



Killybegs Fishermen's
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10th May 2021

KFO Opening Statement to Joint Committee on Agriculture and the Marine on the Sea Fisheries (Amendment) Bill 2021 and the SFPA

Sea Fisheries (Amendment) Bill 2021

General Comments

At the outset I wish to clearly state again, the KFO accept the principle of Penalty Points for Serious Fishing Infringements both for the owners and the masters (skippers) of fishing vessels, as per the EU regulations 1224/2009 and 404/2011 and the requirement on Ireland to implement these measures. However, we will only accept a system of administering penalty points that is – fair, balanced and equitable to all and in no way infringes on the rights of the individual fisher and or his/her livelihood and furthermore that it is in keeping with our common law principles.

It is important to note under the EU control regulation 1224/2009 and the implementing regulation 404/2011 there are significant differences between what is prescribed in relation to penalty points to be assigned to owners (already in place S.I. 318 of 2020) and masters of fishing vessels for serious fishing infringements. This Sea Fisheries (Amendment) Bill 2021 covers masters of fishing vessel and unlike the penalty points system already in place for owners of fishing vessels there is only one sub article (92 .6) in the Control Regulation 1224/2009 dealing with the master points. It is worth quoting this sub article (see below) as it clearly shows that the Minister has considerable scope how he implements the measure and the parameters of such a points system. The Minister has chosen not to use this latitude but instead has mirrored the detailed penalty points requirements for vessel owners. The KFO is of the firm view that the Minister should have used this latitude which only requires the establishment of a points system for the master with an appropriate number of points as a result of a serious infringement of the rules of the common fisheries policy committed by him/her. It does not specify how this should be done or the number of points to be assigned.

Article 92.6 of the Control Regulation 1224/2009 states:

“6. Member States shall also establish a point system under which the master of a vessel is assigned the appropriate number of points as a result of a serious infringement of the rules of the common fisheries policy committed by him.”

The offending articles included in the penalty points for vessel owners (S.I. 318 of 2020) which the industry has tried on numerous occasions to get rectified have been incorporated



again in Sea Fisheries (Amendment) Bill 2021 to also apply to masters of fishing vessels. These are dealt with below under specific comments.

Specific Comments

• Right of Appeal to the High Court

We do not accept that an individual has not the right of appeal to the High Court other than on a point of law, this matter is referenced in the Supreme Court decision following a previous case, the Supreme Court ruling clearly permitted for such a right on the basis that the sanction can eventually lead to removal of an individual's livelihood, therefore it is realistic expectation of the citizen to have recourse to the courts.

We fully accept that the points assigned to the master remain on the master's registration document until such time as the matter is finally determined by the High Court. Therefore, we are at a loss as to why the Minister is unable to allow the right of appeal to the High Court only on a point of law as there is no possible way in which this could be used as a delaying tactic, due to the fact points remains assigned to the master's registration document until the High Court determines the case before it. This also meets the immediate enforcement requirement under the Control Regulation 1224/2009. In such serious matters as penalty points, which can ultimately lead to the complete removal of an individual's livelihood then the right of appeal must be afforded to the individual, as a right without restriction.

This is in keeping with our firm belief that as a right - recourse to the High Court must be guaranteed for the individual once the prescribed appeals mechanisms contained within the Bill are exhausted. We cannot support a Bill, that has the potential cumulative long-term effect of removing an individual's income without him or her having recourse to the courts – bearing in mind our earlier acceptance that penalty points remain applied until the courts finally determine the case. In effect there is no potential of using the courts to delay or circumvent the laws of the state, this is one whereby justice can be administered fairly and equally to all.

• Removal of Penalty Points

Penalty Points must be allowed to be removed if the High Court rules in favour of the master. It is an incredible proposal that penalty points can remain on a master's registration document even when the court determines that they be removed, again the reasoning for this defies logic. We cannot see any circumstances whereby if the High Court rules that penalty points must be removed, the points remain on the registration document. You could potentially have the farcical situation whereby the High Court rules you are innocent, but the penalty points remain – no reasonable argument can be made to justify this scenario.



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- **Beyond reasonable doubt**

We do not accept that any law which has potentially serious consequences such as penalty points for serious fishing infringements; whereby the entire livelihood could be removed from the individual is based on a lesser burden of proof i.e., balance of probabilities rather than beyond a reasonable doubt. The Minister has cited that balance of probabilities is the norm for administrative sanctions, but we are not aware that there is a legal impediment preventing the Minister including beyond a reasonable doubt in the Bill.

- **Application to Third Country Vessels**

The bill as it stands only applies to Irish and EU flagged fishing vessels. This is a serious anomaly as UK, Norwegian and Faroese vessels fishing in our EEZ are not covered and the penalty points system does not apply to these Third Countries vessels. As the UK is a Third Country since the 1st January 2021 it exacerbates the situation with a large number of UK vessels fishing on the same grounds as our vessels but the penalty points system will not apply to them. This is contrary to one of the cornerstones of the EU Control Regulation 1224/2009 which requires the implementation of an effective control system and the establishment of level playing field in control and enforcement amongst fishers.

Sea Fisheries Protection Authority (SFPA)

- **Review of the SFPA**

The KFO considers that the SFPA is a dysfunctional organisation that is not fit for purpose and must be completely reset. This is a widely held view across the entire Irish Seafood Sector. This view has also been confirmed in PWC report of April 2020 on the Review of the Organisational Capability of the Sea-Fisheries Protection Authority

In PWC report which is a very damning report on the SFPA the overall conclusion is that the SFPA is not working effectively, requires urgent attention and as an organisation, needs to be reset and unified with a clear and agreed articulation of its mandate. The report goes on to highlight that the relationships and trust have been impacted by a range of issues, including some long standing industrial relations (IR) issues which have not been resolved and that a significant programme of change will be required. The KFO fully endorses the PWC report and its 46 recommendations. The immediate implementation of these is a must particularly the short-term measures as covered in the PWC executive summary. (see below)



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“In the short term, this will require the SFPA to reset the dial, both in terms of the strategic plan for the organisation and its interactions with staff and stakeholders. This is critical, as without establishing these essential building blocks it will be challenging to manage the SFPA in an effective manner to build on these foundations and further develop the SFPA over the medium to long term and deliver on core obligations.”

Furthermore, the KFO is of the firm view that a major impediment to establishment of fit for purpose SFPA is the absence of independent board. This will require primary legislation, but the Sea Fisheries (Amendment) Bill 2021 affords an opportunity to rectify that situation.

- **COMMISSION IMPLEMENTING DECISION of 13.4.2021 revoking the approval of the Irish control plan submitted for the weighing of fishery products in accordance with Article 61(1) of Council Regulation (EC) No 1224/2009**

The industry was notified by the SFPA about this “bombshell” on Friday evening the 15th April 2021 without any warning whatsoever that the Commission had published an Implementing Decision on the 13th April revoking the approval of the Irish control plan submitted for the weighing of fishery products in accordance with Article 61(1) of Council Regulation (EC) No 1224/2009. This is a major problem for the entire fishing industry as all species will now have to be weighed at the point landing rather than in the premises that had acquired weighing permits to weigh after landing. This is totally unworkable from time, quality and logistics point of view. It will destroy our reputation on the markets and deliver a catastrophic blow to the Irish industry from which it may not be able to recover.

What is even more galling is the inclusion in the Implementing Decision published on the 13th April that the findings of the 2018 Commission’s Audit Report in terms of control irregularities were subsequently confirmed also by the Administrative Inquiry conducted by the Irish competent authority (SFPA). The first we knew that the SFPA had confirmed the control irregularities in the Commission’s 2018 Audit report was when we read it in the Decision. We have requested the SFPA to rectify this statement if it is not correct but to date they have been unwilling to do so.

All the parties involved here the Commission, DAFM and SFPA have refused on several occasions to give the industry access the Audit reports, and the



correspondence and data in relation to the Administrative Inquiry. The only information we have is the leaked information in the media accusing the industry without any factual backup that there is widespread illegality in the industry. We are not afforded the opportunity to be able to defend ourselves against these false accusations as we will not get access to information these unfounded accusations are based on. This runs totally contrary to the democratic process which provides that you are innocent until proven guilty. If the leaked information is the basis for these accusations and the Commission's Implementing Decision, there does not seem to be a scintilla of proof. These accusations are unfounded, false and based on innuendo and conjecture.

- **Immediate Solution Required for Weighing on Landing**

It is of the utmost importance that an immediate solution is found by the SFPA to sort out this disastrous situation of weighing all fish at the point of landing. This was not caused by the industry; the blame lies entirely with the SFPA for not in the first instance adequately addressing the control irregularities in the Commission's 2018 Control Audit report and now for confirming in the Commission's Implementing Decision of the 13th April 2021 all those irregularities in the Administrative Inquiry which was carried out by SFPA in accordance with article 102 of the Control Regulation 1224/2009. The following three action points must be immediately put in place to avoid a disastrous situation unfolding in the Irish seafood sector.

1. The SFPA to immediately by end May latest to submit a revised control plan, having actively consulted the industry, for weighing in permitted premises after landing covering all species both quota and non-quota (demersal, pelagic and shellfish) and which addresses the Commission's concerns.
2. In the interim period until the Commission has issued its decision on the revised control plan the arrangements prior to Implementing Decision of the 13th April to remain in place.
3. The SFPA by whatever means necessary to correct the statement (assuming it does not agree with the statement) in the Commission Implementing Decision of 13.4.2021 revoking the approval of the Irish control plan submitted for the weighing of fishery products in accordance with Article 61(1) of Council Regulation (EC) No 1224/2009 which clearly states that the findings of the 2018 Commission's Audit Report were subsequently confirmed also by the Administrative Inquiry conducted by the SFPA.

Sean O Donoghue

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