

## Joint Committee on Agriculture Food and Marine

### Sea Fisheries Protection Authority Opening statement.

29 June 2020

#### Introduction

Thank you for inviting us to meet with you today, so swiftly following our recent work with you. We genuinely welcome your interest in our work and are always happy to be come before this Committee to inform on our actions on behalf of the Oireachtas. However, it is disappointing that once again, our appearance today is in the context of a narrow platform being set which is ultimately unrepresentative of the extensive role and remit of the Sea-Fisheries Protection Authority (SFPA) set out under the legislation. Fishery control is one part of our work, and we believe the services we provide in one area should be assessed with due consideration and context of the wider totality of our roles including food safety official control, food trade controls, and fishery data provision.

As the regulator for the sea-fisheries and seafood sectors, the Sea-Fisheries Protection Authority plays a key role, promoting compliance, verifying it and, where necessary, using the powers given to us under legislation, enforcing sea-fisheries and seafood safety laws for all areas under our remit. This includes all fishing vessels operating within Ireland's 200-mile limit, almost 2,000 Irish registered fishing vessels, wherever they operate, and all seafood produced in Ireland's seafood-processing companies.

The SFPA has a very broad and extensive remit, including:

- Regulation of the commercial sea-fishing industry and fishers' compliance with the EU Common Fisheries Policy (CFP).
- Official controls of food safety for all wild & farmed fish including classification of wild & farmed mollusc areas, and approval of Irish food processing establishments to place food on the market



- Food trade controls, including Catch-& Health certification of Irish fish exports, and also import controls, a role which has grown and expanded substantially due to Brexit.
- Control of compliance with maritime environmentally protected area
- Infrastructure provision to facilitate fishers / vessel operators' compliance with their obligations including development and support of their on-board IT systems to facilitate their statutory declarations.

Currently, the SFPA employs 155 people across the major fishing ports around the coast and in our headquarters in Clonakilty – colleagues who are committed and in the case of our sea-fisheries protection officers, whose work can often be done in difficult and challenging circumstances.

The central matter of today's discussion may be described at many levels, but at the very centre is a natural resource, which if fished sustainably can give a stable supply of seafood, significant economic benefits for food production, commercial trade, and coastal communities for both today and for future generations. European and Irish society has seen the need and decided to create fishery management systems aimed at sustainability and thereby strive to balance the needs of today with the needs of tomorrow, as well as the real socioeconomic needs with those of biological finiteness. Commercial realities bring risks of prioritising immediate socioeconomic needs over biological future predictions, and therefore regulatory authorities such as the SFPA are given the role of 'fishery control', to manage the risk of fishery noncompliance. The SFPA is not however a dedicated fishery control agency, this is only a part of our role, and conversely fishery control mechanism and oversight is not dedicated to SFPA solely - Ireland's delivery is dispersed amongst other state agencies.

The SFPA work with the Irish Naval service for control of fishing 'at sea' within waters around Ireland, while our fishery control role is focussed on what is landed at and into Irish ports, which is circa 20,000 landings per year. Our work at landing is that of ensuring that what is landed is declared. Fishermen's declarations must reflect the outcome of fish weighing. Under-declarations would defeat the purpose of catch limits (quotas) and make fish mortality assessment incorrect thus creating immediate fraudulent food provenance and damaging long term sustainability efforts.

Our control work at ports is primarily focused on ensuring that operator weighers have the necessary systems in place to weigh and record all catches landed, all of the time whether we are there or



not. The SFPA does not have the resources to be on every fishing deck at every fishing haul, nor every landing of every vessel so uses risk based controls. We apply a risk based compliance model of verification on correct operation of such systems, meaning we place our efforts and aligned resources at those areas where we perceive greatest risk of non-compliances. Our risk-based controls might involve physical observation of weighing by operators, or retrospectively checking records of operators including cross-correlation with other quantity declarations. We have worked closely and in cooperation and collaboratively with the industry to promote compliance.

The particular issue for discussion here today begins with an assertion of less fish being declared than that which were caught. We want to emphasise to the Committee that SFPA is not responsible for weighing declaring fish. That legal onus sits with industry – they are obliged to abide by the law.

The central issue is therefore the actions/inactions commissions/omissions of operators. We urge this committee to recognise the difference between fishers' obligations to comply with the law and authority control obligations to promote, verify and where necessary enforce those laws, and ask you to differentiate between those two in your consideration of representations made to you on this matter. The difference between compliance and non-compliance arises within the decisions and actions of fishery operators. The actions of SFPA are designed to influence those decisions, interrupt fraudulent activity by operators/fishers and legislate those who breach non-compliance By preparing case files for the DPP.

Where there have been breaches, fraudulent activity or suspicions of such, we have acted and or monitored to seek to cease such activities by operators. We urge this committee to recognise that our fishery control risk management decisions do not sit in isolation but fall within the broader framework of the totality SFPA resource focus across all of our roles. We are a risk-based and proportionate regulator, targeting our resources and man-power where it will have greatest effect and impact. Our approach is to seek to work with operators for maximum compliance, using enforcement action where needed but sparingly and to good effect.



### General Pelagic Compliance Concerns,

Pelagic fish, nominally mackerel, horse mackerel, herring and blue whiting, are amongst the largest and most valuable landings to Irish ports, both in totality across all landings and also as individual landing events. It is not uncommon to have a single pelagic landing with a pierside value of half million euros or more. The approach to on-board storage and discharge to landing of pelagic fish is fundamentally different to most other whitefish e.g. cod hake or haddock. For pelagic fish they are stored onboard in bulk tanks with a mix of fish and refrigerated seawater. This mix of fish and water is pumped ashore into bulk road-tankers for transport to processing establishments. A central issue in this discussion is the significant challenge of being able to accurately verify the amount of fish landed, as a control authority; whilst not impeding high quality management of commercial landings. Quantity assessment and verification techniques applicable to boxed non-pelagic fish have no relevance to bulk pelagic discharge. Physical observation of a continuous flow-scale merely verifies the accumulation of some weight. Weighing of individual tankers has the complexity of not being able to establish the amount of water included in the pumping of a mix of fish and water.

Neither pelagic fishery declaration non-compliance, nor pelagic fishery control approaches to managing those risks, are new problems. These were at the centre of the Oireachtas decision to establish SFPA as an operationally independent regulatory authority from 2007. At the same time immense Garda resources were devoted to the retrospective investigation of alleged criminal fraud within Irish pelagic industry with some successful prosecutions. Large-scale criminal activity involving collusion between catchers and processors has been shown in pelagic fisheries landings to Scotland. Spain has had pelagic quota clawback because of non-compliance within pelagic fishers there. SFPA understands analogous issues to be the subject of DG-mare scrutiny within Netherlands and possibly Denmark too. So, whilst this is an issue it is one all our counterparts in EU countries are dealing with.

It is entirely possible to use factory weighing systems to weigh pelagic fish accurately. However, it is a matter of judicial record, and SFPA opinion, and Legal Metrology opinion, that these systems can also facilitate incomplete and the systems can be open to fraud by those seeking to circumvent the system for commercial gain.. At a very simple level, fish may be diverted past the device, or the weighing component may be simply turned off. Somewhat less crude methods might involve exceedance of the specified belt speeds beyond the reactivity capability of load cells. There also



exist a variety of tamper approaches reliant on crude physical interference with load-cells including welded springs or simple wedges, facilitating under-registering of the weights. In increasing elaborateness there appears to be facility for software-based modification of weights to cater for e.g. 'glazing'. Overall SFPA has concerns that these weighing systems can be tampered with, and do not provide sufficient protection from concerted attempts to under-weigh fish, and these concerns are not assuaged by we are seeing in other countries .

In relation to the issue of publication of this DG-Mare report. As contained in our submission SFPA lacks definitive awareness of actual status of either compliance or controls in other Member States. We inherited a process whereby DG Mare audit reports of Member States and indeed Third Countries which are not published either by the auditor or the auditee. This is completely different to EU audits by DG-Sante of EU Member State food safety controls which are published. We would maintain that the DG Mare audit reports should be published. We have expressed our view on this matter and the SFPA submission in 2011 to what became the 2013 CFP review is a matter of record, available [here](#) from which we offer you an extract from Section 3 page 9:

*...the SFPA would like to see the findings of EU audit missions published on these secure websites to increase transparency and confidence in the systems of control in place in the different Member States operating under the CFP.*



## Weighing of pelagic fish landed to Ireland

In 2007, when established, SFPA worked with a regulation where the default was weighing before transport from landing, subject to the permitting of establishments for post-transport weighing (at that time <100km). SFPA's role is to implement this and all EU regulations enacted into Irish policy, This brought with it some overt difficulty in relying on continuous-flow weigh-belts in pelagic processors, versus the commercial and quality challenges of achieving a meaningful verification weight before transport. We have been to the forefront of that discussion and debate, and that is ultimately the problem that proves challenging to this very day.

The legal construct changed in 2011, again in line with the Commission approved Control Plan to enable post-transport weighing. We hope the Committees is aware that a directly analogous construct is being perpetuated within current late-draft re-write of those fishery control regulations. In 2011 SFPA reprioritised its work plan to enable it devote resources to set out a Control Plan to support post-transport weighing of all fish including pelagic and demersal landed to and weighed in Ireland. We were attempting to balance reasonable control oversight with reasonable compliance expectations. That achieved DG-mare approval in effect in 2012, and had been the basis for post-transport weighing from then until April 2021. In simple terms this was about trust in industry post-transport weights derived within systems which met necessary standards, with the ongoing verification of their weighing by SFPA. It specifically acknowledges the default of weighing at landing, putting an onus on post-transport weighers to develop and operate systems to accurately and completely weigh fish and demonstrating all of this to the satisfaction of SFPA to earn permit for such derogation.

However, weighing systems do not weigh fish of their own accord; people weigh fish and record those weights. The most accurate weigh belt can be by-passed or its results ignored or changed, by operators who chose to do so and contravene the regulations. Since 2012 what we have identified within pelagic weighing under that control plan, has resulted in general downward trend in SFPA confidence in the compliance by operators involved in pelagic weighing to abide by the regulations. We make that statement based on some notable detected events, and monitoring of the situation. This is all coloured by the constant discussion whereby pelagic operators see no alternative to in-factory weighing over continuous flow belts, and of which fishery control authorities know are imminently manipulatable. The view of fishery control authorities is the need for at least some pier-side control verification of operator weights which is seen by pelagic operators as something that cannot produce accurate results whilst maintaining fish quality.



The DG Mare audit here formed the view that fishers landing to Irish establishments under this system had underdeclared fish. Prior to the DG mare audit here, SFPA had identified indicators of high risk of undeclaration within the actions of operators involved in the weighing and declaration of pelagic fish to Irish pelagic plants. Those indicators included general shortcomings to facilitate, and indeed obfuscate SFPA controls e.g. installing flow belt metres in inaccessible places and places distant to the actual flowbelt. They also included scenarios where inordinately high ratios of water to fish resulted in remarkably low fish weights per tanker particularly if weighing was not supervised by SFPA leaving an alternative hypothesis of undeclared fish. There were also instances of clear inaccuracy of 'ullage' tables converting tank fullness height to occupied volume being presented to SFPA to facilitate estimate on-board catches, along with baffle-points capable of altering such assessments, and potential underwater discharge points. SFPA concerns also arose through the identification of discarded fish adjacent to landing points which were consistent with dumping of fish that might have been landed if SFPA controls had not intervened.

In one instance there was a successful prosecution of one pelagic processor for tampering with weigh-scales, by means of installing physical hardware to ensure zero readings. That prosecution resulting in a substantial monetary and custodial sentence, for breaches of legal metrology legislation. Another equally serious event is still the subject of a pending prosecution indicted by the DPP, so we are precluded from commenting further at this point, and another event case where there was a withdrawal of compelling evidence by a key witness so is not being progressed. We believe these detections on our part illustrate how susceptible these systems are to tampering, and actual tampering to under-declare weights as part of organised criminal fraud by some Irish pelagic operators. In assessing whether its individual rogue operators versus organised collusion, it is notable to us that in instances of both proven and clear- tampering there was little or no deviation between the processing plant weights and the fisher declarations, and also no complaints from fishers of being paid for too low an amount of fish.



### Control Actions based of pelagic Weighing Compliance risks

In our last appearance before you, we described the breadth and extent of our control response to these concerns. They fall into categories of enhanced compliance requirements imposed on operators to justify post-transport weigh permits with enhanced control verifications and enforcement actions initiated by us. In this and all of our work, there is no shortage of opinions which regard our actions as too harsh, and equally no shortage of the opposite concern of our actions being too lenient. For the SFPA the challenge of pelagic control is very much the part of of our fishery control work. We continuously identify pelagic compliance risks and divert resources towards managing and addressing those risks. We are well aware of the cat/mouse cycle whereby this then creates impetus for conscious adversaries to find different ways around our control approach, which we then move to disrupt and the cycle continues

For the SFPA, significant work is focussed on getting partial weighing before transport to ensure a verification of post-transport weighing fidelity. This has included commissioning and procurement of water separators based explicitly on systems routinely used onboard pelagic vessels, and infrastructural improvements of publicly operated weigh facilities at the ports. Assertions of quality damage were rebutted with [independent quality-impact assessment](#), at least in the case of mackerel. We stepped into the space of addressing poor state oversight of volumetric ullage tables, commissioning an independent review of those; The SFPA project became one of defining a baseline that previously didn't exist and instructing all vessel operators to use those tables and no others. Individual weigh permits were temporarily suspended in case of tamper allegations in particular establishments, until necessary assurances were put in place including installation of weigh systems with greater tamper resistance.

In 2014 we refused to issue pelagic weighing permits until core issues were addressed, including SFPA access. Amongst the conditions we insisted upon, were the installation of live-feed CCTV viewability of weigh-belt systems to manage risk of zero-readings and fraudulent activity, and provision of dispatch records from processing plants to manage risk of fish output exceeding declared intake.

The audit outcomes do not regard or accept our responses to what we found and suspected, as adequate. Their view is that notwithstanding our ongoing control enhancements, the derogation of post-transport weighing of pelagic fish had facilitated under declaration by operators. Furthermore the audit findings appear to regard the extent of under-declaration to be quantifiable, and they regard an appropriate index to be reflected in the extent of inaccuracy of ullage tables used by SFPA as part of an estimation of onboard catches. SFPA view is that such an estimation remains as





no more than an estimation, to inform at-landing risk assessment, and never intended as a declaration. Nevertheless, the outcomes of the audit regard the difference between 'old' actual estimate and notional 'new' estimate as an appropriate overall index of the extent of under-declaration. Notwithstanding compliance risks, and resultant potential inaccuracy of landing declaration derived from post-transport weighing, SFPA remain of the view that old:new ullage assessment is not an appropriate modifier 'factor' that might be applied to landing declaration based on weighing.

The only enforcement powers available to SFPA are criminal prosecution. In the case of high value matters which are indictable in the circuit court, SFPA is compelled by statute to lay the case before the DPP, who decide whether a case should be prosecuted. This decision includes assessing the existence of necessary proofs to meet the 'beyond reasonable doubt' test. Physical tamper devices are believed to meet that test to prove tampering, but not necessarily to prove under-declaration of fish or to prove collusion

Overall, SFPA devotes much of its available resources to managing pelagic compliance risks where we suspect non-compliance to have potential to occur. Our response to compliance risks is one of managing those going forward to minimise that risk. In a small number of instances where compelling cases existed to substantiate those suspicions, formal enforcement action was initiated by SFPA and taken by DPP. Prosecution should impose sanction for those involved in those historical events and contribute to ongoing risk management through deterrence.

### Notification & Timelines of 2012 Control Plan revocation

It is a matter of EU law, accepted within Irish policy, that the ultimate decision-maker for allowing post-transport weighing is the EU Commission. EU law does not delegate that to the Member state, instead retaining it at Commission level. Their powers are not explicitly fettered nor qualified by consultation or advance notification obligations. Therefore, since the day of approval of the Control Plan, the risk of its revocation has existed.

SFPA is aware of a view that access to this derogation is perceived as an immutable right by operators, which the authorities could only remove if sufficiently justified. This is a completely incorrect assessment or understanding of EU law. This derogation is only possible when the national authorities set out how control efforts will manage compliance risks to the satisfaction of the EU Commission, and when operators work within those confines to comply.

SFPA has frequently emphasised to Irish's operators, the overall precariousness or at least non-automatic nature of this derogation. In many of the audits by DG Mare since 2012, the risk of post-transport derogations facing jeopardy was made explicit. The potential for post transport weigh derogation removal has been clearly to the fore of all SFPA cyclic discussion with the pelagic industry. We ask this Committee's support in dispelling the legally incorrect illusion of automatic access to this derogation and a lack of awareness of the potential risk of it ceasing.

There has been a dialogue between Ireland as MS with DG Mare on this 2018 audit, within the initial audit and then with draft report, and administrative inquiry. This has involved an active pushback on some of the findings, and illustrating corrective actions already instigated by the SFPA on foot of others. The possibility for Control Plan revocation has always existed within that dialogue. The precariousness of Commission approval of Ireland's Control Plan was evident before and after the Commission letter to the Minister in December 2020. Other matters have also been within that dialogue, including potential quota clawback by Ireland. Whilst SFPA is not central to those discussions, we will implement controls around whatever decisions arise.

SFPA is a regulatory authority. We are agents of the state who implement what is on the EU or national statute book. At the time of writing there are many cumulatively enormous changes proposed within EU fishery and food legislation. Similarly, we are conscious of potential changes to UK import requirements, entirely within the remit of UK to decide. When requirements are enacted we implement them. In the normal run of events EU legislation comes with time-lagged enactment. This decision did not. We communicated it to Irish operators on the day on which we were notified of its existence.



### Impact and transitional arrangements of 2012 Control Plan revocation

SFPA accept and agree with much of the commentary on the practical challenges of pre-transport weighing. That statement is overtly supported by the fact that we drove the genesis of the 2012 Control Plan, to expressly avoid those challenges. The continued existence of the Sampling Plan, which also exists because of SFPA action to avoid these impacts, in our view substantially ameliorates the extent of the impact for non-pelagic fishers.

We have repeatedly been asked to put in place 'transitional arrangements' and face criticism for not doing so. We have no authority in EU or national law to derogate in any way. We have no doubt about the express intention of the Commission to bring about a cessation of post-transport weighing here. SFPA has however stretched the bounds of the concept of weighing at landing to include, at least for demersal fish, weighing in establishments physically adjacent to point of landing, and even that may be challenged as the SFPA being too lenient.

Pelagic fishers do not have access to a sampling regime, instead left with a stark reality of weighing all fish at landing. We are being clear to all parties that this is the statutory reality. We are bound to enforce this for pelagic fisheries to Ireland and it is likely to involve landings within the next few months (typically beginning mid August). We hear perspectives of resultant landings to other countries and can only offer our role in implementing the control regimen required by Ireland as an EU Member State. We specifically remind pelagic fishers that landings to Northern Ireland transported to Irish plants, that the weights in Irish processing establishments have no legal relevance to landing declarations by those vessels. Options include weighing at landing or otherwise in NI in accordance with UK implementation of Article 60/61 under the NI Protocol.



### Control Plan Submission, Roles and Scope

Article 61(1) and Article 77 of the 404/2011 foresee the adoption and submission of a Control plan, by a Member State, as opposed to being explicitly a role of a Control Authority. Irish law, in the form of the SFMJ Act establishes) SFPA an implementation agency, we prioritise tasks accepted by the State within EU law and deliver them. These include fishery control roles allocated to Competent Authorities and also roles allocated more broadly to Member States. In 2011 & 2012, the various requirements within 1224/2009 'fishery control regulation' were discussed across various State agencies within a Fishery Control Reg Implementation Committee, jointly chaired by DAFM and SFPA. Our work in developing the necessary provisions to facilitate Irish access to the various Article 60/61 derogations were discussed and agreed at that time. SFPA as implementation authority, picked this up, drafted the document in accordance with explicit annex of implementing rules, consulted with industry, and achieved approval. We regard this to be implicitly consistent with the SFPA role within Section 43 of SFMJ Act, and explicitly consistent with the provision of Article 12 (3) of SI 54 of 2016.

*(3) The SFPA may permit fisheries products to be weighed after transport from the place of landing in accordance with Article 61(1) of the Council Regulation*

There is a particular perspective of inadvertent or unjustified implication of demersal fishers and weighers suffering consequences of pelagic non-compliance. There also exists SFPA explicit desire and obligation to function as fair proportionate and risk-based regulator, with our control measures aligned to levels of risk. At the time of writing SFPA has drafted and consulted on a Control Plan that explicitly excludes applicability to pelagic landings. The decision to consult without Pelagic landings was undertaken as they are a risk scenario singled out for enhanced control regimen within Commission Implementing Regulation 404/2011. The intention was to submit control plan in order to deal with the current issues experienced by non-pelagic fishers with weighing prior to transport. SFPA is explicitly highlighting particular risks and resultant SFPA lack of confidence in the approach of pelagic weighers to compliance within the previous control plan. However, the authority have decided that taking consideration of the submissions in the consultation process that there will be an inclusion of bulk pelagic landings in the control plan. Submissions will be available on the SFPA website to view.

Developing the control plan will involve several reviews and will involve working closely with the commission. We are aiming for a submission as soon as possible which in reality will be a number of months. DG mare have indicated their review time will be in the order of ten weeks following the



submission of the documents. We are also of the view that SFPA authority to make decisions to revoke/suspend or not issue a weigh approval or post-transport permit, should be both explicit and subject to appropriate natural justice procedures for effected operators.

### **Parallel Weighing Derogations, other than those revoked with the Control Plan**

In 2011 SFPA submitted five different plans/programmes to support weighing derogations. One of those has now been revoked; the Control Plan that facilitated weighing within Ireland following landing to Ireland, regardless of vessel flag. All of the others remain approved. One of those is the Sampling Plan, which refers to weighing before transport, following landing to Ireland regardless of vessel nationality, and allows that to be done on a sample basis as opposed to weighing every box of fish. This has assumed much increased relevance since the revocation of the Control Plan and is applicable in most instances of non-pelagic fish landed, with frequently remarkably low sample numbers.

Two further approved weigh derogations exist under Article 61(2). These are Common Control programmes which allow for weighing after transport from the point of landing in one Member State, to a weigher in another Member State. Ireland has had two approved CCPS, one with France and one with Belgium since 2012. These apply regardless of vessel nationality. Brexit has seen something of a displacement of French and particularly Belgian vessels from UK landings to Irish landings. The extent of utilisation of these derogations does not exactly follow the flag of the vessels, but SFPA can inform the committee that from 13 of April (Control Plan revocation) until 14 June we are aware 145 and 59 landings by French and Belgian vessel respectively to Irish ports. The bulk of those landings would have been weighed under the terms of the approved CCP, in France or Belgium respectively. SFPA would have inspected those landings, on a risk basis, and conducted data crosschecks on returns of others. There also exists explicit potential for control supervision of weighing prior to transport in accordance with both the CCP and Article 60(6).

We acknowledge the perspective that this a regimen may be more lenient for such landings, and the perspective that France/Belgium gain more benefit than Ireland in that these CCPS are more likely to be used with landings to Ireland. However, the provisions have existed for nine years, and are available regardless of vessel flag, and fish are still all weighed. These CCPs exist due to the confidence of Irish Control Authorities and French/Belgian Control Authorities in the correct weighing of theses at their destination, and the approval by Commission of these arrangements. All EU vessels, including Irish vessel may invoke these provisions following landings to France/Belgium for weighing



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to Ireland, or following landing to Ireland for weighing in Fra/Bel. Finally, we are not aware of any concerns about these CCPs prior to the revocation of the Control Plan and see no basis for perceiving higher compliance risks here arising from such revocation.

We thank you for the invitation to speak to you today. We are happy to meet again or supply any extra material which is required.