



Screening Regulatory Impact Analysis of the

Proposal for a Bill to amend the Sea Fisheries and Maritime Jurisdiction Act 2006 to provide for Fixed Penalties for minor offences, a Points System for Masters of Fishing Vessels for serious offences and Quota Management Policy

Report Name:	Regulatory Impact Assessment of the Proposal for a Bill to amend the Sea Fisheries and Maritime Jurisdiction Act to provide for Fixed penalties, a Points System for Masters of Fishing Vessels and quota management policy
Prepared by:	Seafood Policy Division, Department of Agriculture, Food and the Marine
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About this Regulatory Impact Assessment (RIA)

This RIA is drawn up, in accordance with the Revised RIA Guidelines issued by the Department of the Taoiseach in June 2009, to consider a proposal to amend the Sea Fisheries and Maritime Jurisdiction Act to provide for fixed penalties for fishing offences, a Points System for Masters of Fishing Vessels and quota management policy. This document provides a basis for consultation and discussion in relation to the options available for the implementation of these measures.

The Minister for Agriculture, Food and the Marine welcomes input in relation to any aspect of the analysis from interested parties, in particular analysis of the potential implementation costs for fishing, seafood and aquaculture operations as well as the overall monetising of costs and benefits.

The RIA sets out the background, constraints and policy objectives for consideration in a Bill. It details the current regulatory framework and outlines possible options. Details of the consultative process are also given.

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1. Summary

Summary of Regulatory Impact Analysis (RIA)	
Department/Office: Agriculture, Food and the Marine	Title of Legislation: Proposal to amend the Sea Fisheries and Maritime Jurisdiction Act to provide for Fixed Penalties, a Points System for Masters of Fishing Vessels and quota management policy
Stage: Proposal	Date: 19 November 2014
Related Publications: <ol style="list-style-type: none"> 1. EU Council Regulation 1224/2009, 2. EU Commission Implementing Regulation 404/2011, 3. Programme for Government 2011-2016 	
Contact for enquiries: Kieran Burns	Telephone: 023 8859566
<p>What policy options have been considered?</p> <p>1. Do nothing/no policy change</p> <p>Not an option as 'do nothing/no policy change' would result in a failure to implement stated Government policy as well as a failure to comply with EU regulations.</p> <p>2. Bring forward Primary Legislation to</p> <p>(a) Introduce a system of fixed penalties for minor fisheries offences so as to provide a more efficient and effective Fisheries Control regime for minor offences and to provide the option to deal with such offences outside of the courts. This delivers on a commitment in the programme for Government.</p> <p>(b) Implement a points system for Masters of fishing vessels involved in serious fishery infringements which the State is obliged to do under Article 92 of EU Commission Regulation 1224/2009, and</p> <p>The measures at (a) and (b) above will apply to any fishing vessel operating inside the Irish Exclusive Fishery Limits and an Irish sea fishing vessel wherever it may be. The provisions may also apply to any person engaged in landings, transshipping, buying, handling weighing, transporting, processing, storing, documenting or selling fish within the State or the Exclusive Fishery Limits.</p> <p>(c) Enact the existing national policy on the public ownership of fishing quotas.</p> <p>Preferred Option: Option 2.</p>	

Fishing in Ireland

The seas around Ireland (ICES Sub Areas VII and VI) are among the most productive and biologically sensitive areas in EU waters. Most of the fisheries resource within the area comes under the remit of the Common Fisheries Policy (CFP). The 2013 fishing opportunities (i.e.



Total Allowable Catches, TAC's species) for the international fleets that operate in the waters around Ireland were 1,040,117 tonnes of fish, with an estimated landed value of €1.161 billion. These economic values are based on 2012 average prices and represent a conservative estimate. Ireland's share of these fishing opportunities represents 23% by tonnage and 17% by value.

These values do not include the valuable inshore fisheries (e.g. lobster, whelk) which are not managed using internationally agreed TACs but do come within the remit of the CFP. This inshore fisheries resource

represents a very important resource base for the coastal communities around Ireland. Inshore fish stocks (e.g. whelk, cockle) are managed nationally and the Marine Institute works closely with Bord Iascaigh Mhara (BIM) through the inshore management.

1.2 Sea Fisheries Management

Catching of wild fish is regulated at national and EU levels under the Common Fisheries Policy (CFP) and annual quotas are also set for most fish stocks under the CFP. The reform of the CFP is of critical importance to the future of the sector, particularly in relation to strengthening conservation and management to build fish stocks to a level that delivers a maximum sustainable yield.

Following consultation with Member States and on the basis of a proposal from the EU Commission, the Council agree the Total Allowable Catch (TAC) and Quotas at the December

Fisheries Council each year. These Regulations set out for each Member State the total tonnage of catch for certain species, in specific areas of the sea that they are allowed to catch. It is the responsibility of each Member State to manage their fisheries within these quotas. There are three categories of species to which Quotas apply. These are:-

- Whitefish Species;
- Deep Sea Species; and
- Pelagic Species

In Ireland, quotas are a public resource and are managed by the Minister. The Minister decides on the management of fish quotas following consultation with industry representatives. The existing fish quota management system is designed to ensure, having regard to fishing patterns and market conditions, the best possible spread between fishermen and also in terms of take up of quota during the year. The arrangements have been set and developed over many years and changes to management arrangements are determined by the Minister following consultation with industry representatives. Any changes to long term management arrangements are subject to detailed analysis and a lengthy consultation process.

A key objective of whitefish quota management is the avoidance of very early closure of fisheries through rapid exhaustion of quota. This is important because our whitefish fisheries are mixed and an early closure may lead to the discarding of marketable fish. Under the current arrangements, a formal Whitefish Quota Management Advisory Committee involving fishing industry representatives, the SFPA and the Department meets each month and as far as possible the Minister takes account of the recommendations for monthly regimes for particular stocks. Additional meetings are organised as required to discuss specific issues in particular fisheries that may arise, including issues relating to pelagic stocks.

The fishing of pelagic species (e.g. herring, mackerel, horse mackerel, blue whiting) is generally confined to the spring and autumn. The management arrangements for pelagic fisheries differ from stock to stock and are determined by the Minister following consultations with industry. The policy and annual arrangements for pelagic stocks are made available on the Departments' website.

Under the Sea-Fisheries and Maritime Jurisdiction Act 2006 the Minister has the power to make the following legal instruments to manage fisheries:

1.2.1 Fisheries Management Notices

Fisheries Management Notices are used to open and close fisheries as well as set catch limits (generally monthly) in certain fisheries for Irish vessels. These provisions are used to manage whitefish stocks primarily.

1.2.2 Authorised fisheries

The Minister may **determine** under what circumstances an Irish vessel will require an authorisation from the Department to fish for particular species. The Minister will issue such **authorisations** to appropriate vessels. As part of this management process approx. 2,000 authorisations and amendments are issued each year.

1.2.3 Statutory Instruments

The Minister makes Statutory Instruments under *Section 14* of the Act to give effect to EU Regulations covering such areas as conservation, technical measures and control. National conservation measures, that go beyond what is required by EU Regulation – such as the requirement for Irish vessels with monkfish catches to land at certain designated ports – are implemented through the Minister making SI's under *Section 15* of the Act.

The various Determinations and Fisheries Management Notices can be found on the Department's website at:

<http://www.agriculture.gov.ie/fisheries/seafoodpolicydivision/fisheriesmanagementnotices/>

The more recent Statutory Instruments can be found on the website at:

<http://www.agriculture.gov.ie/legislation/>

1.3 Sea Fisheries Control in Ireland

Enforcement of the sea fisheries legislation relevant to the Common Fisheries Policy in Irish waters is undertaken by the Sea Fisheries Protection Authority (SFPA) in co-operation with the Irish Defence Forces of the Naval Service and Air corps. The Naval Service with the support of the Air Corps and SFPA carry out inspections at sea and run the National Fisheries Monitoring Centre.

Matters relating to the operational enforcement of sea fisheries law are, by Statute, matters appropriate to the Sea Fisheries Protection Authority (SFPA). The SFPA is the independent law enforcement agency of the State for sea fisheries law. The Sea–Fisheries Protection Authority (SFPA) was established under the provisions of the Sea-Fisheries and Maritime Jurisdiction Act 2006 and is Ireland's competent authority for Seafood Safety and Sea-Fisheries Protection. The SFPA's mission is:

"The Sea Fisheries Protection Authority is committed to the effective and fair regulation of the sea fishing and seafood sectors that fall within our mandate. This means all fishing vessels operating within Irelands 200-mile limit, Irish fishing vessels wherever they operate, and all seafood produced in Ireland wherever it is marketed."

Based in the National Seafood Centre in Clonakilty, County Cork, the SFPA has a number of offices in the major ports around the coast, at Killybegs, Ros a' Mhíl, An Daingean, Castletownbere, Dunmore East and Howth.

The continued health of Ireland's economy and coastal communities is dependent upon our natural resources being used sustainably. It is important for Ireland to have well managed fisheries and the SFPA will continue to engage with the fishing industry to promote compliance with the requirements of the legislation.

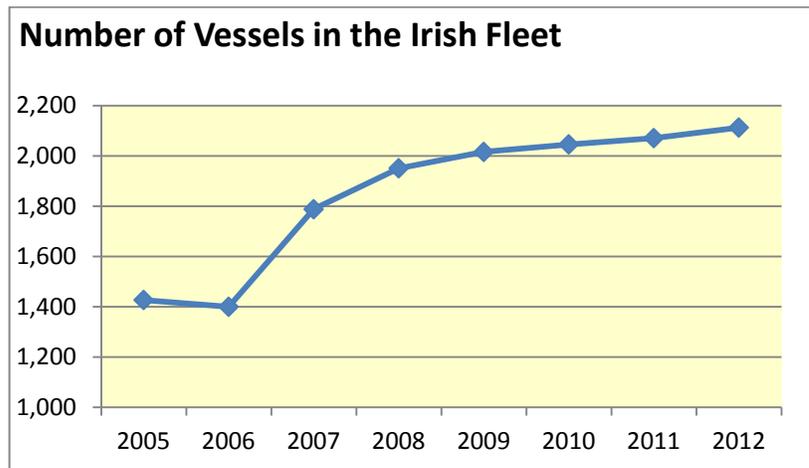
SFPA supports a sustainable and profitable commercial fishing sector, while protecting and conserving fisheries resources for long-term exploitation.

The Sea-Fisheries and Maritime Jurisdiction Act 2006 places primary responsibility for the regulation of sea-fisheries conservation law with the SFPA. Under EU Regulation, a new common control approach to fisheries control across Member States has been introduced that includes comprehensive monitoring of catches with a view to ensuring a level playing field for the fishing sector that takes into account the differences in the segments of the fleet. To this end, common criteria for the implementation of fisheries control and in particular standardized and coordinated inspection procedures have been established. In order to carry out this remit the SFPA produces an annual Fisheries Control Plan. This plan is used for the management of monitoring, surveillance and control of sea-fisheries at sea by the Naval Service, through aerial surveillance by the Air Corps and at landing ports in Ireland by SFPA staff. This plan outlines the benchmark requirements for inspections both at sea by the Naval Service and ashore by the SFPA. The annual plan uses agreed risk management strategies to develop these benchmarks which produce baseline inspection benchmarks for all vessels operating in our EFZ (Exclusive Fishing Zone).

The EU Commission controls and evaluates the application of the rules of the CFP by Member States including by carrying out inspections and audits.

1.4 Description of the Irish fleet segments

The Irish fishing fleet is largely a coastal fleet made up of 2,217 vessels. The fleet operates over five segments: pelagic, polyvalent, beam-trawl, specific and aquaculture.



This graph illustrates the number of vessels in the Irish Fleet from 2005 to 2012 which has grown to just over 2,000 vessels. In practice, the rise in vessels seen in 2006 can be attributed to the licensing and registration of small inshore boats facilitated between 2003 and 2006 was completed in 2007 and in all approximately 490 vessels came onto the Register.

Number of Vessels in the Irish Fleet

An outline of the 5 fleet segments in the Irish fleet in respect of 2012, and relevant developments, is provided below:

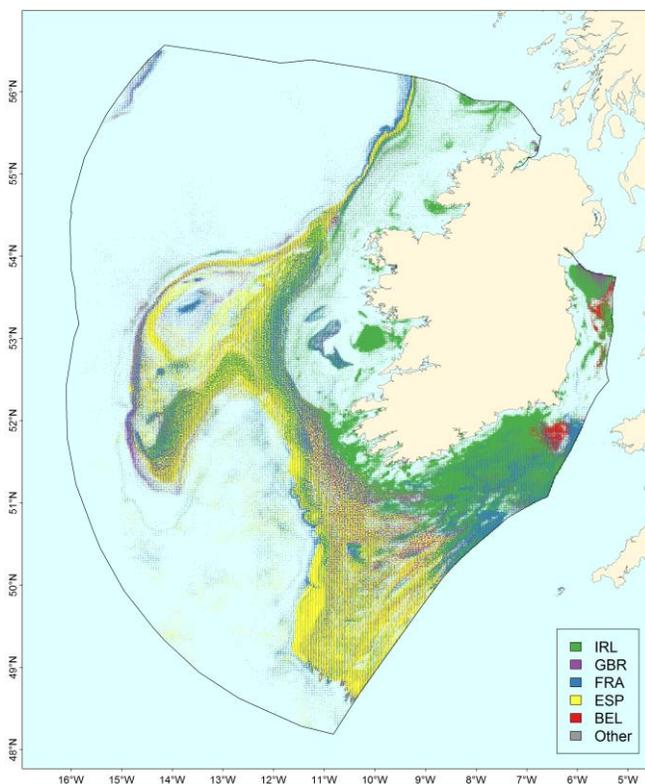
- (a) **Refrigerated Seawater (RSW) Pelagic Segment:** This segment contained 23 vessels engaged predominantly in fishing for pelagic species (herring, mackerel, horse mackerel and blue whiting mainly), with a total capacity of 22,614 GT and 43,900kW.
- (b) **Beam Trawler Segment:** This contained 10 vessels, which are dedicated to beam trawling, with a total capacity of 1,022 GT and 2,715 kW. Compared with 2011, this represented an increase of 1 vessel and an increase of 143 GT and 270 kW.
- (c) **Polyvalent Segment:** This segment comprised 1,933 vessels, the vast majority of vessels in the fleet, with a total capacity of 33,798 GT and 123,280 kW, These vessels are multi-purpose and include small inshore vessels (netters and potters), and medium and large offshore vessels targeting whitefish, pelagic fish and bivalve molluscs.

This segment also includes vessels licensed and registered under the Scheme for the Licensing of Traditional Pot Fishing Boats in the Irish Inshore Fleet.

(d) **Specific Segment:** This segment contained 147 vessels, with a total capacity of 2,697.GT and 13,324 kW, which are permitted to fish for bivalve molluscs and aquaculture species only.

(e) **Aquaculture Segment:** These vessels must be exclusively used in the management, development and servicing of aquaculture areas and can collect spat from wild mussel stocks as part of a service to aquaculture installations. This segment, which contained 104 vessels, with a total capacity of 4,746 GT and 13,180 kW, is not subject to the entry / exit regime. Compared with 2011, this represented an increase of 8 vessels and an increase of 58 GT and 508 kW.

1.5 Fishing within Irelands Exclusive Fisheries Zone



Nationalities active in Irish EFZ

The Marine Institute review shows that Ireland carries out 36% of fishing effort of vessels of 15m or greater in length inside the Irish EFZ; this effort mainly consists of demersal otter trawling. Spain accounts for 30% of the effort (mainly demersal otter trawls and longlines). The proportion of the Irish effort would be considerably higher if smaller vessels were included. France and the UK account for 20% and 11% respectively (dominated by demersal otter trawls for both countries). Belgium has 1% of the effort, which is nearly all beam trawls. The remaining 3% effort of is carried out mainly by the Netherlands, Germany and Denmark and is dominated by midwater trawls.

2. Policy Context

2.1 Policy objectives

The overall objective of the Bill is to (1) Implement a points system for Masters of fishing vessels involved in serious fishery infringements which the State is obliged to introduce under Article 92 of EU Commission Regulation 1224/2009, and (2) Introduce a system of fixed penalty notices (FPN) for minor fisheries offences so as to provide a more efficient and effective Fisheries Control regime for minor offences and to provide the option to deal with such offences outside of the courts. This delivers on a commitment in the programme for Government.

Both options will apply to any fishing vessel operating inside the Irish Exclusive Fishery Limits and an Irish sea fishing vessel wherever it may be. The provisions may also apply to any person engaged in landings, transshipping, buying, handling, weighing, transporting, processing, storing, documenting or selling fish within the State or the Exclusive Fishery Limits.

In Ireland, fish quotas are treated as a “Public Good” and allocated to fishermen by the Minister following a consultative management framework with the fishing industry. Essentially they remain a National asset and transferability other than in the context of pair fishing, set down in legislation, is not permitted.

3. Legislative Context

3.1 The use of criminal sanctions in fishing

The use of criminal justice system for the prosecution of fishery offences has been in place since the founding of the State. The 1978 Fisheries Amendment Act restructured the financial penalties for fishing offences and was the basis for the scale and structure of financial penalties used in the 2006 Sea Fisheries and Jurisdiction Act. Fishery offences are indictable offences (to be heard in the Circuit Court) under the 2006 act which may in certain circumstances be tried summarily (in the District Court).

Since 2005 there have been a number of calls for the use of administrative sanctions to replace the criminal sanctions in fishing. The introduction of administrative sanctions under the Sea Fisheries and Maritime Jurisdiction Act 2006 were considered but were not adopted because of the strong legal opinion that, in fisheries enforcement, such administrative sanctions would create legal difficulties and could be potentially unconstitutional.

The possibility of introducing a regime for “on the spot” fines is under consideration. Consideration of any such regime must take account of the need to satisfy the EU requirements under the Common Fisheries Policy that requires that Member States use effective, proportionate, and dissuasive sanctions. Also, under the Irish legal system, criminal sanctions for serious offences may only be imposed by the Courts following a criminal prosecution. In relation to minor offences of a summary nature, a person may be given an opportunity to pay a fixed penalty notice instead of being prosecuted but he/she must also retain the right to elect to go for trial to have his/her guilt determined in accordance with Article 38 of the Constitution.

Taking into account the need to comply with these principles, it is considered that a regime of “on the spot fines” for minor fishery offences may be introduced. The type of fishing offences currently prosecuted in the Circuit Court must remain unchanged and may not come within the scope of any such scheme. Accordingly minor offences must be clearly set out in legislation and will need to be clearly distinguished as minor offences with distinguishing attributes which characterise the offences as being on the minor scale of offences.

This possible option is for a system of fixed penalty notices for minor offences whereby the subject can avoid progressing the offence to the Court by choosing to pay a fixed penalty notice. If the subject chooses not to pay the fixed penalty notice, the case will be tried in the District Court as normal and if the prosecution is successful, it will result in a criminal record.

3.2 EU Regulatory Framework

Council regulation EU 1224/2009 and Commission regulation EU 404/2011 known as the Control regulations governs the control of boats fishing in European waters and by European boats elsewhere. The recital to 1444/2009 states that “Some parts of the control system are poorly implemented by Member States which results in insufficient and divergent measures in response to infringements of the rules of the common fisheries policy thereby undermining the creation of a level playing field for fishermen across the Community.”

In relation to the Points system, recital 24 to EU No 404/2011 is even more specific: “Article 92 of the Control Regulation provides for the establishment of a point system for serious infringements with the aim to ensure compliance with the rules of the Common Fisheries Policy

and a level playing field in all EU waters. For this to be achieved, it is necessary to establish common rules at the level of the European Union for the application of such a point system, including a list of points to be attributed for each serious infringement”.

The EU Regulation requires Member States to implement two points systems to be applied in cases of serious infringements of the CFP, one for the Fishing Boat License Holder and one for the Master of the Fishing Vessel. The system to apply to the License Holder was set out in detail in the Control Regulations and included the offences to which points apply, the number of points which apply to each offence and the duration of suspension applicable in each instance. All the policies and procedures necessary to implement the points regime for licence holders are contained in the EU Regulations. Ireland has implemented the system for license holders in SI No. 3 of 2014.

While the EU Regulation requires Member States to implement a points system for masters, it does not specify the policies and procedures to apply. However there is a requirement in the EU Regulations that the measures adopted as a result of the EU Control Regulation lead to a level playing field for all Member States. For this reason many Member States which have implemented a points system for masters has mirrored the points system for license holders.

It is important to note that the EU will closely examine our points system for masters to ensure that it is effective, proportionate and dissuasive and that it delivers on the requirement to create a level playing field in fisheries control across Member States.

The issue of the transferability of fishing quotas arose in the context of the reform of the Common Fisheries Policy. The EU Commission proposed that under the new Policy, all Member States would be required to introduce a mandatory form of individual transferable quotas. This proposal from the EU Commission was vigorously opposed by Ireland. The new basic CFP Regulation (1380/2013), provides that each Member States shall decide how the quotas are allocated to its fleet.

4. Objectives & Options

4.1 Overall objective

The objective of a Bill would be to deliver on the programme for Government commitment to introduce a system of fixed penalties for minor fishery offences, to meet our obligations under Council regulation 1224/2009 to implement a system of points for masters involved in serious fishery offences and to set down in legislation the National policy on the public ownership of fishing quotas.

4.2 Options

4.2.1 Fixed Penalty Notices

Any regime for fixed penalty notices must deliver on the twin pressures of the EU requirement that fishery offences be “proportionate, effective and dissuasive” which sets the scale and seriousness of the fine and the Irish Constitution which protects an individual’s right to access justice in criminal cases. This constrains the choices available and reaffirms that fishery offences in Section 28 of the 2006 Act are indictable offences and these must continue to be heard in court to protect the individual’s rights under the Constitution. Implementing a system of on the spot fines will increase the work of the SFPA but should lead to an improvement in overall compliance. Any new system must apply to all vessels fishing within the Irish Exclusive Fishery Limits. It may also apply to Irish fishing vessels wherever they may be.

An option may be, to create a subset of minor offences which are legally suitable to be dealt with by way of fixed penalty notices. These offences currently exist as offences under Section 28 of the Act. However it may be possible in a description of the offence to include sufficient mitigating factors to distinguish them as minor in nature.

So for example while “illegal nets or other equipment” is an offence under section 28, a minor offence can be created which is similar but distinguished as minor, that is:

Use of fishing gear of illegal construction or containing illegal attachment where no evidence of fish below conservation reference size is detected.

The mitigating factor in this case to distinguish it as a minor offence is the phrase *where no evidence of fish below conservation reference size is detected*. Such offences would continue to be within the criminal system rather than an administrative system of justice. However a

process could be created to allow an operator to pay a fine for the minor offence and thus avoid the court case.

The following is an example of how the process could operate (*details for demonstrative purposes only*):

1. Where a person is alleged by a Sea Fisheries Protection Officer to have committed a single offence which clearly of its nature may be determined as one of the summary offences which is to attract a Fixed Penalty Notice, he or she may be served with a notice. If the charge is paid within 28 days no prosecution in respect of that offence will be taken.

2. Where a person fails to pay a fixed penalty notice within 28 days a prosecution in respect of any such offence shall be initiated against him or her and on conviction the fine shall be considerably higher, say twice the amount of the Fixed Penalty Notice in respect of the offence.

Repeated offences of the same nature would not be eligible for a fixed penalty notice and a restriction would apply to repeated accumulation of fixed penalty notices of all types.

4.2.2 Legislative Changes

In order to implement such a system a number of changes would be required to the 2006 Act, including the way in which EU Regulations are adopted. The areas which would need to be considered are

- i. List of offences
- ii. Level and scale of fines
- iii. Treatment of repeat offences
- iv. Policies and principles for Future changes to the list of offences.

4.2.3 List of offences

The offences to which Fixed Penalty Notices (FPN) could apply will be drawn up taking account to the EU legal framework, the SFPA advice and that of the Office of the Attorney General. The outcome of the consultation process will inform those deliberations.

For example some possible offences which could be deemed minor could be:

- Towed Net-Exceeding twine thickness for area where the excess is less than 2mm greater than the prescribed limit
- The Offer for sale for human consumption of fish below the size limit permitted by law where the value of such fish is below €1,000;
- Failure to return transport documents within 24hrs following the expiry of any time limit prescribed in law.

The determination of the offences are not necessarily restricted to fishermen and can equally apply to transport operators or processors etc.

4.2.4 Level and scale of fines

The options considered for establishing the level of the fine must be based on the following considerations. Firstly, the Fixed Penalty Notice system should only deal with minor offences. Secondly, there is an absolute requirement under EU Regulations implementing the Common Fisheries Policy that fishery sanctions must be proportionate, effective and dissuasive. Finally the maximum fine which a District Court may impose is €5,000. The fines must be set at a level to achieve the desired change in behaviour; that is they are dissuasive enough to discourage wrongdoers but which will cover the administrative costs to the taxpayer of issuing them while providing an incentive to the fisher to pay the notice rather than face a court appearance.

As an example, an average landing for a Refrigerated Seawater (RSW) Pelagic Vessel is roughly 350t. If this were mackerel, the value could be around €350,000 per landing. It is clear therefore that the application of a fixed penalty notice for illegal catches by such a vessel with a maximum fine outcome in court of €5,000 would neither be proportionate or dissuasive in these cases. However in the Potting sub-segment the average landing is only 0.83t with a value of less than €1,000. Therefore the penalties even at a low level of €100 for an under 10 metre vessel would be a significant deterrent.

The initial fine could be set at a level which would encourage a person to pay the fine rather than face a court appearance where the initial fine could be doubled or trebled. This type of approach is used in a number of Irish fine systems, such as road traffic offences etc.

4.2.5 Treatment of repeat offences

The FPN system should be a system which seeks to help a fisher avoid court for a minor breach of fishing regulations. A fisher who continues to operate in a non-compliant manner has moved beyond the minor nature of the offence by virtue of the repetition. Using the FPN system to deal with this type behaviour would not be dissuasive and thus would be in breach of our EU obligations to have a system of sanctions for fishery offences which are proportionate, effective and dissuasive.

The Bill will need to contain a provision to deal with serial offenders and an appropriate mechanism to do this would be to limit the number of times a person may be offered a FPN in a given period. This approach is used in the Road Traffic Acts. However in any such arrangement, cognisance must be taken of the need to ensure that sanctions for fishing offences under the Common Fisheries Policy must be proportionate, effective and dissuasive. (EU 1224/2009).

4.2.6 Policies and principles for determining offences as Minor in nature

The majority of fishing offences stem from regulations implementing the Common Fisheries Policy. When these EU Regulations are published, they are directly applicable to all Member States. In Ireland, we give full effect to EU Regulations and apply a penalty by making a Statutory Instrument under Section 14 of the 2006 Act. Therefore as EU Regulations change the list of offences deemed minor must be updated. This could be done by making regulations under the 1972 European Communities Act which would amend the list of Minor offences in the Act which are subject to a fixed penalty notice, in line with the new EU Regulations.

Again the principle for determining whether an offence is minor is as laid down in EU law which requires that penalties for fishing offences must be effective, proportionate and dissuasive. In addition the upper limit for fines in the District court would also be a limiting factor.

4.3 Points System for Masters for Serious infringements of the CFP

The objective is to introduce a points system for masters of fishing vessels, which complies with the requirements of Article 92(6) of EU Regulation 1224/2009 and which delivers on the objective stated in the EU Regulation to deliver a level playing field in fisheries compliance across Member States. The objective from a national level is to do this in a way which is fair and equitable to the fishing industry but which is effective and efficient. Unlike the FPN system which applies to minor offences, the points systems apply only to serious offences.

Article 92 of Council Regulation EU No. 1224/2009, requires Member States, inter alia, to implement a points system for fishing boat license holders and masters of fishing vessels involved in serious infringements of the Common Fisheries Policy. The system which applies to license holders is well specified in terms of policies and procedures and has been implemented as a relatively common system across all Member States. In Ireland this has been adopted by way of S.I. No 3 of 2014.

The system to apply to Masters of fishing vessels on the other hand contains no such details, procedures and policies. For this reason the system to be used must be defined nationally and introduced by way of primary legislation.

In considering the options available when designing a system, the following constraints are in place. The system must apply to all vessels fishing within the Irish Exclusive Fishery Limits. It must also apply to Irish fishing vessels wherever they may be. The system must be an effective deterrent to illegal activity in order to comply with EU requirements and the system must comply with the national justice system.

In designing a point system for masters, a number of Member States appear to have simply mirrored the system which applies license holders. In many of those countries Masters of fishing vessels have a specific licence which can be endorsed which allows this approach to be used. This option would be difficult to implement in Ireland as there is no permit system for masters of fishing vessels which could be withdrawn or suspended. There is a Certificate of Competency qualification issued by the Department of Transport, Tourism and Sport, which

applies to only a small proportion of the larger vessels in the fleet, however this is not specific to fishing vessels.

A key decision in developing a system is whether the point system for masters should depend on a conviction for the assignment of points or whether it could be purely administrative in nature as is the point system for license holders. The benefits of an administrative type system is that that the process can be efficient and effective providing a element of certainty for all parties in terms of possible outcomes, timeliness and cost. A criminal system on the other hand can be unpredictable in relation to costs and timeliness but however delivers a high degree assurance on the final verdict.

A third option is a hybrid type system whereby a person has the option of resolving matters in either an administrative process or choosing to have the matter heard in a court. This is the type of process used in certain road traffic offences where if a person chooses not to pay a fine the matter is heard in court. In hybrid systems it is normal that higher fines are sought if the matter is to be determined in a court. Under such a hybrid type system, where an offence has been detected and the SFPA has determined that it is a serious offence, the skipper would be given an option to accept the appropriate points for such an offence. If the skipper decides not to accept the points, the application of points would be a consequence of a court decision on the relevant offence. A higher number of points for the same offence would apply as a consequence of a successful prosecution. Implementing a system for points will increase the work of the SFPA but should lead to an improvement in overall compliance.

4.4 The ownership and transferability of fishing quotas

The Irish fishing fleet is for the most part made up of family owned vessels with strong links to their home ports. The introduction of a form of individual transferable quota system would create an open market in Member States fish quotas, where the likelihood is that our family owned vessels could not withstand the economic clout of large European fishing conglomerates. Under the EU open market policy, once quotas are made available to operators on a multi annual and transferable basis, the market for their use would be open across the EU. The experience of other Member States is that there is a strong market for fish quotas across the EU and there is a strong probability that the Dutch and Spanish large

international fishing companies would over a period of time buy up the high value fish quotas. These companies have no socio or economic links to our ports, and land elsewhere, with the resultant loss of jobs and economic activity around our coast. For Ireland, this scenario could potentially substantially reduce our fishing industry and Ireland will not get the benefit from the rich fisheries resources in the waters around our coast.

In Ireland our processors and distributors are equally dependent on the large vessels as well as smaller vessels for their raw product. Therefore treating size segments of the fleet differently is not a realistic option. If quotas are openly traded then there will be no incentive or compulsion for the foreign owners of “Irish” quota to land their product in Ireland. Therefore, the argument that it would not impact on Ireland's coastal community to introduce a form of individual transferable quota system for large vessels on the basis that these are industrial does not stand up. For Ireland the pelagic processing sector in Donegal, Galway, Kerry and Cork are almost totally reliant on the larger pelagic vessels in the fleet.

It is important to note that if quotas were bought up by international fishing companies and Ireland lost much of its industry, Ireland would retain the responsibility and cost of control of fishing activity and the cost of data collection to inform scientific advice for the waters inside our 200 mile exclusive fishery zone.

The proposed amendment copper fastens the existing national policy in relation to the transferability of quotas and ensures that the policy is explicitly set down in the Act. There is concern that, as the current policy is not explicitly set down in national legislation, it could in certain circumstances, be undermined through unintended actions. In any case, it is considered that any change in this policy in relation to the management of quotas should be determined in the Oireachtas. The principles to be covered in legislation would be to provide that fishing opportunities and fishing effort are vested in the Minister and are retained as a public good. Practically in order to protect from privatisation, it would be necessary to explicitly provide that fishing opportunities and fishing effort made available to the licence holder of an Irish sea fishing boat may not be loaned, given, sold or otherwise transferred to any other sea fishing boat. This provision would ensure that quotas are not amalgamated into concentrations, which if allowed, would make them attractive to international companies.

5. Identification and Description of Options

5.1 Fixed penalties

In relation to the Fixed Penalty Notice element of a Bill, a range of different options can be considered at this point concerning the offences to which Fixed Penalties could apply and the operation of the system. As noted above the application of a fixed fine system to all fishing offences is constrained by the legal requirement to respect both national and EU law. The commitment in the programme for Government only considers a system for minor offences. The minor offences to which the FPN could be applied should be the ones which will improve the overall levels of compliance with fishing regulations. The system must remain within the criminal justice system for constitutional reasons, but may allow a fisher to avoid a court appearance by acceptance of a Fixed Penalty

5.1.1 Do Nothing - Option Fixed penalties

The programme for Government contained the commitment to replace criminal sanctions system for minor fisheries offences with an administrative sanction system to bring Ireland into line with other European jurisdictions. This is tempered by legal advice which recommends a scheme whereby a fixed payment can offer the option to avoid a court sanction for minor fisheries offences. To do nothing would mean that the current situation would continue in which minor offences are heard in the District Court, would continue. The “do nothing” option would impact the compliant fisher as there is a concern that minor offences could go unpunished as the Control authorities efforts are focused on serious infringements, leading to frustration on the part of the compliant fisher. The increased workload on Control authorities’ sea-fisheries officers tackling minor offences without a proportionate sanction in their compliance toolkit could draw resources away from the detection of serious offences.

It remains an option at this point to decide not to proceed with a system as set out, if a system cannot be devised which would deliver real change.

5.2 Points system for Masters of Vessels

The points system will, in general, deal with serious infringements at the opposite end of the scale to the fixed penalty notice system for minor offences. In relation to the point system for

the masters of fishing vessels, a number of options can be explored such as mirroring the system in place for license holders, having a conviction based system and or possibly a hybrid model.

5.2.1 Do Nothing Option – Points System for Masters

This option is included for calibration purposes only. The implementation of a points system for masters is an obligation on the State under Article 92 of EU Commission Regulation 1224/2009 and under Article 134 of EU no. 404 of 2011. The obligation requires a system to be in place by 1 January 2012. Almost all Member States have adopted the provision at this time and the EU Commission has written to the State on a number of occasions seeking an implementation date. Failure to adopt the provision will certainly result in infringement proceedings in the European Court of Justice to which we will have no defence. A negative judgement will cost the State significantly in lump sum and ongoing fines. The do nothing option is not tenable.

5.3 The ownership and transferability of fishing quotas

The options of introducing a system of transferable fishing quotas was considered during the Consultation on the ratification of the revised Common Fisheries Policy in 2013. At the time, the response to the consultation processes overwhelmingly supported Ireland's opposition to a system of transferable quotas. Therefore the options considered at present are to explicitly state the this position in the Bill or whether to exclude the proposed amendment.

(1) Explicit Statement of position

The benefit of explicitly stating the position is that because the allocation and management of fishing opportunities is a complex process which is regularly subject to judicial scrutiny, no act on the part of the Minister can lead to the unwanted and unforeseen consequence of a fishing quota becoming in any way individually transferable. Any change of policy in the future would be required to be considered by the Oireachtas involving an amendment of the legislation.

(2) Do Nothing

The current situation remains and policy will continue unless amended at Ministerial level.

6. Miscellaneous Amendments necessary

A number of additional amendments to the 2006 Act are necessary for a variety of reasons. These are set out below.

- 1) It is felt that a legislative basis is necessary to confirm any Data protection issues concerning the use of CCTV at Fishery Harbour Centres and Designated Ports. It is intended that an amendment to the 2006 act to provide for this will be included in the Bill.
- 2) A number of SFPA Corporate Governance Issues arise concerning the appointments and tenure of the Board of the SFPA, so as to provide continuity of service at board level. Amendments in this respect will be included in the Bill. A similar type of continuity issue arises in respect of the Consultative Committee and the Bill will also address these issues.
- 3) The Common Fisheries Policy identifies a range of Control tools available to Member States. Amongst these is the use of remote monitoring and CCTV onboard fishing vessels. The Bill will create the necessary legislative basis for this element of the CFP.
- 4) The Minister for Justice Equality and Law reform in Consultation with the Garda Commissioner has requested the removal of the provision for the Garda Reward fund. This will involve the deletion of Sections 315, 318 and 319 of The Fisheries (Consolidation) Act, 1959.
- 5) A number of amendments to the Sea-Fisheries and Maritime Jurisdiction Act 2006 are proposed so as to simplify the making of Natura regulations in the sea. This will allow the Minister to make regulations to give effect to the Birds and Habitats directives through the Sea Fisheries and Maritime Jurisdiction Act.

- 6) Early in 2007 shortly after the passing of the 2006 Act, the Office of the Attorney General identified a small number of largely technical amendments. These are not substantive but would improve the overall operation of the Act.

7. Consultation

The Department requested the views of the organisation listed in *Table 1* below as regards possible issues for consideration in the development of any new Bill.

Federation of Irish Fishermen
Irish South and East Fish Producers Organisation
Irish Fish Producers and Exporters Association
Irish Fisherman's Producer Organisation
Irish South and West Fish Producers Organisation
Killybegs Fishermen's Organisation
Sea Fisheries Protection Authority
Environmental Pillar Environmental Pillar Members include: An Taisce., BirdWatch Ireland. Coast Watch. Irish Seal Sanctuary. Irish Whale and Dolphin Group.
Bord Iascaigh Mhara
The Marine Institute
Department of Transport, Tourism and Sport
Department of Defence
Department of Communications, Energy and Natural Resources
Inland Fisheries Ireland
Department of Environment
Department of Public expenditure and Reform
Department of Finance

Department of Justice, Equality & Law Reform
Irish Naval Service
Irish Air Corps
Dunmore East Fishermen's Co-Op
Clogherhead Fishermen's Co-Op
Foyle Fishermen's Co-Op
Galway & Aran Fishermen's Co-Op
Castletownbere Fishermen's Co-Op Soc Ltd
IFA Aquaculture
North RIFF (c/o BIM)
North -West RIFF (c/o BIM)
West RIFF (c/o BIM)
South West RIFF (c/o BIM)
South-East RIFF (c/o BIM)
North-East RIFF (c/o BIM)

8. Who are the enforcement authorities?

Enforcement of the sea fisheries legislation relevant to the CFP in Irish waters is undertaken by the Sea Fisheries Protection Authority (SFPA) in co-operation with the Irish Defence Forces of the Navy and Air corps. The SFPA's regulatory role in seafood safety is to protect public health and consumers' interests by ensuring that seafood consumed, distributed, marketed or produced in the State meets the highest standards of food safety and hygiene and enjoys the highest reputation in the market place. The Food Safety Authority of Ireland is responsible for enforcing legislation regarding the marketing and labelling of seafood which is operated under service level agreement with the SFPA.

	Inspections		Patrol Days		
	Naval Service	SFPA	Naval	Aer	Flying

			Service	Corps	Hours
2007	1846	1775	1546	224	1398
2008	1920	2978	1493	242	1566
2009	1841	2707	1419	252	1559
2010	1684	2889	1249	237	1521
2011	1313	2247	1257	246	1559
2012	1329	2294	1254	217	1298
2013	994	1783	1331	276	1459

Inspection and patrol effort SFPA, Naval Service and Air Corps

	Enforcement Cases progressed	Convictions	Fines	Forfeiture	Cases Dismissed	Before Courts	DPP Directed Not proceeding	Awaiting Direction
2007	77	26	€199,350	€341,650	3	14	21	13
2008	62	24	€75,500	€262,000	2	22	2	12
2009	23	10	€34,350	€127,270	1	7	3	2
2010	12	8	€51,500	€204,750		4		
2011	20	4	€18,000	€56,100	1	9	3	3
2012	38	7	€72,750	€186,996		18	5	8
2013	61	4	€8,500	€142,000		18	4	35

Enforcement actions progressed by SFPA, Naval Service and Air Corps

The SPFA works to continue to develop its control capability, particularly through the use of technology. During the period 2008 to 2013 the Irish Authorities applied for and received approval for 47 projects and were eligible for EU co-funding of 11.2 million Euro and this co funding in addition to the National Contribution was used for significant Control projects including:

- The implementation of an Electronic Reporting Systems (ERS) for fishing vessels, the development of onboard software ieCatch and the development of back office hardware and software for the creation of mechanisms and IT networks necessary for information exchange and analysis.
- The introduction of Hardware and software (ieInspect) to allow the electronic recording of Inspections.
- The implementation of a project eLocate to allow the introduction of Traceability and weighing requirements required under the Control Regulation.
- Funding towards Ship Replacement
- The modernisation of a Vessel Monitoring System for Irish fishing vessels and the provision and upgrading of the necessary back office infrastructure in the FMC. The extension of VMS to fishing vessels over 12 metres in length.
- The training of control officials.
- Significant IT projects including the enhancement of the Integrated Fisheries Information System (IFIS) database, Development of Naval Service Information Systems and CCTV systems in Landing Ports
- The acquisition and modernisation of control, inspection and surveillance equipment such as OMEGA gauges.

8.1 Accountability & Transparency

The SFPA works closely with its Consultative Committee, comprising 14 representatives from the Fishing Industry, the Irish Marine Community, and with the assistance of the Naval Service, Air Corps, Marine Institute and Food Safety Authority of Ireland. One of the key functions of the Committee is to advise the SFPA of its views on the fairness and consistency of the operations of the SFPA, though for obvious reasons the Committee has no function in relation to detailed operational matters or individual cases or groups of cases with which the SFPA is or may be concerned.

When deploying resources on control activities, the SFPA applies the Proportionality, Risk Assessment, Transparency and Consistency principles of good enforcement. This means that the SFPA prioritises its work load on the basis of risk assessment having regard to consumer health and compliance with fisheries conservation legislation. Actions are then taken on a basis proportionate to the nature, seriousness and extent of the contraventions detected.

Efforts are also made to ensure that comparable enforcement actions taken for similar contraventions. An example of the application of these principles is the Code of Conduct for Fishing Vessel Inspections so that vessels owners know what to expect in the event of an inspection being carried out.

8.2 Planning of Activities

Risk Assessment is a key tool to target the use of resources to those areas at greatest risk of infringements. Data collection forms an essential component of risk management; the SFPA collect information from logbooks, sales notes and, in the case of shellfish harvested from Irish waters, gatherer's documents. Technological measures such as the move to electronic log books and the requirement for Vessel Monitoring Systems (VMS) on vessels greater than 12m in length also provide the SFPA with useful information to apply to risk management.

The Irish authorities actively engage in co-operation with other Member States on enforcement and control matters. To date, the authorities have participated in 5 Joint Deployment Programmes and held the Co-ordination Centre in Charge role for 2 of these. Joint Deployment Programmes are co-ordinated by the European Fisheries Control Agency and may be applied to waters where a long-term recovery plan or a multi-annual management plan is in place for a particular stock. The SFPA is also continuing its programme of agreeing Memoranda of Understanding with other Member States to facilitate the management of fisheries cases, exchange fisheries data and inspector exchange programmes. The SFPA undertakes approximately 2,000 vessel inspections per annum. This averages approximately 10% of over 20,000 landings at Irish ports.

Collection of data for research on sea fishing is undertaken by the Marine Institute. Fishing surveys involve monitoring the temporal and spatial changes in the fish populations and take place on commercial vessels and purpose built research vessels (RV. Celtic Explorer & RV. Celtic Voyager). Other data collected include analysing biological data (age, length etc.) of the fish caught, together with data on the quantities of fish caught and the fishing effort. The Fisheries Science Services of the MI assess many of the commercial fish and shellfish stocks around Ireland. An annual stock book is produced for quota species. Assessments are also carried out on non-quota species, particularly inshore fish and shellfish stocks. Methods used to perform stock assessments include sampling programmes while fishing effort information is gathered from the EC logbooks.

9. Review

The RIA will be reviewed and updated as required throughout the legislative process.

10. Publication

The RIA is published on the Departmental Website, and will be updated required throughout the legislative process.

11. Glossary

EFZ: Exclusive Fishing Zone

Demersal includes Cod; sole; Haddock; Hake; Ling; Megrin; Monk/angler; Plaice; Ray/skate; Saithe; Turbot; White pollock; Whiting; Witch John Dory; Lemon sole; Discards: Discards means the catches that are returned to the sea. Fishing effort: limits restrict the amount of time (generally in days) a vessel may spend fishing; calculated by product of the capacity and the activity of a fishing vessel

FMSY: fishing at maximum sustainable yields

Pelagic includes herring, mackerel, blue whiting; Horse mackerel; Sprat; Tuna;

Quota: Member States receive a national quota based on a proportion of the TAC for a commercial species.

RIA: regulatory impact analysis

Shellfish includes Blue mussel; Crab; Crawfish; Dublin Bay prawns; Escallop; Lobster; Periwinkle; Prawn tails; Shrimp; Squid; Whelk; Other shellfish.

TAC: total allowable catch, catch limits that are set for most significant commercial fish stocks; are set annually for most stocks and every two years for deep sea species.