

## 1. Introduction and Overview

Good evening, Chairman and Committee members. We thank the Committee for the invitation to appear today. We welcome interest in the Sea-Fisheries Protection Authority (SFPA), our work as the regulator for the sea-fisheries and seafood sectors and to have the opportunity to outline how we seek to ensure effective and fair regulation of the areas under the Authority's mandate, in order to support safe, authentic and sustainable seafood.

I am joined today by my colleagues:

- Dr. Micheál O'Mahony, Senior Executive Manager and Chief Scientific Advisor.
- Olive Loughnane, Senior Executive Manager and Director of Transformation.

By way of introduction, Ireland's seafood economy was worth an estimated €1.26 billion in 2021<sup>1</sup>, having experienced growth in GDP of 15.3% when compared to 2020, with Irish people consuming an average of 25 kilos of seafood per year. The sector supports over 16,000 livelihoods, predominantly in coastal communities along the Atlantic Ocean, Celtic Sea and Irish Sea.

Effective regulation and oversight of the sea-fisheries and seafood sectors is essential to the achievement of our shared ambitions for the development of Ireland's seafood sector, as well as ensuring that Ireland's shared marine resources are sustainable for future generations of fishermen and fisherwomen, coastal communities, and Irish and international consumers.

The SFPA plays a key role in promoting compliance, verifying it and, where necessary, using the powers provided under legislation to enforce 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.

We acknowledge that the focus of today's meeting is on the weighing of fishery products, however, Fishery Control is one of a number of functions performed by the SFPA. The SFPA's scope of work is broad and varied. It includes ensuring legal and sustainable sea-fishing. In food safety it includes approving, registering, auditing and inspecting fish processing establishments; along with classification and monitoring of bivalve mollusc production areas. In food trade it involves certification of Irish seafood exports and verification in imports. In data matters SFPA collates the States' formal record of fishing activity.

The SFPA employs staff in the major fishing ports around the coast and at our headquarters in Clonakilty, each of whom is committed to the mission of the SFPA and ensuring sustainable fishing stocks for future generations of Irish fishers. Their work to fulfil their duties as set out under Irish law can often be undertaken in challenging circumstances. This is particularly the case for our staff based in the Killybegs Port office in recent months. We are proud of the work undertaken by each and every one of these SFPA employees.

## 2. Fishery Control and Weighing of Fishing Products

Under Irish legislation the legal onus is on the fishing industry to comply with national and EU sea-fisheries and seafood safety regulations. The SFPA's systems are designed to provide regulatory oversight, with checks in place throughout the catching, storage, transport and processing stages. Similar to our counterparts in other EU countries, the SFPA operates a risk-based control policy to maximise its efforts in those areas of greatest risk of non-compliance or abuse.

There are in the region of 20,000 landings of pelagic and demersal fish by larger vessels (greater than 10 metres) in Ireland on an annual basis. The SFPA does not have the resources to be on every fishing deck at every fishing haul, nor every landing of every vessel, necessitating our risk-based control policy. Pelagic fish is a term referring to shoaling migratory oily fish which swim in the middle of the water column, including Mackerel, Horse Mackerel, Herring or Blue Whiting. Pelagic fish are stored onboard fishing vessels in bulk tanks and pumped ashore in bulk quantities. Demersal fish refers to bottom-dwelling whitefish with a habitat on the continental-shelf seabed such as Cod, Hake, Whiting or Monkfish. Demersal fish are typically sorted by species and gutted then iced and boxed onboard.

Of the 20,000 landings annually by larger vessels, an estimated 600 are bulk pelagic landings – roughly three per cent of the total annual Irish landings. Bulk pelagic fishing is highly industrialised, pursued by some of the largest vessels in Europe. Bulk pelagic landings are large in terms of both fish quantity and monetary value and can frequently exceed €1,000,000 for a single landing.

Pelagic landings involve commercial processes whose speed and automation adds to both control challenges and compliance risks. Control-supervised weighing of a small proportion of pelagic landings is only one part of SFPA controls for pelagic fisheries and landings. At-sea data monitoring, pre-landing checks and post-transport weighing controls in permitted plants are also used.

Records of these Houses in 2005 and 2006 will show that amongst the central reasons for the Irish Oireachtas to establish the SFPA through the 2006 Sea Fisheries & Maritime Jurisdiction Act were allegations of significant non-compliance in pelagic landings and the need for meaningful controls.

In this submission and in our contribution to this Committee, we hope to emphasise the following points:

- SFPA implements the regulations as provided by the Oireachtas and as required under Irish law.
- Fish weighing obligations exist for operators for the express purpose of ensuring that the amount of fish landed is accurately assessed and to ensure sustainable fishing stocks for future generations.
- SFPA does not catch, land, weigh nor declare fish. The accurate weighing of fish is the legal responsibility of the operators not the SFPA.
- Of the approximate 600 landings of bulk pelagic fish on an annual basis, 19 out of every 20 landings currently avail of a derogation in the Interim Fisheries Control Plan to weigh after transport at a processing facility.
- One out of every 20 bulk pelagic landings are subject to a supervised weighing upon landing. Specific control focus on a small proportion of bulk-pelagic landings is an explicit control

requirement to manage the particular risks of such landings, and a significant part of what secures the overall derogation to enable post-transport weighing of all landings to Ireland.

- In the absence of an Interim Control Plan that enables the weighing after transport, every landing into Ireland would be required to be weighed upon landing.

### 3. Regulatory & Practical & Risk Background

One of the requirements of EU legislation which the SFPA is bound to enforce by this Oireachtas, is an obligation on operators to weigh wild-caught fish on landing. That EU legislation, as agreed by Ireland, has a default starting point of all such fish being weighed immediately at landing with no delegated authority to SFPA to diverge from that.

For clarity the default position under EU and Irish legislation is that all landings into Ireland should be weighed upon landing. The potential for fish to be transported from the point of landing before weighing is set out as one of two potential derogations of Article 61 of EC No 1224/2009. (for further details please see endnote<sup>ii</sup>) In both cases derogations can only be implemented if approved by the EU Commission.

### 4. Article 61(1) Control Plan and Pelagic Non-compliance risk management

In 2012, the SFPA secured EU Commission approval for a Control Plan under article 61(1) of Reg. EC No: 1224/2009 to facilitate the derogation for weighing in Ireland after transport from place of landing in Ireland. Such weighing could only occur in plants specifically permitted for that purpose. The SFPA had a variety of different controls in place to manage compliance risks arising from this post-transport weighing regimen. In the case of bulk-pelagic weighing, there was overt reliance on operators' weigh-belt systems with the SFPA control input both at landing and at post-transport weighing.

Subsequent to the introduction of the 2012 Control Plan, SFPA controls identified significant and ongoing non-compliance risks in post-transport weighing of bulk pelagic fish. Several instances of weigh-unit manipulation resulted in temporary revocation of permits until necessary enhancements were made, including one subsequent conviction. In no case of manipulation was there any particular deviation between the declarations of masters, purchasers or weighers.

The SFPA responded to increased understanding of non-compliance risk by enhancing its control focus on landings and weighing, and strengthening the permit conditions, to include, for example, CCTV-feed to SFPA. Nevertheless, a clear sentiment existed of ready manipulability of such systems, with any such manipulation resulting in inaccurate declarations of the amount of fish landed and potentially fraudulent food marketing. This puts at risk the reputation of Ireland's entire sea-fisheries and seafood processing sector, as well as the sustainability of Irish fishing stocks for future generations and the authenticity of Irish seafood consumed domestically and across the globe.

In 2014 and again in 2018, the Directorate General of Maritime Affairs and Fisheries at the European Commission (DG-MARE) conducted an audit of bulk pelagic control in Ireland. The 2018 audit formed the view that the risk of non-compliance by bulk pelagic operators with their weighing obligations was unacceptably high. That report also highlighted deficiencies in the control methods being implemented by the SFPA finding that these were not sufficiently robust to ensure operators did not under-declare their catches.

A subsequent Administrative Inquiry by the Commission was used to quantify the extent of the concerns. The SFPA worked to address the various concerns through enhanced controls. A particular focus of DG-MARE was the perspective that, as part of the overall control regimen allowing most landings to be weighed after transport, there must be some instances of control-authority instigated pre-transport weighing. The SFPA incorporated such events into its pelagic controls from 2020 under the previous 61(1) Control Plan. In response, industry used a pier side device that would actively-dewater, then weigh those dewatered fish, before reuniting fish with their original water. Irish courts found no reason in law to prevent the SFPA from approving such a device for weighing and it was used for weighing pelagic landings during 2021.

In April 2021, DG-MARE revoked the Irish 61(1) Control Plan as a result of significant and ongoing concerns regarding inaccurate weighing of catches, particularly by operators landing bulk pelagic catches to Ireland. Accordingly, all landings to Ireland which previously would have been weighed at an Irish establishment in accordance with the 61(1) plan were then legally required to be weighed at landing.

At a hearing with this Oireachtas Committee on Tuesday 11<sup>th</sup> May 2021, members were clear in relaying and endorsing concerns voiced throughout the industry about the impracticality of this. In the case of demersal fish landed in standardised boxes, the Irish 60(1) Sampling Plan remained in place to reduce impact.

In September 2021 a 61(1) Control Plan, for pelagic and demersal catches, was submitted by the SFPA followed by ongoing dialogue with DG-MARE. During this dialogue it became clear that EU Commission approval would only be achieved with inclusion of pre-transport control-supervised weighing, performed on non-industry-owned, non-industry operated devices such as weighbridge. The SFPA accepted such a Control Plan on an interim basis from January to April 2022 in the interest of facilitating post-transport weighing.

## 5. 2022 Interim Control Plan Implementation

Under this Interim Control Plan, the SFPA had multiple obligations, including the assessment of processing plants' compliance with weighing conditions as set out in the Interim Control Plan and issuing of permits to allow the invoking of the provisions of the plan to apply (weighing after transport). In simple terms, the SFPA had to develop the control infrastructure reversing the paradigm shift that had occurred in April 2021 towards pierside landing, to then in January 2022 develop controls on post transport weighing.

As the very premise of a 61(1) regimen under a Control Plan is one of overt reliance on the vast majority of fish being weighed after transport, the SFPA controls needed to shift back to weighing upon landing pierside. Additionally, the Interim Control Plan had explicit obligation for pre-transport controls, as part of an overall control of post-transport weighing. One of the explicit stipulations which arose from dialogue with the EU Commission, was that pre-transport control-supervised weighing should take place for bulk pelagic landings on non-industry-owned non-industry-operated weighing systems. Key representatives of the Irish pelagic industry were informed of the inclusion of this new stipulation in late 2021. The expected frequency of controlled weighing upon landing was linked to Reg. Ec. No: 404/2011 Art 107, meaning that 5% of bulk pelagic landings – or 7.5% of fish quantity –



would be subject to control-supervised weighing. Under this regimen, therefore, 19 out of every 20 landings could be weighed after transport at a permitted facility.

During the period from the opening of the season in February until the beginning of March, the SFPA accepted weighing on an industry-owned pier side device. It subsequently became clear that the use of this industry-owned pier side device did not fulfil the requirements of the Interim Control Plan, which stipulated that weighing must be conducted on a device under non-industry-ownership. It is clear that operation of the Interim Control without fully insisting on the strict terms as set in the EU-approved Control plan is regrettable and detracted from overall implementation. At this stage we are of the view that the significant amount of work done by SFPA in early 2022 to implement the ICP, should have moved more quickly to implement this stipulation.

From early March 2021, the SFPA moved to ensure that control-supervised pre-transport weighing events met all the terms of the ICP for those approximately 5% of bulk-pelagic landings. In the absence of an alternative, this meant weighing of bulk-tankers of fish with transport water on a state-owned weighbridge.

To meet the requirements of the Interim Control Plan, operators may select one of two options for conducting weighing before transport at Killybegs Harbour:

**Option 1:** In this method, fish exiting the vessel are discharged into an industry owned pier-side system which momentarily separates the fish from the water. This fish is immediately placed directly into a tanker that has been pre-filled with water and pre-weighed. The tanker containing the fish and the water is then reweighed on the SFPA approved weighbridge and an accurate weight for the fish is obtained.

**Option 2:** In this method, the fish and water exiting the vessel are discharged directly into a pre-weighed empty tanker. The tanker containing the fish and the water is then reweighed on the SFPA approved weighbridge. The fish remain with their original water which operators seek to minimise in order to balance quality considerations with fish-weight accuracy concerns.

In both options the pre-transport weight i.e., the weight on the weighbridge, must be used in all statutory declarations, including Landing Declaration by Master, Sales Note by Purchaser and Transport Document of transporter. In neither option is there any requirement for the fish to be dried before, during or after control supervised weighing.

## 6. Landing outside the jurisdiction (outside of the scope of 61(1))

It is with genuine concern that the SFPA became aware of a sustained campaign of disinformation and misinformation suggesting the SFPA was not adhering to provisions of the Northern Ireland protocol following the UK departure from the EU.

The SFPA confirms that there has been no change in the fish weighing on landing arrangements between the Republic of Ireland and other jurisdictions as a result of Brexit.

Under the EU regulations, which SFPA is bound to implement by this Oireachtas, landings to Northern Ireland could never have been weighed in Killybegs under the terms of an Irish 61(1) Control plan.

That 61(1) derogation is only applicable to post-transport weighing of fishery products when weighed within the Member State of landing. The only way in which fishery products might be weighed in Killybegs following a landing to Northern Ireland, would be through a Common Control Programme between UK and Ireland approved by the EU Commission. It is important to reiterate, no such Common Control Programme has ever existed, either before or after Brexit. Therefore, landings to Northern Ireland are treated similarly to landings in any EU state with which Ireland does not have a Common Control Programme.

Irish operators may choose to purchase fish landed to a jurisdiction with which Ireland does not share an approved Common Control Programme, such as Northern Ireland. In such cases, the weighing must have taken place in the landing jurisdiction, either through the default of immediately at landing, or perhaps at a permitted post-transport establishment in that landing territory if a 61(1) Control Plan exists there.

Crucially, however, the weight of the fish upon landing in another jurisdiction must be the weight declared by all parties. Declaration of a weight after transport at a processing facility in the jurisdiction of Ireland is not permitted.

Permitting establishments to weigh after transport at a processing facility following a landing in the Republic of Ireland is a significant exemption available under the Interim Fisheries Control Plan to operators who have the systems to apply such a permit appropriately. The SFPA will not accept the misuse of the weigh after transport system, which has the potential to jeopardise the EU Commission approved exemption for the entire Fishing and Seafood Processing sector. If this exemption is revoked, all landings of pelagic and demersal fish across Ireland could be required to be weighed pier-side.

## 7. Post April Outlook

The Interim Control Plan agreed in December 2021 had a prescribed applicability from 01 January 2022 until 30 April 2022. On foot of a DG-Mare proposal in March 2022, SFPA applied for an extension of approval of the interim Control Plan until 31 December 2022. It is a positive development that this was approved by Commission in late April, and the Control Plan was adopted by the SFPA to extend previously issued weigh permits for several months. The SFPA anticipate further dialogue with the Commission with a view to having an Irish 61(1) Control Plan on a permanent footing by the end of 2022.

## 8. Closing Comments

In closing, we would emphasise again that the role of the SFPA is to regulate the sea-fisheries and seafood sectors to both ensure compliance with Irish and EU laws and so that we can ensure sustainable fishing stocks for future generations.

We encourage Committee Members to see the broader merit of the work being undertaken by the SFPA to ensure fish are weighed completely and accurately, with overall minimal impact on quality. In the absence of approval from the European Commission of an interim or full Fisheries Control Plan, there is no exemption to weigh fish after transport at an approved facility and so all landings – pelagic and demersal – would be subjected to weighing upon landing. As the industry and this Committee experienced last year, the ramifications of no Control Plan are experienced right across the seafood sector and in coastal communities around Ireland.



Control is what SFPA provides. Declaring less fish than are actually caught is a real and ongoing risk that threatens the sustainability of fishing stocks for future generations and the authenticity of Irish seafood. Compliance with the regulations is with the industry – they have a legal onus to comply. Our role is to oversee compliance.

For those involved in bulk pelagic fishing, the Control Plan enables 19 out of every 20 landings to be weighed after transport. The control-supervised weighing of 1 out of every 20 landings of bulk pelagic fish should be viewed in the context of the very real alternative of 100% of landings needing to be weighed at the pier.

The SFPA's duty is to implement the laws passed by this House, encompassing both Irish and EU regulations. Committee Members are no doubt aware that weighing provisions are amongst the considerations of a currently ongoing revision of the EU Fishery Control Regulation. If new or amended laws and regulations pertaining to the sea-fisheries and seafood sectors are passed by this Oireachtas, then the SFPA will implement these. Until then, we will discharge the duties set out for the organisation as set out by this House.

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<sup>i</sup> <https://bim.ie/publications/corporate-and-other-reports/>

<sup>ii</sup> There two derogations of EU regulation are in sub-paragraphs 1 and 2 of Article 61 of EC No 1224/2009.

- 61(1) creates potential for weighing after transport within the Member state of landing, if the Member State has adapted a Control Plan approved by the EU Commission
- 61(2) creates potential for weighing after transport to a place in a Member State different to the Member State of landing, if both Member States have agreed a Common Control Programme approved by the EU Commission.