuant to Community legislation

4. Member States shall ensure that all fishery and aquaculture products from catching or harvesting are put into lots.

Article 49
Common marketing standards

1. Member States shall ensure that the products to which common marketing standards apply are displayed for sale, offered for sale, sold or otherwise marketed only if they comply with these standards.

2. Products withdrawn from the market, in accordance with Council Regulation (EC) No 104/2000 of 17 December 1999, shall respect common marketing standards, in particular freshness categories.

3. Operators responsible for the selling, stocking or transporting of lots of fishery products shall be able to prove that the products comply with the marketing standards at all stages.

Article 50
Traceability

1. Without prejudice to Regulation (EC) No 178/2002[37] and to their national legislation, Member States shall ensure that their operators put in place systems and procedures which allow the information on the provenance of the fishery and aquaculture products to be made available to the competent authority.

2. The minimum information requirements for all lots of fishery and aquaculture products in order to trace their provenance shall be:

   a) the identification number of each lot;

   b) the commercial and scientific name of each species;

   c) the live weight in kilograms;

   d) the date of catching and/or harvesting;

   e) the production unit (name of the fishing vessels, aquaculture site);

   f) name and address of the suppliers;

   g) the gear.

3. Each lot shall be submitted to a specific tagging and/or labelling system containing the information referred to in paragraph 2.

Article 51
Consumer information

Member States shall ensure that the information provided for in Article 8 of Regulation (EC) No 2065/2001 of 22 October 2001 laying down detailed rules for the application of Council regulation (EC) No 104/2000 as regards informing consumer about fishery and aquaculture products shall be available at each stage of marketing of the species concerned. The catch area referred to in Article 8 of Regulation (EC) No 2065/2001 shall refer to the sub-area and division or sub-division or, where applicable, to the statistical rectangle in which catch limits apply pursuant to Community law.

Chapter II
Post-landing activities

Article 52
First sale in auction centres

1. Member States shall ensure that the first marketing of all quantities subject to catch or effort limits are sold and/or registered at an auction centre to registered buyers.

[37] OJ L 31, 1.2.2002, p. 1.

2. Other fisheries products shall only be sold at an auction centre or to bodies or persons authorised by Member States.

3. The buyer of fisheries products from a fishing vessel at first sale shall be registered with the authorities of the Member State where the first sale takes place. For the purpose of registration, each buyer shall be identified according to his VAT number in national databases.

Article 53
Weighing of fishery and aquaculture products

1. All registered buyers purchasing fishery and aquaculture products shall ensure that all lots received are weighed on scales approved by the competent authorities. The weighing shall be carried out prior to the fish being sorted, processed, held in storage and transported from the place of landing or resold.

2. The figure resulting from the weighing shall be used for the completion of landing declarations, sales notes and takeover declarations.

3. By way of derogation from paragraph 1, Member States may permit fresh fish to be weighed after transport from the place of landing provided that the fish could not have been weighed on landing and provided they are transported to a destination on the territory of the Member State that is no more than 20 kilometers from the place of landing.

4. The competent authorities of a Member State may require that any quantity of fish first landed in that Member State is weighed in the presence of officials before being transported elsewhere from the place landing.

Article 54
Sales notes

1. Registered buyers, registered auctions or other bodies or persons which are responsible for the first marketing of fishery products landed in a Member State, shall submit electronically, within 2 hours after the first sale, a sales note to the competent authorities of the Member State in whose territory the first sale takes place. If this Member State is not the flag State of the vessel that landed the fish, it shall ensure that a copy of the sales note is submitted to the competent authorities of the flag Member State upon receipt of the relevant information. The accuracy of the sales note shall be the responsibility of these buyers, auctions, bodies or persons.

2. Where the first marketing of fishery products does not take place in the Member State where the products have been landed, the Member State responsible for monitoring the first marketing shall ensure that a copy of the sales note is submitted to the authorities responsible for monitoring the landing of the products concerned and to the authorities of the flag Member State of the vessel within 2 hours after the receipt of the sales note.

3. Where a sales note does not correspond to the invoice or to a document replacing it, Member States shall adopt the necessary provisions to ensure that the information on

the price excluding tax for deliveries of goods to the purchaser is identical to that indicated on the invoice.

Article 55
Content of the sales notes

The sales notes referred to in Article 54 shall contain as a minimum the following data:

a) the Community fleet register number and name of the fishing vessel that has landed the products concerned;

b) the port and date of landing;

c) the name of the vessel's owner or master and, if different, the name of the seller;

d) the name of the buyer and his VAT number;

e) the relevant name or FAO alpha code of each species and its geographical origin expressed by reference to a sub-area and division or sub-division in which catch limits apply pursuant to Community legislation;

f) for all species subject to marketing standards, as appropriate, the individual size or weight, grade, presentation and freshness;

g) where appropriate, the destination of products withdrawn from the market (carry-over, use for animal feed, for production of meal for animal feed, for bait or for non-food purposes);

h) the place and the date of the sale;

i) where possible, the reference number and date of invoice and where appropriate, the sales contract;

j) where applicable, reference to the transport document referred to in Article 58.

Article 56
Exemptions from sales notes requirements

1. The Commission, in accordance with the procedure referred to in Article 111, may grant an exemption from the obligation to submit the sales note to the competent authorities or other authorised bodies of the Member State for fishery products landed from certain categories of Community fishing vessels having an overall length of up to 10 meters or for quantities landed of fishery products not exceeding 50 kg of live weight equivalent by species. Such exemptions may be granted only in cases where the Member State in question has installed an acceptable sampling system, in accordance with Articles 16 and 22.

2. A buyer acquiring products up to an amount of 15 kg which are not thereafter placed on the market but used only for private consumption shall be exempt from the requirements of Articles 54 and 55.

Article 57
Take-over declaration

1. Without prejudice to specific provisions contained in multiannual plans, when the products are intended for sale at a later stage, a take-over declaration shall be submitted, if possible by electronic means, as soon as possible and not later than 2 hours after completion of landing, to the competent authorities or other authorised bodies of the Member State where the take-over takes place. The submission of the take-over declaration and its accuracy shall be the responsibility of the holder of this declaration.

2. The take-over declaration referred to in paragraph 1 shall contain at least the following information:

   a) the Community fleet register number and the name of the fishing vessel that has landed the products;

   b) the name of the vessel's owner or master;

   c) the relevant name or FAO alpha code of each species and its geographical area of origin expressed by reference to a sub-area and division or sub-division, or where applicable statistical rectangle in which catch limits apply pursuant to Community legislation;

   d) the weight of each species, broken down by type of product presentation;

   e) the port and date of landing;

   f) the name and address of the facilities where the products are stored;

   g) where applicable, reference to the transport document specified to in Article 58.

Article 58
Transport document

1. Fishery products landed into the Community, either unprocessed or after having been processed on board, that are transported to a place other than that of landing, shall be accompanied by a document drawn up by the transporter until the first sale has taken place. The transporter shall submit, if possible by electronic means, within 24 hours after the loading, a transport document to the competent authorities of the Member State in whose territory the landing has taken place.

2. In the event that the products are transported to a Member State other than the Member State of landing, the transporter shall also transmit within 24 hours following the loading of the fishery products a copy of the transport document to the competent authorities of the Member State in whose territory the first marketing is declared to take place. The Member State of first marketing may require further information in this regard from the Member State of landing.

3. The transporter shall be responsible for the accuracy of the document.

4. The transport document shall indicate:

a) the place of destination of the consignment(s) and the identification of the transport vehicle;

b) the name and Community fleet register of the fishing vessel that has landed the products;

c) the quantities of fish for each species transported in kilograms of processed or unprocessed weight, the name(s) and address(es) of the consignee(s), the place and date of loading and the geographical origin of each species, expressed by reference to a sub-area and division or sub-division in which catch limits apply pursuant to Community legislation.

5. The competent authorities of Member States may grant exemptions from the obligation set out in paragraph 1 if the fishery products are transported within a port area or not more than 20 kilometers from the place of landing.

6. Where fishery products that have been declared as sold in a sales note are transported to a location other than the place of landing, the transporter shall be able to prove with a document that a sales transaction has taken place.

Chapter III
Producer Organisations And Price And Intervention Arrangements

Article 59
Monitoring of producer organisations

1. In accordance with Article 6 (1) of Regulation (EC) No 104/2000, Member States shall carry out checks at regular intervals to ensure that

a) producer organisations comply with the terms and conditions for recognition;

b) recognition of a producer organisation may be withdrawn if the conditions set out in Article 5 of Regulation (EC) No 104/2000 are no longer fulfilled or if recognition is based on wrong information;

c) recognition is immediately withdrawn retroactively if the organisation obtains or benefits from recognition by fraudulent means.

2. In order to ensure that the rules pertaining to producer organisation as laid down in Article 5 and Article 6 (1) (b) of Regulation (EC) No 104/2000 are complied with, the Commission shall carry out checks and in the light of such checks may, where appropriate, request that Member States withdraw recognition.

3. Each Member State shall carry out appropriate checks to ensure that each producer organisations fulfils the obligations laid down in the operational programme for the fishing year concerned, as referred to in Regulation (EC) No 2508/2000 and shall

apply the penalties provided for in Article 9 (3) of Regulation (EC) No 104/2000 in the event that those obligations are not fulfilled.

Article 60
Monitoring of price and intervention arrangements

Member States shall carry out all the checks regarding the price and intervention arrangements, in particular:

(a) the withdrawal of products from the market for purposes other than human consumption;

(b) carry over operations for stabilising, storing and/or processing of products withdrawn from the market;

(c) private storage of products frozen at sea;

(d) compensatory allowance for tuna intended for processing.

TITLE VI
SURVEILLANCE

Article 61
Sightings at sea and detection by Member States

1. Member States shall carry out surveillance in maritime waters under their sovereignty or jurisdiction based on

   (a) sightings of fishing vessels by inspection vessels or surveillance aircrafts,

   (b) a Vessel Detection System as referred to in Article 11.

2. If the sighting or detection does not correspond to other information available to the Member State, it shall undertake any investigations that may be necessary to determine the appropriate follow-up.

3. If the sighting or detection refers to a fishing vessel of another Member State or a third country and the information does not correspond to any other information that is available to the coastal Member State and if that coastal Member State is not in a position to undertake further action, it shall record its findings in a surveillance report and shall transmit that report without delay, if possible by electronic means, to the flag Member State, or to the third countries concerned. In case of a third country vessel, the surveillance report shall also be sent to the Commission or to a body designated by it.

4. In the event that an official of a Member State sights or detects a fishing vessel engaged in activities that may be considered as an infringement to the rules of the

Common Fisheries Policy, he shall without delay issue a surveillance report and send it to their competent authorities

5. The form of the surveillance report shall be determined in accordance with the procedure referred to in Article 111.

Article 62
Action to be taken upon information on sightings and detection

1. Flag Member States shall, upon receipt of a surveillance report from another Member State, take prompt action on it and undertake such further investigation as is necessary to allow them to determine appropriate follow-up.

2. Member States other than the flag Member State concerned shall, where appropriate, verify whether the sighted vessel reported has carried out activities in the waters under their jurisdiction or sovereignty or if fishery products stemming from that vessel have been landed or imported into their territory and shall investigate its record of compliance with relevant conservation and management measures.

3. Flag Member States, other Member States and the Commission or the body designated by it shall also examine suitably documented information regarding sighted vessels submitted by individual citizens, civil society organisations, including environmental organisations, as well as representatives of fisheries or fish trade stakeholder interests.

Article 63
Observers

1. Observers on board vessels shall monitor the fishing vessel's compliance with the rules of the Common Fisheries Policy. They shall implement all the tasks of an observer scheme and in particular verify and record the vessel's fishing activities and relevant documents.

2. Observers shall be qualified and experienced for their tasks. They shall be independent of the owner, the master of the vessel and any crew member. They shall not be a member of the crew of the vessel.

3. As far as possible observers shall ensure that their presence on board fishing vessels does not hinder or interfere with the fishing activities and the normal operations of the vessel.

4. Observers shall draw up a surveillance report and forward it to their authorities and/or to the flag State authorities. Member States shall insert the report in the data base referred to in Article 69.

5. Masters of Community fishing vessels shall provide adequate accommodation for assigned observers, facilitate their work and avoid interference with the discharge of their duties. Masters shall provide observers access to relevant parts of the vessel, including the catch, and to the vessel's documents including electronic files.

6. All costs arising from the operation of observers under this Article shall be borne by the flag Member States. Member States may charge those costs, in part or in full, to the operators of the vessels flying their flags involved in the relevant fishery.

7. Detailed rules for the application of this Article may be adopted in accordance with the procedure referred to in Article 111.

Article 64
Admissibility of surveillance reports

Surveillance reports drawn up by persons authorised by national and Community authorities to carry out surveillance shall constitute admissible evidence in administrative or judicial proceedings of any Member State. For establishing facts they shall be treated equally to surveillance reports of officials of the Member State where the administrative or judicial proceedings take place. Appropriate follow-up action shall be taken on the basis of those reports.

TITLE VII
INSPECTION

Chapter I
General provisions

Article 65
Conduct of inspections

1. Member States shall set up and keep up to date a list of officials responsible for carrying out inspections.

2. Officials shall carry out their duties in accordance with Community law. They shall conduct inspections in a non-discriminatory manner at sea, in ports, during transport, on processing premises and during the marketing of the fish.

2. Officials shall check in particular

   a) the legality of the catch kept on board, stored, transported, processed or marketed and the accuracy of the documentations relating to it;

   b) the legality of the fishing gear used for the targeted species and for the catches kept on board;

   c) if appropriate, the stowage plan and the separate stowage of species and

   d) the marking of passive gear.

3. Officials shall examine all relevant areas, decks and rooms where fishery products are caught, stored, transported, processed or marketed. They shall also examine catches, processed or not, nets or other gear, equipment, containers and packages

containing fish or fishery products and any relevant documents which they deem necessary to verify compliance with the rules of the Common Fisheries Policy. They may also question persons deemed to have information on the matter that is the subject of the inspection.

4. Officials shall conduct inspections in such manner as to cause the least disturbance or inconvenience to the vessel or transport vehicle and its activities, and to the storing, processing and marketing of the catch. They shall, as far as possible, prevent any degradation of the catch during the inspection.

5. Detailed rules for the application of this Article, in particular on the methodology and the conduct of an inspection, shall be adopted in accordance with the procedure referred to in Article 111.

Article 66
Duties of the operator

The operator shall facilitate the safe access to the vessel, transport vehicle or room where the fishery products are stored, processed or marketed. He shall ensure the safety of the officials and shall not obstruct, intimidate or interfere with the officials in the performance of their duties.

Article 67
Inspection report

1. Officials shall draw up an inspection report after each inspection and shall forward it to their authorities. In case of the inspection of a fishing vessel flying the flag of another Member State or a third country, a copy of the inspection report shall be sent without delay to the flag Member State or the third country authorities concerned. In case of an inspection carried out in the waters under the sovereignty or jurisdiction of another Member State, a copy of the inspection report shall be sent without delay to that Member State.

2. The officials shall sign their report in the presence of the operator, who shall also sign it and have the right to add any comment to it. The officials shall indicate in the logbook that an inspection has been made.

3. A copy of the inspection report shall be handed over to the vessel master or his representative.

Article 68
Admissibility of inspection reports

Inspection reports drawn up by persons authorised by national and Community authorities to carry out inspections shall constitute admissible evidence in the administrative or judicial proceedings of any Member State. In the establishment of facts they shall be treated equally to inspection reports of officials of the Member State where the administrative or judicial proceedings take place and appropriate follow-up action may be taken on the basis of those reports.

Article 69
Electronic database

Member States shall set up and keep up to date an electronic database where they upload all inspection and surveillance reports drawn up by their officials.

Article 70
Community inspectors

1. A list of Community inspectors shall be established by the Commission in accordance with the procedure referred to in Article 111. Community inspectors shall be officials of a Member State or the Commission or the Agency.

2. Without prejudice to the primary responsibility of the coastal Member States, Community inspectors shall carry out inspections in accordance with this Regulation on the territory of Member States, in Community waters and on Community fishing vessels outside Community waters.

3. Community inspectors may be assigned for

   a) the implementation of the Community control and inspection programmes adopted in accordance with Article 87;

   b) international fisheries control programmes, where the Community is under an obligation to provide for controls.

4. Community inspectors shall have the same powers as national inspectors. While performing their tasks and exercising their powers, Community inspectors shall comply with Community law and the national law of the Member State where the inspection takes place.

5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 111.

Chapter II
Inspections outside the waters or the territory of the inspecting Member State

Article 71
Inspections of vessels outside the waters of the inspecting Member State

1. Without prejudice to the primary responsibility of the coastal Member State, a Member State may inspect fishing vessels flying its flag in all Community waters.

2. A Member State may carry out inspections on fishing vessels of another Member State in accordance with this Regulation relating to fishing activities in all Community waters:

a) following authorisation by the coastal Member State concerned, or

b) where a Specific Community control action programmes has been adopted in accordance with Article 87.

3. A Member State may inspect Community fishing vessels flying the flag of another Member State in international waters.

4. A Member State may inspect Community fishing vessels flying its own flag or the flag of another Member State in waters of third countries in accordance with international agreements.

5. Member States shall designate the competent authority which shall act as the contact point for the purpose of this Article. The contact point of the Member States shall be available 24 hours a day.

Article 72
Requests for authorisation

1. Requests for authorisation of a Member State to carry out inspections on fishing vessels in Community waters outside waters under its sovereignty or jurisdiction , as referred to in Article 71(2)(a), shall be decided by the coastal Member State concerned within 12 hours of the time of the request or within an appropriate delay where the reason for the request is a hot pursuit commenced in the waters of the inspecting Member State.

2. The requesting Member State shall be informed of the decision without delay. Decisions shall also be communicated to the Commission or the body designated by it.

3. Requests for authorisations shall be denied in whole or in part only to the extent necessary for compelling reasons of national security. Denials and the reasons underlying them shall be sent without delay to the requesting Member State and the Commission or to the body designated by it.

Article 73
Inspections outside the territory of the inspecting Member State

A Member State may carry out inspections in accordance with this Regulation on the territory of another Member State:

a) following authorisation of the Member State concerned, or

b) where a Specific Community control action programmes has been adopted in accordance with Article 87.

Chapter III
Infringements detected in the course of inspections

Article 74
Procedure in the event of an infringement

If the information collected during an inspection leads the official to believe that an infringement of the rules of the Common Fisheries Policy has been committed, he shall:

a) note the suspected infringement in the inspection report;

b) take all necessary action to ensure safekeeping of the evidence pertaining to such suspected infringement;

c) immediately forward the inspection report to his/her competent authority;

d) inform the natural person suspected of having committed the infringement or who was caught in the act while committing the infringement, that the infringement should entail assignment of appropriate penalty points in accordance with Article 84. It shall be noted in the inspection report.

Article 75
Infringements detected outside the waters of the inspecting Member State

If an infringement has been detected as a result of an inspection carried out in accordance with Article 71(2), the inspecting Member State shall immediately submit a summary inspection report to the coastal Member State. A full inspection report shall be submitted to the coastal and to the flag State within seven days from the time of inspection.

Article 76
Enhanced follow-up with regard to certain serious infringements

1. The flag Member State or the coastal Member State in whose waters a vessel is suspected to have:

   a) misrecorded catches of more than 500 kilograms or 10%, calculated as a percentage of the logbook figures, whichever is the greater or to have

   b) committed any of the serious infringements as referred to in Article 42 of Regulation (EC) No 1005/2008 within one year of committing the first serious infringement,

   shall require the vessel to proceed immediately to a port for a full investigation, in addition to the measures referred to in Chapter IX of Regulation (EC) No 1005/2008.

2. The coastal Member State shall immediately and in compliance with its procedures under national law, notify the flag Member State of the investigation referred to in paragraph 1.

3. Inspectors may remain on board a fishing vessel until a full investigation as referred to in paragraph 1 has been undertaken.

4. The master of the fishing vessel referred to in paragraph 1 shall cease all fishing activities and proceed to port as required.

Chapter IV
Prosecution of infringements detected in the course of inspections

Article 77
Prosecution

Where an infringement of the provisions of this Regulation is discovered by the competent authorities in the course of inspection, the competent authorities of the inspecting Member State shall take appropriate action in accordance with Title VIII against the master of the vessel involved or against any other person responsible for the infringement.

Article 78
Transfer of prosecution

The inspecting Member State may also transfer prosecution of the infringement to the competent authorities of the flag Member State or the Member State of registration or the Member State of which the offender is a citizen so long as this is done, with the agreement of the latter Member State and on condition that the transfer is more likely to achieve the result referred to in Article 81(2).

Article 79
Infringement detected by Community inspectors

Member States shall undertake all necessary actions to prosecute any infringement that a Community inspector has discovered on their territory, in the waters under their sovereignty or jurisdiction, or on a vessel flying their flag.

Article 80
Corrective measures in the absence of prosecution by the Member State of landing or transhipment

1. If the Member State of landing or transhipment is not the flag Member State and its competent authorities do not take appropriate measures against the natural or legal persons responsible, or do not transfer prosecution in accordance with Article 78, the quantities illegally landed or transhipped may be set against the quota allocated to the Member State of landing or transhipment.

2. The quantities of fish to be set against the quota of the Member State of landing or transhipment shall be fixed in accordance with the procedure referred to in Article 111 after the Commission has consulted the two Member States concerned.

3. If the Member State of landing or transhipment no longer has a corresponding quota at its disposal, Article 28 shall apply. To that end the quantities of fish illegally landed or transhipped shall be deemed equivalent to the amount of the prejudice suffered, as mentioned in that Article, by the flag Member State.

TITLE VIII
ENFORCEMENT

Article 81
Measures to ensure compliance

1. Member States shall ensure that appropriate measures are systematically taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons suspected of a breach of any of the rules of the Common Fisheries Policy.

2. The proceedings initiated pursuant to paragraph 1 shall be capable, in accordance with the relevant provisions of national law, of effectively depriving those responsible of the economic benefit of the infringements and of producing results proportionate to the seriousness of such infringements, thereby effectively discouraging further offences of the same kind.

3. Member States may apply a system whereby a fine is proportionate to the turnover of the legal person, or to the financial advantage achieved or envisaged by the commission of the serious infringement.

4. The competent authorities of the Member State having jurisdiction in the event of an infringement shall, without delay and in compliance with their procedures under national law, notify the flag Member States, the Member State of which the offender holds the citizenship, or any other Member State with an interest in the follow up of the infringement of the criminal or administrative proceedings or other measures taken and of any definitive ruling relating to such infringement, including the number of points assigned.

Article 82
Sanctions for serious infringements

1. Member States shall ensure that a natural person having committed or a legal person held liable for a serious infringement is punishable by effective, proportionate and dissuasive administrative sanctions, in accordance with the range of sanctions and measures provided for in Chapter IX of Regulation (EC) No 1005/2008.

2. In addition, for all serious infringements which level cannot be linked to the value of the fishery products obtained by committing the serious infringement, Member States shall ensure that a natural person having committed or a legal person held liable for a serious infringement is punishable by an administrative fine of a minimum of at least 5.000 EUR and a maximum of at least 300.000 EUR for each serious infringement. The flag Member State shall be immediately notified of the sanction imposed.

3. In case of a repeated serious infringement within a 5 year period, a Member State shall impose an administrative fine of a minimum of at least 10.000 EUR and a maximum of at least 600.000 EUR.

4. In fixing the amount of the fines the Member States shall also take into account the value of the prejudice to the fishing resources and the marine environment concerned.

5. Member States in which the Euro has not been adopted shall apply the market exchange rate between the Euro and their currency of the last but one day of the month proceeding the one when the administrative fine is imposed, as published in the C series of the Official Journal of the European Union .

6. Member States may also, or alternatively, use effective, proportionate and dissuasive criminal sanctions.

7. The sanctions provided for in this Chapter may be accompanied by other sanctions or measures, in particular those described in Article 45 of the (EC) Regulation No 1005/2008.

Article 83
Immediate enforcement measures

Member States shall take immediate measures to prevent vessels, natural or legal persons found *in flagrante delicto* while committing a serious infringement, as defined in Article 42 of Regulation (EC) No 1005/2008 from continuing to do so.

Article 84
Penalty point system

1. Member States shall apply a penalty point system on the basis of which the holder of a fishing authorisation receives appropriate penalty points as a result of an infringement against the rules of the Common Fisheries Policy.

2. When a natural person has committed or a legal person is held liable for an infringement of the rules of the Common Fisheries Policy, the appropriate number of points shall be assigned to the holder of the fishing authorisation as a result of the infringement. The holder of the fishing authorisation shall be entitled to review proceedings in accordance with national law.

3. When the total number of penalty points equals or exceeds a specified number of points, the fishing authorisation shall be automatically suspended for a period of at least six months. That period shall be one year if the fishing authorisation is suspended a second time as a consequence of a permit holder being assigned the specified number of points. In case of the holder being assigned the specified number of points for a third time, the fishing authorisation shall be permanently withdrawn.

4. In the event of a serious infringement, the penalty points assigned shall be at least, equal to half of the points referred to in paragraph 3.

5. If the holder of a suspended fishing authorisation does not commit, within three years from the date of the last infringement, another infringement, all points on the fishing authorisation shall be deleted.

6. Provisions for the application of this Article may be adopted in accordance with the procedure referred to in Article 111.

7. Member States shall also establish a penalty point system under which the master and the officers of a vessel receive appropriate penalty points as a result of an infringement against the rules of the Common Fisheries Policy committed by them.

Article 85
National registers of infringements

1. Member States shall register in a national data base all infringements against rules of the Common Fisheries Policy, committed by vessels flying their flag or by their nationals, including the sanctions they incurred and the number of points assigned. Infringements of vessels flying their flag or by their nationals prosecuted in other Member States shall also be entered by Member States in their national data base on infringements, upon notification of the definitive ruling by the Member State having jurisdiction, pursuant to Article 82.

2. When prosecuting an infringement against rules of the Common Fisheries Policy, Member States shall systematically request other Member States to provide information in their national data bases, on the fishing vessels and persons suspected of having committed the infringement in question or caught in the act while committing the infringement in question.

3. Where a Member State requests information from another Member State in relation to the prosecution of an infringement, that other Member State shall provide the relevant information on the fishing vessels and persons in question.

TITLE IX
CONTROL PROGRAMMES

Article 86
Common control programmes

Member States may carry out, among themselves and on their initiative, monitoring, inspecting and surveillance programmes concerning fisheries activities.

Article 87
Specific Community control action programmes

1. The Commission in accordance with the procedure referred to in Article 111 and in concert with the Member States concerned may determine which fisheries shall be subject to Specific Community control action programmes.

2. The Specific Community control action programmes referred to in paragraph 1 shall state the objectives, priorities and procedures as well as benchmarks for inspection activities. Such benchmarks shall be revised periodically after an analysis has been made of the results achieved.

3. When a multiannual plan has entered into force and before a Specific Community control action programme has become applicable, each Member State shall establish risk management based target benchmarks for inspection activities.

4. The Member States concerned shall adopt the necessary measures to ensure the implementation of the Specific Community control action programmes, particularly as regards required human and material resources and the periods and zones where these are to be deployed.

Title X
Evaluation, management and control by the Commission

Article 88
Responsibilities of the Commission

1. The Commission shall control and evaluate the application of the rules of the Common Fisheries Policy by the Member States by means of the examination of information and documents and by conducting on-the-spot visits and inspections and shall facilitate coordination and cooperation between them. For this purpose the Commission may, on its own accord and by its own means, initiate and carry out inquiries, audits and inspections. It may in particular verify:

   a) the implementation and application of the rules of the Common Fisheries Policy by Member States and their competent authorities;

   b) the implementation and application of the rules of the Common Fisheries Policy in the waters of a third country in accordance with an international agreement with that country;

   c) the conformity of national administrative practices and inspection and surveillance activities with the rules of the Common Fisheries Policy;

   d) the existence of the required documents and their compatibility with the applicable rules;

   e) the circumstances in which control activities are carried out by Member States;

   f) the detection and prosecution of infringements;

   g) the cooperation between Member States.

2. The Commission shall issue written instructions to its inspectors indicating their authority and the objectives of their mission.

Article 89
Programmed verifications

1. Wherever it is deemed necessary by the Commission, its officials may be present during control activities carried out by national control authorities. In the framework of these missions, the Commission shall establish appropriate contacts with Member

States with a view, wherever possible, to establish a mutually acceptable control programme.

2. If the control and inspection operations envisaged in the framework of the initial control and inspection programme cannot be carried out for factual reasons, the Commission officials, in liaison and agreement with the competent authorities of the Member State concerned, shall modify the initial control and inspection programme.

3. Wherever the Commission officials encounter difficulties in the execution of their duties, the Member States concerned shall provide the Commission with the means to accomplish its task and give the officials the opportunity to evaluate the specific control and inspection operations. Member States shall in particular take all necessary steps to ensure that the control and inspection missions are not subject to publicity that is harmful to the control and inspection operations.

4. In case of sea or air controls and inspections, the commander of the vessel or aircraft shall be in sole charge of the operations. In exercising his command he shall take due account of the control and inspection programme referred to in paragraph 1.

5. The Commission may arrange for its officials visiting a Member State to be accompanied by one or more officials from another Member State as observers. Upon request from the Commission the sending Member State shall nominate, albeit at short notice, the national officials selected as observers. Member States may also draw up a list of national officials whom the Commission may invite to be present at such controls and inspections. The Commission can invite national officials included in that list or those notified to the Commission at its discretion. The Commission shall, where appropriate, place the list at the disposal of all the Member States.

Article 90
Autonomous verifications

1. Commission inspectors may, in the context of verification without prior notice, conduct observations on the implementation of this Regulation.

2. During their observations, Commission officials, without prejudice to applicable Community law, and complying with the rules of procedure provided for in the laws of the Member State concerned, shall have access to the relevant files and documents and to the public premises and places, vessels and private premises, land and means of transport where the activities covered by this Regulation take place, in order to collect data (not containing named references) necessary for the accomplishment of their tasks.

Article 91
Autonomous inspections

1. When there is reason to believe that irregularities occur in the application of the rules of the Common Fisheries Policy, in particular in the implementation of multiannual plans, the Commission may carry out autonomous inspections. The Member State concerned shall accept the autonomous inspections and shall ensure that the bodies or persons concerned accept to be submitted to such inspections. The national

authorities of the Member States concerned shall facilitate the work of Commission officials.

2. Commission officials may carry out inspections on fishing vessels, transport vehicles as well as on the premises of businesses and other bodies with activities relating to the Common Fisheries Policy. They shall have access to all information and documents needed to exercise their responsibilities. They may in particular request the presentation of the logbook, landing declarations, catch certificate, transhipment declaration, sales notes, business records and other relevant documents from fishermen, fishing companies and companies transporting, processing or trading in fisheries products.

3. Commission officials shall have the same powers as national inspectors. They shall present a written authority stating their identity and capacity. In the exercise of their duties on the territory or in waters under the jurisdiction of a Member State, the procedural rules of that Member State shall apply.

4. Officials of the Member State concerned shall be given the possibility to be present during the inspection and shall, at the request of the Commission officials, assist them to carry out their duties.

5. All operators may be subject to autonomous inspections where these are considered necessary. Where undertakings oppose an inspection, the Member State concerned shall afford Commission officials the necessary assistance including by the police authorities, to enable them to carry out the inspection.

Article 92
Audit

The Commission may carry out audits of the control systems of Member States. The audits may include in particular the evaluation of:

a) the quota and the effort management system;

b) data validation systems, including systems of cross-checks of Vessel Monitoring Systems, catch, effort and marketing data and data related to the Community fishing fleet register as well as the verification of licences, and fishing authorisations;

c) the administrative organisation, including the adequacy of the available staff and the available means, the training of staff, the delimitation of functions of all authorities involved in control as well as the mechanisms in place to coordinate the work and the joint evaluation of the results of those authorities;

d) the operational systems, including procedures for control of designated ports;

e) national control programmes including the establishment of inspection levels and their implementation;

f) the national system of sanctions, including the adequacy of the sanctions imposed, duration of proceedings, economic benefits forfeited by offenders and the deterrent nature of such system of sanctions;

g) designated ports.

Article 93
Inspection and audit reports

1. The Commission shall inform the Member States concerned of the findings of autonomous verifications and of autonomous inspections within one day after they have taken place.

2. Commission inspectors shall draw up an inspection report after each inspection. The report shall be made available to the Member State concerned within one month after the conclusion of the inspection. Member States shall have the possibility to comment on the findings of the report.

3. The Commission shall draw up an audit report after each audit. The report shall be made available to the Member State concerned within one month after the audit. Member States shall have the possibility to comment on the findings of the report.

4. Member States shall take the necessary action on the basis of the report referred to in paragraph 2 and 3.

5. The Commission may publish the inspection and audit reports, together with the comments of the Member State concerned, on the secure part of its official website.

Article 94
Follow-up of inspection and audit reports

1. Member States shall provide the Commission with such information as it may request on the implementation of this Regulation. In submitting a request for information, the Commission shall specify a reasonable time limit within which the information is to be supplied.

2. If the Commission considers that irregularities have occurred in the implementation of the rules of the Common Fisheries Policy or that the existing control provisions and methods in particular Member States are not effective it shall inform the Member States concerned, which shall then conduct an administrative inquiry in which Commission inspectors may participate.

3. The Member States concerned shall inform the Commission of the results of the inquiry and forward a report to the Commission drawn up not more than three months after the Commission's request. This period may be extended by the Commission, on a duly reasoned request from the Member State, for a reasonable delay.

4. If the administrative inquiry referred to in paragraph 2 does not lead to the removal of the irregularities or if the Commission identifies shortcomings in the control system of a Member State during the inspections referred to in Articles 89, 90 and 91 or in the audit referred to in Article 92, the Commission shall establish an action plan with that Member State. The Member State shall take all necessary measures to implement this action plan.

TITLE XI
MEASURES TO ENSURE COMPLIANCE BY MEMBER STATES Of COMMON FISHERIES POLICY OBJECTIVES

Chapter I
Financial Measures

Article 95
Suspension and cancellation of Community financial assistance

1. The Commission may decide to suspend for a maximum period of eighteen months all or part of the payments of the Community financial assistance under Council Regulation (EC) No 1198/2006 and Article 8, paragraph a, of Council Regulation (EC) No 861/2006 where there is evidence that:

   a) the provisions of this Regulation have not been complied with as a result of an action or omission directly attributable to the Member State concerned, and that

   b) this may lead to a serious threat to the conservation of living aquatic resources or the effective operation of the Community control and enforcement system;

   and where the Commission concludes, on the basis of the information available and, as appropriate, after examination of the Member State's explanations, that the Member State concerned has not taken adequate measures to remedy the situation and is not in a position to do so in the immediate future.

2. Where, during the period of suspension, the Member State concerned still fails to demonstrate that it has taken remedial action to ensure compliance with and the enforcement of applicable rules in the future or that there is no serious risk that the future effective operation of the Community control and enforcement system will be impaired, the Commission may cancel all or part of the Community financial assistance the payment of which was suspended pursuant to paragraph 1. Such cancellation shall only be made after the corresponding payment has been suspended for 12 months.

3. Before taking the measures referred to in paragraphs 1 and 2, the Commission shall inform in writing the Member State concerned of its findings relating to failures in the control system of the Member State and its intention to adopt the decision referred to paragraph 1 or 2,and shall request it to take remedial action within a period to be determined by the Commission according to the gravity of the infringement, which shall not be less than one month.

4. If the Member State fails to reply to the letter referred to in paragraph 3 within the period to be determined in accordance with that paragraph, the Commission may take the decision referred to in paragraph 1 or 2 on the basis of the information available at that time.

5. The percentage by which payments may be suspended or cancelled shall be proportionate to the nature and importance of the Member State's non-compliance with applicable rules on conservation, control, inspection or enforcement and the gravity of the threat to the conservation of living aquatic resources or the effective operation of the Community control and enforcement system. It shall take into account, and be limited by, the relative share of the fishery and fishery-related activities, to which non-compliance relates, within the measures financed by the financial assistance referred to in paragraph 1.

6. Decisions under this Article shall be taken with due regard to all relevant circumstances and in such a way that a real economic link exists between the subject matter of the compliance failure and the measure to which the suspended payment or cancelled Community financial assistance relates.

7. A suspension shall be discontinued if the conditions laid down in paragraph 1 are no longer met.

8. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 111.

Chapter II
Closure of fisheries

Article 96

Closure of fisheries for failure to comply with the objectives of the Common Fisheries Policy

1. Where a Member State does not respect its obligations for the implementation of a multiannual plan, and where the Commission has reasons to believe that the non respect of those obligations is particularly detrimental to the stock concerned, the Commission may provisionally close the fisheries affected by those shortcomings.

2. The Commission shall inform in writing the Member State concerned of its findings and set a deadline of no more than 10 working days for the Member State to demonstrate that the fisheries can be safely exploited.

3. The measures referred to in paragraph 1 shall only apply if the Member State fails to respond to this request of the Commission within the deadline given in paragraph 2 or if the response is considered unsatisfactory or is clearly indicative of the fact that the necessary measures have not been implemented.

5. The Commission shall lift the closure after the Member State has demonstrated in writing, to the satisfaction of the Commission that the fisheries can be safely exploited.

Chapter III
Deduction and transfers of quotas

Article 97
Deduction of quotas

1. When the Commission has established that a Member State has overfished its quota, allocation or share of a stock or a group of stocks available to it the Commission shall operate deductions in the following year or years from the annual quota, allocation or share of the Member State which has overfished by applying a multiplying factor according to the following table:

Extent of overfishing relative to the permitted landings	Multiplying factor
Up to 5%	Overfishing * 1.0
Over 5% up to 10 %	Overfishing * 1.1
Over 10% up to 20%	Overfishing * 1.2
Over 20% up to 40%	Overfishing * 1.4
Over 40% up to 50%	Overfishing * 1.8
Any further overfishing greater than 50%	Overfishing * 2.0

2. If a Member State has repeatedly overfished its quota, allocation or share of the stock or group of stocks over the previous two years, if the overfishing is particularly detrimental to the stock concerned or if the stock is subject to a multiannual plan, the multiplying factor referred to in paragraph 1 shall be doubled.

3. If a Member State takes catches from a stock subject to a quota for which it has no quota, allocation or share of a stock or a group of stocks available to it, the Commission may deduct in the following year or years quotas for other stocks or groups of stocks available to that Member State in accordance with paragraph 1.

Article 98
Deduction of quotas for failure to comply with the objectives of the Common Fisheries Policy

1. Where there is evidence that rules on conservation, control, inspection or enforcement under the Common Fisheries Policy are not being complied with by a Member State and that this may lead to a serious threat to the conservation of living aquatic resources or the effective operation of the Community control and enforcement system, the Commission may operate deductions from the annual quotas, allocations or shares of a stock or group of stocks available to that Member State.

2. The Commission shall inform in writing the Member State concerned of its findings and set a deadline of no more than 10 working days for the Member State to demonstrate that the fisheries can be safely exploited.

3. The measures referred to in paragraph 1 shall only apply if the Member State fails to respond to this request of the Commission within the deadline given in paragraph 2 or if the response is considered unsatisfactory or is clearly indicative of the fact that the necessary measures have not been implemented.

4. Detailed rules for the application of this article, and in particular for determining the quantities concerned, shall be adopted in accordance with the procedure referred to in Article 111.

Article 99
Refusal of quota transfers

The Commission may deny the transfer of quotas for stocks of a Member State to the following year in accordance with Article 3 of Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas if:

a) the quota to be transferred has been overfished by the Member State concerned in any one of the immediately preceding two years or

b) the quota refers to a stock that is under a multiannual plan or is caught in association with a stock under a multiannual plan and there has been an overfishing of that quota or of quotas for stocks under a multiannual plan in association with which that stock is caught, by the fleet of that Member State in one of the immediately preceding five years or

c) the Member State concerned does not take appropriate measures to ensure a proper management of the fishing opportunities of the stocks concerned, in particular by not operating a computerized validation system as referred to in Article 102 or by insufficiently operating the systems providing the data for this validation system.

Article 100
Refusal of quota exchanges

The Commission may exclude the possibility to exchange quotas according to Article 20 paragraph 5 of Regulation (EC) No 2371/2002:

a) for quotas for which there was an overfishing of more than 10% of the quotas available to one of the Member State concerned in one of the immediately preceding two years or

b) if the Member State concerned does not take appropriate measures to ensure a proper management of the fishing opportunities of the stocks concerned, in particular by not operating a computerized validation system as referred to in Article 102 or by insufficiently operating the systems providing the data for this validation system.

Chapter IV Emergency measures

Article 101
Emergency measures

1. If there is evidence, including based on the results of the sampling carried out by the Commission, that fishing activities and/or measures adopted by a Member State or Member States undermine the Common Fisheries Policy or threaten the marine eco-system and this requires immediate action, the Commission, at the substantiated request of any Member State or on its own initiative, may decide on emergency measures which shall last not more than one year. The Commission may take a new decision to extend the emergency measures for no more than six months.

2. The emergency measures provided for in paragraph 1 shall be proportionate to the threat and may include, inter alia:

   a) suspension of fishing activities of vessels flying the flag of the Member States concerned;

   b) closure of fisheries;

   c) prohibition for Community operators to accept landings, placing in cages for fattening or farming, or transhipments of fish and fishery products caught by the vessels flying the flag of the Member States concerned;

   d) prohibition to place on the market or use for other commercial purposes fish and fishery products caught by the vessels flying the flag of the Member States concerned;

   e) prohibition of provision of live fish for fish farming in the waters under the jurisdiction of the Member States concerned;

   f) prohibition to accept live fish caught by vessels flying the flag of the Member State concerned for the purposes of fish farming in waters under the jurisdiction of the other Member States;

   g) prohibition for fishing vessels flying the flag of the Member State concerned to fish in waters under the jurisdiction of other Member States;

   h) modification of the fishing data submitted by Member States in an appropriate way.

3. A Member State shall communicate the request referred to in paragraph 1 simultaneously to the Commission and to the Member States concerned. The other Member States may submit their written comments to the Commission within five working days of receipt of the request. The Commission shall take a decision within 15 working days of receipt of the request.

4. The emergency measures shall have immediate effect. They shall be notified to the Member States concerned and published in the *Official Journal of the European Union*.

5. The Member States concerned may refer the Commission decision to the Council within 10 working days of receipt of the notification.

6. The Council, acting by qualified majority, may take a different decision within one month of the date of receipt of the referral.

TITLE XII
DATA AND INFORMATION

Chapter I
Analysis And Audit Of Data

Article 102
General principles for the analysis of data

1. Member States shall check the accuracy of all data recorded in accordance with this Regulation, and the respect of deadlines for the submission of data in order to ensure compliance with obligations laid down in the field of the Common Fisheries Policy. For that purpose Member States shall establish a computerised validation system that includes in particular:

   a) procedures for checking the quality of all data recorded in accordance with this Regulation;

   b) cross-checks, analysis and verification of all data recorded in accordance with this Regulation;

   c) procedures for checking compliance with deadlines for the submission of all data recorded in accordance with this Regulation.

2. The validation system shall allow the immediate identification of inconsistencies of related data and their consequent follow-up.

3. Member States shall set up a computerized database for the purpose of the validation system referred to in paragraph 1, having regard to the data quality principle is applicable to computerized databases.

4. Member States shall ensure that the database provides information on the follow-up of inconsistencies, allows the identification of fishing vessels or operators for which inconsistencies of data were repeatedly found, and permits the correction of wrong data entries. In such a case, Member States shall clearly identify the data that were corrected and the reason for such a correction.

5. If data referred to in paragraph 1 are not transmitted by electronic means Member States shall ensure that they are entered manually into the database without delay.

6. Member States shall continuously, systematically and thoroughly validate all data referred to in paragraph 1 on the basis of automated computerised algorithms and mechanisms, in particular by means of data cross-checking.

7. If an inconsistency of related data has been identified the Member State shall undertake the necessary investigations and, if there are reasons to suspect that an infringement has been committed, take the necessary action.

Article 103
Communication of data

1. For the purpose of the verification of the completeness and the quality of the data referred to in Article 102, Member States shall ensure that the Commission has direct real time access at any time without prior notice, to the computerised database referred to in Article 102. The Commission shall be given the possibility to download these data for any period or for any number of vessels.

2. Inconsistencies detected by the validation system and the follow-up of such inconsistencies shall be connected to the relevant data in such a way that, when the information on the secure part of the official website provided for in Article 106 is queried, such detected inconsistencies and the follow-up can be traced. Dates for data receipt, data entry and data validation, as well as follow-up data, shall be clearly visible.

3. The data of the validation system made available on the official website provided for in Article 106 shall be updated in real-time.

4. If the Commission has identified inconsistencies in the data entered in the validation system of the Member State as a result of its own investigations, it may require the Member State to correct these data, and shall inform the other Member States.

5. Detailed rules for the application of this Chapter, in particular for establishing a standardised format for the download of data referred to in Article 102, shall be adopted in accordance with the procedure referred to in Article 111.

Chapter II
Confidentiality of data

Article 104
Protection of personal data

1. Member States and the Commission shall ensure that all applicable provisions laid down in Regulation (EC) No 45/2001 and Directive 95/46/EC are respected.

2. The names of natural persons shall not be communicated to the Commission or to another Member State except in the case where such communication is expressly provided for in this Regulation or if it is necessary for the purposes of preventing or pursuing infringements or the verification of apparent infringements. The data

referred to in paragraph 1 shall not be transmitted unless they are aggregated with other data in a form, which does not permit the direct or indirect identification of natural persons.

Article 105
Confidentiality and professional and commercial secrecy

1. Member States and the Commission shall take all necessary steps to ensure that the data collected and received within the framework of this Regulation shall be treated in a confidential manner and shall respect all rules on professional and commercial secrecy of data.

2. The data exchanged between Member States and the Commission shall not be transmitted to persons other than those in Member States or Community institutions whose functions require them to have such access unless the Member States transmitting the data give their express consent.

3. The data referred to in paragraph 1 shall not be used for any purpose other than that provided for in this Regulation unless the authorities providing the data give their express consent for the use of the data for other purposes and on condition that the provisions in force in the Member State of the authority receiving the data do not prohibit such use or communication.

4. Data communicated in the framework of this Regulation to persons working for competent authorities, courts, other public authorities and the Commission or the body designated by it, the disclosure of which would undermine:

   a) the protection of the privacy and the integrity of the individual, in accordance with Community legislation regarding the protection of personal data,

   b) the commercial interests of a natural or legal person, including intellectual property,

   c) court proceedings and legal advice or

   d) the scope of inspections or investigations,

   shall be permitted only if it is necessary to bring about the cessation or prohibition of an infringement of the rules of the Common Fisheries Policy and the authority communicating the information consents to its disclosure.

5. Such data shall benefit from the same protection accorded to similar data by the national legislation of Member State receiving them and by the corresponding provisions applicable to Community institutions.

6. Paragraphs 1 to 6 shall not be construed as obstacles to the use of the data, obtained by virtue of this Regulation, in the framework of legal actions or proceedings subsequently undertaken for failure to respect the rules of the Common Fisheries Policy. The competent authorities of the Member State transmitting the data shall be informed of all the instances where the said data are utilised for these purposes.

7. This Article shall not prejudice the obligations pursuant to international conventions concerning mutual assistance in criminal matters.

Chapter III
Official websites

Article 106
Official websites

1. For the purpose of this Regulation each Member State shall set up by 1 June 2010 at the latest an official website accessible via Internet and containing the information listed in Articles 107 and 108. The website shall follow the guidelines of the 'Web Accessibility Initiative'. Member States shall communicate the Internet address of their official website to the Commission. The Commission may decide to develop common standards and procedures to ensure transparent communication between the Member States themselves as well as between the Member States, the Agency and the Commission, including transmission of regular snapshots on records of fishing activities in relation to fishing possibilities.

2. Each Member State's official website shall be composed of a public accessible part and a secure part. On that website each Member State shall establish, maintain and keep up to date the data necessary for control purposes in accordance with this Regulation.

Article 107
The public accessible part of the website

1. On the public accessible part of their website Member States shall publish without delay

   a) the names and addresses of the competent authorities responsible for issuing fishing licences, and fishing authorisations referred to in Article 7;

   b) the list of designated ports for the purpose of transhipment specifying their operating hours, as referred to in Article 18;

   c) one month after entry into force of a multiannual plan, and after approval by the Commission, the list of designated ports, specifies their operating hours as referred to in Article 34, and within 30 days thereafter, the associated conditions for recording and reporting the quantities of the species under the multiannual plan for each landing;

   d) the contact point details for the transmission or submission of logbooks, prior notifications, transhipment declarations, landing declarations, sales notes, take over declarations and transport documents as referred to in Articles14, 17, 18, 21, 54, 57 and 58;

e) a map with the coordinates of the area of temporary real time closures as referred to in Article 45, specifying the duration of the closure and the conditions governing fisheries in that specific closed area;

f) the decision to close a fishery under Articles 26 and all necessary details.

Article 108
The secure part of the website

1. On the secure part of the website each Member State shall establish, maintain and keep up to date the following lists and data bases:

a) the lists of officials in charge of inspections as referred to in Article 65;

b) the electronic data base for the treatment of inspection and surveillance reports established by the officials as referred to in Article 69;

c) the Vessel Monitoring System computer files recorded by its Fisheries Monitoring Centre as referred to in Article 9;

d) the electronic data base containing the list of all fishing licences, and fishing authorisations issued and managed in accordance with this Regulation, with a clear indication of the conditions set out and the information on all suspensions and withdrawals;

e) the electronic data base containing all relevant data on fishing opportunities as referred to in Article 23;

f) the electronic data base containing all infringements of rules of the Common Fisheries Policy including the sanctions they incurred, relating to vessels flying its flag and to its nationals as referred to in Article 85;

g) the electronic data base for the purpose of the verification of the completeness and the quality of the data collected as referred to in Article 102.

2. On the secure part of its website each Member State shall establish a national fisheries related information system, which allows for the direct electronic exchange of information with other Member States, the Commission or the body designated by it as referred to in Article 109.

3. For the secure part of its website, each Member State shall provide remote access to the Commission and the body designated by it. The Member State shall grant access to Commission officials based on electronic certificates generated by the Commission or the body designated by it.

4. The data contained in the secure parts of the websites shall be made available only for specific users authorised to that effect by either the Member States or the Commission or the body designated by it. The data accessible to these persons shall be limited to the data they need in order to carry out their tasks and activities of ensuring compliance with the rules of the Common Fisheries Policy and thus shall be bound by the rules governing the confidentiality of the use of such data.

5. The data contained in the secure parts of the website shall only be stored for as long as necessary for the purpose of this Regulation, but always for a minimum of three calendar years, starting from the year following that in which the information is recorded.

TITLE XIII
IMPLEMENTATION

Article 109
Administrative cooperation of Member States

1. The authorities responsible for the implementation of this Regulation in the Member States shall cooperate with each other, with authorities of third countries, with the Commission and the body designated by it in order to ensure compliance with this Regulation.

2. To this end, a system of mutual assistance shall be established, which shall include rules on the exchange of information upon prior request or on a spontaneous basis. An automated information system via national databases, shall also be established.

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 111.

Article 110
Reporting obligations

1. Every four years, Member States shall transmit a report to the Commission on the application of this Regulation.

2. On the basis of the reports submitted by the Member States and its own observations, the Commission shall draw up a report every five years to be submitted to the Council and the European Parliament.

3. An evaluation of the impact of this Regulation on the Common Fisheries Policy shall be undertaken by the Commission 5 years after the entry into force of this Regulation.

4. Member States shall transmit to the Commission a report stating the rules that have been used from the basic data for producing reports.

Article 111
Committee procedure

1. The Commission shall be assisted by the Committee set up under Article 30 of Regulation (EC) No 2371/2002.

2. Where reference is made to this Article, Articles 4 and 7 of Decision 1999/468/EC shall apply.

3. The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at one month.

Article 112
Amendments to Council Regulation (EC) No 768/2005

Council Regulation (EC) No 768/2005 is hereby amended as follows:

1. In Article 3, the following point is added:

'(i) to assist in the uniform implementation of the control system of the Common Fisheries Policy, including in particular:

- organisation of operational coordination of control activities by Member States for the implementation of specific control programmes, IUU control programmes and international control programmes;

- the carrying out of audits of national control systems and cooperation between Member States related to their control systems, being assisted by high national authorities or independent qualified entities;

- inspections as necessary to fulfil its tasks.'

2. In Article 5

a) paragraph 1 is replaced by the following:

'1. Operational coordination by the Agency shall cover control of all activities covered by the Common Fisheries Policy:

(b) the following paragraph is added:

'3. For the purpose of enhanced operational coordination between Member States, the Agency may establish operational plans with the Member States concerned and coordinate their implementation.'

3. Article 7 is replaced by the following:

'Article 7
Assistance to the Commission and the Member States

The Agency shall assist the Commission and the Member States for the purpose of ensuring a high, uniform and effective fulfilment of their obligations under the rules of the Common Fisheries Policy including the fight against IUU fishing and in their relations with third countries. The Agency shall in particular:

a) establish and develop a core curriculum for the training of the instructors of the fisheries inspectorate of the Member States and provide additional training courses and seminars to those inspectors and other personnel involved in control activities;

b) establish and develop a core curriculum for the training of Community inspectors before their first deployment and provide updated additional training and seminars on a regular basis to those inspectors;

c) at the request of Member States, undertake the joint procurement of goods and services relating to control activities by Member States as well as preparation for and the coordination of the implementation by Member States of joint pilot projects;

d) draw up joint operational procedures in relation to joint control activities undertaken by two or more Member States;

e) elaborate criteria for the exchange of means of control and inspection between Member States and between Member States and third countries and for the provision of such means by the Member States.

f) conduct risk analysis on the basis of the fisheries data on catches, landings and fisheries effort, as well as risk analysis of unreported landings including inter alia comparing data on catches and imports with data on exports and on national consumption;

g) on request from the Commission or of Member States develop common inspection methodologies and procedures;

h) assist Member States to comply with their and the Community's and their other international obligations including the fight against IUU fishing and those arising in the framework of Regional Fisheries Management Organisations;

i) promote and coordinate the development of uniform risk management methodologies in the field of its competence;

j) coordinate and promote cooperation between Member States and common standards for the development of sampling plans defined in Community legislation.'

In Council Regulation (EC) No 768/2005, the following chapter shall be inserted:

‘Chapter IIIa Competences of the Agency

Article 17a
Inspections of Member States

1. Without prejudice to the enforcement powers conferred by the Treaty on the Commission, the Agency shall assist the Commission for the purpose of evaluating and controlling the application of the rules of the Common Fisheries Policy by the Member States. The Agency may undertake inspections of public authorities and private operators in the Member States. For this purpose it may, in compliance with the legal provisions of the Member State concerned,

   a) examine relevant records, data, procedures and any other relevant material;

b) take copies of or extracts from such records, data, procedures and other material;

c) ask for an on the spot explanation ;

d) enter any relevant premises or means of transport.

2. The officials of the Agency shall produce written authority stating their identity and capacity. The Agency shall inform the Member State concerned of the planned inspection and the names of the officials within a reasonable time before the inspection.

3. The Member State concerned shall accept such inspections and shall ensure that any bodies or persons concerned shall also accept such inspections.

4. Where an operator opposes such inspection, the Member State concerned shall afford the necessary assistance to officials authorised by the Agency to enable them to make their inspection.

5. Reports drawn up in fulfilment of this Article shall be sent to the Member State concerned and to the Commission.

Article 17b
Agency measures

The Agency shall, where appropriate:

a) issue manuals on harmonised standards of inspections;

b) develop guidance material reflecting the best practices in the field of control of the Common Fisheries Policy, including on the training of control officials, and update this on a regular basis;

c) monitor the overall functioning of the control of the Common Fisheries Policy control, including in individual Member States. This may include visits to Member States;

d) provide the Commission with the necessary technical and administrative support to carry out its tasks;

e) monitor the level and quality of training of national officials and national means of control.

Article 17c
Cooperation

1. The Member States and the Commission shall cooperate with and afford the necessary assistance to the Agency for the accomplishment of its mission.

2. With due regard to the different legal systems in the individual Member States the Agency shall facilitate cooperation between Member States and between them and

the Commission in the development of harmonised standards for control in accordance with Community legislation and taking into account best practices in Member States and agreed international standards.

Article 17d
Emergency unit

1. Where the Commission, on its own initiative or at the request of a number of Member States, identifies a situation involving a direct, indirect or potential serious risk to the Common Fisheries Policy, and the risk cannot be prevented, eliminated or reduced by existing means or cannot adequately be managed, the Agency shall be immediately notified.

2. The Agency acting upon such notification or on its own initiative shall immediately set up an emergency unit and inform the Commission thereof.

Article 17e
Tasks of the emergency unit

1. The emergency unit formed by the Agency shall be responsible for collecting and evaluating all relevant information and identifying the options available to prevent, eliminate or reduce the risk to the Common Fisheries Policy as effectively and rapidly as possible.

2. The emergency unit may request the assistance of any public authority or private person whose expertise it deems necessary to respond to the emergency effectively.

3. The Agency shall make the necessary coordination for undertaking an adequate and timely response to the emergency.

4. The emergency unit shall, where appropriate, keep the public informed of the risks involved and the measures taken.

Article 17f
Multiannual work programme

1. The multiannual work programme of the Agency shall establish its overall objectives, mandate, tasks, performance indicators and the priorities for each action of the Agency over a 5 year period. It shall include a presentation of the staff policy plan and an estimation of budget appropriations to be made available for the achievement of the objectives for that 5 year period.

2. The multiannual work programme shall be presented according to the Activity-Based Management system and methodology developed by the Commission. It shall be adopted by the Administrative Board.

3. The annual work programme mentioned in Article 23 (2) c shall refer to the multiannual work programme. It shall clearly indicate the additions, changes or deletions in comparison with the previous year’s work programme, and the progress

made in the achievement of the overall objectives and priorities of the multiannual work programme.

Article 17g
Cooperation in Maritime Affairs

1. The Agency shall contribute to the implementation of the integrated EU maritime policy, and in particular to the achievement of the integrated EU maritime surveillance network, by making available its operational systems as well its data on fisheries monitoring and compliance to the EU Institutions, bodies and the Member States.

2. On behalf of the Agency, the Executive Director may conclude administrative agreements with other bodies in matters covered by this Regulation after having informed the Administrative Board. The Executive Director shall inform the Commission thereof at an early stage of such negotiations.'

Article 17h
Detailed rules

1. Detailed rules for the implementation of this Chapter shall be adopted in accordance with the procedure referred to in Article 30 (2) of Regulation (EC) No 2371/2002.

2. These rules may cover in particular the formulation of plans for response to an emergency the establishment of the emergency unit and the practical procedures to be applied.'

Article 113
Amendments to other Regulations

1. Regulation (EC) No 2371/2002 is amended as follows:

   a) Article 21 is replaced by the following:

      'Access to waters and resources and the pursuit of activities as set out in Article 1 shall be controlled and compliance with the rules of the Common Fisheries Policy enforced. For this purpose a Community system for monitoring, surveillance, inspection, and enforcement of the rules of the Common Fisheries Policy shall be established.'

   b) Articles 22 to 28 are deleted.

2. In Council Regulation (EC) No 423/2004[38], Chapter V is deleted.

3. In Council Regulation (EC) No 811/2004[39] , Articles 7, 8, 10, 11, 12 and 13 are deleted.

[38] O.J. L 70, 9.3.2004, p. 8.

4. In Council Regulation (EC) No 2166/2005[40], Articles 9, 10, 11, 12, and 13are deleted.

5. In Council Regulation (EC) NO 2115/2005[41], Article 7 is deleted.

6. In Council Regulation (EC) No 388/2006[42] Articles 7, 8, 10 and 11 are deleted.

7. In Council Regulation (EC) No 509/2007 l[43] , Articles 6, 8, 9, and 10 are deleted

8. In Council Regulation (EC) No 676/2007[44] Articles 10, 11, 12, 14 and 15 are deleted

9. In Council Regulation (EC) No 1098/2007[45], Articles 15 and 25 are deleted

10. In Council Regulation (EC) No 847/96, Article 5 is deleted.

Article 114
Repeals

Council Regulation (EEC) No 2847/93 and Council Regulation (EC) No 1627/94 of 27 June 1994 laying down general provisions concerning special fishing permits shall be repealed.

Article 115
References

References to provisions deleted in accordance with Article 113 and to Regulations repealed in accordance with Article 114 shall be construed as references to the present Regulation and shall be read in accordance with the correlation table in Annex II.

TITLE XIV
FINAL PROVISIONS

Article 116
Entry into force

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union.*

It shall apply from 1 January 2010.

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39 OJ L 185; 27.5.2004, p. 1.
40 OJ L 345; 28.12.2005, p. 5.
41 OJ L 340, 23.12.2005, p. 3.
42 OJ. L 65; 7.3.2006, p. 1.
43 OJ. L 122, 11.5.2007, p. 7.
44 OJ L157, 19.06.2007, p. 1.
45 OJ L 248, 22.9.2007, p. 1.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Council
The President

ANNEX I

SPECIFIC INSPECTION BENCHMARKS FOR MULTIANNUAL PLANS

Objective

1. Each Member State shall set specific inspection benchmarks in accordance with this Annex.

Strategy

2. Inspection and surveillance of fishing activities shall concentrate on vessels likely to catch species subject to a multiannual plan. Random inspections of transport and marketing of species subject to a multiannual plan shall be used as a complementary cross-checking mechanism to test the effectiveness of inspection and surveillance.

Priorities

3. Different gear types shall be subject to different levels of prioritisation, depending on the extent to which the fleets are affected by fishing opportunity limits. For that reason, each Member State shall set specific priorities.

Target benchmarks

4. Not later than one month from the date of entry into force of a Regulation establishing a multiannual plan, Member States shall implement their inspection schedules taking account of the targets set out below.

   Member States shall specify and describe which sampling strategy will be applied.

   The Commission can have access on request to the sampling plan used by the Member State.

   (a) Level of inspection in ports

   As a general rule, the accuracy to be achieved should be at least equivalent to what would be obtained by a simple random sampling method, where inspections shall cover 20 % of all landings of species subject to a multiannual plan by weight in a Member State.

   (b) Level of inspection of marketing

   Inspection of 5 % of the quantities of species subject to a multiannual plan offered for sale at auction.

   (c) Level of inspection at sea

   Flexible benchmark: to be set after a detailed analysis of the fishing activity in each area. Benchmarks at sea shall refer the number of patrol days at sea in the management areas, possibly with a separate benchmark for days patrolling specific areas.

(d) Level of aerial surveillance

Flexible benchmark: to be set after a detailed analysis of the fishing activity conducted in each area and taking the available resources at the Member State's disposal into consideration.

ANNEX II

CORRELATION TABLE

Regulation (EEC) No 2847/93	**Present regulation**
Article 1(1)	Articles 1 and 2
Article 1(2)	Article 5 (3)
Article 1(3)	Article 2
Article 2	Article 5
Article 3	Article 9
Article 4	Article 5
Article 5 (a), (b)	Article 65
Article 5(c)	Article 8
Article 6	Articles 14, 15, 16
Article 7	Article 17
Article 8	Article 21
Article 9 (1); (2), (3), (4)	Article 54, 55
Article 9(4b)	Article 57
Article 11	Article 18, 19
Article 12	
Article 13	Article 58
Article 14	Article 52
Article 15	Articles 23, 25
Article 16	Article 24
Article 17	Articles 5, 65
Article 19	Articles 102, 103
Article 19a	
Article 19b	
Article 19c	
Article 19d	
Article 19e	Article 14
Article 19f	

Article 19g	
Article 19h	
Article 19i	
Article 19j	
Article 20	Articles 37, 38
Article 20a	
Article 21(1), (2), (3)	Articles 26, 27
Article 21 (4)	Article 28
Article 21a	Articles 26, 27
Article 21b	Articles 23, 25
Article 21c	Article 27
Article 22	
Article 23	Articles 97, 98
Title V	Title IV, Chapter II
Article 28(1)	Article 48
Article 28(2)	Article 60
Article 28 (2a)	Article 48
Article 28c	Articles 9, 14
Article 28a, b, c, d, e, f, g, h	
Article 29	Articles 88, 89, 90, 91, 92, 93
Article 30	Article 94
Article 31(1), (2)	Article 81
Article 31(3)	Article 82
Article 31(4)	Article 78
Article 32	Article 80
Article 33	Article 81
Article 34	
Article 34 a	Article 109
Article 34b	Article 89
Article 34c	Article 87

Article 35	Article 110
Article 36	Article 111
Article 37	104, 105
Article 38	Article 3
Article 39	Article 114
Article 40	Article 116
Regulation (EC) No 2371/2002	**Present regulation**
Article 21	Articles 1, 2
Article 22 (1)	Articles 6, 7, 9, 14, 66
Article 22 (2)	Articles 50, 52, 54, 58, 66
Article 23 (3)	Articles 5 (3), 5 (5), 11
Article 23 (4)	Article , 28 (2), 97
Article 24	Article 5, Title VII, articles 61, 83
Article 25	chapter III, IV of Title VII
Article 26 (1)	Article 88
Article 26 (2)	Article 101
Article 26 (4)	Article 27
Article 27 (1)	Articles 88 – 91
Article 27 (2)	Articles 93, 94
Article 28 (1)	Article 109
Article 28 (3)	Articles 71-73
Article 28 (4)	Article 70
Article 28 (5)	Article 64
Regulation (EC) No 1627/94	**Present regulation**
The entire regulation	Article 7
Regulation (EC) No 423/2004	**Present regulation**
Article 9	Article 14 (2)
Article 11	Article 17
Article 12	Article 34
Article 13	Article 14 (3)

Article 14	Article 36
Article 15 (1)	Article 53 (4)
Regulation (EC) No 811/2004	**Present regulation**
Article 7	Article 14 (2)
Article 8	Article 17
Article 10	Article 14 (3)
Article 11	Article 35
Article 12	Article 53 (4)
Regulation (EC) No 2166/2005	**Present regulation**
Article 9	Article 14(3)
Article 10	Article 53 (1)
Article 12	Article 35
Article 13	Article 53 (4)
Regulation (EC) No 2115/2005	**Present regulation**
Article 7	14 (3)
Regulation (EC) No 388/2006	**Present regulation**
Article 7	Article 14 (3)
Article 8	Article 53 (1)
Article 10	Article 35
Article 11	Article 53 (4)
Regulation (EC) No 509/2007	**Present regulation**
Article 6	Article 14 (3)
Article 8	Article 35
Article 9	Article 53 (4)
Regulation (EC) No 676/2007	**Present regulation**
Article 10	Article 14 (2)
Article 11	Article 14 (3)
Article 12	Article 53 (1)
Article 14	Article 35
Article 15	Article 53 (4)

Regulation (EC) No 1098/2007	**Present regulation**
Article 15	Article 14 (3)
Regulation (EC) No 847/96	**Present regulation**
Article 5	Article 97