

# Enforcing the Common Fisheries Policy in Ireland Penalty Points post O'Sullivan

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# Overview

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# The Common Fisheries Policy

- \* The Common Fisheries Policy is the EU system for managing fishing fleets and conserving fish stocks thus allowing fishermen to compete fairly. It was first introduced in the 1970s and has undergone periodic updates. The most recent update, Regulation (EU) No 1380/2013 on the Common Fisheries Policy, took effect on 1 January 2014.
- \* Taking our seabed area into account, Ireland is actually one of the largest EU countries, with sovereign or exclusive rights over 220 Million Acres under the Sea. The Irish maritime economy is growing nearly twice as fast as the overall economy. It grew by 9% between 2010 and 2012 and by over 8% for 2012 to 2014.
- \* The CFP has 4 main policy areas:
  - \* Fisheries management
  - \* International policy
  - \* Market and trade policy
  - \* Funding of the policy

# The Common Fisheries Policy

- \* To enforce common-fisheries-policy rules, there is a control system, designed to:
  - \* ensure that only the allowed quantities of fish are caught
  - \* collect the necessary data for managing fishing opportunities
  - \* clarify the roles of EU countries and the Commission
  - \* ensure the rules are applied to all fishers in the same way, with harmonised sanctions across the EU
  - \* ensure that fisheries products can be traced back and checked throughout the supply chain, from net to plate.

# Control Regulation

- \* The success of the common fisheries policy involves implementing an effective system of control.
- \* The persistence of a high number of serious infringements of the rules of the common fisheries policy within EU waters or by EU operators is to a large extent attributable to the non-deterrent level of sanctions for serious infringements of those rules laid down in national legislation
- \* Council Regulation (EC) No 1224/2009 of 20 November 2009 establishes an EU system for control, inspection and enforcement to ensure compliance with all the rules of the common fisheries policy in order to provide for the sustainable exploitation of living aquatic resources by covering all aspects of this policy.
- \* The Control Regulation provides that sanctions should be complemented by a point system for serious infringements on the basis of which a fishing licence should be suspended if a certain number of points have been attributed to the holder of a fishing licence following the imposition of sanctions for serious infringements.

# Control Regulation

- \* Some Key Definitions

- \* **'fishing vessel'** means any vessel equipped for commercial exploitation of living aquatic resources;
- \* **'fishing activity'** means searching for fish, shooting, setting, towing, hauling of a fishing gear, taking catch on board, transshipping, retaining on board, processing on board, transferring, caging, fattening and landing of fish and fisheries products;
- \* **'fishing licence'** means an official document conferring on its holder the right, as determined by national rules, to use a certain fishing capacity for the commercial exploitation of living aquatic resources. It contains minimum requirements concerning the identification, technical characteristics and fitting out of a Union fishing vessel;
- \* **'fishing authorisation'** means a fishing authorisation issued in respect of a Union fishing vessel in addition to its fishing licence, entitling it to carry out specific fishing activities during a specified period, in a given area or for a given fishery under specific conditions;

# Control Regulation

- \* Serious Infringements are mainly defined by reference to Article 42(1)(a) of Regulation (EC) No 1005/2008.
- \* Article 42(1)(a) provides that a serious infringement means “the activities considered to constitute IUU fishing in accordance with the criteria set out in Article 3.
- \* Article 3 provides that fishing vessel shall be presumed to be engaged in IUU fishing if it is shown that, contrary to the conservation and management measures applicable in the fishing area concerned, it has:
  - \* (a) fished without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State; or
  - \* (b) not fulfilled its obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system, or prior notices under Article 6; or
  - \* (c) fished in a closed area, during a closed season, without or after attainment of a quota or beyond a closed depth; or
  - \* (d) engaged in directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited; or
  - \* (e) used prohibited or non-compliant fishing gear; or
  - \* (f) falsified or concealed its markings, identity or registration; or

# Control Regulation

- \* (g) *concealed, tampered with or disposed of evidence relating to an investigation; or*
- \* (h) *obstructed the work of officials in the exercise of their duties in inspecting for compliance with the applicable conservation and management measures; or the work of observers in the exercise of their duties of observing compliance with the applicable Community rules; or*
- \* (i) *taken on board, transhipped or landed undersized fish in contravention of the legislation in force; or*
- \* (j) *transhipped or participated in joint fishing operations with, supported or re-supplied other fishing vessels identified as having engaged in IUU fishing under this Regulation, in particular those included in the Community IUU vessel list or in the IUU vessel list of a regional fisheries management organisation; or*
- \* (k) *carried out fishing activities in the area of a regional fisheries management organisation in a manner inconsistent with or in contravention of the conservation and management measures of that organisation and is flagged to a State not party to that organisation, or not cooperating with that organisation as established by that organisation; or*
- \* (l) *no nationality and is therefore a stateless vessel, in accordance with international law.*

# Control Regulation

- \* 2. *The activities set out in paragraph 1 shall be considered as serious infringements in accordance with Article 42 depending on the gravity of the infringement in question which shall be determined by the competent authority of the Member State, taking into account the criteria such as the damage done, its value, the extent of the infringement or its repetition.”*
  
- \* *Article 90 of the Control Regulation provides:*
  - \* 1. In addition to Article 42 of Regulation (EC) No 1005/2008, the following activities shall also be considered as serious infringements for the purpose of this Regulation depending on the gravity of the infringement in question which shall be determined by the competent authority of the Member State, taking into account criteria such as the nature of the damage, its value, the economic situation of the offender and the extent of the infringement or its repetition:
    - \* (a) the non-transmission of a landing declaration or a sales note when the landing of the catch has taken place in the port of a third country;
    - \* (b) the manipulation of an engine with the aim of increasing its power beyond the maximum continuous engine power according to the engine certificate;
    - \* (c) the failure to land any species subject to a quota caught during a fishing operation, unless such landing would be contrary to obligations provided for in the rules of the common fisheries policy in fisheries or fishing zones where such rules apply.

# Control Regulation

## **Title II- General Principles - Article 5**

1. Member States shall control the activities carried out by any natural or legal person within the scope of the common fisheries policy on their territory and within waters under their sovereignty or jurisdiction, in particular fishing activities, transshipments, transfer of fish to cages or aquaculture installations including fattening installations, landing, import, transport, processing, marketing and storage of fisheries and aquaculture products.
2. Member States shall also control access to waters and resources and control activities outside Union waters carried out by Union fishing vessels flying their flag and, without prejudice to the primary responsibility of the flag Member State, by their nationals.
3. Member States shall adopt appropriate measures, allocate adequate financial, human and technical resources and set up all administrative and technical structures necessary for ensuring control, inspection and enforcement of activities carried out within the scope of the common fisheries policy. They shall make available to their competent authorities and officials all adequate means to enable them to carry out their tasks.
4. Each Member State shall ensure that control, inspection and enforcement are carried out on a non-discriminatory basis as regards sectors, vessels or persons, and on the basis of risk management.

# Control Regulation

- \* 5. In each Member State, a single authority shall coordinate the control activities of all national control authorities. It shall also be responsible for coordinating the collection, treatment and certification of information on fishing activities and for reporting to, cooperating with and ensuring the transmission of information to the Commission, the Community Fisheries Control Agency established in accordance with Regulation (EC) No 768/2005, other Member States and, where appropriate, third countries.
  
- \* 6. In accordance with the procedure laid down in Article 103, the payment of contributions from the European Fisheries Fund pursuant to Regulation (EC) No 1198/2006 and of Union financial contributions to measures referred to in Article 8(a) of Regulation (EC) No 861/2006 shall be conditional upon respect by the Member States of their obligation to ensure compliance with and enforcement of the rules of the common fisheries policy related to, or having an impact on the effectiveness of, the measures being financed, and to operate and maintain an effective control, inspection and enforcement system to this effect.
  
- \* 7. In accordance with their respective responsibilities, the Commission and the Member States shall ensure that the objectives of this Regulation are fulfilled in the management and control of Union financial assistance.

# Control Regulation

- \* **Title VIII – Enforcement**

- \* Article 89 - Measures to ensure compliance
- \* Article 90 – Sanctions for serious infringements
- \* Article 91 – Immediate Enforcement Measures
- \* Article 92 – Point System for Serious Infringements
- \* Article 93 – National Register of Infringements

# Control Regulation

\* Article 89 provides that:

- \* 1. Member States shall ensure that **appropriate measures** are systematically taken, including **administrative action** or **criminal proceedings** in conformity with their national law, against the natural or legal persons suspected of a breach of any of the rules of the common fisheries policy.
- \* 2. **The overall level of sanctions and accompanying sanctions shall be calculated**, in accordance with the relevant provisions of national law, **in such way as to make sure that they effectively deprive those responsible of the economic benefit** derived from their infringement without prejudice to the legitimate right to exercise their profession. Those sanctions shall also **be capable of producing results proportionate to the seriousness of such infringements, thereby effectively discouraging further offences of the same kind.**
- \* 3. Member States **may apply a system** whereby a fine is **proportionate to the turnover of the legal person, or to the financial advantage achieved or envisaged by committing the infringement.**
- \* 4. The competent authorities of the Member State having jurisdiction in the event of an infringement shall, without delay and in compliance with their procedures under national law, notify the flag Member States, the Member State of which the offender holds the citizenship, or any other Member State with an interest in following up the administrative action, criminal proceedings or other measures taken and of any definitive ruling relating to such infringement, including the number of points assigned in accordance with Article 92.

# Control Regulation

- \* Article 90 states:
- \* 1. In addition to Article 42 of Regulation (EC) No 1005/2008, the following activities shall also be considered as serious infringements for the purpose of this Regulation depending on the gravity of the infringement in question which shall be determined by the competent authority of the Member State, taking into account criteria such as the nature of the damage, its value, the economic situation of the offender and the extent of the infringement or its repetition ...
- \* 2. Member States shall ensure that a natural person having committed or a legal person held liable for a serious infringement is punishable by effective, proportionate and dissuasive administrative sanctions, in accordance with the range of sanctions and measures provided for in Chapter IX of Regulation (EC) No 1005/2008.
- \* 3. Without prejudice to Article 44(2) of Regulation (EC) No 1005/2008, the Member States shall impose a sanction that is effectively dissuasive and, as appropriate, calculated on the value of the fisheries products obtained by committing a serious infringement.
- \* 4. In fixing the sanction, the Member States shall also take into account the value of the prejudice to the fishing resources and the marine environment concerned.
- \* 5. Member States may also, or alternatively, use effective, proportionate and dissuasive criminal sanctions.
- \* 6. The sanctions provided for in this Chapter may be accompanied by other sanctions or measures, in particular those described in Article 45 of Regulation (EC) No 1005/2008.

# Control Regulation

## \* **Article 92 – Point System for Serious Infringements**

- \* 1. Member States **shall** apply a point system for serious infringements ... on the basis of which the holder of a fishing licence is assigned the **appropriate number of points as a result of an infringement of the rules of the common fisheries policy.**
  
- \* 2. When **a natural person** has committed or **a legal person** is held liable for a serious infringement of the rules of the common fisheries policy, the appropriate number of points shall be assigned to **the holder of the fishing licence** as a result of the infringement. The points assigned **shall be transferred to any future holder of the fishing licence** for the fishing vessel concerned where the vessel is sold, transferred or otherwise changes ownership after the date of the infringement. The holder of the fishing licence shall be entitled to review proceedings in accordance with national law.

# Control Regulation

- \* 3. When the total number of points equals or exceeds a specified number of points, the fishing licence shall be automatically suspended for a period of at least two months. That period shall be four months if the fishing licence is suspended a second time, eight months if the fishing licence is suspended a third time and one year if the fishing licence is suspended a fourth time as a consequence of a licence holder being assigned the specified number of points. In case of the holder being assigned the specified number of points for a fifth time, the fishing licence shall be permanently withdrawn.
- \* 4. If the holder of a fishing licence does not commit, within three years from the date of the last serious infringement, another serious infringement, all points on the fishing licence shall be deleted....

# Control Regulation

- \* 5. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 119.
- \* 6. Member States shall also establish a point system under which the master of a vessel is assigned the appropriate number of points as a result of a serious infringement of the rules of the common fisheries policy committed by him.

# Implementing Regulation

- \* Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 as amended by the Corrigendum of the same date and by Commission Implementing Regulation (EU) 2015/1962 of 28 October 2015 lays down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy.

# Implementing Regulation

## \* **TITLE VII – ENFORCEMENT - POINT SYSTEM FOR SERIOUS INFRINGEMENTS**

- \* *Article 125* - **Setting up and operation of a point system for serious infringements;**
- \* *Article 126* - **Assignment of points;**
- \* *Article 127* - **Notification of decisions;**
- \* *Article 128* - **Transfer of ownership;**
- \* *Article 129* - **Suspension and permanent withdrawal of a fishing licence;**
- \* *Article 130* - **Follow-up of suspension and permanent withdrawal of fishing licence;**
- \* *Article 131* - **Deletion of fishing licences from relevant lists;**
- \* *Article 132* - **Illegal fishing during the suspension period or after the permanent withdrawal of a fishing licence;**
- \* *Article 133* - **Deletion of points**
- \* *Article 134* - **Point system for masters of fishing vessels**

# Implementing Regulation

## **Article 125 - Setting up and operation of a point system for serious infringements.**

- \* Each Member State shall designate the competent national authorities which shall be responsible for:
  - (a) setting up the system for the attribution of points for serious infringements, as referred to in Article 92(1) of the Control Regulation;
  - (b) assigning the appropriate numbers of points to the holder of a fishing licence;
  - (c) transferring assigned points to any future holder of a fishing licence for the fishing vessel concerned where the latter is sold, transferred or otherwise changes ownership; and
  - (d) keeping relevant records of the points assigned or transferred to the holder for each fishing licence.

# Points Assigned

1. Not fulfilling of obligations to record and report catch or catch related data, including data to be transmitted by satellite vessel monitoring system – 3 points
2. Use of prohibited or non-compliant gear according to Union legislation – 4 points
3. Falsification or concealing of markings, identity or registration – 5 points
4. Concealing, tampering or disposal of evidence relating to an investigation – 5 points
5. Taking on board, transhipping or landing of undersized fish in contravention of the legislation in force or not fulfilling of obligations to land undersized fish – 5 points
6. Carrying out of fishing activities in the area of a regional fisheries management organisation in a manner inconsistent with or in contravention of the conservation and management measures of that organisation – 5 points
7. Fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State – 7 points
8. Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth – 6 points
9. Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited – 7 points
10. Obstruction of officials – 7 points
11. Transhipping to or participating in joint fishing operations with, support or re-supply of fishing vessels identified as having engaged in IUU fishing - 7 points
12. Use of a fishing vessel with not nationality and that is therefore a stateless vessel in accordance with international law – 12 points

# European Union (Common Fisheries Policy) (Point System) Regulations 2014

- \* **European Union (Common Fisheries Policy) (Point System) Regulations 2014**
  - \* Entered into force on 20 January 2014
  - \* The constitutionality of the 2014 Regulations was successfully challenged in *O'Sullivan v Sea Fisheries Protection Authority & Ors* [2017] IESC 75 and *Crayden Fishing Company Limited -v- Sea Fisheries Protection Authority & Ors* [2017] IESC 74 and the Supreme Court held that they were invalid.
  - \* Revoked on 1 March 2016

# European Union (Common Fisheries Policy) (Point System) Regulations 2016

- \* European Union (Common Fisheries Policy) (Point System) Regulations 2016
  - \* Entered into force on 1 March 2016.
  - \* Revoked on 20 March 2018 following *O'Sullivan v Sea Fisheries Protection Authority & Ors* [2017] IESC 75 and *Crayden Fishing Company Limited -v- Sea Fisheries Protection Authority & Ors* [2017] IESC 74

# European Union (Common Fisheries Policy) (Point System) Regulations 2018

- \* Detection
- \* Notification
- \* Determination Panel
- \* Appeals Officer
- \* Appeal to the High Court on a point of law only

# The Future

- \* Proposed Sea Fisheries and Maritime Jurisdiction (Amendment) Bill
  - \* To provide for a points system for serious fishery infringements of the Common Fisheries Policy as required by Council Regulation 1224/2009, to affirm that fishing quotas are a national resource, resolve some typographical errors in the Principal Act of 2006 and introduce other miscellaneous and technical amendments
  - \* No date yet for Pre-Legislative Scrutiny (PLS) as of Legislative Programme Spring/Summer Session 2017



**Questions?**

**Thank You**

**Darren Lehane BL**