



STATUTORY INSTRUMENTS.

S.I. No. 3 of 2014



EUROPEAN UNION (COMMON FISHERIES POLICY) (POINT
SYSTEM) REGULATIONS 2014

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EUROPEAN UNION (COMMON FISHERIES POLICY) (POINT
SYSTEM) REGULATIONS 2014

I, SIMON COVENEY, Minister for Agriculture, Food and the Marine, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purposes of giving full effect to Article 92 of Council Regulation (EC) No. 1224/2009 of 20 November 2009¹ and Title VII of Commission Implementing Regulation (EU) No. 404/2011 of 8 April 2011², hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Common Fisheries Policy) (Point System) Regulations 2014.

(2) These Regulations come into operation on 20 January 2014.

Application

2. These Regulations apply to serious infringements of the rules of the common fisheries policy detected on or after 20 January 2014.

Interpretation

3. (1) In these Regulations—

“Act of 2003” means Fisheries (Amendment) Act 2003 (No. 21 of 2003);

“Act of 2006” means Sea-Fisheries and Maritime Jurisdiction Act 2006 (No. 8 of 2006);

“appeals officer” shall be construed in accordance with Regulation 9;

“Control Regulation” means Council Regulation (EC) No. 1224/2009 of 20 November 2009¹;

“Commission Regulation” means Commission Implementing Regulation (EU) No. 404/2011 of 8 April 2011²;

“IUU Regulation” means Council Regulation (EC) No. 1005/2008 of 29 September 2008³;

“fishing capacity” in relation to an Irish sea-fishing boat, means its tonnage within the meaning of Article 4, and its engine power within the meaning of Article 5, of Council Regulation (EEC) No. 2930/86 of 22 September 1986⁴;

¹OJ No. L 343, 22.12.2009, p.1

²OJ No. L 112, 30.4.2011, p.1

³OJ No. L 286, 29.10.2008, p. 1

⁴OJ No. L 274, 25.9.1986, p.1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 14th January, 2014.*

“fishing licence” means an Irish licence or a foreign licence, as the case may be;

“foreign fishing vessel” means a Community fishing vessel other than an Irish sea-fishing boat;

“foreign licence”, in respect of a foreign fishing vessel, means a fishing licence issued in respect of the vessel by the competent authority of the flag Member State concerned;

“Irish sea-fishing boat” has the meaning assigned to it by section 2 of the Act of 2006;

“Irish licence” means a sea-fishing boat licence;

“licensing authority” has the meaning assigned to it by section 3 of the Act of 2003;

“Minister” means Minister for Agriculture, Food and the Marine;

“Register” means Register of Fishing Boats maintained under section 74 of the Act of 2006;

“sea-fisheries protection officer” means a sea-fisheries protection officer (within the meaning of the Act of 2006);

“sea-fishing boat licence” means a licence to fish for sea-fish granted in respect of an Irish sea-fishing boat under section 4 (inserted by section 97 of the Act of 2006) of the Act of 2003;

“serious infringement” means an infringement of the rules of the common fisheries policy mentioned in Annex XXX to the Commission Regulation that is determined by the SFPA, on the balance of probabilities, to be serious having regard to the criteria, and guidance notes, referred to in Regulation 5(2);

“SFPA” means Sea Fisheries Protection Authority.

(2) A word or expression that is used in the Control Regulation, the Commission Regulation or the IUU Regulation and is also used in these Regulations, has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Control Regulation, the Commission Regulation or the IUU Regulation, as the case may be.

Competent authorities

4. (1) The SFPA is designated as the competent authority in the State for the purposes of Article 125(a) and (b) of the Commission Regulation.

(2) The licensing authority is designated as the competent authority in the State for the purposes of Article 125(c) and (d) of the Commission Regulation.

Assignment of points by SFPA

5. (1) Where a serious infringement is detected by a sea-fisheries protection officer—

- (a) involving an Irish sea-fishing boat, wherever the boat may be, or
- (b) involving a foreign fishing vessel, in the exclusive fishery limits of the State (within the meaning of section 88 of the Act of 2006),

the SFPA, as soon as may be, on notification to it of the detection and having determined that the infringement is a serious infringement, shall—

- (i) in case the vessel is an Irish sea-fishing boat—
 - (I) propose to assign the appropriate points to the holder of the Irish licence relating to the boat concerned for the serious infringement, and
 - (II) notify the holder of the Irish licence of the proposal to assign points,

or

- (ii) in case the vessel is a foreign fishing vessel—
 - (I) propose to notify the competent authority of the flag Member State concerned of the serious infringement detected and the number of points appropriate to that infringement, and
 - (II) notify the holder of the foreign licence relating to the vessel or, where the holder is not contactable, the master of the vessel, of the proposal to notify the flag Member State concerned of the detection of the serious infringement.

(2) In determining whether an infringement is a serious infringement, for the purposes of paragraph (1), the SFPA shall have regard to—

- (a) the criteria set out in Article 3(2) of the IUU Regulation, and
- (b) guidance notes published by the SFPA, from time to time, under paragraph (9).

(3) A notification under paragraph (1) to the holder of a fishing licence or the master of a foreign fishing vessel shall—

- (a) give particulars of the infringement and the appropriate number of points proposed to be assigned, and
- (b) inform that—
 - (i) holder of his or her option, or
 - (ii) master of the option of the holder of the foreign licence relating to the foreign fishing vessel concerned,

to appeal in accordance with Regulation 10.

(4) The assignment of the points or the notification to the competent authority of a flag Member State, in accordance with paragraph (1), shall not occur until—

- (a) the period allowed to make an appeal to an appeals officer under Regulation 10 has expired, without such an appeal having been made, or
- (b) where an appeal under Regulation 10 is made, and—
 - (i) in case the appeal is withdrawn, the date of the withdrawal, or
 - (ii) in case the appeals officer decides to uphold the proposal of the SFPA, the date of that decision.

(5) The SFPA shall, in the case of an Irish sea-fishing boat, notify the licensing authority, as soon as practicable, after—

- (a) the period allowed to make an appeal under Regulation 10 has expired without such an appeal having been made, or
- (b) where an appeal is made under Regulation 10, the withdrawal of the appeal or the decision of the appeals officer to uphold the proposal of the SFPA to assign points,

of—

- (i) the name and address of the holder of the Irish licence to whom the proposed points are to be assigned,
- (ii) the identity of the Irish sea-fishing boat to which the Irish licence concerned relates,
- (iii) the nature of the serious infringement concerned, and
- (iv) the number of points to be assigned.

(6) Where the SFPA receives a notification under Article 89(4) of the Control Regulation from the competent authority of another Member State of the detection of a serious infringement by an Irish sea-fishing boat, the SFPA shall—

- (a) assign points to the holder of the Irish licence in respect of the boat concerned, and
- (b) notify the holder of the Irish licence and the licensing authority accordingly.

(7) Points assigned by the SFPA in accordance with this Regulation shall apply from the date of detection of the serious infringement concerned.

(8) A report prepared, or material collected, by a sea-fisheries protection officer in the exercise of his or her powers under section 17 or 18 of the Act

of 2006 may be used for the purposes of a proposal to assign points under this Regulation.

(9) The SFPA may issue guidance notes, which shall be published on its website on the internet, for the purpose of providing practical guidance in identifying the criteria, for the purpose of these Regulations, the Control Regulation and the Commission Regulation, employed by the SFPA in determining whether an infringement is a serious infringement.

(10) In this Regulation identity, in relation to Irish sea-fishing boat, includes the lettering and numbering of the boat as entered in the Register.

Matters relating to points assigned

6. (1) Subject to paragraph (2), points assigned to a holder of an Irish licence remain assigned regardless of any criminal proceedings pending, or the outcome of any such proceedings, in respect of the serious infringement concerned.

(2) The SFPA shall establish procedures for the application of Article 92(4) of the Control Regulation or Article 133 of the Commission Regulation which shall be published on its website on the internet.

Recording of points by licensing authority

7. (1) Upon notification to it under Regulation 5(5) or (6), the licensing authority shall record the points assigned to the holder of an Irish licence that relates to the Irish sea-fishing boat concerned.

(2) Points notified to the licensing authority shall be recorded as applying from the date of detection of the serious infringement concerned.

(3) Points notified to the licensing authority shall also be recorded against the fishing capacity of the Irish sea-fishing boat concerned and remain so attached even if the boat or the capacity (or any part thereof) is subsequently de-registered or transferred, unless—

(a) otherwise notified by the SFPA, or

(b) any or all of the points have been deleted in accordance with Article 92(4) of the Control Regulation and Article 133 of the Commission Regulation.

Points assigned attach to fishing capacity

8. (1) Subject to this Regulation or the deletion of any points, points assigned to a holder of an Irish licence in accordance with Regulation 5 and Article 126 of the Commission Regulation attach to the fishing capacity associated with the licence and remain attached regardless of any transfer, division or sale of that fishing capacity, or any de-registration of the Irish sea-fishing boat concerned.

(2) Where fishing capacity of an Irish sea-fishing boat in respect of which points are assigned is divided and transferred, the total of the points assigned in respect of that boat shall transfer with each separate part of the capacity transferred.

(3) Where fishing capacity from more than one Irish sea-fishing boat, in respect of which points are assigned, is combined and used for the purpose of an application for an Irish licence relating to another Irish sea-fishing boat, the total number of points assigned in respect of those first-mentioned boats shall transfer to the holder of the new licence.

(4) Where off-register fishing capacity expires under the requirement of the 2 year rule referred to in Part E of policy directive 2 of 2003, any points recorded as assigned against that expired capacity shall also expire except where the capacity is restored—

(a) on appeal under Part 3 of the Act of 2003, or

(b) by way of judicial review under Order 84 of the Rules of the Superior Courts.

(5) In paragraph (4)—

“policy directive” means a policy directive given by the Minister under section 3(2)(b) of the Act of 2003;

“off-register fishing capacity” means fishing capacity that is not, for the time being, assigned to an Irish sea-fishing boat.

Appeals officer

9. (1) The Minister shall appoint, on such terms and conditions as are specified in writing, one or more than one person who is a practising barrister or solicitor of not less than 5 years' standing to consider an appeal under Regulation 10 who shall, in relation to the appeal, be called the “appeals officer”.

(2) An appeals officer shall—

(a) hold office for a term of 3 years and shall be eligible for re-appointment as such an officer,

(b) subject to these Regulations, be independent in the performance of his or her functions, and

(c) be paid such remuneration, and allowances for expenses, as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine from time to time.

(3) An appeals officer may—

(a) resign from office by letter addressed to the Minister and the resignation shall take effect on the date on which the Minister receives the letter, or

(b) be removed from office by the Minister where—

- (i) in the opinion of the Minister, the appeals officer has become incapable through ill-health of effectively performing his or her functions under these Regulations, or
- (ii) has committed stated misbehaviour.

(4) An appeals officer shall, at such intervals and in relation to such periods as are specified in writing by the Minister, submit a report in writing to the Minister in relation to the performance of his or her functions as an appeals officer under these Regulations during the period to which the report relates.

(5) An appeals officer shall be entitled to an indemnity in respect of proceedings taken against him or her in respect of acts done in good faith in his or her official capacity under these Regulations.

Appeal

10. (1) The holder of—

- (a) an Irish licence relating to an Irish sea-fishing boat concerned with an alleged serious infringement detected, where points are to be assigned to him or her, or
- (b) a foreign licence relating to a foreign fishing vessel concerned with an alleged serious infringement detected, where a notification is to be made to the flag Member State concerned,

in accordance with Regulation 5 (other than in respect of a notification under paragraph (6) of that Regulation) may, not later than 21 days from the date of the notification under that Regulation, appeal to an appeals officer against the proposal—

- (i) to assign points to him or her, or
- (ii) to notify the flag Member State concerned,

as the case may be.

(2) An appeal under this Regulation shall—

- (a) be made by—
 - (i) where the serious infringement concerned relates to an Irish sea-fishing boat, the holder of the Irish licence relating to the boat, or
 - (ii) where the serious infringement concerned relates to a foreign fishing vessel, the holder of the foreign licence relating to the vessel,
- (b) be made in writing,
- (c) be accompanied by a statement of grounds relied on by the appellant, and

(d) be accompanied by such fee—

(i) determined by the Minister, from time to time, and

(ii) published on the website of the Department of Agriculture, Food and the Marine on the internet.

(3) The appeals officer may decide at his or her discretion whether or not to conduct an oral hearing for the purposes of the appeal.

(4) The appeals officer may direct that further information be provided by the SFPA or the holder of the fishing licence in relation to the determination of the SFPA that the infringement is a serious infringement and, having regard to paragraph (9) and, in any case, not later than 5 working days after receiving the request, the SFPA or licence holder, as the case may be, shall comply with such direction.

(5) The Minister may set down the procedures to be followed in respect of the conduct and consideration of appeals and the appeals officer, subject to paragraph (12), shall comply with those procedures.

(6) The appeals officer may—

(a) confirm that the points shall be assigned to the holder of the Irish licence or that notification be made to the flag Member State concerned, as the case may be, or

(b) allow the appeal, in which event—

(i) in the case of an Irish sea-fishing boat, the points shall not be assigned and a notification under Regulation 5(5) shall not be made, or

(ii) in the case of a foreign fishing vessel, a notification under Regulation 5(1)(ii) shall not be made.

(7) An appeal may only be allowed where the appeals officer on the consideration of an appeal, on the balance of probabilities, considers that the alleged serious infringement in respect of which points have been assigned—

(a) did not occur,

(b) occurred before the commencement of these Regulations,

(c) involved an infringement that was not serious, or

(d) did not involve the fishing vessel concerned.

(8) In making a decision under this Regulation, the appeals officer shall have regard to Article 126(4) of the Commission Regulation.

(9) Subject to paragraph (10), an appeals officer shall make a decision in relation to an appeal not later than 28 days of the date of receipt of an appeal to him or her under paragraph (1).

(10) In exceptional circumstances, the appeals officer may take not more than 14 days in addition to the number of days mentioned in paragraph (9) to make a decision.

(11) The appeals officer shall notify the holder of the fishing licence concerned, and the SFPA, in writing of his or her decision and the reasons for it and the decision or reasons for the decision may be published on a publicly available website on the internet.

(12) A party to an appeal may apply to the High Court regarding a decision of the appeals officer on a point of law and the determination of the High Court on such an appeal shall be final and conclusive.

(13) An application to the High Court under paragraph (12) shall be made not later than 14 days after the notification to the parties of the decision of the appeals officer under paragraph (11).

(14) In this Regulation “appeal” means an appeal under this Regulation.

Points system to be term of Irish licence

11. The points system under—

- (a) Article 92 of the Control Regulation,
- (b) Article 126 of the Commission Regulation, and
- (c) these Regulations,

is a term of an Irish licence.

Offence — failure to inform potential future licence holder of assignment of points

12. (1) The holder of a fishing licence who fails to comply with Article 128 of the Commission Regulation commits an offence and is liable, on summary conviction, to a class B fine.

(2) Where the holder of an Irish licence has been notified by the SFPA under Regulation 5(1) that points are proposed to be assigned, the licence holder shall advise in writing any other party to any proposed, or actual, sale, transfer or disposal of the fishing capacity of the Irish sea-fishing boat concerned of the proposal before—

- (a) the expiry of the time limits referred to in Regulation 5(5), and
- (b) the recording of the points by the licensing authority in accordance with Regulation 7(1).

(3) A person who fails to comply with paragraph (2) commits an offence and is liable, on summary conviction, to a class B fine.

Prohibition on fishing where fishing licence is withdrawn

13. (1) The holder of a fishing licence that is suspended or permanently withdrawn in accordance with Article 129 of the Commission Regulation who fails to comply with Article 130(2) of that Regulation commits an offence and is liable—

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €100,000.

(2) Where a fishing licence in relation to a fishing vessel is suspended or permanently withdrawn in accordance with Article 129 of the Commission Regulation, the master of the vessel concerned who, upon receiving information on the fact of such suspension or withdrawal—

- (a) fails immediately to cease fishing activity,
- (b) does not proceed immediately to the home port of the vessel or a port indicated by a sea-fisheries protection officer,
- (c) fails to lash and stow fishing gear in accordance with Article 47 of the Control Regulation, or
- (d) fails to deal with any catch on board the vessel in accordance with the instructions of a sea-fisheries protection officer,

commits an offence and is liable—

- (i) on summary conviction, to a class A fine, or
- (ii) on conviction on indictment, to a fine not exceeding €50,000.

Prosecution of summary offences

14. A prosecution for an offence under these Regulations may be brought summarily by the SFPA.

Service of notifications to fishing licence holders

15. (1) A notification that is required to be served on or given to a holder of an Irish licence under these Regulations shall be addressed to the holder concerned by name, and may be so served on or given to the person in one of the following ways:

- (a) by delivering it to the holder;
- (b) by leaving it—
 - (i) at the address at which the holder ordinarily resides or, in a case in which an address for service has been furnished, at that address, or
 - (ii) where the holder is the master or owner of a fishing vessel, at that vessel;

- (c) by sending it by post in a prepaid registered letter to the address at which the holder ordinarily resides or, in a case in which an address for service has been furnished, to that address;
- (d) in a case in which an e-mail address for service has been furnished, to that e-mail address;
- (e) where the vessel concerned is at sea, by e-mail, satellite telephone or through the fisheries monitoring centre and subsequently confirmed by any of the other methods referred to in this paragraph.

(2) A notification that is required to be served on or given to a holder of a foreign licence under these Regulations shall be addressed to the holder concerned by name, and may be so served on or given—

- (a) to the master of the vessel concerned, at the vessel,
- (b) to the holder at any other place in the State where the holder carries on business,
- (c) to the holder at an address, or to a named person in the State, nominated by the holder for the purpose of delivery of notifications, or
- (d) where the vessel concerned is at sea, by e-mail, satellite telephone or through the fisheries monitoring centre and subsequently confirmed by any of the other methods referred to in this paragraph.

(3) A notification that may be given to the master of a foreign fishing vessel under Regulation (5)(1)(ii)(II) shall be addressed to the master of the vessel and may be served on, or given to, him or her—

- (a) at the vessel or any place in the State where he or she resides, or
- (b) where the vessel is at sea, by e-mail, satellite telephone or through the fisheries monitoring centre and subsequently confirmed by a method referred to in paragraph (a).

(4) For the purpose of this Regulation, a company within the meaning of the Companies Acts shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

(5) In this Regulation “fisheries monitoring centre” means the monitoring system operated in accordance with Article 9 of the Control Regulation by the Naval Service of the Defence Forces or the competent authority of another flag Member State.

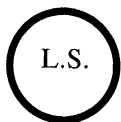
Fixed payment notice

16. (1) Where an officer of the SFPA, authorised by the SFPA in that behalf, has reasonable grounds for believing that a person is committing or has committed an offence under Regulation 12, he or she may serve a notice in writing (“fixed payment notice”) on that person stating that—

- (a) the person is alleged to have committed the offence,
 - (b) the person may during the period of 28 days beginning on the date of the notice make to the SFPA, at the address specified in the notice, a payment of €200, accompanied by the notice,
 - (c) the person is not obliged to make the payment, and
 - (d) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.
- (2) Where a fixed payment notice is served under paragraph (1)—
- (a) the person to whom the notice applies may, during the period specified in the notice, make to the SFPA at the address specified in the notice the payment specified in the notice accompanied by the notice,
 - (b) the SFPA may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, and
 - (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.
- (3) In proceedings for an offence under Regulation 12—
- (a) the onus of proving that a payment, in accordance with a fixed payment notice, has been made lies on the person on whom the fixed payment notice was served, and
 - (b) it is a defence for the accused to show that he or she has made a payment in accordance with this Regulation pursuant to a fixed payment notice issued in respect of that offence.

Non-application of Part 3 of Act of 2003 to suspension or permanent withdrawal of Irish licence

17. Part 3 of the Act of 2003 does not apply to the suspension or permanent withdrawal of an Irish licence under Article 129 of the Commission Regulation.



GIVEN under my Official Seal,
8 January 2014.

SIMON COVENEY,
Minister for Agriculture, Food and the Marine.

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation)

This instrument adopts the requirements of Article 92 of Council Regulation (EC) No. 1224/2009 of 20 November 2009 and Title VII of Commission Implementing Regulation (EU) No. 404/2011 of 8 April 2011. In accordance with the regulations, this instrument establishes a point system, which will apply to the Licence Holder of a sea-fishing boat when a serious infringement of the Common Fisheries Policy by a vessel is detected within the Exclusive Fishery Limits of the State or for an Irish vessel, wherever it may be.

The Sea Fisheries Protection Authority is determined as the competent Authority for the establishment of the system and the assignment of points. The Licensing Authority is the competent authority for the recording of points assigned to the licence of an Irish registered fishing vessel and for the transfer of those points.

This Statutory Instrument provides for the establishment of an independent appeals officer to hear appeals against the assignment of points.

The accumulation of points for persistent serious infringements of the Common Fisheries Policy will lead to the suspension of a sea fishing boat licence for a period from 2 months to one year. In extreme cases persistent serious fisheries infringements could lead to the permanent withdrawal of a licence.

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