

# DÁIL ÉIREANN

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## AN COMHCHOISTE UM THALMHAÍOCHT, BIA AGUS MUIR

## JOINT COMMITTEE ON AGRICULTURE, FOOD AND THE MARINE

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*Dé Máirt, 27 Meitheamh 2017*

*Tuesday, 27 June 2017*

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Tháinig an Comhchoiste le chéile ag 3 p.m.

The Joint Committee met at 3 p.m.

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Comhaltaí a bhí i láthair/Members present:

Teachtaí Dála/Deputies	Seanadóirí/Senators
Jackie Cahill,	Paul Daly,
Martin Kenny,	Tim Lombard,
Charlie McConalogue,	Pádraig Mac Lochlainn,
Willie Penrose.	Michelle Mulherin.

I láthair/In attendance: Deputies Marcella Corcoran Kennedy, Danny Healy-Rae, Michael Lowry and Mattie McGrath.

Teachta/Deputy Pat Deering sa Chathaoir/in the Chair.

## **Business of Joint Committee**

**Chairman:** I remind members to ensure their mobile phones are turned off completely as they interfere with the recording and broadcasting of proceedings.

We will go into private session to deal with item No. 5 and housekeeping matters. Is that agreed? Agreed.

*The joint committee went into private session at 3.10 p.m. and resumed in public session at 5.10 p.m.*

## **Annual Report of Sea-Fisheries Protection Authority: Discussion**

**Chairman:** From the Sea-Fisheries Protection Authority, SFPA, I welcome Dr. Susan Steele, chairperson, and Mr. Andrew Kinneen and Mr. Micheál O'Mahony, authority members. I thank them for coming before the joint committee to brief members on the SFPA's annual report for 2015. I bring to their attention that witnesses are protected by absolute privilege in respect of the evidence they give to the committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to 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 asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official, either by name or in such a way as to make him or her identifiable.

I invite Dr. Steele to make her opening statement. When she has concluded, I will ask members to put their questions.

**Dr. Susan Steele:** I thank the joint committee for the invitation. I will begin by addressing the late submission of our annual report for 2015. In the past the SFPA has been cited for our failure to meet the statutory deadline for the submission of annual reports. We have taken this matter seriously and are committed to, and have demonstrated, an improvement in our performance in areas under our control in meeting annual report submission deadlines

With regard to the work of the SFPA, Ireland is surrounded by the richest fishing grounds in Europe. The SFPA acts as the guardian of these marine resources around Ireland. To this end, we maintain an inspectorate, with 61 sea fishery protection officers operating from seven regional port offices up to 24 hours a day, seven days a week. Our primary statutory role is as the regulatory agency for Irish sea fishing and seafood production. Our strategy aims for an industry built on compliance with fair, effective and independent regulation. We aim to have systems that give robust confidence in Ireland's reputation worldwide as a source of high-quality fishery products and systems ensuring sustainability in order that there will be fishing for our children, grandchildren and great-grandchildren.

I refer to the highlights in the 2015 report, a hard copy of which we have circulated. With regard to sea fishery conservation work, 2015 saw the introduction of the most significant ele-

ment of the reformed Common Fisheries Policy, CFP - the landing obligation. The first phase of the introduction of this very significant regulation to reduce and eliminate unwanted discarding of fish at sea included measures to be applied in pelagic fisheries. Since 2015 implementation of these regulations has advanced to include other fisheries, including the requirement to land fish from demersal fisheries. The application of the regulations presents a very real challenge to regulators and the industry.

We work closely with the Naval Service and the Air Corps which carry out all inspections at sea, as well as the national fishery monitoring centre under a service level agreement with us. In 2015 the SFPA was responsible for 2,500 direct fisheries conservation inspections, of which 1,000 were carried out at sea by the Naval Service under the service level agreement. The 1,500 inspections carried out by the SFPA were generally of landings by fishing vessels in ports, including 150 at sea-inshore fisheries inspections. This area of inspection activity has been well supported by our consultative committee in order that illegal and unlicensed operators are not let compete with legitimate inshore fishermen. The inspection programme generated 35 legal case files related to apparent infringements of the CFP. The SFPA attributed points for serious infringements to seven fishing vessels in 2015. The points legislation was subsequently challenged in the courts and following direction, it was revised.

It can be difficult to measure how good a job a regulator is doing as inspection statistics only tell part of the story. For the first time the authority included examples of the types of case we bring to court and the issues associated with these cases in the annual report for 2015. We refer the committee to two fisheries-related cases, in particular. In the first the apparent high-grading of fish by a large-scale pelagic freezer vessel operating within the Irish EZ was detected in 2013 after an SFPA-Naval Service investigation. The operator was brought to court and convicted in 2015. High-grading occurs where a fisher illegally selects the most valuable fish by size, discards the rest overboard and records only the fish kept on board. The case illustrated the importance of carrying out controls on fishing vessels that fish in Irish waters but never land in Irish ports and how equipment could be used to grade fish illegally on an industrial scale.

The second case involved close co-operation between the authority and Legal Metrology Ireland, NSAI, to detect and prosecute an apparent case of tampering with approved weighing equipment at a pelagic processing factory. The court found the defendant guilty earlier this year. The case followed the discovery of a switch on the wall that could be used to interfere with the proper operation of weighing equipment, with the potential for undeclared fish to be caught, processed and sold. The evasion of fishery management rules has a direct consequence for all who are dependent on the sea for their livelihoods.

With regard to seafood safety work, as an official agency of the Food Safety Authority of Ireland, we are responsible for the control of the food safety systems for all seafood from production by fishermen or farmers throughout the production chain as far as but not including retail. We maintain Ireland's shellfish classification system which classifies production areas according to water quality in line with European food regulations and has ramifications for how shellfish may be placed on the market. We also validate labelling and traceability systems, including DNA checks of fish species.

During 2015 the SFPA carried out 1,700 seafood safety inspections, with 1,600 shellfish production samples. By way of example of this work, fishing vessels were found to be harvesting razor clams outside a classified production area and as a result were producing shellfish with a potential risk to public health. Traceability checks conducted by the authority confirmed that some of the shellfish harvested had been exported. The export market closed access to Irish

shellfish on a precautionary basis. Thankfully, the importing authorities were persuaded by the effectiveness of the control systems in place in Ireland and reopened the market shortly afterwards. However, this incident illustrates how irresponsible operators can damage the reputation of the entire Irish industry and put public health at risk.

Seafood can be traded freely within the European Union when produced from SFPA approved establishments. Seafood consignments exported outside the European Union generally must be certified as being compliant with the standards of the importing third country. We are responsible for providing health certificates detailing origin and traceability for every consignment of fish and fish products manufactured, processed or packaged in Ireland for export to an increasing number of third countries. During 2015 the SFPA issued 6,100 export certificates, involving 50,000 tonnes of seafood exported to 35 countries outside the European Union. An example of our work in this area is the export of live crabs to China where the importing authorities had concerns about specific criteria for imported crabs. The authority, with the assistance of the Department of Foreign Affairs and Trade, engaged directly with the Chinese authorities. Taking into account the wider picture of food exports to China, we temporarily suspended certification of crabs exported to China. Following sustained dialogue with the Chinese authorities, the matter was resolved earlier this year.

In 2015 the SFPA commenced access to the European Maritime Fisheries Fund, EMFF. It will fund the development of systems that support Ireland in meeting its CFP responsibilities.

The implications of Brexit in fisheries will be both unique and profound. As regulator, the SFPA is concerned about the prospect of significant additional demands related to possible Brexit outcomes. It is not possible at this time to calculate the size of the burden that will emerge, but we are sure that to support the trade of fish and fishery products from Ireland in a post-Brexit world additional resources will be required. The key issues are fishing access rights, fishing opportunity rights and the trading of fish and fishery products.

Our annual report for 2015 informs on specific changes to our scallop control systems. The changes arose from our attempt to meet the requirements of EU control systems for the protection of public health. While Ireland is happy that its systems protect public health, the Commission is taking infringement proceedings against it in this matter.

Under the CFP, we also play a substantial coastal state role in the case of non-Irish registered vessels operating in waters under the control of the Irish jurisdiction. More than 80% of the wild fish taken from Irish waters are taken by vessels from other member states. The SFPA is proud to announce to the committee that we will shortly put in place a coastal state unit. The unit will focus on fishing vessels that fish in Irish waters but which rarely, if ever, land in Irish ports to ensure they will operate on the same level playing field as Irish fishing vessels.

I thank members for their time and look forward to their questions.

**Senator Pádraig Mac Lochlainn:** I thank Dr. Steele and her colleagues for attending. The fishing community is aggrieved because its members believe they have been criminalised under legislation. There have been stand-offs at various ports between fishing communities and SFPA officials. Perhaps the problem is with the legislators, given that the authority is simply enforcing the legislation.

I refer to super trawlers. Those of us who live in coastal communities regularly hear that fishermen are expected to jump through hoops, dot the i's and cross the t's, while super trawlers

can operate in Irish waters. Dr. Steele mentioned the new coastal state unit. The *FV Margiris* is the second largest super trawler in the world, capable of processing 250 tonnes a day. It was operating off the coast of Donegal quite recently. It is banned from Australian waters but is out there, off our coast. What is the Sea-Fisheries Protection Authority, SFPA doing about this? Will the authority ensure officers will be on board these super trawlers while they are fishing in Irish waters? We need an assurance. I am sure all the witnesses watched the documentary “Atlantic”. I found it very powerful to see Gerry Earley, a fisherman out in his wee boat off the Donegal islands, being brought to court again for alleged fishing offences while out behind him was what he described as a city of super trawlers and lights. That to me is offensive and embarrassing to our State and to our people.

I want a cast-iron assurance given to this committee today over what the SFPA is doing to ensure these super trawlers are not taking a single fish more than what they are entitled to under the quota laws. What guarantees can the authority give me here today as a Member of the Oireachtas and to the fishing communities concerned? They have alleged to us that there are double standards in the ways that laws are enforced on their communities and limited livelihood because of the Common Fisheries Policy versus the super trawlers. Given also that the *FV Margiris* is banned from Australian waters, why is it not banned from our waters? What is the difference between the Australian policymakers and ours? I would like cast-iron assurances today on the issue of super trawlers and on the sense that our seas are being hoovered up by them while our own small-scale fishermen operating out of piers and harbours around the coast are being made jump through hoops to comply with standards. We have to be able to assure people that these standards apply to everyone equally, and that Irish fishermen have a fair opportunity. I do not believe that is the case at the moment.

**Deputy Charlie McConalogue:** I thank the SFPA for the presentation. I have a question on the issue of penalty point applications. I know this has been an ongoing issue. There has been a lot of anger from fisherman about the fact that, when penalty points are applied, they are applied immediately. Even if the fishermen in question are eventually acquitted in any subsequent court case, the penalty points still stand. I would like to know the authority’s current position on this matter and whether it has engaged with the Department and the Minister on it.

With regard to the landing obligations, it strikes me that the SFPA has long-established operations around the landing of fish. There is an issue, however, around ensuring vessels retain all the fish they catch. The witnesses referred to the high grading of fish. Having to throw away perfectly good fish was something fishermen always resented, and the public also found it abhorrent. This has now been turned on its head and the new requirement is to ensure all fish are kept on the vessel. This is much more difficult to monitor. What steps are being taken to ensure there is no wastage, particularly in the case of the larger vessels? There is, no doubt, an incentive to carry out that high grading. What steps is the SFPA taking to ensure this is policed? Taking into account the fact that policing of this nature would be more difficult and labour-intensive, does the authority have sufficient capacity to do so?

**Deputy Martin Kenny:** I again welcome the witnesses to the committee. I too would like to bring up the issue of the very large capacity vessels, or super trawlers as they are known. I understand that rather than simply discarding dead fish, these super trawlers mince the fish before pumping them back out. This means they will not be seen. Does the SFPA have the powers and ability to board these vessels easily and frequently to check that such practices are not taking place? Speaking to fishermen and fishing organisations around the coast, they are strongly of the view that if Europe or the global community in general are serious about conservation,



they have to be serious about taking on the large vessels. They are the problem. Small fishermen around the country, most of whom are sailing very risky vessels and finding it very hard to make a living, often end up going out fishing on their own because they cannot afford to bring a second person with them. That is very dangerous. The livelihood of these fishermen is under extreme strain, and yet they can see these huge vessels hoovering up all the fish and disappearing off over the horizon with them. If the authority does not have the power or ability to board these vessels, can it put an officer on board to monitor them full-time?

I support Deputy McConalogue's question about penalty points. There were suggestions that something might be done to change the current system in order that penalty points would not stand if the person was exonerated. Has there been any movement on that?

**Senator Paul Daly:** I also have questions about the super trawlers. It is very easy for any regulatory body to produce figures and be judged on its achievements. What number of super trawlers have got away? We could be capturing 10% of them without realising that the other 90% have got away. If a large number of them are getting away, is this down to a question of resources? How does the authority feel about the resources available to it?

Brexit was mentioned. In the potential worst-case scenario of a hard Brexit, what additional resources does the authority envisage requiring over and above what it has at the moment?

**Deputy Willie Penrose:** What triggers an SFPA inspection or invigilation? What proportion of small vessels to big vessels are inspected? It is very easy for supervisory invigilations to catch the small person engaging in minimal offences. According to some of my colleagues here who are quite expert in this area, the larger vessel can escape and do far more damage. Senator Daly is correct in his comments on Brexit and the possibility of inspections and invigilations, protection amendment Bills, *voisinage* agreements and London agreements and so forth. Has the authority given any consideration to all this? What kind of impact can we expect from the result of the recent Supreme Court case? The legislation, which is currently in abeyance, may well have to be delayed as we wait to see how the situation around Brexit crystalises. It would be premature and foolish to proceed with it when no one knows how Brexit will play out until two or three years down the line. Does the authority need additional resources to ensure the protection of what has been defined in the Supreme Court as a natural resource? Has the authority made a submission to the Government for these resources? They will be needed to protect the Irish fishery base, which is very important around the coast in terms of employment and income-generating capacity.

**Chairman:** We will come back to Dr. Steele.

**Dr. Susan Steele:** A number of very interesting questions were asked there. The first issue I will come to - if the Chairman does not mind, I will not address the questions in straight order - is the points legislation because there were two separate questions on it. There is legislation on the Statute Book. This is in suspense at present as we are awaiting the appointment of an adjudicator by the Minister and awaiting nominees to the determination panel, by the Office of the Attorney General and by the Taoiseach and Minister for Defence. The points legislation is in suspense at present. That is in answer to those two.

To come back to the questions on super trawlers, Senator Mac Lochlainn raised the "Atlantic" documentary and the issues that were raised there and sought cast-iron assurances that not one fish more than the entitlement is taken. We are completely dedicated to having sustainable fisheries. When we inspect fishing vessels, we will target on a risk basis. It can be difficult to

inspect large super trawlers at sea due both to the size of them and, if the weather is rough, to the difficulty for the Naval Service in boarding. In addition, as was mentioned, it can be technically difficult because these are large vessels and we need to have trained fisheries officers. We have the numbers of inspections that we have carried out. They have been increasing. We have been looking at that. We have been working with other authorities to ensure that we are working on the risk-based work on that. We are setting up and putting resources in. As a number of members identified, there is a lot of pull on resources in the Sea-Fisheries Protection Authority but we have made a strategic decision to set up a coastal state unit for the sole purpose of looking at the 80% of fish that is caught in Irish waters but not landed in Irish ports. We believe that it is paramount that we put significant resources into looking at that and ensuring that we work on a risk basis. We have superb relationships both with the Air Corps and the Naval Service for carrying out inspections but also with the flag states of vessels where the vessels are inspected on landing.

I will hand over to my colleague, Micheál O'Mahony, who runs the control side of the Sea-Fisheries Protection Authority, who will go into more detail on the number of questions that we have had on what we call "large-scale freezer vessels" rather than "super trawlers".

**Mr. Micheál O'Mahony:** I will deal with the large-scale pelagic freezer trawlers. The questions reflect a lot of what was put to us.

Senator Mac Lochlainn, in particular, was looking for cast-iron assurances. In my own notes, I have the phrases, "double standards" and "opinion on a ban". This may be the starting point. In general terms, the presence of these vessels in the Irish EZ is generally legal. It is perfectly legal within the rules of the Common Fisheries Policy. I am not sure which words the Senator used. It might be perceived as an affront or something like that, but it is generally legal within the rules of the Common Fisheries Policy for them to be present, for a starting point.

**Senator Pádraig Mac Lochlainn:** Does Mr. O'Mahony have an opinion on that?

**Mr. Micheál O'Mahony:** That is the rule-----

**Senator Pádraig Mac Lochlainn:** I asked whether Mr. O'Mahony himself has an opinion on that.

**Mr. Micheál O'Mahony:** I am here as a-----

**Chairman:** Maybe Mr. O'Mahony would answer the question first of all-----

**Mr. Micheál O'Mahony:** That is fair enough.

**Chairman:** -----not trying to be evasive.

**Mr. Micheál O'Mahony:** I can try to deal with the generalities of expressing opinions if-----

**Dr. Susan Steele:** No.

**Mr. Micheál O'Mahony:** I will try and answer the questions.

**Dr. Susan Steele:** Mr. O'Mahony will try to answer, then I will come in.

**Mr. Micheál O'Mahony:** I will work through the answers.

**Dr. Susan Steele:** Yes, perfect.

**Mr. Micheál O'Mahony:** I will try to work through the answers on that.

We are the regulator. We implement policy. We enforce what is on the Statute Book. It is allowable for those, including the vessel the Senator named, to be here. There is a fleet of them. We see them as one homogenous entity but they all are different vessels, generally owned by Dutch multinationals. They fish in various waters, including the Irish EZ.

We consistently hear the same message as the Senator hears, that these should be inspected and these pose particular risks. We agree. They should be inspected and they pose particular risks. We absolutely agree on that. There is no push-back whatsoever on that. We absolutely agree on that.

Our obligation is to have risk-based inspection frequencies which goes towards the question of what is our trigger. Our trigger is the risk of non-compliance. Where we perceive a risk of non-compliance, we are duty bound to act. We are duty bound to devote our resources to those areas where there may be a risk of non-compliance. We see particular risk with these vessels and we devote resource to these vessels. These are among a group of vessels that fish in the Irish EZ but almost never land in Irish ports.

Landing gives us, as controllers, a particular insight into what has been caught at sea, in particular, what has been retained on board. It is a good point at which to get a good idea of what actually is there. These vessels do not land and we do not have that particular window for these vessels. That is a particular issue for us. Because of that, we are setting up this coastal state unit to deal with the information we have as opposed to trying to pontificate about the information we do not have. We try to deal with the information we have and make the best of that to do the job that is before us.

The Senator was emphatically looking for cast-iron assurances of various things, one of which was the presence of officers on board. We arrange for inspections. We have a service level agreement with both the Naval Service and the Air Corps. An inspection involves a discrete event of going on board, verifying what is on board and then coming off. It does not involve staying on. The European control regulation sets a general limit of four hours for an inspection and that is the framework under which we work. It would be abnormal for inspections to take any longer than that.

Deputy Martin Kenny asked more or less the same question - have we the power to place staff on board. Control observers are, within the European regulations, a matter for the flag state, not the coastal state *per se*. As a coastal state, our role is one of inspections which is discrete - a sort of event where, one might say, it is happening now and now it is stopped. That should directly answer the direct question on that.

In 2016, we carried out 13 inspections of these vessels. In 2017 to date, we have carried out 15 inspections of these vessels. Those are the raw numbers of inspections to date for those vessels.

Deputy Martin Kenny mentioned the mincing of fish. One of the prohibitions for all vessels, including these vessels, is the prohibition to have infrastructure on board that would allow the return of fish to sea post grading. That would include whether or not they are minced. Mincing is not something we see on these vessels. There was one highly publicised scientific trial which was mentioned in the media quite frequently. That was - I do not have a date in my



head - roughly towards the middle of 2015, when there was one vessel in the Irish EZ conducting a mincing trial. That is not what we find on board these vessels. Any return of graded fish to sea would be an offence with which we certainly would deal. What we find in our inspections is that is not the norm. I think that answers the questions that were asked.

**Dr. Susan Steele:** Mr. Andrew Kinneen wants to come in as well, if that is okay.

**Chairman:** Go ahead. There is also the Brexit issue.

**Dr. Susan Steele:** There are a few more.

**Mr. Andrew Kinneen:** To add to my colleague's remarks on the super trawler question, Deputy Penrose is quite right in so much as the risk associated with such large vessels of environmental damage is great. If they misbehave, they do a hell of a lot of damage. We are very much aware of that.

At present, we have remote sensing equipment and we can tell exactly where the fishing vessel is, its speed and direction. We can infer from that whether or not it is fishing, maybe not to the extent of legal proof but certainly from the point of view of guesstimating what the vessel is up to out at sea.

No doubt it is difficult at times to get aboard these vessels at sea. It is a serious challenge to be deployed from a Naval Service patrol vessel in a small inflatable, get over beside the boat - I myself have done this job a long time ago - , get up along the side of the boat and get over. One can be climbing vertically 10 m or 15 m. It is a difficult job in the best of weather. It is an impossible job in the conditions prevailing in the Atlantic Ocean a lot of the time.

There is a serious problem here. As Mr. O'Mahony stated, we can be sure if the vessels operating inside our fishing waters are fishing or not. We can also be sure if they have a legal entitlement to be there. We are not so sure what they may or may not be doing with regard to high grading or misbehaving with regard to their fish-catching entitlement. It requires going aboard those vessels to verify that.

We are very concerned about this and some years ago, the Sea-Fisheries Protection Authority, SFPA, took the initiative to get control experts from all over Europe on this particular question to look at what measures might be brought in place to make a more level playing field. The other fishing vessels over which we have control, the pelagic fishing vessels, come into our ports every one or two days. As stated by Mr. O'Mahony, we have a good platform in place for them in terms of controls. They are not foolproof but they are better than what they were. The super trawlers can work away for a number of weeks and then exit our waters without direct control by us. We do have powers to direct these fishing vessels to port, but only with good cause. As is the case of the other fishing vessels we board, we cannot interfere with the normal operation of these fishing vessels without good cause. There are questions to be answered. There is an implicit inequality in the way they operate shoulder to shoulder with an equivalent smaller fishing vessel. We have had anecdotal reports from demersal ground fishermen of large-scale discarding of pelagic species at sea, but we do not know if they come from these large super trawlers or from other pelagic vessels.

We are conscious that there is a problem to be addressed. We have some good technical leads from the remote sensing equipment, and we hope to develop real capacity with it in conjunction with the coastal state unit. We are also researching techniques such as the last haul analysis, which involves a detailed examination of what a trawler brings on board in terms of

average sizes to determine whether they are different from previous hauls recorded by the fishing vessel and thereby infer whether there has been abuse of the system. Again, there is a gap between doing that and getting proof of the level required. Reference was made to the criminal law. The standard of proof in terms of bringing cases to court is very high.

**Dr. Susan Steele:** I hope the committee is happy with those answers.

**Senator Pádraig Mac Lochlainn:** May I ask a supplementary question?

**Chairman:** Yes.

**Senator Pádraig Mac Lochlainn:** My apologies to Mr. O'Mahony for interrupting him during his presentation. Mr. Kinneen has answered my question. I welcome his advice to the committee in regard to his concerns. It is very helpful because the view has been that we do not have the capacity in this State to give a cast-iron guarantee that there is full monitoring of vessels. The *FV Margiris* operates under a Lithuanian flag.

**Mr. Micheál O'Mahony:** Correct.

**Senator Pádraig Mac Lochlainn:** It was mentioned that a vessel is ultimately the responsibility of the flag state. I note from a previous discussion that the Naval Service boarded the *FV Margiris* in November 2016. I am focusing on this vessel only because it is the second largest vessel in the world and it gives rise to great concern when it is off our coast. It was said earlier that, under European regulations, SFPA officers cannot be on board a vessel for longer than four hours and that the authority has the power to call a vessel to port, but to do that it must demonstrate reasonable cause. Do the witnesses believe that there is need for strengthening of legislation at European level to give the authority the powers to be on board those trawlers when they are in Irish waters given their capacity to do damage? From my perspective, it is outrageous that there is a four-hour limit in terms of on-board inspections.

My understanding, based on what the SFPA said in its evidence, is that it is impossible to give a cast-iron guarantee in regard to the operations of these super trawlers because of the difficulty in accessing them, particularly in adverse weather conditions, and because the SFPA does not have the power to bring them into an Irish port unless it can demonstrate reasonable cause. I believe there needs to be an amendment of the legislation or regulations at European level such that when these trawlers enter Irish waters, legally under the Common Fisheries Policy, CFP, it is possible to have people on board for much longer than four hours. I would argue that our officers should be permitted to remain on board for the duration of the time they are in Irish waters. I would welcome the witnesses' opinion. If they do not agree with my proposition perhaps they would outline their ideas in this regard. I note the witnesses' remarks in regard to technology, but I believe to ensure proper monitoring, we need people on board vessels while they are in Irish waters. That has to be the *quid pro quo* for these vessels being given access to our waters.

**Dr. Susan Steele:** It is wonderful to hear the Senator's passion on this issue. As we said earlier in regard to fish stocks, this is for our children, grandchildren and great-grandchildren. Everyone in the Sea Fisheries Protection Authority does the job for that reason. We work as regulators, but there is not one person in the organisation who does not have that passion both for the fish and the coastal communities around Ireland. We welcome the Senator's passion.

In regard to having observers on board a vessel, there is a lot work to be done on this issue. The policy needs to work. As regulators, we do not get involved in policy but it needs to be carefully examined and benchmarked with what could and will work. In regard to the Senator's

suggestion of an observer programme, we would be interested in anything that would assist us. Is it the only way of dealing with the high risk in this scenario? No, it is not. There are records on when fish are landed and when they are sold. There is also a last haul size grade analysis and many other things that can be looked at. The assumption here is that the vessels are coming in to work against the Common Fisheries Policy but perhaps they are not. All these issues need to be addressed. There is no simple solution. The only cast-iron guarantee we can give the committee is that strategically we are putting significant resources into this area. At the highest levels possible, we are examining the risks and how they can be addressed within the current legislative framework.

In regard to future policy, that is a matter for the committee to raise with policymakers rather than with us. We welcome the Senator's passion on this issue. We are putting resources into this area. I wish I could give him the guarantee he seeks, but unfortunately regulators can never give that. I will ask Mr. O'Mahony and Mr. Kinneen to comment further because I believe they may add value to what I have been saying.

**Mr. Micheál O'Mahony:** I, too, am heartened by the Senator's passion, which we share. We believe we do more in this area than many people. We spend our days and nights on it. We do not have 100% control over this area. We have only risk-based controls. We are not on the deck of any fleet every day of the week. We have defined windows of insight into what happens. We do not have 100% control. That is not how the European regulations are set up. Starting from that point, we do the best we can with what we have. We cannot offer cast-iron guarantees.

In regard to the Senator's proposal, what would be required in terms of staff is six fisheries officers, with two officers on board over three shifts to deal with daily catches which are processed during the night. As mentioned earlier, we have 61 officers to cover the entire Irish EZ and all our food safety controls. I have just used up 10% of them without any kind of downtime for them on one vessel in the past five minutes while I have been speaking. This is an immense resource draw. There are various things we could do to tighten the loop here but that is a jump towards 100% control or total control, depending on the phrase one picks. That is not how the control regulation is set up, which is around risk-based controls. I am not pushing it back, I am just contextualising it as to where it sits.

**Mr. Andrew Kinneen:** We have looked at additional measures. As Dr. Steele correctly said, it is a policy matter. They included, for example, more discreet marking of frozen catches on board because one carton can look very like another carton. If there was legislation there that insisted they were colour coded or more amenable to inspection that would be helpful. We know that there are CCTV systems that are very effective in identifying production lines and what is happening on them to try to eliminate risks of illegal discarding and high-grading. Again, that is a policy matter. I know from hearing people in the fishing industry that they do not necessarily welcome the imposition of these technologies on boats. It is a one-size-fits-all in the way it is set up at the moment for the larger fishing vessels. There is no clear demarcation between vessels that freeze their fish or catch it and land it fresh. The technologies are a factor. A range of measures could be considered by the policy makers - and that includes the observer schemes as well - but that might not necessarily be welcomed by all sectors of the industry.

**Mr. Micheál O'Mahony:** We could come up with various things that might help here. Haul-by-haul analysis is another example. At the moment we get what the vessels have caught during the day and that might be several hauls. Haul-by-haul analysis is something that we feel would be particularly useful here. Access to their entire fishing trip information is another one.

To clarify, when they arrive, they may have been fishing for three weeks before they arrive in the Irish EZ. When we go on board how do we tell the difference between what they caught in the Irish EZ and what they did not catch in the Irish Sea EZ? Even that information would be useful. There are various things we can do to step towards a better picture for the coastal state. The reality is that the CFP sets up a shared responsibility between the coastal state, in this instance us, the flag state - reference was made to a particular case in that regard - and the port state, where the catch lands. To join the dots between those is a challenge we face every day of the week.

**Senator Pádraig Mac Lochlainn:** Thank you for your patience, Chairman. I appreciate it. I will be very brief. Could I propose that the SFPA would make a submission to our committee outlining ways or ideas it has for strengthening its ability, including the need for additional resources? We can then put that submission to the Minister. Is that a reasonable request?

**Chairman:** Is it within the SFPA's jurisdiction to do that?

**Senator Pádraig Mac Lochlainn:** I am asking the SFPA as practitioners.

**Dr. Susan Steele:** We can do the resource side, but the policy rests with the policy makers. We work as regulators. In terms of resources, there is no issue. There are always things that we could do better and we would be delighted to look at that side of it.

**Senator Pádraig Mac Lochlainn:** Could I propose then that the SFPA would do as suggested? Could I also propose that the committee would write to the Minister asking him from a policy perspective to address the issues that we have raised here today? Most if not all of us have raised concerns about super trawlers.

**Chairman:** We could have legislation coming before us in that regard anyway so we will have an input into that at some stage down the line.

**Senator Pádraig Mac Lochlainn:** In terms of the specific issues here, could I ask that the committee will write to the Minister asking for assurances? In fairness to the SFPA, the witnesses have said they are limited to a policy perspective.

**Chairman:** Yes. That is understandable.

**Senator Pádraig Mac Lochlainn:** Perhaps the Minister and his departmental officials could reassure us in that regard. Is that fair enough?

**Dr. Susan Steele:** Under the Sea-Fisheries and Maritime Jurisdiction Act which governs the setting up of the Sea-Fisheries Protection Authority, we cannot question or express an opinion on the merits of any policy of the Government or a Minister of the Government, or on the merits of the objectives of such a policy.

**Chairman:** That is fair enough. That is understandable.

**Senator Pádraig Mac Lochlainn:** I appreciate that.

**Dr. Susan Steele:** There are technical aspects of it that we can address.

**Chairman:** The SFPA can confine itself to the areas with which it is comfortable and that are not prevented under the legislation. Is that okay?

**Dr. Susan Steele:** Yes. That would be on the technical aspects.

**Deputy Charlie McConalogue:** The SFPA carried out 2,500 fishing vessel inspections last year. A total of 80% of the fish caught in Irish waters is landed in other countries. Are the type of ships to which Senator Mac Lochlainn referred all in the category that catch the 80%? It was indicated that 12 to 15 inspections were carried out last year and this year on super trawlers. What proportion of the catch is caught by super trawlers? I understand how difficult it is to get access to them but the number of inspections carried out on them strikes me as quite a small number given their size and capacity to catch fish.

Could the witnesses elaborate a bit more on what would normally happen to the vessels at the landing port and in terms of the flag state of the vessel? Are inspections carried out on them and how much co-operation and communication is there between the SFPA, the port state where the catch lands and the flag state?

I accept we are short on time but could the witnesses provide a short explanation of what the coastal state unit will involve and how that will work?

**Dr. Susan Steele:** I apologise as we do not have the information in front of us but out of the 80% there are a large number of vessels, not just large-scale pelagic freezer vessels, landing into ports that are outside Ireland catching fish that are not freezing on board, that would not come into the category of the large-scale pelagic freezer vessels but I do not have the breakdown with me. Those inspections were just on what is referred to here as the super trawlers, what we call the large-scale pelagic freezer vessels. There were 1,000 inspections at sea of all different vessels, some that are landing into Irish ports and some that are landing outside. I am afraid I do not have the breakdown with me but we can look into that and come back to the committee with the information.

I will pass some of the more detailed operational questions to Mr. O'Mahony, but in relation to what is the coastal state unit going to look at, it is going to look specifically at what the Deputy outlined, namely, where the vessels are landing, the links with the port states and flag states of the vessels and what risks there are in that regard. It will have links with member states to look at their risk listings of vessels. If we have vessels here at the moment we do have information from other member states coming in, but just to make sure that we are seeing if there is high risk vessels from other countries that are fishing here, we are very aware of that and use it as part of our risk listings. There is a very descriptive project plan around the work that is going to be done by this unit, but it will have a very significant and important role in making sure that we are identifying and acting on all of the risks that are potentially there for Irish fish stocks. I invite Mr. O'Mahony to respond to the questions on operational areas.

**Mr. Micheál O'Mahony:** I can see why the figures I quoted look small in the overall context. The general pattern of such vessels is to come, stay for quite some time and fish heavily while they are here, weather permitting. A total of 15 inspections in the year to date is a relatively high proportion of the fishing trips. If we go on board a vessel that has been in Irish waters for three weeks, that is an index of what it has been doing for three weeks, which might be compared, for example, to a lot of other vessels that might fish for two or three days and then land and we would inspect them then. Each of those landing inspections is an index of three days fishing activity whereas an inspection of a super trawler is an index of three weeks fishing activity. It is not really a case of comparing apples with apples. The figures I have given are in our view a useful percentage of the number of trips of those vessels but I accept they do not look big in the overall context. We do not have the figure for the proportion of the Irish Box that is taken by these vessels. They fish particular species - pelagic species - and generally target horse mackerel within the Irish EZ. It would be their main reason for coming to the Irish EZ. Many



other fish are caught in the Irish EZ.

The Deputy asked about follow through to the landing state. We have worked hard to make as good a relationship as we can with our equivalents in the Netherlands or Lithuania. There are really three states. There is a coastal state - us - the flag state and the landing state, which we call the port state. In some instances, our analysis of the data available to us might indicate a potential risk of non-compliance. We would highlight that to the flag state, which would highlight it to the port state. On some occasions, although not very often, we have gone to view the inspection of the landing in the port state as well. These are frozen boxes of fish so it is a box count and a pallet count. Essentially, they are placed on pallets before they come off so they are really giant freezers. The boxes are relatively amenable to being counted. There is the issue of making sure a pallet of 30 kg boxes is a pallet of 30 kg boxes and not a pallet of 35 kg boxes. There are issues there with having to tow boxes of fish to make sure a pallet of 30 kg boxes of horse mackerel is not a pallet of 30 kg boxes of mackerel. We have a good relationship and liaison which we invoke on a risk basis when we perceive issues here. I hope that answers the question.

**Deputy Charlie McConalogue:** If Mr. O'Mahony was to highlight a compliance risk to a landing state, is it the SFPA's experience that the landing states generally act on that or is it haphazard?

**Mr. Micheál O'Mahony:** In general terms, my experience is that they do act on that. We do not invoke those things every day of the week. My general experience is that there is a good level of responsiveness from the landing state. By way of context, it could take two or three days to unload one of these vessels. That is on a 24-hour shift basis. These are very large vessels so a lot can happen in two or three days of craning off pallets. It is not a ten-minute job. This is a significant undertaking of the landing state. The landing state has its own obligations under the Common Fisheries Policy. It must inspect a certain proportion of these vessels on a risk basis so it must be there in any event regardless of whether we knock on its door or not. The answer to the Deputy's question is "Yes". I would generally expect a good response and generally receive one along with good feedback from the landing state.

**Chairman:** Are we happy with the answers on that issue?

**Dr. Susan Steele:** I hope I have not missed anything but the final questions that are outstanding relate to Brexit. As everybody in the room is aware and as we are seeing everywhere in the discussions, the implications of Brexit for fisheries will be profound. As regulators, we are very concerned about the huge extra demands that will come from the extra sea area that will have to be patrolled and possibly from displacement. There are so many possibilities regarding what could happen. As the committee will have seen when we spoke about the annual report, last year we signed 6,100 health certificates which were for export to countries outside Europe. This is a huge responsibility for the SFPA. Again, we can see more work in that area in the future. As everyone is watching what will happen with negotiations and the outcome, we are looking at the possibilities and what resources will be required in order for us to be able to ensure both seafood safety, trade and the fisheries control side of our work. We have been discussing with our parent Department. We have not yet put in a formal submission because we do not yet know where we will be with it. That is our answer with regard to Brexit.

**Chairman:** Are members happy with that?

**Dr. Susan Steele:** There was one other question on landing obligations and Mr. Kinneen

will address it.

**Mr. Andrew Kinneen:** The Deputy raised the issue of landing obligations. There are challenges for us, as regulators in this area, because monitoring and getting the assurance in place that everybody is not dumping unwanted fish at sea are very challenging. Again, there may be technical solutions to that. We are trying to encourage fishermen not to catch the fish in the first place. If they develop more selective catch methods, they avoid the problem of having unwanted catches of fish for which they have no commercial use that they must manage when they come ashore. If they cannot manage to be more selective in their catches, we will have a lot of problems. We will have problems managing the catch that has been brought ashore. We have been trying to encourage fishermen to record discards so that we have an idea of what is being dealt with. We cannot say this has been a success despite our efforts at persuasion. There have been port meetings held by the SFPA and our parent Department to try to explain this quite complex regulation to the fishermen. I would say that there is a lot of work to be done in this area. We could not claim that this is an area of high compliance at the moment. We see this regulation as something that is of great benefit to fishermen if they can take it on board and take control of it themselves - not seeing it as a cat-and-mouse issue but one where they use their intelligence to catch the fish they want to keep. Our strategy in this area is to be persuasive.

**Chairman:** That concludes this part of the meeting. I thank the witnesses for coming before the committee and making their presentation, which was very informative.

*Sitting suspended at 6.07 p.m. and resumed at 6.10 p.m.*

### **Sea-Fisheries (Amendment) Bill 2017: Discussion (Resumed)**

**Chairman:** Before we begin I remind members and witnesses to ensure their mobile phones are completely turned off. We are here today to discuss issues concerning the Sea-Fisheries (Amendment) Bill 2017. I welcome Mr. Gerard Kelly, managing director of Tardrum Fisheries Limited and Fresco Seafoods Limited, Mr. Paul Barlow, managing director of Woodstown Bay Shellfish Limited, Mr. Alex McCarthy, director of Alex McCarthy Shellfish and Mr. Michael Crowley, general manager of Riverbank Mussels Limited. I thank them for coming before the committee.

Before we begin, I wish to draw the witnesses' attention to the fact that they are protected by absolute privilege in respect of their evidence given 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, persons or entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable.

I understand Mr. Kelly will make an opening statement. He has circulated quite a lengthy statement to members and they have gone through it. I ask Mr. Kelly to summarise this rather

than going through it word for word, if he does not mind.

**Mr. Gerard Kelly:** I thank the Chairman and members of the joint committee. On behalf of my colleagues, it is great to have an opportunity to make comments on the Bill. The Minister appears to justify the Bill on the basis it is the continuation of fishing that has been going on for 15 years and he is therefore under some sort of moral obligation to facilitate it; that it is required because fishing vessels from the Republic of Ireland enjoy reciprocal rights to fishing sites from UK waters; and that it is a token of goodwill from the Minister for the Brexit negotiations between the UK and the EU. Setting this aside, we present evidence the Minister's position is contradicted by facts on historical fishing and reciprocity and that it has no moral basis as it offers something far beyond what could be expected or offered by another country. It also leaves Ireland open to additional legal risk, of which the Minister is already aware.

The proposed legislation will permit UK vessels access to our zero to six mile zone around the Irish coast, where they can be treated as if they are Irish vessels. I refer to TAB1 D1 in the documentation provided to committee members, which shows a map of what the area looks like. The UK fleet already enjoys privileged access to our waters in the zone between six to 12 miles along the east coast. This was settled at the London Fisheries Convention of 1964. This is easily available to see at TAB1 D2 in our submission document.

Northern Irish vessels, being UK vessels, enjoy access to inshore waters of the entire UK and all waters outside Ireland's 12-mile limit. This is a big area. Without the Bill, these vessels can still operate out of Irish ports in accordance with the London Fisheries Convention. There is no suggestion UK vessels will either give up this access to the UK zone or reciprocate with the same access for Irish boats by Ireland passing the Bill.

Irish fishermen vehemently opposed the *voisinage* agreement when the Government of the day attempted to impose it in the 1960s, and disputed the concept of UK vessels fishing in the zero to six-mile zone. There then followed serious disputes at sea off Dunmore East. Any suggestion this has continued happily since the 1960s is factually incorrect. There are numerous contemporaneous reports of hostility in *The Irish Times* from 1959 to 1966 that support this. The evidence conveys a very different picture to the 50 years of happy fishing outside the zero to six-mile zone that the Minister presented to the Seanad.

At the beginning of the mussel case, the Minister and the Attorney General wished to disown the natural resources, the territorial seas and their property. This is referenced at TAB2 D4 in the submission document. What would happen if we had not successfully appealed the High Court decision to the Supreme Court? Can the same people be trusted to do the right thing now or are they using the Oireachtas as a face-saving mechanism? Have the same attitudes deprived Ireland of the benefits of its oil and gas resources? Were oil and gas policies more rushed decisions involving blind cross-party support without understanding the consequences? Are we to be an island nation without its own seas and marine resources? The Barlow 2 case in the Supreme Court involved the reversal of roles, whereby the citizen had to protect the Constitution and the State with the Minister and the Attorney General opposing.

Fishing rights are to be guarded and preserved. They are part of our sovereignty and Constitution. The Supreme Court found that fishing by Northern Ireland vessels was illegal so any rights gained by these UK vessels or shellfish farms during the reference periods are now also void and must be returned to Irish fishing communities. The simple way to address the issue is to abandon the Bill and allocate the relevant quotas back to the host state, which is Ireland.

The Marine Institute atlas shows an image of where Irish vessels fish around the entire coast of Ireland. This is included in the documentation, at TAB1 D3. It also shows an image of fishing activities by various national fleets in Irish waters, which is incredible. Each time the Government has attempted to force this arrangement on Irish fishermen, the industry has opposed it, never more clearly than as expressed by Irish fishing organisations before the committee on 20 June 2017. An explanation of the so-called arrangement has always been that it is above our station to question such matters. We were told it was non-justiciable and we had no standing to ask questions on it or even to challenge it. The Supreme Court judgment finally put to bed this “it is legal now so go away” argument.

I wish to make a small correction to what is printed on the top of page 5 of our submission document. The first line should refer to the Barlow 2 case and not the Barlow 1 case.

The UK structured its position on the *voisinage* letters that set out the arrangement in such a way that any rights vessels from the Republic of Ireland enjoyed fell away automatically as soon as the arrangement was ended. We hear about a *voisinage* agreement, but this is only a few letters which do not say a lot. However, one thing they do say is the arrangement will apply so long as the authorities of the Republic of Ireland continue to accord to Northern Irish vessels the same treatment as they would accord to vessels of the Republic of Ireland in the waters around the entire Irish coast. This is included at TAB2 D3 in the documentation.

We contend the arrangement referred to in the *voisinage* letters is an arrangement from December 1959, and the arrangement was not to prosecute Six-County fishermen for fishing inside Ireland’s new three-mile limits. It was stated the strict legal position was that boats registered in the Six Counties were not entitled to fish in the new limits, that it would be impolitic to make an announcement that the law would not be enforced against Six-County fishermen and that the informal attitude to Six-County fishermen within the fishing limits would be continued. It was also stated that no announcement would be made on the matter. A senior judge described it as unlawful but tolerated. This is the same context on which this new fisheries Bill is based, that is, not to prosecute.

The Minister referred in the Seanad to Irish fishermen utilising vessels from outside the jurisdiction. Is this covered in the Bill by the term “sea-fishing boat owned and operated in Northern Ireland”? That is a UK-flagged vessel owned and operated in Ireland’s exclusive fisheries zone. The Bill is being diluted for abuse in favour of UK vessels as it proceeds through the Seanad. These vessels can still operate out of Irish ports and be owned by Irish fishermen but they cannot fish in the zero to six-mile zone. Accordingly, there is no hardship or need for compensation as suggested by Deputy Gallagher at the previous committee meeting. Deputy Gallagher’s constituency of Donegal has 360 Irish fishing vessels that deserve his attention.

The Supreme Court was asked to make a decision as to the legality of fishing by Northern Irish fishing vessels. It decided unanimously that it was illegal. For clarity, this applied to all areas within Ireland’s zero to 12-mile zone, apart from that provided for under the London Fisheries Convention, which can be seen at TAB1 D2 in the documentation provided.

With regard to Brexit negotiations and international agreements, our understanding is that the European Union has adopted a policy that there will be no bilateral agreements with the UK prior to Brexit. Has the Minister investigated the consequences of legalising this fishing in terms of our obligations to our EU partners? Has he investigated the risks the proposed legislation may create under Article 8(2) of the London Fisheries Convention? Article 9(2), which is normally referred to, only applies to vessels that habitually fished under *voisinage* arrange-

ments, not to be confused with a regime of “not to prosecute”. Does the legislation comply with the Minister’s fisheries management obligations, for example, in respect of conservation and management? Will the Minister need to have joint management with the UK for Ireland’s in-shore waters? Will he have to consult again with Stormont when managing the mussel industry in Cromane, in County Kerry?

Is the Minister aware that when he was in the Seanad on this matter on 8 March 2017, on the same day the UK fisheries Minister was being advised that the Common Fisheries Policy superseded the London Fisheries Convention, meaning that historic fishing rights derive from EU law, and not from the convention? There was a man here who said he was sceptical as to whether the London fisheries rights could be revived after 40 years. That reference is in TAB3 D3.

With regard to precedent for the legislation, the Minister should be aware that the *voisinage* arrangements concluded between other countries are never unrestricted. He should note that *voisinage* arrangements made at the London Fisheries Convention are all documented in EU Regulation 1380/2013 and listed in Annex I to the aforementioned document. There is no mention of the Irish arrangement permitting UK vessels to operate in Ireland’s zero to 12-mile zone other than that illustrated at TAB1 D2, the text version of which is in TAB2 D6.

All other agreements are specifically restricted to prevent abuse. Typical restrictions include limits on species and locations. Where is Ireland’s *voisinage* recorded in this annexe? The Minister alludes to this *voisinage* being in place since 1960. The London Fisheries Convention was completed in March 1964 yet the so-called *voisinage* letters were dated September and December 1965, so how does the proposed unrestricted access sit in that context?

There is incontrovertible evidence that Northern Ireland shellfish farms, that is, plots of land on the sea bed, were allocated thousands of tonnes of mussel seed in the Republic of Ireland. Some of those farms did not even own a fishing boat. We then had a *voisinage* for fish farms. Nevertheless, joint management under the legal umbrella or foundation of *voisinage* arrangements somehow allowed for allocation-quota of a precious Irish natural resource to UK shellfish farms. These quotas or entitlements have since been traded but, more importantly, Irish businesses had to suffer the loss of these resources and Irish processing plants have closed down. The Irish Department will not consider permitting Irish fishing vessels to have individual transferable quotas but was willing to permit a UK shellfish farm an individual transferable quota of mussel seed in the Irish Sea and the farm need not have a boat.

Has the Minister been made aware of such activities by his officials? Does he propose to prevent such behaviour happening again in the future? Does the Minister give foreign interests priority over Irish communities in this Bill? Where is the legal, moral or economic justification for this? Will the Minister rule out categorically that the ancillary legislation envisaged will provide for similar abusive regimes previously described as joint management or the seed mussel allocation committee, SMAC?

As for good relations and the all-island agenda, if the Minister wishes to give access to Northern Irish vessels on the basis of some higher political goal, he should say so explicitly. If he chooses to legislate to give free access to our zero to six-mile zone, then he cannot simply ignore the legal rights of Irish fishermen, including their right to earn a living, and the constitutional protections that exist in respect of this and other rights. When the then Taoiseach, Seán Lemass, met with Captain O’Neill in the early 1960s, they did discuss agriculture and fisheries. On fisheries, they discussed prosecutions for illegal fishing. Today, there are examples of



co-operation on agriculture on an all-island basis. There is an all-island animal disease control plan, but that does not permit farmers from one jurisdiction or a dairy processor to milk the cows from the neighbouring jurisdiction, although they can buy the milk.

The *voisinage* agreement we have experienced is the only example of a transfer of assets. What the then Taoiseach, Seán Lemass, discussed with Captain O'Neill is documented in the National Archives and reported to the Oireachtas accordingly. There is no mention of any *voisinage* agreement. The reason for that is obvious, as can be seen in the difference between the then Taoiseach's SI 173/1959 and the former Taoiseach, Deputy Kenny's SI 22/2016.

Further clarification on *voisinage* is available to the elected members in the Official Report of the Dáil debate on the Maritime Jurisdiction (Amendment) Act 1964, during which the London Fisheries Convention is discussed but *voisinage* is not mentioned at all. The *voisinage* dialogue letters do not occur until September and December 1965, more than a year later. My colleague, Mr. Crowley, will later give a position offered by the Department of Agriculture, Food and the Marine on *voisinage* in 2012. The answer from the Minister, Deputy Creed, to Deputy McConalogue in Dáil Éireann on 24 November 2016 is somewhat misleading in so far as the Supreme Court judgment related to the zero to 12-mile zone and not the zero to six-mile zone referred to in the Minister's reply. Perhaps the record of the Dáil should be amended accordingly.

I will turn to my summary and proposed way forward. The Minister, Deputy Creed, appears to have lost sight of the fact that he is dealing with illegal fishing in this legislation. Fishing takes place in an environment where rules are numerous and strictly enforced, typically to the letter of the law. What the Minister is actually proposing is to set aside the law for a specific group of British-flagged vessels to operate inside the Irish zero to six miles coastal zone and not be prosecuted.

The Minister is also proposing to allow another state decide which vessels will qualify to be classed in that "not for prosecution" group. The terms "Northern Ireland Owned and Operated" and "*voisinage*" are vague, uncertain and so incapable of enforcement they are void because of uncertainty. Is this intentional on the part of the Minister? Which part applies - owned or operated? Even the text of the Bill is a contradiction of itself. Does the Minister realise that while the Irish vessel registration system proves ownership, the UK registration system does not? State authorities said they cannot look behind the licensing regime of another country, even if the vessels are fishing in Irish waters.

It is our honestly held view that this legislation is nothing more than a vindictive attempt to punish the fishermen and the industry which took the Supreme Court case. The intent of the Minister is in all likelihood incapable of legislation but the ideology behind the Bill raises serious concerns. Recently, we heard that fishermen who operate in the Moville district of Lough Foyle may not be given allocations this year.

To provide our summary of the proposed legislation, the arrangement to set aside the law was never legal and consequently should never earn any sort of legal recognition. It has been continually opposed by Irish fishermen since the first attempt to impose it on us. It was resurrected to facilitate access to our mussel resource for large Dutch corporations using Northern Ireland as a flag of convenience. The legislation is not supported by any moral obligation given that no other country has ever given such access, nor does the UK give anyone else such access. We are swopping a horse for a rabbit.

UK fishermen will continue to enjoy privileged access to our east coast six to 12 mile zone without this legislation. The legislation offers nothing for the fishermen or taxpayers of the Republic of Ireland. It will result in loss of income, jobs, taxes and people from Irish coastal communities. Experience suggests that it will be abused in a similar manner as occurred in the bottom mussel industry historically. It is already drafted for abuse. The main beneficiaries will be large foreign corporations initially, followed by those who will exploit the loopholes now being created in the regulatory regimes by this Bill. It may create major legal difficulties for Ireland elsewhere. In the context of Brexit and the apparent intent of the UK to withdraw from the London Fisheries Convention, the Minister should not be introducing any new fisheries legislation.

Ireland has a sea territory ten times its land area. This vast resource only produces around €500 million worth of fisheries material per year for Ireland. We would like to take this opportunity to begin new thinking for this massive resource and what it could mean for the coastal communities of Ireland. We need new thinking whereby Ireland's leaders value our marine resources and develop an industry as large as farming. The resources are there and other countries are harnessing them, as can be seen in tab No. 1, D5. Deputy Creed's speech in October 2016 at the eighth meeting of the National Inshore Fisheries Forum stated: "The inshore sector, comprising fishing boats of less than 12 metres in overall length, make up more than 80% of the Irish fleet and are predominately active within six nautical miles of the Irish shore". That is over 1,600 Irish vessels depending on the area the Minister is canvassing the committee to give access to for UK vessels to fish in. Note the Minister is not saying the Irish fleet needs the coast of the Six Counties.

**Chairman:** I thank Mr. Kelly for summarising as much as possible.

**Deputy Charlie McConalogue:** I welcome the four witnesses to the committee and thank Mr. Kelly for his presentation. I commend him on the tremendous research and documentation that he has put in front of us for consideration.

I have a few questions. My understanding of *voisinage* previously was that it affected the zero to 12-mile zone and that the practice meant that UK registered boats were able to fish inside the zero to 12-mile zone. The witness is saying to us that technically the *voisinage* agreement did not facilitate that and that it was the zero to six-mile zone for most of the country, apart from part of the east coast, which allowed it from zero to 12 miles. Can the witness elaborate a little further on that and tell the committee his basis for saying that?

*Voisinage* was in place up until the Supreme Court decision. How much was the agreement utilised by UK-registered boats within Irish waters, particularly the zero to 12-mile zone? In terms of the reciprocal arrangement available to Irish boats, how much would it have been used by Irish boats fishing within UK coastal waters?

The witness mentioned in his contribution that the new Bill is based on an intention not to prosecute. I would appreciate if he would elaborate further on what he meant by that.

Can the witness elaborate further on how the *voisinage* agreement impacted on his own sector and his own business in terms of why the witnesses decided to take the joint case?

The witness made a comment on the Moville district and Lough Foyle having no allocations for next year. What does that mean?

**Deputy Willie Penrose:** I thank Mr. Kelly and his colleagues for their very comprehensive

outline of the various issues involved. They are certainly complex, difficult issues and do not lend themselves to a summary evaluation or assessment and require drilling down into various points, because following through on various issues, it seems to be the witnesses' contention that the Department has misconstrued the outcome of the Supreme Court case. The witness is saying that this applies to all areas within the zero to 12-mile zones, apart from the areas provided for under the London convention. Is that correct?

If the new Bill is passed into law, can the witnesses summarise how they will be disadvantaged? There has been a significant focus on aggressive dredging in the zero to six-mile zone when fishing for mussels, which is wiping out the industry. Are the witnesses saying that this legislation is not only premature but is not necessary? Is that the contention? I want to debate this with the witnesses. The Minister says that he brought it forward in the interests of re-establishing what was a prior right which did not have a legal basis but which was essential due to the reciprocity arrangement. Could the witnesses explain how those vessels register in an owned and operated scenario? Can the witnesses give an example of how that operates?

They mentioned some Dutch vessels. The witnesses are saying that not only is the legislation not necessary but it is premature in advance of the Brexit negotiations. I am inclined to agree with them. I said in the Dáil that I do not see anything happening on Brexit for five or six years. There has been no clarification.

Everyone is going around talking about stuff. They do not have a clue. No one does. There are toenail experts talking about Brexit now. The only certainty is continued uncertainty. The very people who promoted Brexit do not know what it is about themselves. Let us be clear about that. Experts in this country are trying to say that we should be prepared. It is nonsense. I thought that the legislation was totally vague and imprecise, and if it was challenged in the courts it would fall due to uncertainty. I am not saying that because it suits the agenda of the witnesses. I believe that it was rushed in response to the Supreme Court case. Mr. Justice O'Donnell gave the judgment. Did the witnesses interpret from that judgment that the Department should actually bring forward its legislation? That appears to be a follow on.

The impression that I got from what the Minister was saying in the Seanad was that this was only going to regularise the situation and that friendly cooperation was important, and the judge did advert to that in the course of his judgment. Is it the view of the witnesses that there was no necessity for the Minister to bring forward this legislation because it was not advised? The Minister does not have to do what a judge tells him, and there has been much talk about the separation of powers in recent times. The judge indicated that a lacuna in the law would have to be fixed, but the witnesses are saying that there never was a lacuna in the law and that this was never the position. Let us suppose there was a lacuna in the law. Any Government worth its salt would have to react to a Supreme Court judgment in that way.

Could the witnesses explain the issue of access to mussel seed resources by shellfish farms under joint management? Perhaps they could give us some degree of explanation as to how that operates, particularly for people who are more used to inland fishing like Senator Paul Daly, who would be more worried about brown trout up in Lough Allen than fishermen on the coast.

I thank the witnesses for giving me a very good exposé on this whole area, without which I would certainly have had less knowledge.

**Chairman:** I call Senator Mac Lochlainn.

**Mr. Gerard Kelly:** I am sorry, Chairman, but can I answer the questions that have already been asked first?

**Chairman:** There will be one more questioner unless everyone is okay to do otherwise.

**Senator Pádraig Mac Lochlainn:** I am happy to give way.

**Mr. Gerard Kelly:** I can take more, but I can only-----

**Chairman:** Mr. Kelly can deal with the questions that have already been asked.

**Mr. Gerard Kelly:** I cannot remember the questions, never mind the answers.

**Deputy Willie Penrose:** That is our problem. We should not have asked so many. We are the ones who are wrong.

**Mr. Gerard Kelly:** The case was taken in respect of access to fish in Irish territorial waters within the 12-mile limit apart from the area that was covered under the London Fisheries Convention. It was decided that those boats had no legal access to the area within that limit. Deputy McConalogue asked about that judgment.

We were asked about our experience. As time passed and some people were getting away with using UK boats, the situation snowballed. Once the Department started defending its position in court, more people took comfort from that. Some sold Irish boats, got good money for fishing licences and bought and started using UK licences. That describes some of the abuse.

Some species do not have quotas attaching to them. Fishermen were able to buy extra boats, which placed pressure on locals. If the fishery went bad, people knew that they had a great market into which to sell their UK boats. There are approximately 5,000 boats as well as a reasonable market in the UK whereas the Irish fisherman would be stuck in Ireland with his boat.

We have brought with us a graph showing mussel production in Ireland. It collapsed to-----

**Mr. Michael Crowley:** Approximately 6,000 tonnes.

**Mr. Gerard Kelly:** That was in 2016, down from circa 29,500 tonnes in 2006 or 2007.

**Mr. Michael Crowley:** The lowest level was 3,200 tonnes in 2014 while it was in the mid to high 20,000s in 2004 or so.

**Mr. Gerard Kelly:** The four of us got new boats, with support from the Government, to develop the mussel industry in Ireland. We each had a business plan to produce 3,000 to 3,500 tonnes that was agreed by the Department and submitted to the EU. The whole country was not even producing 3,500 tonnes when this finished. Not only were there UK vessels, but representatives were advising us on what we should be doing under something called “joint management”. Under that, an allocation of the resource was set up. It was called SMAC, although it was unsure itself at times of whether that stood for seed mussel authorisation, allocation or advisory committee. It decided what we got or, in one case, whether we got anything at all.

**Mr. Alex McCarthy:** They were UK officials.

**Mr. Gerard Kelly:** Deputy Penrose asked about shellfish farms. The old *voisinage* letters are just that - letters. They are not a development document that has been signed and sealed. Mr. Crowley will read from some of them in a moment. The letters concerned boats in the area.

I had imagined that they left some port in Northern Ireland, fished a bit in Irish waters and went home again that evening, the next day or whenever, not that they were based in Cork, Galway, Arranmore or anywhere like that. All of a sudden, our Government recognised the rights of UK shellfish farms, which are plots of land and may not have boats. We were making provision for them to take seed from off Wicklow Head or Rosslare and bring it to the North.

A question was asked about whether the judge instructed the Minister. He did not. He said that it would be a great idea were the Minister to legislate for this but he did not instruct him to do so. I am sure that it is like the X case, namely, the Government should legislate if it can.

Deputy McConalogue asked how this has been written for abuse. We spent a few days watching the State wriggling over what “owned and operated” meant. It meant anything. Now we have new legislation. The Attorney General was present during the hearings. The Attorney General’s office saw how wide a range the term “owned and operated” could cover, but what has it stuck in this Bill? That something is “owned and operated in Northern Ireland” does not mean anything; it could be a French or a Dutch boat. That is how the provision is open to abuse. We have taken legal advice on this matter and have been told that the provision is void because of uncertainty.

The Moville district is an area of Lough Foyle with which the Deputy might be familiar. It covers all of Lough Foyle. I do much of my business there and I was informed last week that we will not be given an allocation of mussel seed this year even though we need it to run our business. That is the same farm that applied to Brussels for grant aid for a new boat. Whether this is a vindictive move by the Department, I do not know.

Mr. Crowley has a document in which the State declared what *voisinage* was. He will cite it.

**Chairman:** Briefly.

**Mr. Michael Crowley:** It relates to written legal submissions from the State in the Barlow case. The position of the State, which was the defendant, was that the *voisinage* arrangement was not an international agreement and that, when properly considered, did not constitute an agreement at all. It stated that, when the three *voisinage* letters were analysed, they did not disclose the existence of any agreement. That was the State’s position in 2012 on whether an agreement was in place.

**Chairman:** Deputy Penrose asked about the potential implications of the Bill passing.

**Mr. Gerard Kelly:** It has to do with production.

**Deputy Willie Penrose:** If the Bill, as proposed, passes.

**Mr. Gerard Kelly:** Yes. Due to the terms of-----

**Deputy Willie Penrose:** If no restrictions are placed on boats. Fianna Fáil would introduce a restriction, but forget about the question of restrictions and consider the current Bill.

**Mr. Gerard Kelly:** The term is “[as long as a person] is on board a sea-fishing boat owned and operated in Northern Ireland while the boat is within the area between 0 and 6 nautical miles”. The Deputy must remember that a country builds its sovereignty from the inside out. In 1959, we created the 3-mile zone. In 1964, we created a 12-mile zone. If this Bill is implemented, boats will be allowed to fish within 6 miles of the shore but will have to stop fishing in the 6 to 12-mile zone before being allowed to fish again outside that. That is like putting



security out on Molesworth Street and allowing anyone in through the Dáil gate. The provision is not even constructed properly. It is poor. Under this legislation, the 6 to 12-mile zone will be more protected than the 0 to 6-mile free for all. One protects everything from the inside out in terms of coastal waters. Proximity determines one's rights.

**Senator Pádraig Mac Lochlainn:** I thank the witnesses for attending in order to deal with this Bill. Some of them witnessed our hearings with a range of fish producer organisations last week. Those organisations are united in their opposition to the Bill. I was struck by how none of them had been consulted about it. I found that extraordinary.

Against overwhelming odds, the witnesses were collectively forced to defend their livelihoods right up to the Supreme Court. It is financially terrifying to go to that level. The cost and exposure must have been extraordinary, and all to defend an Irish natural resource. The witnesses were vindicated in the highest court in the land. This legislation arises from that. There is no doubt about that - it is explicit.

No producer organisation in the entire State, never mind fisherman, was consulted on the legislation. We then discover that it is not a case of the Good Friday Agreement, cumbaya and let us all hold hands together across the island of Ireland because it is not a level playing pitch. The boats registered in the North have access to UK and Irish waters, but they are not subject to the same licensing arrangements and same regulations. It gets worse. It would be bad enough if we were talking about Irish boats, but we are, in fact, talking about foreign investors who took advantage of a loophole regarding residency in the North to access the natural resource in our waters. Have we learned nothing?

Reference was made to oil and gas exploration. From the Minister's demeanour and contributions in the Seanad, I believe his intentions were honourable, but when we get under the issues, it is verging on the need for a public inquiry. Thanks to fishing industry representatives and the fish producers' organisations we are aware of the matter. It is deeply alarming that senior officials in the Department, following the decision of the highest court in the land, could put together legislation that was so painfully against the interests of the people and their natural resources which should be used to create jobs and wealth. I find it absolutely extraordinary and astounding. After the evidence last week from the fish producers' organisations, I cannot for the life of me understand how anybody could draft this legislation and argue that he or she is acting in the national interest. If there was any doubt, we had the London Fisheries Convention, which is obviously under threat as a result of Brexit.

Normally I would get to a question much quicker than this, but I had to say all of that while the representatives of the fishing industry were here. I thank them for taking a stand and defending Irish interests. I congratulate them on the outcome and their courage. I deeply thank them for what they have done for the people in exposing the issue. They have been entirely vindicated and are supported by the entire fishing community on the island. It is extraordinary that they find themselves at this point.

I shall move on to my questions. Mr. Kelly spoke about the Molville district. Perhaps he might elaborate on what he said.

With regard to Brexit, it was stated we needed to reinstate the *voisinage* letters and so on because they would put us in better stead. Will the representatives clarify the matter? Will they also elaborate on the implications of the statement that Britain intends to withdraw from the London Fisheries Convention?

**Mr. Gerard Kelly:** With regard to what was said about the Molville district, we need an allocation of mussel seed in order to be able to run our businesses, but we are told that something is happening in the Supreme Court case that stops the allocation. I cannot understand what it is, but somehow or other, according to the Department, my legal position has changed. I must wait and see what will happen, but we have been waiting for years to try to get this right. It will mean a loss of jobs and business in our area.

I shall move on to the goodwill the Minister thinks he can buy in giving the UK boats access to areas within zero and 6 nautical miles. He will not be at the Brexit negotiating table. He will not even be in the room and will be depending on the European Union to negotiate in that regard. Any goodwill he can buy for the European Union in sacrificing the inshore fishery area will be used by the EU 27, which is a poor deal.

Will the Senator, please, repeat his other question?

**Senator Pádraig Mac Lochlainn:** It was related to Brexit and the London Fisheries Convention.

**Mr. Gerard Kelly:** This type of *voisinage* agreement is supposedly made under Article 9.2 of the London Fisheries Convention. Obviously, it was not because the London Fisheries Convention was long done and this was not in it. It is not listed in any place in it. Once the United Kingdom pulls out of the London Fisheries Convention, Ireland should also pull out immediately. The United Kingdom is the only country with which we have reciprocity on area; therefore, when it pulls out, Ireland will have no access to that area under the London Fisheries Convention and in the meantime it would be giving access to depth to Germany, Belgium, Holland and France. We give them fishing rights in the six to 12 mile area but do not get anything back. Once Ireland stops getting something from the United Kingdom, we should also pull out of the agreement.

Deputy Willie Penrose asked about the licensing system being open to abuse. That is surprising because the representatives who appeared before the committee during the previous session, from the Sea-Fisheries Protection Authority, SFPA, were not able to establish whether the mussel boats we had mentioned to them had fishing licences. We knew quite clearly that the UK mussel boats did not have fishing licences. The particular question of whether a vessel as licensed was asked, but the SFPA could not state whether such vessels were licensed. Vessels which had not been licensed were fishing in our waters year in and year out. That cost us our industry.

**Senator Paul Daly:** I thank the gentlemen for their comprehensive presentation. There is not much need to ask questions because the report says it all. Deputy Charlie McConalogue has made reference to this issue already, but I am not sure if his question was answered. How reciprocal was the previous arrangement? If Northern vessels were trawling in our waters, was there a reciprocal arrangement if Southern vessels tried to fish in UK waters? Was the arrangement made through the exchange of letters or whatever else? I may have seen an indication somewhere that this might not have been the case. Was the arrangement working or did it ever work?

**Mr. Gerard Kelly:** In practice, it worked. There were no Irish fishermen looking for the agreement to be in place because they were not getting anything from it. As I said, we were swapping a horse for a rabbit. We really were getting nothing out of it. The mussel fishery in Northern Ireland was open for as little as six hours a day. In the Republic of Ireland it was open for days and weeks. The level of fishing activity in Northern Ireland was extremely minimal.

In terms of tonnage, some years the mussel fishery was not open because those in the North said it had none, yet vessels were still coming from there to fish here. There was supposedly a reciprocal fishing arrangement when it had nothing to offer.

**Mr. Alex McCarthy:** We do not need that resource.

**Mr. Gerard Kelly:** We definitely do not need it.

**Senator Pádraig Mac Lochlainn:** I thank Mr. Kelly.

**Deputy Charlie McConalogue:** There is an issue with a number of boats, especially in County Donegal, that bought licences in good faith under the old system. At that stage it was legal and perceived to be so - obviously, it has been knocked down as not being legal in the delegates' case - and those boats are now in a position where they are restricted in fishing within that zone. Many of them are of the smaller type and travelling outside the 12 mile zone would severely limit their ability to make a living. What is Mr. Kelly's view on how these boats are affected in the current environment?

**Mr. Gerard Kelly:** I have sympathy for every fisherman. We are all in a mess, but keeping all of us in it does not help to get anyone out of it. The vessels have a good market in the United Kingdom, including Northern Ireland, to which they have good access. The United Kingdom will be the envy of every fishing nation after Brexit when the number of fishing licences for UK vessels will increase dramatically. It is already starting to increase dramatically. Perhaps the boat owners in County Donegal who bought the licences should go back and ask the people who told them that it was okay to do so why they had told them this. I have a feeling that, even up to a few months ago, some people were telling them that it would all be sorted out in this Bill. Some people were taking the Oireachtas for granted.

**Senator Pádraig Mac Lochlainn:** I am very concerned about this issue. As I said in the Seanad, I suspect that there was a degree of vindictiveness in the drafting of this legislation. I suggest we raise with the Department the issue of the allocation of seed in the Foyle which has been brought to our attention today. We should ask the Department if there will be an allocation of mussel seed to the relevant parties. Does it just relate to the Foyle, or does it affect other delegates present today?

**Mr. Gerard Kelly:** It appears only to affect the Foyle. We need to ensure we will not end up disowning it.

**Senator Pádraig Mac Lochlainn:** Does the committee agree on this issue? It is a serious matter. I would not like somebody to be punished for being vindicated in court.

**Chairman:** As a result of this meeting and last week's hearing, we will send a transcript of the proceedings to the Minister and ask the question directly.

**Senator Pádraig Mac Lochlainn:** That is appreciated.

**Chairman:** I thank the delegates for coming before the committee. In recent weeks we have held a lot of hearings which have been informative for me, as someone who comes from an inland part of the country.

The joint committee adjourned at 7 p.m. until 5.30 p.m. on Tuesday, 11 July 2017.