

DÁIL ÉIREANN

AN COMHCHOISTE UM THALMHAÍOCHT AGUS MUIR

JOINT COMMITTEE ON AGRICULTURE AND THE MARINE

Dé Máirt, 11 Bealtaine 2021

Tuesday, 11 May 2021

Tháinig an Comhchoiste le chéile ag 3.30 p.m.

The Joint Committee met at 3.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Martin Browne,	Victor Boyhan,
Michael Collins,	Lynn Boylan,
Brian Leddin,	Tim Lombard.
Pádraig Mac Lochlainn,*	
Christopher O'Sullivan,*	
Thomas Pringle.*	

* In éagmais / In the absence of Deputies Matt Carthy and Michael Fitzmaurice and Senator Paul Daly.

Teachta / Deputy Jackie Cahill sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: Deputy Pádraig Mac Lochlainn is substituting for Deputy Matt Carthy, Deputy Christopher O’Sullivan is substituting for Senator Paul Daly and Deputy Thomas Pringle is substituting for Deputy Michael Fitzmaurice. No apologies have been received. Before we begin, I remind members that in the context of the current Covid-19 restrictions, only the Chairman and staff are present in the committee room and all members must join remotely from elsewhere in the parliamentary precincts. The secretariat issues invitations to join the meeting on MS Teams and members may not participate from outside the parliamentary precincts. I ask members to mute their microphones when they are not making a contribution and to use the raise hand function to indicate. Members should note that messages sent in the meeting chat are visible to all participants. Speaking slots will be prioritised for members of the committee.

Today’s meeting is in two sessions. The first session, from 3.30 p.m. to 4.30 p.m., will be an engagement with representatives of the Sea-Fisheries Protection Authority, SFPA, while the second, from 4.30 p.m. to 5.30 p.m., will be an engagement with representatives of the Killybegs Fishermen’s Organisation, the Irish Fish Producers Association, the Fish Processors and Exporters Association, the Irish South and West Fish Producers Organisation and the Irish South and East Fish Producers Organisation.

Fishing Industry: Discussion

Chairman: For the first session on the pre-legislative scrutiny of the sea-fisheries (amendment) Bill 2020, the 2020 PwC review of organisational capability of the SFPA and the European Commission’s decision to revoke the Irish control plan for weighing of fishery products after transport, I welcome the following representatives of the Sea-Fisheries Protection Authority, SFPA: Dr. Susan Steele, chairperson, Ms Olive Loughnane, director of transformation, and Mr. Andrew Kinneen, authority member. They are all joining remotely and are very welcome. We have received their opening statement and briefing material, which have already been circulated to members. As we are limited in our time due to Covid-19 safety restrictions, the committee has agreed the opening statements will be taken as read so we can use the full session for questions and answers. All opening statements are published on the Oireachtas website and are publicly available.

Witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence in relation to a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Participants who are in locations outside the parliamentary precincts are asked to note that the constitutional protections afforded to those participating from within the parliamentary precincts do not extend to them. No clear guidance can be given on whether or the extent to which participation is

covered by the absolute privilege of a statutory nature.

I invite questions from members.

Deputy Michael Collins: I welcome our witnesses. I have a good number of questions and I hope I can get answers to all or most of them. If not, I might get the replies in writing afterwards.

In particular, the weighing crisis is a massive issue. I presume every coastal Deputy is inundated with calls from concerned fishermen. Many of them are very close to the brink and are seriously worried about their future. I have been asked to issue a request through the Oireachtas committee, although it might be difficult in this pandemic time, for us to be able to visit processing plants with representatives of the EU, the SFPA, the Department and so on to let everyone have their say. The exact same thing is suggested for whitefish, shellfish, lobster, shrimp and crab and it would be good for them to visit co-ops in west Cork at Baltimore, Union Hall, Schull, Turk Head and Colla Pier.

I have the following questions and the witnesses might be able to take them down and answer as many as they can. Does the SFPA accept that the mismanagement of this entire debacle is adding to anti-European sentiment in our country? At face value, it was an act of madness to throw the fisheries industry into turmoil within one hour. On 16 April, at 4 p.m., everything was normal, but at 5 p.m., nothing was normal and a new regime was in place. Do the witnesses think this is acceptable behaviour from a regulatory body? Has the SFPA seriously looked at how this new regime of weighing on piers is going to impact on our two main ports, Killybegs and Castletownbere, as well as the small ports in west Cork, especially for landings during the pelagic season, when a daily landing of 5,000 to 6,000 tonnes of fish is common? It takes numerous factories weighing on their own plant or in-factory devices eight to nine hours a day to clear those fish.

How is the SFPA going to manage putting all landings to all plants through pier weighing when no facilities exist for that scale of throughput? Do the witnesses accept this could lead to a serious amount of landings going elsewhere, for example, to Norway, the Shetlands or elsewhere in Scotland? I am not just talking about Irish vessels but other EU vessels refusing to come to our ports due to the present uncertainty. This will result in serious loss to the Irish economy. Do the witnesses think this is acceptable? Is the SFPA committed to restoring in-factory weighing? Will the witnesses assure us today it is a real possibility, that it is part of the programme for Government and the Government is committed to it? Is weighing a policy matter or solely an operational matter at this juncture?

Control and quality monitoring must be separated from the SFPA. The events since 16 April have proven the SFPA cannot do both with fairness, as quality is secondary to control in the eyes of the SFPA. That is despite articles stating both must be done with equal priority. It is crazy what the officers are asking fishers to do at the pier, and this will get worse after 1 June unless somebody calls this out.

What information did the SFPA give to the EU about the system? Why did it accept EU audit findings? To whom did the SFPA speak prior to responding to the audit report? Did it include fishermen, port officers or SFPA protection officers on the ground? What measures have been put in place to limit the damage and alleviate the hardship arising from draconian measures and the withdrawal of weighing in factories on the fishing industry?

Is it true that for years prior to this happening, the fishing industry has been imploring both the SFPA and the Department to implement a code of practice governing how SFPA fisheries protection officers should interact with the industry and discharge statutory responsibilities not just in the area of enforcement but, just as significantly, in the area of certification of Irish fisheries produce in the context of health and hygiene and the provisions of safe and healthy fisheries product that is fit for human consumption.

Chairman: That is a comprehensive set of questions for the witnesses.

Dr. Susan Steele: I thank the Deputy. As a fellow west Cork person, it is good to speak to him. On the invitation to visit processing plants with Members of the Oireachtas or others, we have always taken meetings with the industry or Members. I thank the Deputy for extending that offer. The Deputy asked a significant number of questions, so if it is okay I will go back into what has happened with the revocation of the control plan. I am aware some Deputies are very well versed on what has happened but for others there may be a large number of questions.

We can talk about the weighing of fish, which is a very important part of the fisheries management system. Under EU law, the accuracy of the weighing of catches landed is the responsibility of the operator. The law states that all wild-caught fisheries products must be weighed at landing before transport, and there are a number of potential derogations. In 2012, the SFPA submitted and obtained Commission approval for derogations and there were five separate plans that we submitted at that point. These were a control plan, two sampling plans and common control programmes with Belgium and France. We consulted extensively both internally and with the Irish fishing producer organisations.

Under the control plan, which is what the Deputy is speaking about, from 2012 until 2021 weighing was following transport to Irish establishments and allowed once it took place in a premises, usually a processor, permitted by the SFPA for that purpose. The weight derived would be used by fishers to make landing declarations and reckon uptake from available quota. The European Commission decided recently to revoke this derogation for demersal and pelagic fisheries with immediate effect.

I will speak about how we ended up with this decision from the Commission. It was made as it deemed the risk of industry's non-compliance with the rules of the Common Fisheries Policy as being too high. This decision arises from an administrative inquiry the Commission requested Ireland to carry out following an audit in Ireland in 2018 aimed at monitoring the implementation of Ireland's control for pelagic fisheries. The administrative inquiry looked at possible underdeclaration of catches in 2012 and 2016 and investigations of the same, sanctions for operators, effectiveness of the Irish sanctions system and effectiveness of the Irish control system.

In particular, the Commission identified that the operator did not have in place a weighing system fit for purpose and the audit identified manipulation of weighing systems. Moreover, although it was aware of these shortcomings, Ireland did not take appropriate measures to address such non-compliance, in particular by withdrawing the permission to weigh after transport. Consequently, the control plan did not, in the view of the Commission, minimise the risk of systematic manipulation of weighing of pelagic catches in Ireland and the underdeclaration of catches by operators. Therefore, Ireland could not guarantee an effective control of landed quantities of catches and could not minimise the risk of non-compliance with the rules of the Common Fisheries Policy. All of us here agree that is a policy that would lead to sustainability in our fisheries and our coastal communities.

The revocation centres around post-transport weighing of pelagic landings specifically. Pelagic fish include mackerel, horse mackerel, herring, blue whiting and sprat. Pelagic fish are landed into 11 processing plants in Ireland. In contrast to the traditional fish boxes, these fish landings are highly mechanised, involving pumping fish ashore in bulk with a significant quantity of transport water, and there are practical challenges in trying to verify the quantity of fish involved. It is easier to hide fish because it is harder to quantify accurately the amount of fish moving rapidly when mixed with water. The weighing of fish and water or draining of water from fish has been an issue over many decades in Ireland and it led to the stand-alone set-up of the SFPA.

The Deputy asked if we accept the mismanagement of this debacle or what we think is acceptable behaviour and how we would go forward. The SFPA employs more than 150 people across the major fishing ports around the coast and in our headquarters in Clonakilty. These colleagues are committed to fulfilling our extensive remit for sea fisheries protection and sea-food safety to the highest level of governance. In the case of our sea fisheries officers, this work can be done in difficult and challenging circumstances. We have acknowledged there have been lessons and we are committed to addressing them, as our decision to the Commission and our capability review highlights. We continually reappraise and build on mini-learnings, all the time working towards improving and focusing controls to manage non-compliance risks.

That does not answer the Deputy's next question about how the weighing will affect larger scale landings throughout the country. The SFPA has consulted the industry about this, working on solutions relating to weighing devices, training and the questions about quality of fish. The Deputy asked if we accept this could lead to landings going elsewhere, and that is a matter for those who are deciding where to land rather than the control authority.

There was a question about control and quality measuring. The Sea-Fisheries Protection Authority has a broad and extensive remit. We do not just look after the regulation of the commercial sea fishing industry and fishers' compliance with the Common Fisheries Policy. We also look after wild and farmed fish, the classification of wild and farmed mollusc areas, food trade controls, catch and health certification of Irish fish exports and the control of compliance with maritime environmentally protected areas. We also look after infrastructure provision to facilitate fishers or vessel operators' compliance with their obligations. We function for data provision to the State and the EU on sea fisheries activity and give advice to the Government on policy relating to fishery control, food safety and trade controls. We also look at fishery control for all Irish-registered fishing vessels. There is a large remit for the SFPA. It is committed, through all its staff, to delivering in its full remit.

The Deputy asked what information went to the EU. The EU carried out an audit in 2018 and, following that audit, it asked Ireland to carry out an administrative inquiry. For the committee members who may not be aware how this works, the Commission requested a significant amount of information from the SFPA on historical fisheries data and cases from a large number of areas in respect of the pelagic fisheries in question. This information went to the EU.

I apologise to Deputy Collins, but a number of questions were asked. As to whether the SFPA will commit to weighing in factories, we have moved over the past season to weighing on the pier. In terms of pelagic fisheries, we will be moving to controlled weighings on the pier. We are far from weighing being approved in factories, though. We are in this situation because of the issues identified in the pelagic factories.

The SFPA does not see the same risks in terms of whitefish and shellfish. We will be work-

ing with and consulting industry on a control plan.

Due to the number of questions and if it is okay, I will ask Mr. Kinneen if he has anything to add. I apologise to the Deputy if I missed anything.

Mr. Andrew Kinneen: As Dr. Steele stated, a wide range of questions were asked. We will follow up on today's meeting on a one-to-one basis with the Deputy to ensure Dr. Steele and I understood his questions and-----

(Interruptions).

Mr. Andrew Kinneen: -----that the Deputy is getting from us. I will revisit some of the areas covered by Dr. Steele. The Deputy asked whether we agreed with the administrative inquiry. That inquiry was supported by Ireland, as we are legally obliged to do, through the provision of data to the Commission. Those data were primarily concerned with the landing of pelagic fish at Killybegs between 2012 and 2016. We provided the Commission with detailed records using the data we had on hand as regards what was recorded by the masters of vessels, what we had recorded about the dipping of vessels, etc. We made every effort to respond to the Commission with a complete data set.

In our contacts with the Commission, we have been clear in our views as technical experts and the competent authority about what we regard as the technical limitations of data gathered from the dipping of refrigerated saltwater tanks. We have through-----

(Interruptions).

Mr. Andrew Kinneen: -----consultations we have had with the Marine Survey Office and other experts, we have reason to communicate to the Commission our reservations about how reliable the data gathered there would be, so much so that, at any one time, the readings taken could be affected by the trim and attitude of the vessel, which would have been a function of what water or fuel was on board or how the fish was being stored as it was being discharged.

Chairman: I thank Mr. Kinneen, but a number of other members wish to put questions.

Deputy Pádraig Mac Lochlainn: Does the SFPA believe that a person or persons facing charges that impact on their reputations and livelihoods have a right to be presented with the evidence so that they can defend themselves?

Dr. Susan Steele: I assume the Deputy is talking about the Commission weighing. Obviously, the answer depends on the situation. Will the Deputy elaborate, please?

Deputy Pádraig Mac Lochlainn: Any person who is facing charges that would damage his or her reputation or livelihood would expect the evidence that had led to those charges to be presented to him or her so that the person could defend himself or herself. Does the SFPA agree with that as a right or as a principle of law?

Dr. Susan Steele: Is the Deputy referring to the Commission decision to remove the-----

Deputy Pádraig Mac Lochlainn: I am asking Dr. Steele a question. If I were levelling charges against her or any of her officials that damaged their reputations or livelihoods, would she expect that I would present them with the evidence to justify those charges? I will turn it

around in that way.

Dr. Susan Steele: Speaking as a regulator, if we are making in our regulatory role a decision on anyone in the fishing industry and presenting case material to go to the Director of Public Prosecutions, DPP, we follow due process. We would do the same in a points submission under the points legislation. As a regulator, the process is very well laid out through the courts and the points legislation. A person has a right of appeal and a right of defence.

Deputy Pádraig Mac Lochlainn: I thank Dr. Steele. Apparently, the European Commission audit that was made available to the SFPA and the Government in 2018 covers the period from 2012 to early 2015. This audit was presented to the SFPA, which then chose to carry out an administrative inquiry. I am not sure about the SFPA's administrative inquiry, but the audit has been leaked to a range of national media. There have been three articles in mainstream media that have referred to the audit in detail. Is that acceptable when the industry whose reputation and livelihood is under such serious threat has not been afforded the right to see that audit and defend itself in any way, shape or form?

Dr. Susan Steele: The SFPA takes its data protection commitments seriously. In any situation where data have been leaked, we have taken it seriously.

Regarding the audit and the administrative inquiry, the SFPA is bound by legislation to carry out the administrative inquiry. It is not that we choose to carry it out. Rather, following an audit, the Commission will request an administrative inquiry, which is what has happened in this situation.

I want to check something with the Deputy. I believe what he is asking is whether we support the publication of the EU audit report and its own administrative report. Is that correct?

Deputy Pádraig Mac Lochlainn: Is it acceptable that three national media outlets have reported on alleged mass illegality in the Irish fishing industry, including overfishing to the tune of tens of thousands of tonnes, which will cost tens of millions of euro? It could not be more damaging to the reputation of the industry, yet none of the industry's representatives have seen the report or had a chance to defend themselves in any way, shape or form. Is that an acceptable way to do business?

Dr. Susan Steele: I will answer, although I see that Mr. Kinneen also wants to contribute. It has been stated on the record that the SFPA strongly supports the publication of all Directorate General for Maritime Affairs and Fisheries, DG MARE, audits of all member states and third countries. When we deal with audits of food controls by the Directorate General for Health and Food Safety, DG SANTE, they are published. We put this submission into the control regulation. In the values of our organisation as a regulator, we are of the view that this level of transparency serves to help the confidence of those whom we regulate and shows there is a level playing field in the application of European legislation.

There is no SFPA administrative report. Rather, there are EU audit findings. Under Article 4 of EU Regulation No. 1049 of 2001 of the European Parliament regarding public access to European Parliament, Council and Commission documents, no documents relating to the administrative inquiry can be made public. I acknowledge what the Deputy is saying. If it is acceptable, I will ask Mr Kinneen to comment because I can see he would like to.

Mr. Andrew Kinneen: I thank Dr. Steele. There is no doubt we agree with the procedures of natural justice in the courts according to which an individual has the right not only to know

what he or she is being accused of but also the evidence backing it up and the identity of the accuser. We fully value and follow the standards of the Irish judicial system. I would not quibble with any of that. As Dr. Steele has said, we are bound by the legal provisions in European law. They do not give us discretion to publish the audit findings or the details of the administrative inquiry, but we can assure the Deputy that we are not in the business of leaking confidential information to the public or the media, nor are we in the business of constraining the media's choice as to what is fit to publish. We are not in that space at all. However, as Dr. Steele said, we have been on record over time as being in favour of a higher level of transparency regarding the publication of audits and the response of member states to audit findings, as is the case with our dealings at food safety level and with DG SANTE. It is not the case with DG MARE.

Deputy Pádraig Mac Lochlainn: My final question in this round is on the weighing systems. In recent times, I have observed the weighing systems at a factory in Killybegs, County Donegal. I want to describe the scenario there. The weighing device the fish go over is state of the art. It is virtually impossible to tamper with it. It is sealed. There is closed-circuit television. The weighing system is monitored round the clock by the SFPA. Therefore, the SFPA has its eyes on it. It is a National Standards Authority of Ireland, NSAI, weighing system. That authority can inspect it at any time. That is the front-of-house oversight of the weighing system. The SFPA has monitors observing the fish and the weighing system such that if you tried to tamper with it, you would be a bloody fool.

At the back end of the operation, the loading of fish into packaging can clearly be seen. They are loaded at a rate of 20 kg per box. There are 60 boxes, which weigh 1.2 tons. There is access to the freezer. At any time, the SFPA officials can gain access to it. Indeed, the industry is very eager to co-operate with the SFPA to ensure full oversight at any time and in any shape or form. If I were in the SFPA and the reputation of our entire industry of fishers and fish producers were being taken apart due to a leaked report that the very industry under attack cannot even read to defend itself, I would seek to tell the story I saw with my own eyes. I do not believe there is any other industry subject to oversight at the level in question but it is okay with that because it wants to keep fishing. Those concerned want to maintain a livelihood for themselves and for the people who work in their factories. Do the delegates believe the level of oversight I have described is one that could be presented to the European Commission?

Dr. Susan Steele: We welcome every effort by the fishers. We have always worked with them and supported them in their compliance with the control regulation, particularly the requirement to weigh fish. However, the decision of the Commission we are now examining is such that the weighing of fish would have to occur prior to transport. This is due to historical issues with the industry-owned machinery. There was a requirement to have state-owned weighing machinery to weigh the pelagic fish. What the Deputy is describing is a system. There are cameras on the system but there are still concerns over the systems. That is the reason for the Commission's decision to remove to control plan.

Mr. Andrew Kinneen: Let me respond very directly to what the Deputy is saying about what is an apparent high level of transparency on the part of the industry. Unfortunately, the Commission is finding it very hard to get past the record to the effect that there has been a criminal conviction against an individual processor for tampering with weighing equipment — weighing equipment that was inspected and approved by both the NSAI and SFPA in good faith. One aspect of the matter is we need to have more robust ways of ensuring weighing equipment is protected.

We have made a considerable effort to ensure we would learn what is state of the art and the

vulnerabilities of state-of-the-art equipment. While Deputy Mac Lochlainn is correct that there is better equipment available now that has electronic features that produce a data log after the event that lets us know if any tampering of the weighing has taken place, we have learned in the journey we have taken to assess this modern equipment that state-of-the-art equipment, with all these electronic features, is still vulnerable to physical tampering. The accurate weighing of fish can be affected by techniques such as interference with the speed of the belt feeding in the fish or interference in respect of the way the machinery is set up. We have even learned that in the event that systems are being used that might be dewatering fish using fans, care has to be taken that this, in itself, does not have a distorting effect on the load cells.

We agree entirely with the Deputy in that we are looking for a transparent system in which we can have confidence. There are challenges. There are opportunities presented by more modern equipment but they certainly do not close off all the issues we are facing or might be dealing with. It is a subset of the industry that is determined to circumvent the regulations.

Deputy Martin Browne: Deputy Mac Lochlainn covered two of the questions I wanted to ask. On the issue of Killybegs, the SFPA was initially involved with the terms of reference and the planning and design of the system, yet it is now saying it is not up to scratch and has refused to authorise it. Why is that?

Let me return to a point raised by Deputy Mac Lochlainn. Surely it is crazy that the fishing industry itself is being denied the details of the European Commission audit, especially when it has such a devastating impact on fisheries and livelihoods. Several fishing organisations whose representatives appeared before the committee have questioned the dual role of the SFPA in both fishery quality and control. Is the authority capable of carrying out the many roles outlined in the opening statement?

The Irish Fish Processing and Exporters Association has more or less said the authority has taken its eye off the quality aspect in terms of weighing catches pier-side. The PricewaterhouseCoopers report raised concerns about the organisational capacity of the authority, specifically regarding the need to reset the dial concerning the strategic plan of the organisation and its interaction with staff and stakeholders.

Dr. Susan Steele: I thank Deputy Browne. There are two points of note. Let me offer a slight clarification. The Deputy is speaking about a new device that was built on the pier in Killybegs whereas Deputy Mac Lochlainn was talking about the factory weighing. What I will do is speak about the weighing device on the pier. We cannot comment at this stage on the weighing equipment on the pier in Killybegs as it is currently subject to legal action on the part of the equipment owners. However, we have followed up with the Commission on concerns that the Commission has expressed regarding this particular equipment, and we await further information from the Commission at this time. That is what I can say on the first matter that was raised about the weighing equipment that is currently on the pier in Killybegs.

In terms of the mandate of the SFPA and it covering quality and control, in the significant mandate of the SFPA that was described, that I gave in my opening statement and went through it earlier, and I am conscious of time so we will not go through it again, we have 150 people across the major fishing ports and we have colleagues who are fully committed to fulfilling the extensive remit. We are audited on all aspects of our work. We are discussing one particular audit outcome here, but in others areas we have been audited and we do not have significant issues. We will continue, within the SFPA, always to learn and always to work towards improving and doing a better job.

On the final question, and apologies to Deputy Browne if I skipped over anything but I am just conscious of the time of the committee, about the PwC organisational review, which I am glad the Deputy raised, the SFPA was set up and, as an organisation, both the remit and staffing numbers have grown. In 2019, we commissioned a capability review of the organisation. Ms Loughnane who is the director of transformation with the SFPA. The key things that we have undertaken have been the setting up of an advisory board and appointing a director of transformation. I invite Ms Loughnane to talk about the other work that is being undertaken within the organisation from the capability review.

Ms Olive Loughnane: I thank Deputy Browne for his question. From the outset, it is important for me to state the organisation fully accepts the recommendations made in the report. My role in the organisation is to work with the very hard-working and committed people who are in the organisation and accept the need for change to deliver on those 46 recommendations.

In terms of those pieces, what we have is a number of different pillars around which those recommendations are based. We are working through those recommendations. As we speak, a total of 26 recommendations are under way, seven of which have been delivered and 15 of which have yet to commence. My role is to work with colleagues across the organisation, not just to implement those recommendations but to deliver on the underlying objectives of those recommendations.

Senator Tim Lombard: I welcome the witnesses and thank them for their opening statements. I read them and found them very helpful.

I want to ask about the responsibility the authority has regarding human health and ensuring fish product that lands on the pier is appropriate. I am aware the new practice is going to be icing and de-icing. Fish will be taken out of boxes, de-iced and then put back into boxes again. The analogy used to me was that it will be like milking cows back in the 1960s inside in a stall. I would like to hear Dr. Steele's views on the issue of human health and the product and whether she believes it is effective, appropriate and the way forward.

Dr. Susan Steele: I thank the Senator and I have not had the pleasure of meeting him before. I will address that question first, which is a significant one. The first thing to be aware of is that the sampling plans are still in place. This means the full catch does not have to be weighed in all situations. There are sampling plans where parts of the catch can be weighed.

The responsibility for food safety is obviously with food business operators. The key things are ensuring unloading and landing equipment that comes into contact with the fishery products is constructed of material that is easy to clean and disinfect and is maintained in a good state of repair and cleanliness. There should be an avoidance of contamination of fishery products during the unloading and landing, which means people working as quickly as possible to move product into ice and not use equipment and practices that cause unnecessary damage to the fish. The crew members must have a reasonable standard of hygiene and prevent contamination of fish or fishery products through contact with any open wounds or sores. The ice that is being used to chill all the fishery products must be made from either potable water or clean seawater.

When we are looking at this, the onus is on the operator, but within the Sea-Fisheries Protection Authority, one of the key areas we often work on is in the promotion of compliance. There has been work and there will be a frequently asked questions document that is going up. There will be discussion with members of the industry. We have already met many people in the industry. We are meeting with the fish buyers and we are working with a group of the industry

on these questions. So we will have information on our website, we will have consultation and will work with the industry. The main thing is that the sampling plans are in position. That means not every single box of fish has to be emptied. It is as per the sampling plans that were agreed in 2012, which are still in place. I hope I have given some assurance of the seriousness with which we take this and the work we are doing with the industry.

We are dealing in Ireland with an industry that we find is largely compliant in many port areas. Since the news of the control plan came out, there has been incredible engagement by the industry which has worked with us and suggested solutions. I praise and thank the many people who have engaged with us and worked with us on this matter.

Senator Tim Lombard: Can I ask about the terminology of a serious infringement and where that is related to last July's meeting of the European fisheries element of the European Parliament? We have a slight issue regarding the definition between member states. There seems to be no definition of what is meant by a serious infringement. Can I get clarity regarding whether there is any common ground between the member states regarding that terminology and that definition of a serious infringement?

Dr. Susan Steele: I do not have the legislation in front of me but there are definitions in the legislation of what is a serious infringement. I would like to discuss the matter with the Senator afterwards to understand where the actual issues are and then we can go into detail of the legislation. I am always very nervous of quoting from legislation that I do not have it in front of me, but my understanding is the legislation defines what are serious infringements. I am unsure what the Senator is referring to in terms of the differences between member states.

I am conscious that Mr. Kinneen wanted to come in on the Senator's first question. I am not sure whether he wants to come in on serious infringements.

Mr. Andrew Kinneen: I wanted to come in on the Senator's comment on human health risks arising out of the new arrangements in place for the weighing of fish before transport. It is worthwhile taking note of the sampling plans, which greatly reduce the amount of fish that has to be weighed. The SFPA will do everything to facilitate and promote compliance with the requirement by buyers and fishers. To that effect, we would support EU funding for the purchase of suitable scales and other equipment. We had discussions with our control partners in the National Standards Authority of Ireland, NSAI, on calibration issues and bringing this equipment online for the practitioners in the industry. There is no doubt there is a risk that the quality of the fish will be affected by what I regard as additional handling, but I assure the Senator it will not get to the point, to my knowledge in any event, that there will be a risk to human health arising from the fish.

This issue points to the value of the dual role of the SFPA, where there is a definite knowledge in the organisation with regard to quality, the handling of fish, the preservation of the cold chain and the protection of public health across the board. Equally, that is linked to our role in monitoring illegal, unreported and unregulated, IUU-caught fish coming on the market where it is certified as compliant with that regulation and as eligible for export certification, as might be required, to third countries. The dual role in the statute, as I might loosely call it, serves the Irish industry very well in that an organisation has knowledge of both the environmental impact of the catching and the proper management and production on the market of the quality of the seafood product.

Deputy Christopher O'Sullivan: I thank our guests for their opening statements and con-

tributions. I recently visited Union Hall, having been invited to the pier to witness at first hand how the fish is weighed, brought to the plant and processed. The staff carefully talked and walked me through the process as it would be with the control plan in place. Union Hall, as our guests will be aware, deals mainly with smaller whitefish boats. The boxes of fish, which are already iced, are hoisted directly into the back of a lorry and brought straight to the processing plant, which is only a couple of hundred metres away. If I am not doing it justice, it is because I was walked through the process only once, but our guests will get the point. The fish is brought straight to the plant, de-iced, weighed accurately with transparency and full traceability, boxed, labelled and put into the back of a truck to be distributed wherever its intended market is. To me, that makes complete sense. It is safe, transparent and traceable.

I was then walked through what the process will be following the removal of the control plan and the weighing of the fish on the pier at Union Hall. These whitefish boats can carry anywhere between ten and 15 different species, or even more. The idea of the sampling plans will not work in those cases because it could be five boxes of one species, and eight, three and 12 of others, so it simply will not work. Without the control plan, the boxes of fish are iced, landed on the pier, de-iced, weighed, re-iced and put back into a lorry to be transported to the plant, which is only a couple of hundred metres away.

You can see straight away that makes no sense. It will lead to health and safety issues, as was mentioned, because more time will be spent on the pier exposed to the elements. There may, unfortunately, be an issue with the quality of the fish. We pride ourselves on the incredible fresh quality of our fish, but if the control plan is removed and it is weighed on the pier and exposed to the elements, such as bright sunshine on a hot day, that will have a very significant impact. The key to our fishing sector and the pride we have in the quality of our fish is getting it to market quickly. This will slow down that process by hours. It makes no sense.

Do our guests accept that in the instance I have just described at Union Hall, where there is a variety of species of whitefish, weighing the fish on the pier simply will not work because of the lack of infrastructure on most of our piers and the fact that, in most cases, the processing plants are located various distances from the pier? Do they accept that what is being forced on the fishing sector with the withdrawal of the control plan cannot work in most instances?

Dr. Steele asked how we got to this point. I will read out a passage from the opening statement from the Irish Fish Processors and Exporters Association to be presented to the committee at our next meeting. It states:

A subsequent Administrative Inquiry was required by the EU Commission to be carried out. The SFPA undertook this inquiry during 2019. Again no input was sought from us as a sector.

Does the SFPA accept, therefore, that the reason we are here relates to a consistent lack of consultation with the sector and industry?

Will the SFPA commit to making every effort, in full consultation with the industry, to bring back a control plan with in-factory weighing? As is the case in instances such as at Union Hall, it is fully traceable and transparent and much more efficient. Dr. Steele said she will examine the reintroduction of a control plan and in-factory weighing for the shellfish and whitefish industries. Is there a timeline for when that might happen?

In cases such as that which I described, processors simply do not have the equipment to hand for on-pier weighing. What will be done in the interim?

Dr. Susan Steele: It was really helpful to hear the Deputy describe what happens at Union Hall because it is very close to where we are based in Clonakilty and it gives a good image of what has been occurring. The key issue is that this is an EU decision. The removal of the control plan was a removal of a derogation that Ireland had. This decision, through the EU, involves significant changes to weighing practice and the SFPA is working to ensure the industry can introduce them efficiently and in a way that assures compliance with the regulations. We are working with Union Hall through the Clonakilty port office and examining the use of the sampling plan, but the onus is on the operators to weigh the fish.

As for the impact of the control plan on the demersal and shellfish industries, we have committed to producing control plans and will consult the industry in that regard. In-factory weighing for the demersal, shellfish or pelagic industry is slightly different from the audit and the administrative inquiry. There is a commitment but there will not be a quick resolution. The SFPA will have to work on the new control plan, which will have to be submitted under EU legislation. The minimum timeframe, if there are no issues and no further audits are required from the Commission, will be two months. To be open about it, a change will not happen at any point soon. Weighing will have to occur at landing.

Regarding the question on the administrative inquiry and input from the sector, it does not work like that with an administrative inquiry. The administrative inquiry looked for significant volumes of historic detail about landing figures, landing declarations and other materials. It would not have been appropriate to look for input from the industry in the administrative inquiry. It was looking at data that was stored by the SFPA. It is a very significant undertaking with a significant amount of data being submitted to the Commission for its examination.

The other side to be aware of is that the administrative inquiry is not complete. The removal of the control plan is the first decision we have seen from the Commission. There will be other engagements with the Commission on other aspects coming out of the administrative inquiry and we will communicate and deal with those as they arise. The committee should be aware of that.

The Deputy asked about consultation with the industry. The SFPA has always been committed to and consulted the industry. We meet the consultative committee. At times, the relationship between a regulator and the industry can be difficult and can be strained but we, as an organisation, have always met with the industry and count it as a very important part of our work. Personally, I count it as one of the most important parts of the work.

I do not know if Mr. Kinneen wants to come in at this point on those questions.

Mr. Andrew Kinneen: I have a couple of brief comments on the questions the Deputy asked. What he described, the walk through he was given in Union Hall, sounds to me as if they have a best-practice system in place there. As an organisation, the SFPA is doing everything to minimise the impact of where we stand at present to deal with the revocation of the control plan. Part of that strategy is to have a mapping in place for the major fishery harbours and for the local authority harbours, such as Union Hall, where we may be able to define a footprint area where fish could come off boats and go to a local handling facility or buyer and there would be little or no disturbance to the practice. We are working on that, gathering information and getting it in place.

From the consultations we have had with different sectors of the industry, it is clear the revocation of the capacity to weigh pelagic fish in the factories has had a huge impact and there are

huge challenges to work through given the audit findings. We are also hearing a strong message from the more artisanal and small-scale fishers who would be landing into places that do not have the benefit of much, if any, infrastructure. We are looking, and are solution orientated, to see what we can do with that.

We are working hard to try to get over where we stand. The Commission decision to revoke the control plan was not signalled to us. When it was happening, we were not consulted about it. However, we are certainly using many of the resources of the organisation to react and support the industry to get through where we are at present.

Deputy Christopher O’Sullivan: I thank Dr. Steele and Mr. Kinneen. I have just one more question. It was in the original suite of questions. Dr. Steele mentioned a period of roughly two months maybe before a control plan could be brought back in for the whitefish and shellfish sectors, if I understood her correctly. In the interim, they are in a serious situation. They cannot work. Much of what they do is not workable. What measures will be introduced in the interim to help them out?

Dr. Susan Steele: It is a minimum of two months. Under the legislation, it is a two-month consultation period. That is if we are in a position where it passes through Parliament. There was a significant delay on the previous occasion when the control plans were submitted. The committee should be aware not to take it as that.

In the interim period, we have been working with the industry. I praise the industry, which has been looking at solutions for this. There have been groups buying shared weighing scales that they are putting into piers and lot boxes for smaller piers. As we were saying earlier, there is a huge component of the Irish industry which is compliant and it has been looking at how to comply and how to make this situation work. It is to work with them in looking at solutions.

The control plan is gone. The weighing has to be in the same way as it was ten years ago, at landing. We are looking at how we define the landing areas. For some situations, that includes the apron area and the pier area. The only step forward is to work with us to ensure compliance.

In the interim period, it is literally to move to the new situation to have weighing equipment to put in place for quality. It is a significant change but many members of the industry are looking at this and at how they can work into a compliant situation with it. There will not be a change to this in the short term.

Deputy Thomas Pringle: I thank Dr. Steele and the other members of the SFPA for attending here. I would like to read one paragraph of the document they submitted to the committee and ask a question. It states:

... commission identified that the operators did not have in place a “weighing system fit for purpose” and the audit identified manipulation of weighing systems. Moreover, although aware of these shortcomings, Ireland did not take appropriate measures to address such noncompliance, in particular by withdrawing the permission to weigh after transport. Consequently, the control plan does not minimise the risk of systematic manipulation of weighing of pelagic catches in Ireland and the under-declaration of catches by operators.

I take it that by “Ireland” is meant the SFPA in this regard. I am sure at the time the SFPA could have acted in relation to individuals and that, rather than penalising the whole industry and adopting a blanket approach as we have experienced, which has had the effect of making life impossible for everybody, the SFPA could have dealt with individuals. There is no doubt

that, with any system, no matter what it is, somebody will try to manipulate it at some time. You have to deal with the manipulation, not penalise the whole industry. Does Dr. Steele accept the SFPA has fallen down where these issues were not dealt with individually and that has led to the whole industry being impacted by the changes that have been put in place? Dr. Steele dealt with the questions on the whitefish sector which I was to ask as well.

The EU control plan says it all. Monkfish should be weighed individually but it does not apply to EU-registered or UK-registered vessels at Irish ports. Where is the fairness in that and what comments has Dr. Steele on that?

Irish fishermen are responsible for 1% of infringements under EU law. We seem to be subject to the strictest enforcement of anybody. How does Dr. Steele view the enforcement that is taking place in Ireland versus that taking place across the EU in fisheries issues? Those are all my questions.

Dr. Susan Steele: I thank Deputy Pringle. I am conscious that we are eating into time and I will be as quick as I can on these.

On the manipulation of scales, where there have been cases, the SFPA has prepared cases for the DPP. One case has gone through the courts and another case has not gone through the courts. However, these cases, in the view of the Commission and in the view of the audit, showed systemic issues within the industry that were not being picked up by the control authorities. The answer, therefore, is yes, we acted on an individual basis in those cases, but the cases and the follow-on surveying of ullage tables and tanks in the vessels showed systematic issues in the industry. That is where this audit has picked up the issues. The Deputy has identified one of the key things on which the SFPA acted in respect of individual cases, but we did not act on what was identified by the Commission as systematic issues across the industry. As I stated earlier, our organisation continually reappraises, learns and tries to develop and to do better, so there are lessons for us from the entire process.

I might come back to Deputy Pringle on monkfish and UK-registered vessels in Irish ports because there is quite a bit in that question. This relates in part to the sampling plans. Given the time constraints, I will come back to the Deputy afterwards if that is okay. I assure him that all vessels, whatever their nationality, landing in Irish ports have to weigh prior to transport unless they have first point of sale in France or Belgium, where there is a common control programme. The weighing at landing is for all vessels. I thank the Deputy for the question about monkfish. We will come back with clarity on that because to go into the detail of it here would use up a lot of time.

As for the 1% of infringements across the EU and strictest enforcement in Ireland, I will not comment on other member states. All I can assure Deputy Pringle of is that we in the SFPA believe sustainable fisheries underpin the future of our coastal communities and that, in the shared maritime area, the work the SFPA does in regulating this is the most important work that can be done to ensure a future for our generation and generations to come in the coastal communities. As I said earlier, we are supporting that work with 150 very committed staff. Also, and I know I said this earlier but I will say it again, the vast majority of Irish fishers, by being compliant with the Common Fisheries Policy and the quotas, are acting to develop sustainable fisheries into the future. I wish to take this opportunity to thank not only the committed staff in the SFPA but also compliant fishers around the coast who are responsible for those low infringement levels. I do not know if Mr. Kinneen-----

Deputy Thomas Pringle: Could I ask just one further question? I am sorry. I forgot to ask

it during my previous contribution. Dr. Steele said earlier in the context of white fishing that she expects that within two months a new procedure will be in place, which is very optimistic. It will be a year or a year and half, probably, before it happens. How soon will the interim measures the SFPA is putting in place be in place? That is vitally important. They should be in place, I believe, within the next month or so to run until the period during which this will be accepted. When will they be in place?

Dr. Susan Steele: Again, there are no interim measures-----

Deputy Thomas Pringle: Dr. Steele is just after saying there are.

Dr. Susan Steele: Sorry. When the derogation is removed, the weighing has to be at the point of landing. That has already started from the decision on 13 April. That is why we move very fast on communications with the industry, working with the industry to ensure we have a solution. I am conscious Mr. Kinneen wants to come in.

Chairman: Sorry, no. I will have to move on now. Dr. Steele has answered. We have gone well over time. Is Deputy Pringle satisfied?

Deputy Thomas Pringle: The answer to my question was different from the answer previously given, in which Dr. Steele said interim measures would be put in place. I would like the interim measures to be put in place as soon as possible because the approval of this control measure will take longer than two months, as Dr. Steele herself said.

Dr. Susan Steele: I am sorry. I will have to go back over that. We moved immediately to weighing at landing so we are in that process at the moment.

Mr. Andrew Kinneen: We have left some issues hanging. We have tried to respond as comprehensively as possible. We will refer our contact details to Mr. Higgins, who will circulate them to the committee members. We are very happy to engage. We appreciate our appearance here is a matter of record but we would take any individual engagement with Deputies and Senators very seriously.

Chairman: On behalf of the committee, I thank Dr. Steele, Ms Loughnane and Mr. Kinneen for their informative contributions. I propose we suspend the meeting for two minutes to allow the other witnesses to join the call.

Sitting suspended at 4.46 p.m. and resumed at 4.47 p.m.

Chairman: I apologise to the witnesses who have been in the lobby waiting. We have eaten into the hour of their time, but I felt it was important that members get the chance to question the SFPA extensively and I did not want to cut any member short. The witnesses for this session were undoubtedly listening to the exchanges and I hope they found them informative. There was very intensive questioning of the SFPA by all Deputies and Senators. I apologise again for eating into the witnesses' allocated time.

To the second session of the meeting I welcome the following witnesses: Mr. Seán O'Donoghue, CEO, Killybegs Fishermen's Organisation; Mr. Ciaran Doherty, chairman, Killybegs Fishermen's Organisation; Mr. John Lynch, chairman, Irish South & East Fish Producers Organisation; Mr. Karl McHugh, chairman, Irish Fish Processors and Exporters Association; Mr. Brendan Byrne, CEO, Irish Fish Processors and Exporters Association; Mr. John Ward, CEO, Irish Fish Producers Organisation, all joining remotely; and Mr. Patrick Murphy, CEO,

Irish South and West Fish Producers Organisation, joining from a witness room in Kildare House. They are all very welcome to the meeting. We have received their opening statements, which have been circulated to members. We are limited in our time due to Covid-19, so the committee has agreed that the opening statements will be taken as read in order that we can use the meeting for questions and answers. All opening statements are published on the Oireachtas website and are publicly available.

I will read out an important notice regarding parliamentary privilege. Witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable.

Participants in the committee meeting from a location outside the parliamentary precincts are asked to note that the constitutional protections afforded to those participating from within the parliamentary precincts do not extend to them. No clear guidance can be given on whether or the extent to which their participation is covered by absolute privilege of a statutory nature.

I now invite questions from the members.

Deputy Pádraig Mac Lochlainn: The four producer organisations present today collectively wrote to the Minister, Deputy McConalogue, when SI 318 was introduced by the Taoiseach who was Minister for Agriculture, Food and Marine on an interim basis between Ministers. As far as I am concerned, the four core points about this proposed legislation still stand. The normal threshold for conviction for most citizens is beyond a reasonable doubt and there is an onus on the accuser to prove the matter. In this case, it is done on the balance of probabilities. The submission from the Irish South & West Fish Producers Organisation refers to the way that the UK, when it was a member of the European Union, applied it in a similar common law system. I know some members of the organisations represented today have taken court cases and have been successful in the Supreme Court a number of times. I want to get that perspective. That is the first question for all the producer organisations.

The Bill only covers Irish and EU-flagged vessels. It does not cover UK, Norwegian or Faeroese vessels. A particular concern would be that it does not cover UK vessels. It is comparable to having two drivers on the same road and one can be prosecuted for speeding but the other one cannot be. I ask the witnesses to comment on that.

My third question is for the Irish Fish Processors and Exporters Association, IFPEA. Its representatives have made a very detailed submission to the committee today and will be aware that we have just had an intensive engagement with the SFPA. The EU audit of 2018 was conducted from 2012 to 2015. Apparently, this audit has been leaked to at least three national media outlets. Its implications are very damning to the reputation of our entire fishing industry and fish producers, and yet representatives of the IFPEA have not had a chance to see that report or the report of the SFPA administrative inquiry. I invite the representatives of the IFPEA to outline the reality of the oversight. I have touched on some of it today in the engagement with the SFPA. The IFPEA submission outlines the level of oversight. It states:

Ireland's seafood landings are the most regulated in Europe. Our industry has embraced

those controls. We are committed to sustainably managed fisheries and will continue to play our part in protecting our fisheries as long as controls are proportionate, reasonable and pragmatic.

One would not know that Ireland's seafood landings are the most regulated in Europe based on what was leaked to national media. I invite the representatives of the IFPEA to offer a defence of the industry and to outline their vision for the way forward at what needs to be done in the immediate term to address the serious impact of the revocation of the EU control plan.

Mr. Seán O'Donoghue: I will respond first on behalf of the four producer organisations. Deputy Mac Lochlainn asked very pertinent questions about the Bill applying penalty points to masters or skippers, as we would know them, of fishing vessels in addition to the owners. I must say this at the outset. The industry has been accused of going after these things as a delaying tactic. Nothing could be further from the truth. We have always accepted that there is an onus on Ireland under EU law to have penalty points in place for both the owners of fishing vessels and for the skippers of fishing vessels. We have ended up in this mess because the Minister and his predecessors have ignored what we have tried to tell them.

The four producer organisations made four proposals on the previous penalty points for owners over the years. Unfortunately, the Minister has now copied and pasted all those provisions which are anathema to us and need to be addressed. Before I deal with the specific issue of the burden of proof, it is important for the committee to be aware that the Minister this time around under the EU regulation has considerable latitude in how he implements penalty points for serious infringements of the Common Fisheries Policy for masters of vessels. He did not have the same latitude for owners but he does have it here. Based on the heads of the Bill, he has seen fit not to do that and we are really mirroring what is there as such.

Regarding the burden of proof, the Supreme Court already found that there is no impediment to having beyond reasonable doubt for this. Unfortunately, the Minister has included provision for the balance of probabilities, ignoring that if the master or skipper gets a significant number of penalty points, his livelihood will be taken away from him forever and a day. He can no longer be a skipper of a fishing vessel. If someone's livelihood is being taken away, it must be beyond a reasonable doubt.

That brings me to a ridiculous point in the Bill. The skipper may only appeal to the High Court on a point of law. Given that his livelihood could be taken away, it is not fair and equitable. To rub salt in the wound really, even if he is successful on the point of law in the High Court, the penalty points still apply to his licence. It is hard to imagine telling someone who challenged a speeding offence in the courts and won the case that the person would still have the penalty points applied to his or her licence for the three years. This does not stack up in any democracy and needs to be changed.

The other point the Deputy mentioned is very relevant here. The Bill, as it stands, and the EU legislation only apply to EU-flagged vessels. In the new scenario with Brexit, all the Irish vessels, as they have done for decades, will be fishing alongside their UK counterparts. We will be subject to penalty points and they will not, as such. Just in case anybody is suggesting there are other measures for UK vessels, that does not stack up because the penalty points are being invoked in addition to the other measures, as such. The cornerstone of the control regulation is being thrown out the door with this Bill, and if there are to be penalty points for a skipper, we must have a level playing field for fishermen who are fishing in the same fishing grounds.

The Minister has repeatedly said, including at a recent committee meeting, that allowing an

appeal to the High Court or not taking off the penalty points was delaying the system. That is totally inaccurate. From the very beginning, going back a number of years, we have said we fully accept that if somebody gets penalty points, those points stay on the licence or the master's registration until a case is successfully taken in the High Court. The penalty points would then be removed but not before that. There can be no excuse for not implementing this immediately.

I hope I have covered the Deputy's questions. We have also set out the situation in our opening statement.

Deputy Michael Collins: I will try to keep my questions to a minimum, in contrast to the last time. I thank all our guests, including Mr. Murphy, Mr. O'Donoghue, Mr. McHugh, Mr. Lynch, Mr. Byrne and Mr. Ward. The representatives of the SFPA, who were before us previously, have said they are consulting the industry. That is not right, in my mind, because of the weighing crisis we have now. At 4 p.m. on 16 April, nobody seemed to be aware of what was going to happen at 5 p.m., and a massive crisis was put before the fishermen. Is that right? Were our guests consulted about this? Did they know anything about it? Were they aware it was going to happen?

Some 5,000 or 6,000 tonnes, or more, of fish can come into places such as Castletownbere, Union Hall and Baltimore, fished by onshore and pelagic fishermen. Do our guests accept this could lead to a serious amount of landings going elsewhere? Could the catches of bigger fishermen go to Norway, the Shetland Islands or Scotland? Is that a possibility? I have been told it is and I would appreciate the comments of our guests in that regard.

It looks to me as if there will be no budging in respect of this issue. I tried to get a space to talk about it in the Dáil today but that is not happening. Is there any chance of a restoration of factory weighing, even as a short-term solution? The SFPA is saying it is solution orientated. Have its representatives approached our guests to discuss what solutions they think might resolve this crisis? I understand the board of the SFPA is made up of three internal employees. Is that, in the view of our guests, highly unusual for a State agency? I had better stop there because I could ask 100 questions that our guests will not have a chance to answer.

Mr. Patrick Murphy: I thank the committee for allowing us to come before it again to discuss the serious issues that are affecting our industry. The most recent time we spoke to the committee was to highlight our fears that 20% of our natural resource would be given away. For this issue to arise on top of that is crushing for our industry. It is hard for our coastal communities. I understand the SFPA has a job to do but we do not agree with the way it is being applied. We have pointed out in our submissions that there must be a procedure here. There must be time to lead into this new regime because the sword of Damocles has come across our heads and is being used. It is happening on piers all over the coastline now and has immediate effects.

The SFPA has stated it is consulting the industry, as Deputy Collins said. I do not know what its definition of "consulting" is, or that of the committee. For me, consulting does not mean just being told what is happening and that is it. It should expand to include looking for solutions and sitting down with us. We have spent a good few meetings trying to put that point across to the SFPA.

Our biggest question is why the SFPA accepted this report. This is a damning report and the SFPA accepted it even as it highlighted the SFPA's own incompetence. That is a hard word for me to use, and I know representatives of the SFPA are not here to defend themselves, but that is the reality of the situation. The SFPA accepted this report. It was the SFPA, as Deputy Prin-

gle identified, that put forward a request for revoking what was there in 2012 in the context of fishing scales. The circumstances have not changed. The SFPA is also the competent authority for the quality of fish. I find it incredible that anybody could stand over the taking of fish out of a chilled box, putting them into another box that may not be chilled, looking for ice on piers without the facilities to provide it to re-ice the fish and put them back into boxes.

As Deputy O'Sullivan said, Union Hall is lucky to have a factory a couple of hundred of metres up the road, even though it is not, as Mr. Kinneen said, currently in the roadmap plan for catches to be weighed a couple of hundred metres away. It points to the lunacy of what we are talking about here. This has to be addressed.

Returning to Deputy Mac Lochlainn's questions, we did not object to penalty points being brought in. The industry tried and sought many times to meet the Minister and those who were drafting this legislation to see if it could be introduced in a fair and transparent manner, especially when it was defeated in our courtrooms on the basis that fair procedures were not being followed. There was little or no consultation. We are left scratching our heads and wondering is it possible that we, as a country, are going to allow the balance of probabilities decide somebody's future and right to make a living in this country. If a case goes to the Supreme Court or the High Court and a fisherman is exonerated, he or she may still lose the ability to fish. I am not going to make light of this but I want the situation to be understood. If this was a death penalty and a man was prosecuted and sentenced to death but was thereafter exonerated in a courtroom, he would still be executed under this law. That is what it means. Perhaps that is an imperfect analogy but we must get this point across. It is not following fair procedures. We have requested the same ability to defend our good names in a court of law as any other citizen of the State would be granted. We understand the administrative sanctions and, if they follow a court conviction, surely we should be afforded the same rights as any other citizen in the land.

I do not like using these sorts of analogies but they have to be used to get across the severity of what we are talking about. If a murderer goes into prison, he or she will not be there for life. He or she will eventually come out and be pardoned. However, under this legislation, as Mr. O'Donoghue pointed out, if you lose your rights, you never get them back. Time does not erase it. Nothing you do or change will ever erase it. There is no other avenue to rectify that situation. You are guilty and punished for the rest of your life. It is incredible.

There is so much I would like to say but it would be unfair of me to take the floor for too much longer. I hope I have addressed the issues. I thank the Deputies for their questions during the previous session. I was listening and they are well versed on the issues. Their questions were very pertinent and I would have been happier if clearer answer were given to the simple questions that were asked.

Deputy Christopher O'Sullivan: I will give Mr. Murphy another chance to take the floor so he can continue his soliloquy in a moment. I know most of our guests were probably tuned in to the previous session with the SFPA. There is an opportunity now to answer, clarify, or correct some of the statements made by the SFPA, or agree with them, whichever way you want to look at it. Deputy Collins touched on the fact that the SFPA said it engages extensively with the sector. I think Mr. Murphy has just answered that. It was said that in the whitefish sector, for example, going back to the situation whereby they were weighing on the piers, that is just a return to what was happening ten years ago. It is my understanding that was not happening ten years ago, that was not the situation that pertained and that fish have always been weighed in plants, markets or whatever else. I would like clarification on that.

My next question is for whichever witness can answer it. Are the witnesses confident about the data the SFPA sent to the Commission when this audit was being carried out? I would love to give Mr. Murphy an opportunity to emphasise clearly and as much as possible what needs to happen with the fallout from the Brexit trade agreement, what it means for the Irish fishing sector and, essentially, what needs to happen now in terms of our approach to burden sharing and sharing with other EU countries. I would like another opportunity to hear him speak on that. He should be given the opportunity to clarify that further. I hope those questions were clear enough.

Chairman: I have to bring in some other witnesses first. Mr. McHugh is looking to answer, as is Mr. Lynch.

Mr. Karl McHugh: I am sharing this room with Brendan Byrne, our CEO, who was the one raising his hand.

Mr. Brendan Byrne: To respond to the question Deputy Mac Lochlainn asked, in fairness to him, in his earlier question to the SFPA he outlined the robustness of the control measures in place right across the sector.

Before I go into the detail of the answer, however, we have to address the reality of where we find ourselves as processors and exporters. Our entire world has been thrown upside down by the removal of the control plan. The control plan brought certainty to us as processors and exporters. Article 61.1 brought with it a level playing field, that is, the derogation to weigh within our factories. We are one of seven countries in the EU that can do that. Historically, that has had to happen in Ireland because of the locations of our factories. Article 61.1 is therefore an instrument of fairness that creates a level playing field for us as fish processors and exporters. That is the purpose of that article.

The earlier witnesses from the SFPA gave what was to me a very shocking misrepresentation of the facts surrounding processors and exporters. We are the most regulated and most controlled of all fishers right throughout Europe, with no exception. Our record has been exemplary over the past ten years. Yet there is this audit of 2018, which none of us have had sight of, an administrative inquiry of 2019, which none of us have had sight of, and at least 15 different sets of leaks that emanated from somewhere that accuse us of all things and, most importantly, are destroying the Irish fish sector through misinformation. No other nation would tolerate what has been inflicted on the Irish fishing community over the past six months as to what has gone on here. In our paper we have identified that we have to get a way forward.

Before we do that, however, let us deal with the reality of what we have heard from the SFPA. The SFPA is a flawed entity. It is not just me saying that. The Wolfe report of 2012 stated that. The PricewaterhouseCoopers report of 2020 stated that. The greater part of the problem we find ourselves in at present is through the incompetence of the SFPA as our regulatory authority. The control plan brought certainty to us as processors and exporters. What is being talked about now is effectively the creation of a Chinese wet market on every pier and harbour in the country, where the food going into the food chain is open to the elements, be that sun, rain, wind or the fowl above our heads. No other country would tolerate this, yet it is being foisted on us through two audits, or an audit and an administrative inquiry we have not had sight of. I take exception to the earlier speaker who said an administrative inquiry cannot be released to the public. That is factually incorrect. It was confirmed to me that, under Article 4 of the same regulation, that information can be released at the discretion of the Minister.

We need to have a serious discussion as to where we are going with fishing. For too long the Irish fishing sector has failed to get a political voice, but we have crossed the Rubicon and are in an unprecedented situation in which Brexit has inflicted a 20% cut to our quota, which was already small. Now as processors we are not even allowed to function in the way we have functioned with certainty since the foundation of our businesses.

I wish to address three sections of this. It is grossly unfair to have shellfish included in the removal of this control plan because they are non-quota and were not part of the control plan or weighing, yet fishers are being forced to weigh them under the elements, on piers and harbours throughout the country. There is no basis for that and it has to stop. Both whitefish and pelagic were subject to the derogation. I seriously question the weight of evidence the SFPA has suggested is in this yet-unseen audit and this yet-unseen administrative inquiry. If we got full sight of that, I think there would be a greater body of evidence for the incompetence of the regulatory authority than against us as fishers.

I thank the Chairman for his indulgence. I want to say one further thing about due process and where we have got ourselves. Deputy Collins was right when he said that within one hour on 16 April everything had changed and everything was turned on its head. Deputy Collins is 100% right, but that should not have happened. No transitional arrangement was made by the EU or this national Government to protect us. However, Article 102.4 of the 2009 regulation states:

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 verifications or autonomous inspections referred to in Articles 98 and 99 or in the audit referred to in Article 100, the Commission shall establish an action plan with that Member State. The Member State shall take ... [the] necessary measures to implement that action plan.

We were not afforded an action plan. We were not afforded a transitional period. We were afforded nothing. We were thrown out into the proverbial deep waters and cut loose. I ask the committee to stand up for fishing.

Deputy Martin Browne: I assure Mr. Murphy and the rest of the witnesses that we believe if anybody is accused of anything, the fisheries should get due process. That is only a natural course of justice. I assure Mr. Murphy also, and I would say I speak for all committee members, that we believe the leaks going on are totally unacceptable, especially given the witnesses tell us the SFPA is not even communicating with them.

I wish briefly to raise three things. The first is for the Killybegs contingent. They heard the reply we got from the SFPA earlier about the weighing system in Killybegs. The SFPA representatives say there are legal issues around the weighing system there and the equipment. We have been led to believe the SFPA was involved in the installation of that equipment. Will the Killybegs contingent share with us their feeling on that?

The Irish Fish Processors and Exporters Association has made it quite clear that, as far as it is concerned, the SFPA just cannot handle the remit it has been given in terms of fishing control and that it has taken its eye off the quality aspect. Is it the view of the witnesses that the SFPA has done this deliberately in order to focus its attention someplace else and that is why there is so much secrecy involved? On the Commission audit, it is crazy that so many families and fishers like the witnesses, who cannot even access the report, are affected. Could they give us an idea of how large an impact there will be on catches - in the context of an open weighing

process - when temperatures start to increase?

Mr. John Lynch: On Deputy O’Sullivan’s question, he is absolutely right in saying that prior to 2012 the fish were weighed in the factories, markets or auction halls throughout the country. In very limited circumstances where there were recovery measures - cod stock comes to mind - on one occasion a small percentage of that fish was weighed on the pier. Unlike the situation now where the scales have to be provided by the agent selling the fish, at that time the scales were provided by and the weighing was performed by the SFPA because it was part of a stock recovery programme. Other than that, the fish have always been weighed at the point of sale in factories or auction halls. The withdrawal of this derogation is really disastrous for all sectors but especially on those involved in the demersal fish and shellfish sectors who land smaller amounts of fish in boxes that are packed in controlled conditions on vessels with refrigeration, ice and plenty of water on board for washing. When the fish are put onto the pier, these facilities are no longer immediately to hand. According to the sampling plan, all the fish have to be stacked on the pier and then sorted and weighed but there will not be enough ice to re-ice all of the fish. On the admission today of the SFPA, this will affect the quality of the product, but it will also potentially affect the condition of the product to the point that it may deteriorate enough to get contaminated and affect public health. That is, in fact, what is going to happen.

I cannot understand why no notice was given of the possibility of this happening. The first we heard of it was on the evening of 16 April, which was a Friday, so we had no opportunity to make any inquiry until the following Monday morning. We were told on a Friday evening, with no warning whatsoever, that in future all fishery products would have to be weighed on the pier. No accusation was made against the fishermen and no evidence was produced in the context of which they could defend themselves. Out of the blue we were just told to stop weighing in the auction halls and to weigh on the piers instead. That is unacceptable from a fisherman’s point of view. It is unworkable. It is a danger to public health and also a danger to the health and safety of the people doing the work.

On the sea fisheries (amendment) Bill, we have the same problem in our organisation with the penalty points for masters. We would call it the main problem, in that fisheries offences are prosecuted under the Criminal Justice Act. If an offence is alleged by the authority, it will apply points to the licence and the Bill outlines that points will now apply to the master. On the case being taken to the court, and if the offence is subsequently found not to have occurred, the master will be found to be innocent of the offence, but the penalty points will be retained anyway. We cannot see any justice in this system. We cannot understand how this can be allowed in a country with a common law system. Once again, it is an imposition on fishermen that they cannot see the evidence and defend themselves in order to be proven innocent. Even if they are found innocent when prosecuted they must still keep the points.

Senator Tim Lombard: I welcome the witnesses and thank them for their opening statement, which was very helpful. It has been an amazing four months for the industry between Brexit, penalty points and now the proposed change on the 16 April. It is very hard to equate what they have gone through with any other industry in Ireland.

I touched on the food safety issue in the context of the change in practice on piers. This is a massive issue. I do not think it has been thought through. I would welcome a comment in that regard. I described the scenario as like going back to the 1950s and milking cows in a stall. It has that kind of feel to it. Is there logic to it? If we had decided to do this on the ground, I am sure they would have stopped us. As a result of the fact that we did not decide to do it, however, it is okay. This is a major issue and I would welcome a comment on it.

In terms of the point on common law, penalty points are the biggest issue I have seen in fisheries in my time on this committee in the past five years. In terms of the Minister's position and the basis of his approach, I heard his testimony at the previous hearings and I ask the witnesses to comment on that. He seemed to say that he is legally bound in respect of the issue because of the advice he has received. I have started my own inquiries into the matter. What is the information of fishermen on the advice? What the Minister said was very strange to say the least. I asked him straight out if there was any other two-tier system in his Department in the area of agriculture. It does not exist in agriculture, but it does in fisheries. I would welcome clarity from the witnesses on their view on the Minister's statement at the committee's previous meeting.

On the media, in hindsight, we should have had this meeting back to front. I would have preferred if the fishermen came in first and the regulator came in afterwards. The issue about the media is something we almost need to go back to the regulator to talk about whether there are leaks of information. My first question is whether the Data Protection Commissioner, Helen Dixon, has been informed. Has she been asked where the information has come from and if it was leaked? Articles were published in three major newspapers. The information must have come from one or two sources, either the commission or the regulatory body itself. For me, that is a data protection issue. Ms Dixon mentioned it. I am interested in the views of the witnesses in that regard because we must stop having a one-sided conversation.

Chairman: As to the format of the meeting, it was at the request of the fishery organisations that we went in this order.

Senator Tim Lombard: I appreciate that.

Chairman: They wanted to hear the SFPA first so they could comment on what was said. A number of witnesses want to reply but, unfortunately, I will have to guillotine proceedings very shortly. I will let Mr. Ward in - he has not spoken previously - to respond to Senator Lombard's questions.

Mr. John Ward: In response to the comments made by the Senator, all I will do is ask who benefited from the data leaks that were given to the three major news organisations. It certainly was not the fishing industry.

I would like to make a point on the weighing system. The SFPA expressed serious doubts about the weighing system in the factories. The type of weighing system that exists in the factories in Ireland is exactly the same as what is in factories in Scotland, Norway and Denmark. For some reason, the authorities in these countries do not seem to have any problem with them.

In response to another question, the weighing systems that are in the factories were approved by the SFPA. Further to that, the SFPA insisted that CCTV cameras be installed so that it could watch the weighing of fish in its offices.

Today, the SFPA has said that it has 150 members of staff and that 11 factories in total produce pelagic fish. Surely out of that 150 staff, if the SFPA is not satisfied by what is happening in the factories, it could find 11 people who could spend a day in the factories to see exactly what is happening, but there is an unwillingness to do that.

We, as an industry, have tried very hard to engage with the Minister but we have seen Ministers change while nothing else. The problem is that there is an unwillingness of what we call the permanent government to change.

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Chairman: We have reached our allocated time and I know other witnesses want to make points. On behalf of the committee, I thank all of the witnesses for putting forward their views and concerns about the legislation. I know the organisations are extremely concerned and this matter, on top of Brexit, is putting the industry under extreme pressure.

We have listened intently to what the witnesses have said here today. I know the Deputies and Senators, especially those in the constituencies where the industry is very important, will bring their issues to the Dáil and the Seanad in the next couple of weeks. I hope today's meeting was beneficial to the organisations. I know that they will lobby us continually to secure a resolution of the issues facing the industry.

I propose that we suspend the meeting for 15 minutes and resume in private session using MS Teams at 5.45 p.m.

The joint committee suspended at 5.33 p.m., resumed in private session at 5.45 p.m. and adjourned at 6.23 p.m. until 12.30 p.m. on Thursday, 13 May 2021.