

STUDY

Requested by the PECH committee



# Implementation of the current EU fisheries control system by Member States (2014-19)



**Fisheries**



Policy Department for Structural and Cohesion Policies  
Directorate-General for Internal Policies  
PE 652.205 - July 2020

EN



# Implementation of the current EU fisheries control system by Member States (2014-19)

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## **Abstract**

This study assesses the implementation of the current EU fisheries control system by Member States. It focuses on the application of national infringement procedures, sanctions and the point system for serious infringements from 2014 to 2019. The research shows results based on interviews and survey replies by 17 out of 22 coastal Member States and it presents case studies for the following seven countries: Denmark, France, Germany, Ireland, Italy, Lithuania and Spain.

This document was requested by the European Parliament's Committee on Fisheries.

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## LIST OF ABBREVIATIONS

<b>BBND</b>	Bazinis bausmių ir nuobaudų dydis <i>Minimal threshold for fines (Lithuania)</i>
<b>BLE</b>	Bundesanstalt für Landwirtschaft und Ernährung <i>Federal Office for Agriculture and Food (Germany)</i>
<b>CCNP</b>	Centro controllo nazionale pesca <i>National centre for fisheries control (Italy)</i>
<b>CCTV</b>	Closed-circuit television
<b>CEGs</b>	Control Expert Groups
<b>CFP</b>	Common Fisheries Policy
<b>CNSP</b>	Centre National de Surveillance de la Pêche <i>National Fisheries Monitoring Centre (France)</i>
<b>CRPM</b>	Code Rural et de la Pêche Maritime <i>Rural and Maritime Fishing Code (France)</i>
<b>CSO</b>	Civil Society Organisation
<b>CSP</b>	Centres de Surveillance de la Pêche <i>Fisheries Monitoring Centres (France)</i>
<b>DIRM</b>	Direction Inter-régionale de la Mer <i>Inter-regional Directorate of the Sea (France)</i>
<b>DKK</b>	Danish Krone
<b>DPMA</b>	Direction des Pêches Maritimes et de l'Aquaculture <i>Directorate of Marine Fisheries and Aquaculture (France)</i>
<b>DRMs</b>	Directions de la Mer <i>Directorates for the Sea (France)</i>
<b>ECA</b>	European Court of Auditors
<b>EEZ</b>	Exclusive Economic Zone
<b>EFCA</b>	European Fisheries Control Agency

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<b>EUR</b>	Euro
<b>FIT</b>	Fishery Information Technology
<b>GU</b>	Gazzetta Ufficiale della Repubblica Italiana <i>Official Journal of the Italian Republic</i>
<b>IUU</b>	Illegal, Unregulated and Unreported Fishing
<b>JDP</b>	Joint-deployment plan
<b>JORF</b>	Journal Officiel de la République Française <i>Official Journal of the French Republic</i>
<b>LEI</b>	Romanian Lev
<b>MIPAAF</b>	Ministero delle Politiche Agricole, Alimentari e Forestali <i>Ministry of Agricultural, Food and Forest Policies (Italy)</i>
<b>NEAFC</b>	North East Atlantic Fisheries Commission
<b>PECH</b>	European Parliament's Committee on Fisheries
<b>Pe.M.Acq.</b>	Direzione Generale della Pesca Marittima e dell'Acquacoltura <i>Directorate General of Maritime Fisheries and Aquaculture (Italy)</i>
<b>REM</b>	Remote Electronic Monitoring
<b>SEK</b>	Swedish Krona
<b>SFMJA</b>	Sea Fisheries Maritime Jurisdiction Act 2006 (Ireland)
<b>SFPA</b>	Sea-Fisheries Protection Authority
<b>SGCI</b>	Subdirección General de Control e Inspección <i>Vice Directorate General of Control and Inspection (Spain)</i>
<b>SIPE</b>	Sistema de Información Pesquera Española <i>Spanish Fisheries Information System</i>
<b>TAC</b>	Total Allowable Catch



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## EXECUTIVE SUMMARY

### KEY FINDINGS

- Most Member States have adopted administrative procedures **in national law** to sanction infringements of the CFP. The **length** of the infringement procedures varies considerably between Member States, mainly depending on the procedure implemented based on **administrative or criminal law** and the possibility of **appeal**.
- There are **substantial differences** in the **number** of infringements and sanctions, i.e. Spain and Italy together sum 80% of the infringements committed by all the Member States that provided data (17 Member States).
- The **most common type** of infringement is the following: Not fulfilling the **obligations to record and report** catch or catch-related data, including data to be transmitted by satellite vessel monitoring system.
- All Member States have implemented the **point system**. Nevertheless, the research has identified substantial differences in the way the Member States allocate points. It is recommended to **simplify** the criteria for the implementation of the point system; to provide **guidelines** for the definition of serious infringements; and to increase **transparency** in the access to information on points.
- Moreover, it is recommended to **increase** the number of **controls at sea**, to consider **enhanced cooperation** between relevant authorities and the European Fisheries Control Agency (EFCA), and to **harmonise** the level of detail of national registries for a level playing field.

This study on the implementation of the current EU fisheries control system by Member States presents an update on an earlier Parliament study: '[The CFP-Infringement Procedures and Imposed Sanctions throughout the European Union](#)' (2014)<sup>1</sup>. The present study covers the years 2014-2019 and was aiming to cover the state of play in all 22 coastal EU Member States.

The research centres on the infringement procedures and sanctions imposed by EU Member States in the field of fisheries control and also provides an overview of the application of the point system for serious infringements in the different Member States. The aim is to establish background knowledge for the current legislative proposal for a revision of the current Fisheries Control Regulation. The ultimate objective is to contribute to the promotion of a level playing field in fisheries throughout the EU, promoting the equal application of infringement procedures and aiming at the harmonisation of sanctions imposed on EU vessels.

This paper has been prepared during the period March to June 2020 by Blomeyer & Sanz on the basis of desk research, stakeholder interviews, data requests addressed to all 22 Member States with a coastline. In addition this research presents seven case studies for Denmark, France, Germany, Ireland, Italy, Lithuania and Spain.

<sup>1</sup> see [https://www.europarl.europa.eu/RegData/etudes/note/join/2014/514003/IPOL-PECH\\_NT\(2014\)514003\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/join/2014/514003/IPOL-PECH_NT(2014)514003_EN.pdf)

## Infringement procedures

Infringement procedures in the different Member States might fall in the sphere of administrative and/or criminal law. Member States are free to choose the system they consider most adequate to guarantee the enforcement of the CFP. Most Member States have adopted administrative procedures, although in most cases, the administrative procedures are complemented with criminal procedures.

In most Member States, the competent authorities for sanctions and controls depend on the different Ministries of Agriculture and/or Fisheries at the national level. Nevertheless, the administrative organisation of the Member State influences the structure of the authorities (i.e. Germany and Spain have both national and regional competent authorities).

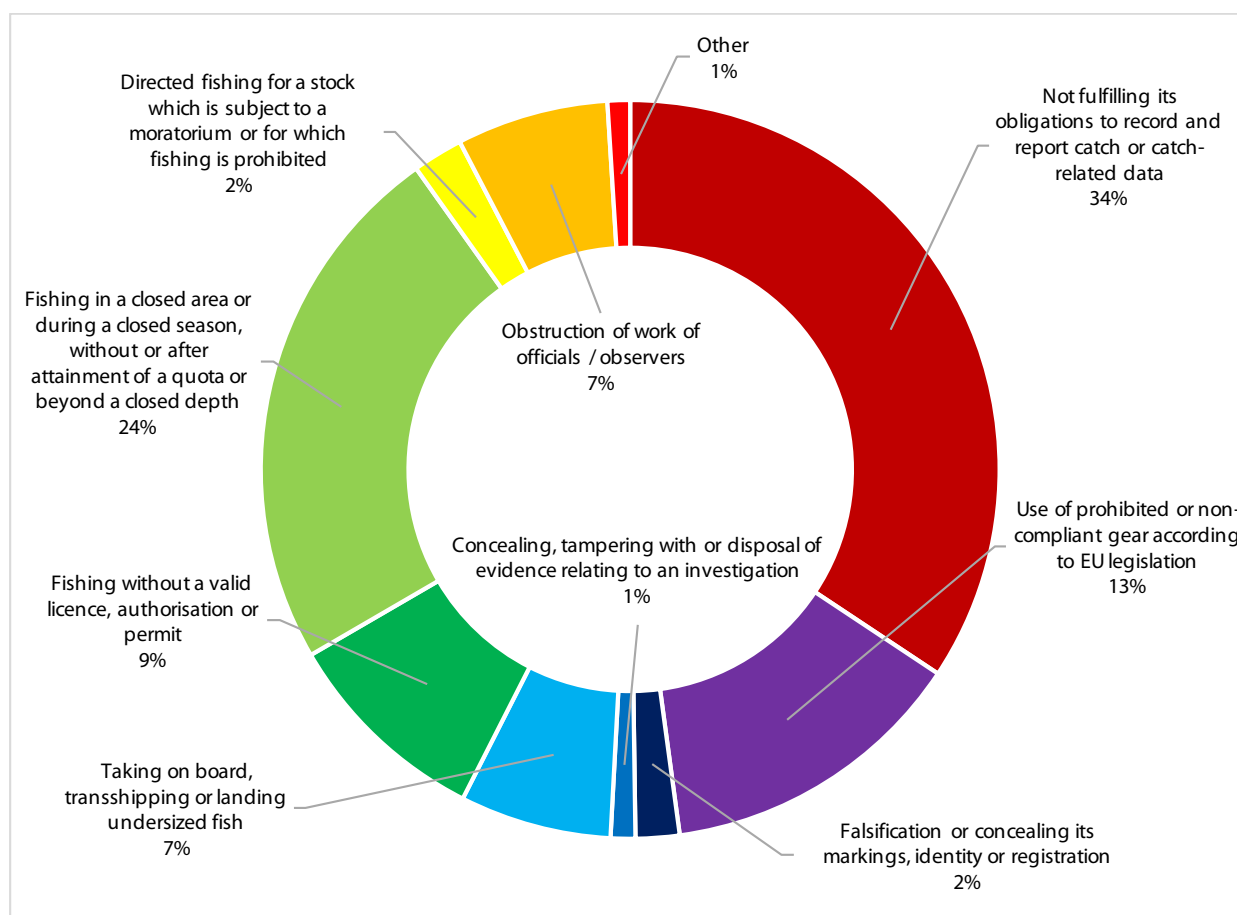
The average length of infringement procedures varies considerably between different Member States. In some Member States infringement procedures are completed within only days whilst in other Member States this can take several years. This depends on whether procedures are mainly administrative, criminal, or a combination of both, and on whether appeals procedures are in place.

## Controls and sanctions imposed

It is worth noting the considerable differences between Member States regarding the number of identified infringements. For example, with a total of 14,882 infringements, Italy and Spain together sum 80% of the total amount of infringements of all the Member States combined (15 Member States that provided data). It is important to note that the number of infringements will normally result in a lower number of cases initiated and sanctions applied, which is based on investigations carried out to determine whether there is a basis or not for case proceedings. The most common infringements are:

- Not fulfilling its **obligations to record and report catch** or catch-related data, including data to be transmitted by satellite vessel monitoring system (34%).
- Fishing in a **closed area or during a closed season**, without or after attainment of a quota or beyond a closed depth (24%).
- Use of **prohibited or non/compliant gear** according to EU legislation (13%).

The following figure shows the **number of infringements** classified by type of serious infringements in the EU.

**Figure 1: Infringements per type in the observed EU Member States (2014-2019)<sup>2</sup>**

Source: Author based on data provided by the Member States

Regarding **minimum and maximum penalties** laid down in the law, the main goal of the penalties is to act as **deterrent** in order to prevent new infringements. It is very complex to compare the different penalties in the Member States. For example, the **standard of living varies** considerably between different Member States, i.e. a sanction that is moderate in one Member States may be excessive and disproportionate in a different Member States. As long as the penalties imposed work as deterrent, they might be considered adequate for achieving their goal.

Regarding the number of sanctions imposed in the Member States, **almost all the infringements** identified were followed by the imposition of the **corresponding sanctions**. With a total of 6,893 Italy is the Member State with most sanctions imposed, followed by Spain with 5,001 sanctions.

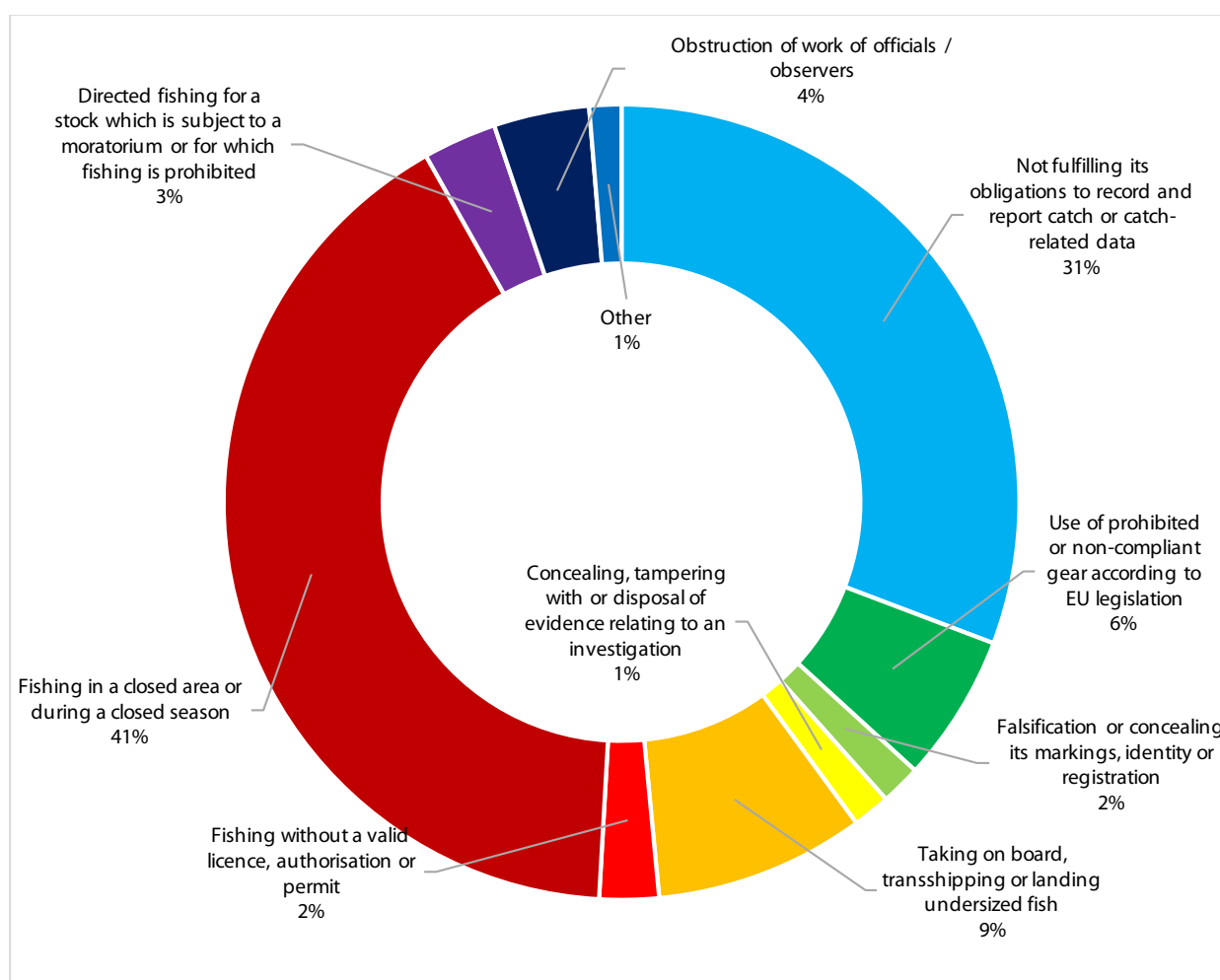
<sup>2</sup> The category 'Other' includes: (1) Carrying out fishing activities in the area of a regional fisheries management organisation in a manner inconsistent with or in contravention of the conservation and management measures of that organisation; and (2) Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as having engaged in IUU fishing under Regulation (EC) No 1005/2008, in particular those included in the Union IUU vessel list or in the IUU vessel list of a regional fisheries management organisation; and (3) Use of a fishing vessel with no nationality and that is therefore a stateless vessel in accordance with international law.

## Point system

One of the main goals of the sanctioning system is to ensure that sanctions should be a **deterrent** to those not complying with the rules of the CFP. In this sense, the Member States decide on the most adequate system of penalties and determine criteria for defining serious infringements. Concerning the **point system**, **all Member States have implemented** the system. Most of them have done this between 2013 and 2014, although there are some countries, such as Croatia, that only implemented it in 2017. In the case of Ireland, the implementation of the point system was in force from 2014 to 2016. Case study work identified **substantial differences** in the way the **Member States allocate points**. Moreover, it is worth noting the different systems implemented by certain Member States for **rewarding good behaviour**, resulting in the subtraction of penalty points. Even if all the Member States have transposed the Fisheries Control Regulation in their national legislation, not all of them actually attribute points. With 3,210 cases where points were assigned, Italy has attributed more points than all other Member States combined (3,607 cases for 15 Member States that provided data).

The following figure shows the points allocated per type of serious infringement.

**Figure 2: Points per infringement (2014-2019)**



Source: Author based on data provided by the Member States.



## Recommendations

### On the Point System:

- To **simplify** the current complexity of the point system in the proposed regulation.
- To **increase transparency** in access to information related to the point system.
- Regarding the point system for serious infringements there appears to be a need for more careful consideration of what should be the **definition of serious infringements** and the criteria to be used.
- The point system should not result in **disproportionate and severe sanctions** and the permanent suspension of fishing licenses. Due to consideration should be given to the **effectiveness** of the sanctioning system in place.
- The differences and **specificities according to regions/areas/fishery** should be considered.
- To clearly specify how to apply the penalty point system and to indicate both **aggravating and attenuating circumstances** when assigning penalty points. It is important to consider circumstances on a **case-by-case basis** and allow for **flexibility**.

### On controls:

- To consider **cooperation** between national control authorities / EFCA and research institutes for more **efficient data collection and high-qualitative data**.
- To increase the **number of controls** at sea, which is particularly relevant in the context of the Last Haul programme and the control of the landing obligation.
- To introduce **camera monitoring** on vessels to allow a more effective control, but this should be carried out on a voluntary basis and with associated incentives.
- Consider the establishment of an **EU register of infringements**.
- To **harmonise the level of detail** included in the national registers of infringements.



## 1. INTRODUCTION

This study has been prepared during the period March to May 2020 by Blomeyer & Sanz. The introduction briefly presents the objectives (1.1) Research objectives, the methodology (1.2), and the study structure (1.3).

### 1.1. Research objectives

The purpose of this study on the 'Implementation of the EU fisheries control system by Member States (2014-19)' is to present an update on an earlier study commissioned by the Parliament: 'The CFP-Infringement procedures and imposed sanctions throughout the European Union' from 2014. The present paper covers the years 2014-2019 and focuses on 22 coastal Member States. The research offers an overview of most coastal Member States<sup>3</sup> and presents a more detailed picture of the current situation in Denmark, Germany, France, Ireland, Italy, Lithuania and Spain.

The study centres on the infringement procedures and sanctions imposed by EU Member States in the field of fisheries control. It also provides an overview of the application of the point system for serious infringements in the different Member States.<sup>4</sup> The aim is to establish background knowledge for the current legislative proposal for a revision of the EU Fisheries Control Regulation (the Control Regulation).

The ultimate objective of the research is to identify national differences with a view to promoting a level playing field throughout the EU, advocating the equal application of infringement procedures and aiming at the harmonisation of sanctions imposed on EU vessels for breaches of CFP rules.

### 1.2. Methodology

This study has been prepared on the basis of desk research, stakeholder interviews, data requests and case studies:

**Desk research:** Data used for this report comprises legislation, official documents and secondary sources (see [REFERENCES](#)):

- **Stakeholder interviews:** Interviews were conducted with national and regional fisheries (inspection) authorities from seven Member States (Denmark, Germany, France, Ireland, Italy, Lithuania and Spain), scientific research institutes, civil society organisations (CSO) and the fisheries industry. 22 interviews took place between March and May 2020 (see ANNEX I – STAKEHOLDER INTERVIEWS).
- **Data requests:** Fisheries authorities in 22 coastal Member States have been contacted for information (see ANNEX II – QUESTIONNAIRE TO THE MEMBER STATE). This focused on:
  - Overview of the sanctioning systems: This focused on providing an update of the sanctioning systems in the EU. 17 Member States provided information.<sup>5</sup> The information has been complemented with desk research for the following Member States: Belgium, Malta, the Netherlands, Portugal and Sweden.

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<sup>3</sup> All 22 coastal Member States with the exception of Belgium, Malta, the Netherlands, Portugal and Sweden.

<sup>4</sup> The objectives are established in the terms of reference for this research project.

<sup>5</sup> The data requests were sent to the competent authorities of the 22 coastal Member States of the EU. We have received responses from all of them, with the exception of the following: Belgium, Malta, the Netherlands, Portugal, Sweden. Italy submitted the responses after the closing date of the report. The figures provided by the Italian authorities have been taken into consideration, even if they do not always coincide with the data included in the reports of ClientEarth that are the main source of information analysed for the case study.

- Application of the point system for serious infringements: This presents an overview of the implementation of the point system on serious infringements in the EU. 17 Member States provided information.
- Recommendations: This includes recommendations provided by the relevant Member States authorities related to the infringement procedures, sanctioning system and implementation of the point system.

**Case studies:** Case studies were conducted for Denmark, France, Germany, Ireland, Italy, Lithuania and Spain (see Chapter 6). The case studies are based on desk research and on the information provided by the national authorities of Denmark, France, Germany, Ireland, Italy, Lithuania and Spain. The case study on Italy is mostly based on desk research and information provided by stakeholders since the national authorities submitted the information after the closing date of the research paper. However, the figures provided by the national authorities have been taken into consideration.

The COVID-19 health crisis affected data collection; there was more limited availability of relevant stakeholders for interviews. Many Member States' stakeholders were working from home and had limited access to their databases. Considering this and the fact that key data for the quantitative analysis only became available in late April 2020, the study was practically prepared in a very short time frame.

The authors of this report would like to express their gratitude to the colleagues in Parliament's Policy Department for Structural and Cohesion Policy for the support provided in terms of facilitating data collection and allowing for additional time for the preparation of the report (the contract duration was extended by about one month).

### 1.3. Study structure

The main study is organised in seven chapters, including this introductory chapter:

- Background with an **overview of key EU legislation** related to the national infringement procedures, the revision of the EU Fisheries Control Regulation and feedback from the stakeholders (Chapter 2).
- **Infringement** procedures with an overview of the implementation of the EU fisheries control system by Member States, the respective competent authorities for sanctions and controls and the average length of infringement procedures by Member State (Chapter 3).
- Overview of **controls** implemented and sanctions imposed (Chapter 4).
- Overview of minimum **penalties** imposed (Chapter 5).
- **Case studies** for the implementation of the EU fisheries control system by six selected Member States (Chapter 6).
- **Recommendations** (Chapter 7).
- The main study text concludes with the **References** used in the research.

Moreover, we include two annexes:

- [ANNEX I – STAKEHOLDER INTERVIEWS.](#)
- [ANNEX II – QUESTIONNAIRE TO THE MEMBER STATES.](#)

## 2. BACKGROUND

### KEY FINDINGS

- The CFP establishes a Union Fisheries Control System that comprises four pillars: the Control Regulation, the IUU Regulation, the EFCA Founding Regulation and the Regulation on the sustainable management of the external fishing fleets.
- The control system is currently under review in order to improve effective control and to be fully coherent with the reformed CFP.
- The new proposal intends to introduce some amendments in the areas of inspection and surveillance, and sanctions.
- The harmonization of the different systems of fisheries control and inspection system throughout the EU aims to contribute to a level playing field.

This section provides an overview of key EU legislation related to the infringement procedures, sanctioning system and implementation of the point system. The focus is on the development of relevant legislation since the publication of the 2014 study 'The CFP-Infringement Procedures and Imposed Sanctions throughout the EU'.<sup>6</sup> Besides, this section offers an overview of the revision of the EU Fisheries Control Regulation (the Control Regulation) and summarises some of the stakeholders' positions regarding the revision.

### 2.1. Legal framework for the EU fisheries control system

The CFP objectives are to ensure that fishing and aquaculture activities are environmentally sustainable in the long term and are managed in a way that is consistent to achieve economic, social and employment benefits.

In order to ensure sustainable fisheries, the CFP establishes a Union Fisheries Control System that comprises four pillars:

- the Control Regulation, [Council Regulation \(EC\) No 1224/2009](#);
- the Regulation establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (IUU Regulation), [Council Regulation \(EC\) No 1005/2008](#);
- the European Fisheries Control Agency (EFCA) founding Regulation, [Council Regulation \(EC\) No 768/2005](#);
- the Regulation on the sustainable management of the external fishing fleets, [Regulation \(EU\) No 2017/2403](#) of the European Parliament and of the Council.

<sup>6</sup> See <https://op.europa.eu/en/publication-detail/-/publication/2f47e0b9-b69f-43b0-8688-57773bd330a8/language-en/format-PDF/source-120906211>

## 2.2. Revision of the EU Fisheries Control Regulation

The Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy establishes a system for control, inspection and enforcement. This system is currently under review in order to be improved and to be fully coherent with the reformed CFP.<sup>7</sup>

Several documents from Parliament,<sup>8</sup> the Commission<sup>9</sup> and the European Court of Auditors (ECA)<sup>10</sup> have noted that the *'Fisheries Control Regulation has deficiencies and is overall not fit for purpose'*.<sup>11</sup>

In that sense, Parliament considers that *'a sound and harmonised control system is needed; (...) calls for a standardisation of sanctions while keeping them at a level that is proportional and non-discriminatory and that acts as a deterrent; prefers economic sanctions, including temporary suspensions of activity, to penal sanctions'*. Besides, Parliament *'advocates a strengthening of controls (...) and calls for increased cooperation between Member States through exchanges of inspectors, control methods and data, risk analysis sharing and shared information on quotas of flagged vessels'*.<sup>12</sup>

In May 2018 the Commission adopted a proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1224/2009. Parliament and the Council are currently examining the proposal. In relation to enforcement, the proposal intends to introduce some amendments in the areas of inspection and surveillance, and sanctions.

Regarding **inspections**, some of the proposed amendments include:

- Clarify the inspection process, inspectors' duties and masters' and operators' duties during inspections;
- Digitise the inspection reports;
- Clarify control through the mandatory use of an Electronic Inspection Report System.

Regarding **sanctions**, the proposed amendments include:

- New definitions of the sanctions;
- New list of serious infringements;
- New list of criteria to qualify infringements as serious;
- Introduction of mandatory administrative sanctions;
- Introduction of minimum levels of fines for serious infringements;
- Clarification that points should be assigned to both the fishing license holder and the master;
- Clarification that points apply in addition to the main sanction.

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<sup>7</sup> The CFP has been reformed in accordance with [Regulation \(EU\) No 1380/2013](#) on the Common Fisheries Policy.

<sup>8</sup> [European Parliament resolution](#) of 25 October 2016 on how to make fisheries controls in Europe uniform.

<sup>9</sup> European Commission, [COM\(2017\) 192 final](#). REFIT Evaluation of the impact of the fisheries regulation.

<sup>10</sup> European Court of Auditors (2017) [Special Report](#) of the Court of Auditors 'EU fisheries controls: more efforts needed'.

<sup>11</sup> European Commission, [COM\(2018\) 368 final](#). Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries control.

<sup>12</sup> [European Parliament resolution](#) of 25 October 2016 on how to make fisheries controls in Europe uniform (points 26, 55, 32 and 34).

Some of the main considerations for Parliament's revision of the Control Regulation are to establish a control system that is simple, efficient and transparent; and to harmonize the fisheries control and inspection system throughout the EU. The harmonization of the different systems aims to contribute to a level playing field. The establishment of strengthened controls aims to have a positive impact on the sector.

On the penalty **point system**, it is important to note that the proposal for a revised Control Regulation states<sup>13</sup>:

*"To ensure a faster, effective and more dissuasive response to the serious infringements, administrative proceedings against such serious infringements should be introduced by Member States without prejudice to existing criminal proceedings. Setting standardized minimum levels of fines and improving the point system which may lead to the suspension or withdrawal of fishing licenses or of the right to command a vessel, will also increase the deterrent effect of the sanctioning systems of all Member States and prevent recidivism."*

As noted by a Parliament policy brief, *"The gravity of the infringements is determined by the national authorities in each Member State, based on criteria such as the nature of the damage, its value, the economic situation of the offender, the extent of the infringement or its repetition"*.<sup>14</sup>

A further consideration is that the proposed amendments should not imply increased costs for the fleets, neither more administrative burden for the Member State and/or for the vessels. In that sense, Parliament considers a progressive approach towards the implementation of the new regulation necessary.

### 2.3. Feedback from the stakeholders

Apart from the feedback from the national authorities consulted in the case study countries (Denmark, France, Germany, Ireland, Italy, Lithuania and Spain – see section 6), the fishing industry agrees on the need for the Control Regulation to be simplified, to make it more effective and efficient, and to ensure full compliance with the CFP.<sup>15</sup> The fishing industry is of the opinion that it is necessary to reform the Control Regulation together with a reform of the Fisheries Control System.<sup>16</sup>

The fishing industry agrees with the proposal of introducing a harmonised system of sanctions and with the clarification of the criteria to qualify infringements as serious.<sup>17</sup> Besides, the sector agrees with the digitisation of the inspection reports and the harmonisation of the inspection systems throughout the EU. There are however some particular points to consider from the industry perspective:<sup>18</sup>

- Avoid repetition of weighing and provide flexibility in the rules. This appears to be problematic and there are cases of disproportionate sanctions (and assignation of points) for rules that are difficult to comply with in certain fisheries (pelagic bulk fisheries).

<sup>13</sup> European Commission, [COM\(2018\) 368 final](#). Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries control.

<sup>14</sup> European Parliament (November 2019), Briefing: Revising the Fisheries Control System. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/642281/EPRS\\_BRI\(2019\)642281\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/642281/EPRS_BRI(2019)642281_EN.pdf)

<sup>15</sup> Europêche [position](#) on the EU Fisheries Control System, 5 December 2017.

<sup>16</sup> Europêche [position](#) on the EU Fisheries Control System, 5 December 2017 (p. 2).

<sup>17</sup> Telephone interview with representatives from OCEANA, 25 March 2020.

<sup>18</sup> Europêche [position](#) on the EU Fisheries Control System, 5 December 2017.

- Opposition to consider engine power, as this is not considered relevant in the quota system. This should thus consider whether fisheries are managed in relation to inputs or outputs. The industry makes the point that engine power is strongly related to better safety onboard vessels.
- The use of remote electronic monitoring tools (CCTV cameras) should be on a voluntary basis.<sup>19</sup> There is considerable resistance to introduce this across the EU due to issues related to privacy, confidentiality, mistrust, etc. However, the crucial issue is that this appears to be the only effective tools available to enforce the landing obligation.

Civil society organisations (CSO)<sup>20</sup> also support the position of working towards a better implementation of the enforcement provisions of the Control Regulation. They support most of the proposed amendments, such as the digitisation of the inspection system or the enlargement of the scope of the current provisions on the control of fishing restricted areas. Nevertheless, in some respects they claim that certain other points should also be taken into consideration. For example, regarding the list of infringements, the CSO position paper calls for a completion of the list of serious infringements rather than establishing a new list that might cause more delays. They also support the introduction of transparency requirements by making information such as reports, infringements and sanctions publicly available. Besides, they are of the opinion that the role of EFCA should be strengthened. A more significant involvement of EFCA would help to increase transparency, and establish a centralised database, including aggregated data on real time on the number and types of inspections, infringements, sanctions and points imposed.

In general terms, CSOs appear concerned about the implementation of the Control Regulation, since they consider that there is a gap between different Member States. Some Member States have a comparatively well-established sanctioning system, but in their view, this does not always mean better implementation. In certain cases, the delays in implementation are simply caused by resource constraints or by a lack of political will. In that sense, CSOs encourage the improvement of guidelines on the implementation.

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<sup>19</sup> This is not the focus of this study, but it should be noted that placing CCTV on a few vessels is not expected to be an effective control mechanisms due to various effects (behaviour will be affected by CCTV onboard vessels).

<sup>20</sup> [Joint NGO priorities](#) on the revision of the EU Fisheries Control System, November 2019.



### 3. INFRINGEMENT PROCEDURES

#### KEY FINDINGS

- Most EU Member States have adopted administrative procedures, although in most cases they are complemented with criminal procedures.
- The competent authorities for sanctions and controls mainly depend on the different Ministries of Agriculture and/or Fisheries at the national level. In some Member States, such as Germany or Spain, the regional authorities have certain competencies.
- The average length of the procedures varies considerably in the different Member States, depending on the type of procedure (criminal or administrative) and on the possibility of appeal.

This section presents a brief description of the infringement procedures in the Member States. Regarding the procedures in the case study countries (Denmark, France, Germany, Ireland, Italy, Lithuania, Spain) more detail is presented in section 6. Besides, this section provides an overview of the competent authorities for sanctions and controls, and data on the average length of infringement procedures.

#### 3.1. Overview of the infringement procedures

The infringement procedures in the different Member States might fall in the sphere of administrative and/or criminal law. Member States are free to choose the system they consider most adequate to guarantee the enforcement of the CFP. Most Member States have adopted administrative procedures, although in most cases, the administrative procedures are complemented with criminal procedures if this is considered necessary. A few Member States have opted for a predominantly criminal law approach.

In this sense, it is worth noting the French case where prison sentences are only applied if violations happened within French waters (territorial or EEZ). Beyond the limits of French territorial waters, only fines can be imposed.

The following **Table 1** shows an overview of the different systems.

**Table 1: Systems of infringements procedures in national law (2020)**

Mainly administrative	Mainly criminal	Combination
Bulgaria, Croatia, Estonia, Germany, Lithuania, Malta, Poland, Portugal, Romania, Slovenia, Spain	Finland, Ireland, the Netherlands, Sweden	Belgium, Cyprus, Denmark, France, Greece, Italy, Latvia

Source: Author based on desk research and survey questions

### 3.2. Competent authorities for sanctions and controls

In most Member States, the competent authorities for sanctions and controls (see **Table 2**) depend on the different Ministries of Agriculture and / or Fisheries at national level. Nevertheless, the administrative organisation of the Member States influences the structure of the authorities (i.e. Germany and Spain have both national and regional competent authorities).

**Table 2: Competent authorities for sanctions and controls in the EU**

Member State	Competent authority
Belgium	<i>Flemish Government level:</i> Department of Agriculture and Fisheries
Bulgaria	Executive Agency for Fisheries and Aquaculture
Croatia	Ministry of Agriculture. Directorate of Fisheries
Cyprus	Ministry of Agriculture. Department of Fisheries and Marine Research
Denmark	Danish Fisheries Agency <sup>21</sup> of the Ministry of Environment and Food
Estonia	Ministry of Environment. Environmental Inspectorate
France	Ministry of Agriculture and Food. Directorate for Maritime Fisheries and Aquaculture <sup>22</sup>
Germany	<i>At federal level:</i> Federal Office for Agriculture and Food <sup>23</sup> <i>At regional level:</i> <i>For the Baltic Sea:</i> The State Office for Agriculture, Food Safety; State Office for Agriculture, Environment and Rural Areas and the Water Police <i>For the North Sea:</i> Schleswig-Holstein Water Police and the State Office for Agriculture, Environment and Rural Areas; The State Fisheries Office
Greece	Ministry of Agriculture and Food. Directorate of Maritime Fisheries and Aquaculture; Administrative Police
Ireland	Sea Fisheries Protection Authority (SFPA); Licencing Authority
Italy	Ministry of Agricultural, Food and Forestry Policies. General Directorate for Maritime Fisheries and Aquaculture: <sup>24</sup> Corps of the Port Captaincies – Coast Guard; Police; Financial Police; Carabinieri; <i>Agenti giurati</i> <sup>25</sup>

<sup>21</sup> Fiskeristyrelsen.

<sup>22</sup> Direction des Pêches Maritimes et de l'Aquaculture.

<sup>23</sup> Bundesanstalt für Landwirtschaft und Ernährung (BLE).

<sup>24</sup> Direzione generale della pesca marittima e dell'acquacoltura.

<sup>25</sup> Private individuals who receive powers of control upon approval from authorities such as municipalities.

Member State	Competent authority
Latvia	Ministry of Agriculture. General Directorate for Maritime Fishing and Aquaculture; the State of Environmental Service and the Nature Protection Board
Lithuania	Ministry of Agriculture. Fisheries Service
Malta	Department of Fisheries & Aquaculture
The Netherlands	Food and Consumer Product Safety Authority
Poland	Ministry of the Maritime Economy and Inland Navigation; District Inspectorates of Marine Fisheries
Portugal	Ministry of the Sea. Directorate for Natural Resources and Maritime Safety and Services <sup>26</sup>
Romania	Ministry of Agriculture and Rural Development
Slovenia	Ministry of Agriculture. Inspectorate for Agriculture, Forestry, Hunting and Fisheries
Spain	Ministry of Agriculture, Fisheries and Food; General Secretariat of Fisheries and Vice Directorate of Fisheries Inspection. <i>At regional level:</i> Inspection services of the autonomous regions
Sweden	Swedish Board of Fisheries <sup>27</sup>

Source: Authors based on desk research and data provided by Member State (see Annex II)

The authorities decide on the most adequate type of control (i.e. land, air, sea). German and Spanish authorities consider the sea controls as being 'highly effective'. In the German case, this is based in particular on the presence of the control vessels in the fishing areas and their deterrent effect. On the basis of the results of the controls carried out, an increasingly high degree of compliance with the rules of German fisheries in the corresponding areas is said to be observed.

Besides, the relevant authorities decide on the areas, vessels and time they consider most adequate to carry out controls. For instance, in Ireland inspections are based on risk assessment following the EFCA model. There are generally no 'quotas' for inspections, which are undertaken as needed and when the opportunity arises, with the exception of the pelagic species.

### 3.3. Average length of infringement procedures

This section presents data on the average length of CFP infringement procedures in the EU Member States. It is worth noting that the average length of the infringement procedures varies considerably between different Member States. In some Member States infringement procedures are completed within only days or one month (e.g. Slovenia, Latvia and Lithuania) whilst in other Member States this can take several years (e.g. Croatia, Denmark, France). This depends on whether procedures are mainly

<sup>26</sup> Direção-Geral de Recursos Naturais, Segurança e Serviços Marítimos - DGRM, Ministério do Mar.

<sup>27</sup> Fiskeriverket.

administrative, criminal, or a combination of both, but another factor that is crucial important is the possibility for appeal and the procedures that are in place for this.

In some countries, such as Denmark the time range of infringements procedures varies greatly (from 2 weeks and 3 years, depending on the infringement). This depends on whether it was a straightforward case of issuing a warning or an administrative fixed penalty, or whether it implied criminal prosecution.

The following **Table 3** gives an average period for a selection of Member States, but it does not cover all possible scenarios which may be associated with specific cases.

**Table 3: Average length or time range of infringement procedures**

Member State	Average length of infringement procedures
Bulgaria	6-12 months
Croatia	2-3 years
Denmark	2 weeks-3 years
Estonia	No records
France	Max. 1 year (administrative procedures) - Max. 3 years (criminal procedures)
Germany	10 months
Ireland	14 months
Italy	3 months
Latvia	1 month
Lithuania	1 month
Poland	6 months
Slovenia	5 days-6 months
Spain	6 months

Source: author based on data provided by Member States (see Annex II)

## 4. EU OVERVIEW: CONTROLS AND SANCTIONS IMPOSED

### KEY FINDINGS

- There are significant differences between Member States regarding the number of identified infringements.
- The most common type of infringement in all Member States is not fulfilling the obligation to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system.
- It is very complex to compare the penalties imposed in the Member States due to the considerable differences in the standard of living: a sanction that is moderate in one Member State may be disproportionate in a different one. As long as the penalties imposed work as deterrent, they might be considered adequate for achieving their goal.
- The differences in the number of sanctions are substantial: Spain and Italy together sum more cases with sanctions imposed than all other Member States combined.

### 4.1. Identified infringements and sanctions imposed by type of infringement

This section provides an overview on the number of infringements in the EU during the period 2014-2019. The information is organised by Member State and by type of serious infringement. The information is based on the Member States questionnaires (see Annex II). It is important to note that the figures of this report do not cover the whole EU.

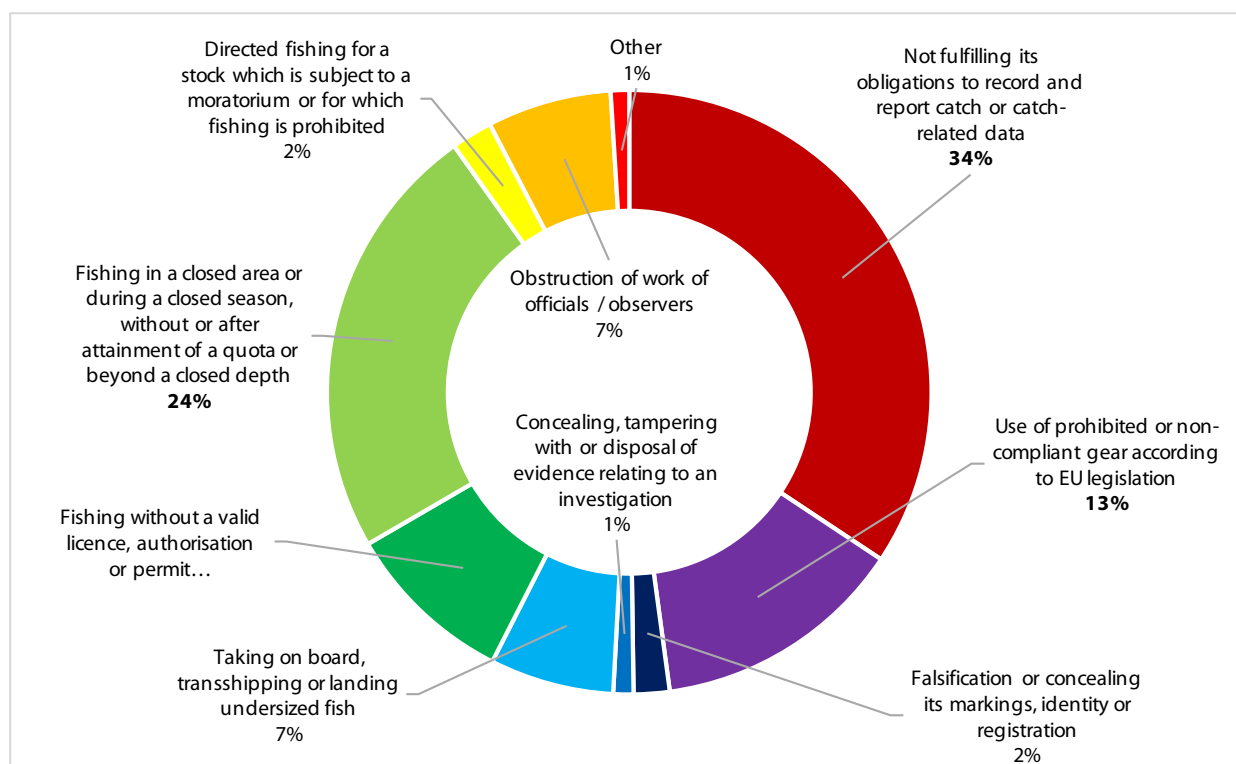
It is worth noting the considerable differences between Member States regarding the number of identified infringements. For example, Spain (with 7,989 infringements) and Italy (6,893) together sum more than double the amount of infringements as all other Member States combined (total of 18,293 for 15 Member States that provided data, see also **Table 4**). The other three Member States with a substantial number of infringements are Denmark (904 infringements; it is important to note that 904 infringements were detected but only 807 sanctions were applied - this is due to the fact that after investigations, not all infringements lead to sanctions), France (677) and Croatia (667). On the other hand, the Member States reporting the lowest numbers of infringements include Poland (2 infringements), Lithuania (8 infringements) and Germany (17 infringements). It is important to note that the number of infringements will normally result in a lower number of cases initiated and sanctions applied, which is based on investigations carried out to determine whether there is a basis or not for case proceedings. Some countries, such as Spain have a strong sanctioning system in place that is considered to be a strong deterrent. Other Member States are encouraged to follow the example of Spain.

The **most common infringements** are:

- Not fulfilling its **obligations to record and report catch** or catch-related data, including data to be transmitted by satellite vessel monitoring system (VMS) (6,047 infringements, 34%).
- Fishing in a **closed area or during a closed season**, without or after attainment of a quota or beyond a closed depth (4,147 infringements, 24%).
- Use of **prohibited or non/compliant gear** according to EU legislation (2,383 infringements, 13%).

The following **Figure 3** and **Figure 4**, as well as **Table 4** show the shares and numbers of infringements classified by type of serious infringements in the EU

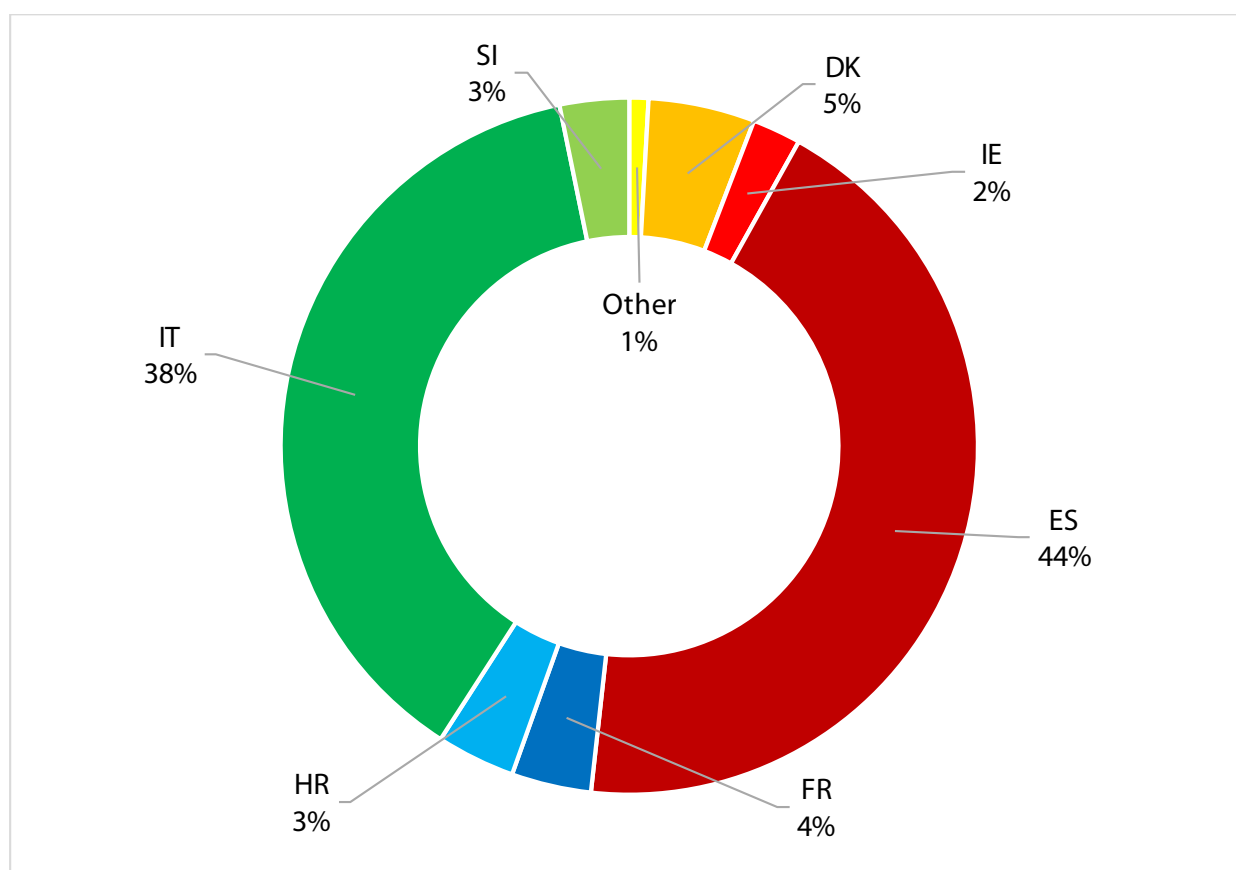
**Figure 3: Infringements per type (2014-2019)<sup>28</sup>**



Source: Author based on data provided by the Member States

<sup>28</sup> The category 'Other' includes: Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as having engaged in IUU fishing under Regulation (EC) No 1005/2008, in particular those included in the Union IUU vessel list or in the IUU vessel list of a regional fisheries management organisation; Violation of the obligations established by the European and national regulations in force concerning the landing obligation; Use of a fishing vessel with no nationality and that is therefore a stateless vessel in accordance with international law; Carrying 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; Direct fishing of fish stocks for which fishing is suspended for the purpose of restocking for the recovery of the same; Fishing, possession, transshipment, landing, transport and marketing of the species whose capture is prohibited at any stage of growth, in violation of the legislation in force.

**Figure 4: Infringements per country (2014-2019)<sup>29</sup>**



Source: Author based on data provided by the Member States

<sup>29</sup> The category 'Other' includes: BG, DE, EE, LT, LV, PL.

**Table 4: Number of infringements per type of infringement and per Member State (2014 – 2019)**

Type of infringement	BG	DK	DE	EE	IE	ES	FR	HR	IT	LV	LT	PL	RO	SI	FI	Total
Not fulfilling its obligations to record and report catch or catch-related data [...]	4	628	14	0	224	3,750	0	132	1,209	34	4	2	0	46	0	<b>6,047</b>
Use of prohibited or non-compliant gear according to EU legislation	3	58	0	8	7	847	0	21	1,434	1	0	0	0	4	0	<b>2,383</b>
Falsification or concealing its markings, identity or registration	0	4	0	0	1	31	0	4	298	0	0	0	0	0	0	<b>338</b>
Concealing, tampering with or disposal of evidence relating to an investigation	0	0	0	0	10	109	0	0	71	0	0	0	0	0	0	<b>190</b>
Taking on board, transshipping, landing undersized fish in contravention of legislation	1	50	0	4	14	381	0	16	698	1	4	0	0	0	0	<b>1,169</b>
Carrying out fishing activities [...] in contravention of the conservation measures	0	0	0	0	0	1	0	1	0	0	0	0	0	0	0	<b>2</b>
Fishing without a valid licence, authorisation or permit [...]	8	35	1	43	20	984	0	241	123	3	0	0	0	151	0	<b>1,609</b>
Fishing in a closed area or during a closed season [...]	5	55	1	12	117	1,166	0	199	2,591	1	0	0	0	0	0	<b>4,147</b>
Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited	1	50	0	2	3	180	0	16	136	0	0	0	0	0	0	<b>388</b>
Obstruction of work of officials [...]	0	9	1	0	17	540	0	37	180	0	0	0	0	387	0	<b>1,171</b>
Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as having engaged in IUU [...]	0	5	0	0	0	0	0	0	0	0	0	0	0	0	0	<b>5</b>
Use of a fishing vessel with no nationality [...]	0	10	0	0	0	0	0	0	0	0	0	0	0	0	0	<b>10</b>
Other	0	0	0	4	0	0	0	0	0	0	0	0	0	0	0	<b>4</b>
Fishing, possession, transshipment, landing, of the species whose capture is prohibited [...]	0	0	0	0	0	0	0	0	96	0	0	0	0	0	0	<b>96</b>
Direct fishing of fish stocks for which fishing is suspended for the purpose of restocking [...]	0	0	0	0	0	0	0	0	55	0	0	0	0	0	0	<b>55</b>
Violation of the obligations established [...] concerning the landing obligation	0	0	0	0	0	0	0	0	2	0	0	0	0	0	0	<b>2</b>
<b>Total</b>	<b>22</b>	<b>904</b>	<b>17</b>	<b>73</b>	<b>413</b>	<b>7,989</b>	<b>677</b>	<b>667</b>	<b>6,893</b>	<b>40</b>	<b>8</b>	<b>2</b>	<b>0</b>	<b>588</b>	<b>0</b>	<b>18,293</b>

Source: Author based on responses from the Member States (see Annex II)



Notes: <sup>30</sup> <sup>31</sup> <sup>32</sup> <sup>33</sup>

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<sup>30</sup> RO: feedback to the survey questions from the Romanian authorities mentions that there are zero infringements. However, they state that the infringements are recorded on paper and electronically in DPIM Constanta. Once the database update will be finished, they will be registered in electronic way exclusively. FR: the available information on the total number of infringements is not split by type.

<sup>31</sup> For Table 4 and Table 6 The following Member States did not provide any information BE, EL, FR, CY, MT, PT, SE.

<sup>32</sup> FI: feedback to the survey questions from the Finnish authorities states that 'There has been only six cases of suspected serious infringements where a decision has been made. Five of them have been found to be groundless and the only one with sanctions given is currently in a court of appeal. In other words, we have no case to be reported in the table. As for the one case decided and appealed, there were several infringements in one act: at least use of prohibited gear and fishing during a closed season'.

<sup>33</sup> The full name of the type of infringements are:

1. Not fulfilling its obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system
2. Use of prohibited or non-compliant gear according to EU legislation
3. Falsification or concealing its markings, identity or registration
4. Concealing, tampering with or disposal of evidence relating to an investigation
5. Taking on board, transshipping or landing undersized fish in contravention of the legislation in force
6. Carrying 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
7. Fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State
8. Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth
9. Carrying 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
10. Fishing, possession, transshipment, landing, transport and marketing of the species whose capture is prohibited at any stage of growth, in violation of the legislation in force
11. Direct fishing of fish stocks for which fishing is suspended for the purpose of restocking for the recovery of the same
12. Violation of the obligations established by the European and national regulations in force concerning the landing obligation.

## 4.2. Minimum and maximum sanctions laid down in the law

The following **Table 5** presents an overview of the countries that impose economic sanctions and/or prison sentences for very serious infringements.

The main goal of the penalties is to act as deterrent in order to prevent new infringements. It is very complex to compare the different penalties in the Member States. For example, the standard of living varies considerably between different Member States, i.e. a sanction that is moderate in one Member States may be excessive and disproportionate in a different Member States. As long as the penalties imposed work as deterrent, they might be considered adequate for achieving their goal. Nevertheless, if we compare countries such as Croatia and Sweden with very different standards of living, it appears noteworthy that the penalties imposed are not very different.

In some countries, i.e. Germany, the sanctions are determined on a case-by-case basis. The minimum sanction ranges to EUR 500 to EUR 2,000 depending on the type of infringement. The authorities may multiply the amounts attributed to each type of infringement by values assigned to several factors, such as negligence, the intent, and the catch, the size of vessel, the repetition or the economic situation.

In Lithuania, in general, the law does not set pre-determined fine thresholds, using instead the specific circumstances of the violation as a basis for the calculation of the sanction. The responsibility for determining the value of the product falls on the officials of the Ministry of Agriculture in case of violations resulting from fishing activities, and on Customs officials in case of import of products resulting from IUU fishing.

**Table 5** confirms substantial differences between the Member States. Sanctions range from a minimum of EUR 22 (serious infringement in Poland) to EUR 600,000 (very serious infringement in Spain).

**Table 5: Economic sanctions for serious infringements**

Member State	Economic sanctions for serious infringements (EUR)
Belgium	100 – 15,000
Bulgaria	Max. 5,100
Croatia	300 – 30,000 (legal entity); 150 – 12,000 (person)
Cyprus	Max. 17,000
Denmark	Min. 670 <sup>34</sup> / no maximum (applied on basis of proportionality)
Estonia	Max. 32,000 (legal entity); Max. 1,200 (person)
Finland	2,000 – 100,000 (legal entity); 2,000 – 50,000 (person)
France	1,500 – 75,000
Germany	500 – 100,000
Greece	Max. 15,000
Ireland	10,000 – 100,000

<sup>34</sup> DKK 5,000

Member State	Economic sanctions for serious infringements (EUR)
Italy	1,000 – 75,000
Latvia	140 – 14,000 (legal entity); 30 – 700 (person)
Lithuania	540 – 4,400*
Malta	435 – 58,000
The Netherlands	100 – 82,000 (criminal infringements); 100 – 20,500 (administrative)
Poland	22 – 17,700**
Portugal	150 – 50,000 (person); 250,000 (legal entity)
Romania	27 – 2,063***
Slovenia	420 – 41,000
Spain	601 – 60,000 (serious infringements); 60,001 – 600,000 (very serious)
Sweden	95 – 47,400****

Source: author based on desk research and responses from the Member State (see Annex II)

\* The amount of the fine for a legal entity should be at least two times but not more than five times the value of the fishery products obtained by committing the serious infringement. In addition, the legal person shall pay the compensation for the damage to the marine environment concerned. Alternately, if no fishery products were obtained by committing the serious infringement, the fine is calculated on the basis of average annual income of the company in the range of 1-5 percent of gross income.

\*\* Amount in PLN : 100 – 80,000 PLN

\*\*\* Amount in LEI : 130 – 10,000 LEI

\*\*\*\* Amount in SEK: 1,000 – 500,000 SEK

### 4.3. Sanctions imposed

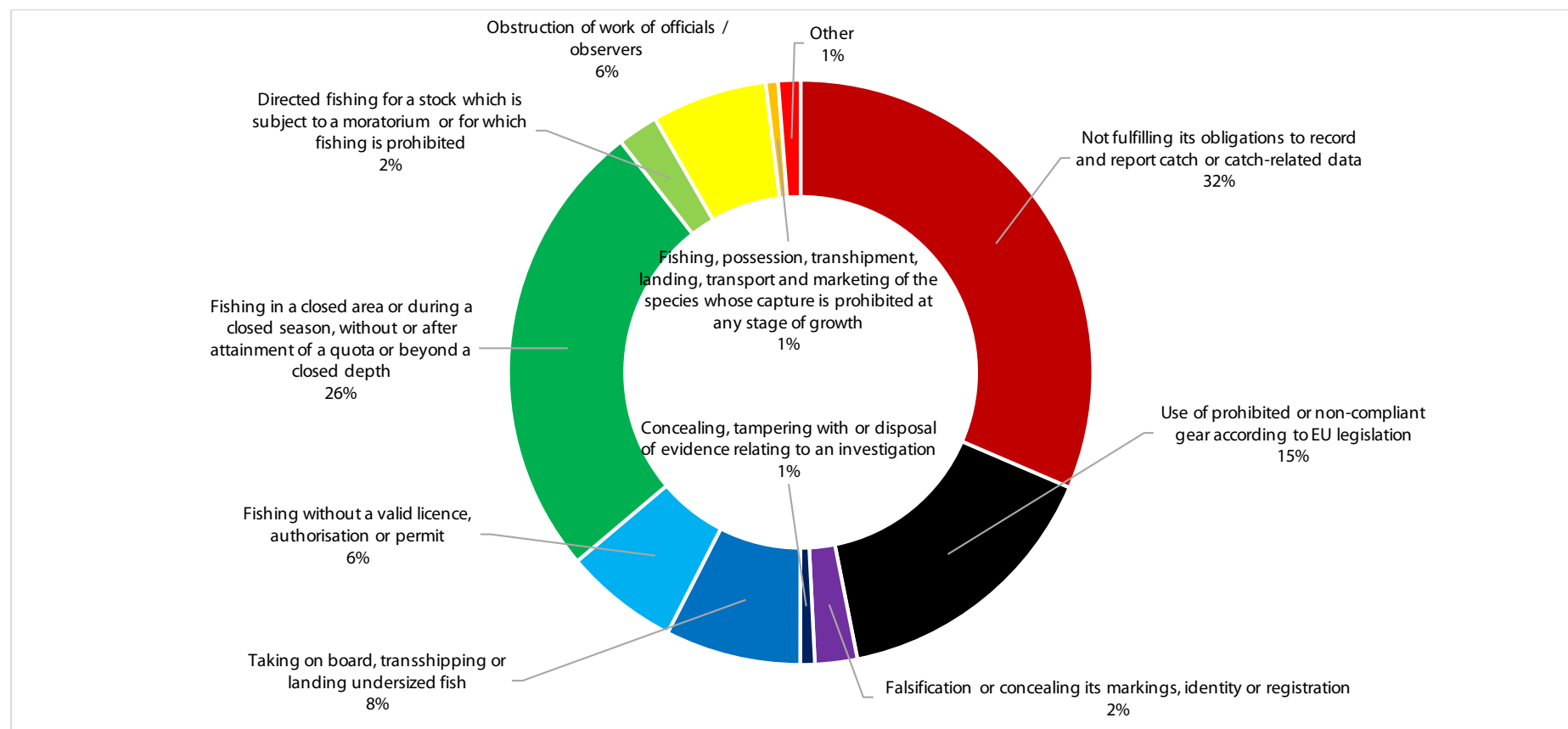
Regarding the number of sanctions imposed in the Member States, the data corresponds to the data presented in section 4.1. This means that almost all the infringements identified were followed by the imposition of the corresponding sanctions (see **Table 6**).

Italy (with 6,893 cases where sanctions were applied) and Spain (with 5,001 cases) together sum 84% of the sanctions imposed by the 15 Member States that provided information (see **Figure 6**). The other three Member States with a substantial number of sanctions are Denmark (807 sanctions), Slovenia (437 sanctions) and France (425 only for 2017 and 2018). On the other hand, the Member States reporting the lowest numbers of sanctions include Poland (2 sanctions), Lithuania (11 sanctions) and Germany (17 sanctions).

The infringements with the highest numbers of incidents detected and actual sanctions are:

- Not fulfilling its obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system (4,424 sanctions).
- Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth (3,605 sanctions).
- Use of prohibited or non-compliant gear according to EU legislation (2,171 sanctions).

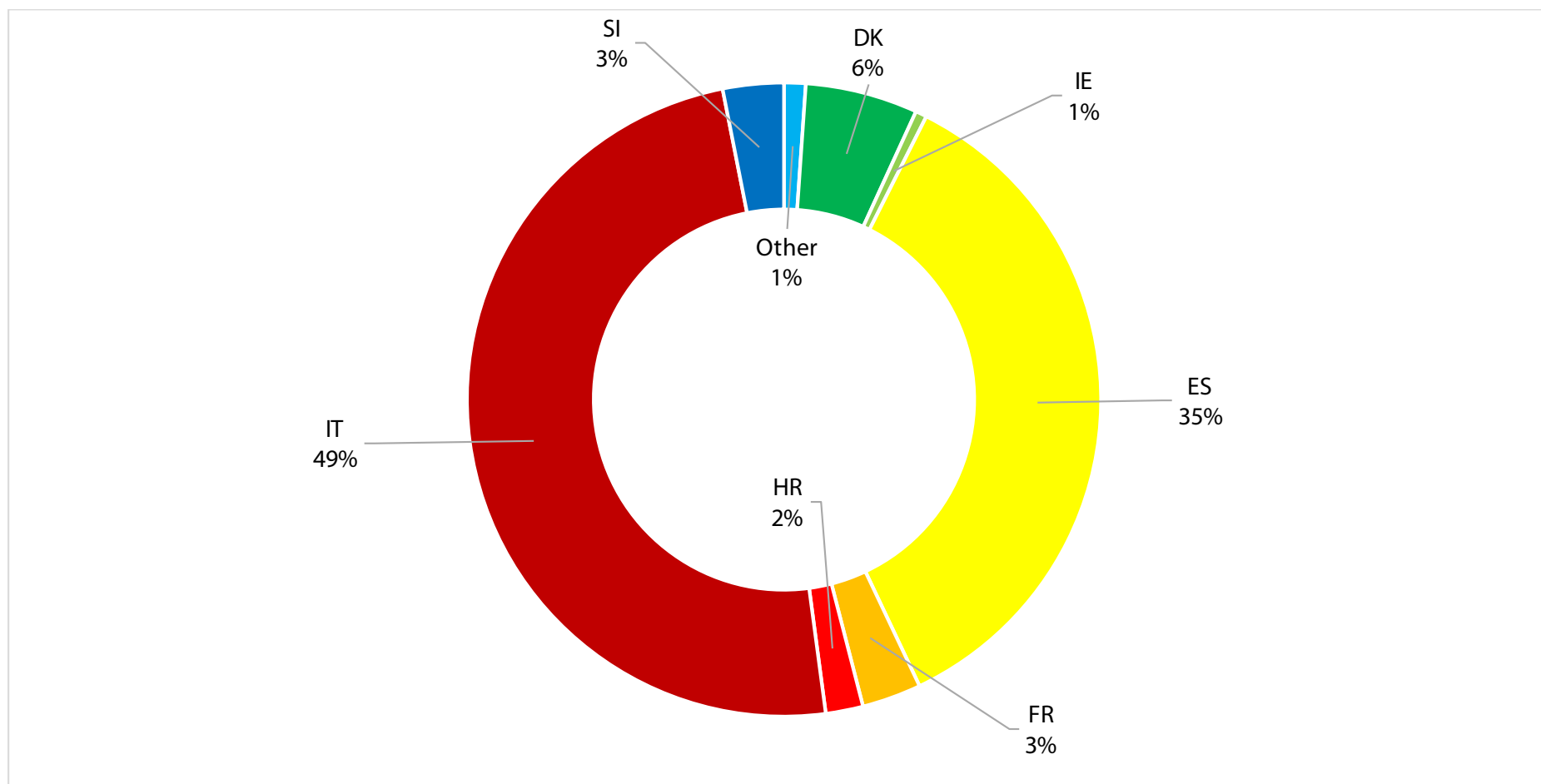
**Figure 5: Cases of sanctions per infringement (2014-2019)**<sup>35</sup>



Source: Author based on data provided by the Member States

<sup>35</sup> The category 'Other' includes: Storage of fish whose size or weight is prohibited; Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as having engaged in IUU fishing under Regulation (EC) No 1005/2008, in particular those included in the Union IUU vessel list or in the IUU vessel list of a regional fisheries management organisation; Use of a fishing vessel with no nationality and that is therefore a stateless vessel in accordance with international law; Prohibited sale or acquisition of species whose weight, size or quantity is prohibited; Illegal landing; Carrying 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; Direct fishing of fish stocks for which fishing is suspended for the purpose of restocking for the recovery of the same.

**Figure 6: Cases of sanctions per country (2014-2019)<sup>36</sup>**



Source: Author based on data provided by Member States

<sup>36</sup> The category 'Other' includes: BG, DE, EE, LV, LT, PL.

**Table 6: Cases of sanctions applied per type of infringement and per Member State (2014 – 2019)**

Type of infringement	BG	DK	DE	EE	IE	ES	FR	HR	IT	LV	LT	PL	RO	SI	FI	TOTAL
Not fulfilling its obligations to record and report catch or catch-related data [...]	4	550	14	0	37	2,237	155	132	1,209	34	4	2	0	46	0	<b>4,424</b>
Use of prohibited or non-compliant gear according to EU legislation	3	54	0	6	3	610	34	21	1,434	1	1	0	0	4	0	<b>2,171</b>
Falsification or concealing its markings, identity or registration	0	4	0	0	1	19	3	4	298	0	0	0	0	0	0	<b>329</b>
Concealing, tampering with or disposal of evidence relating to an investigation	0	0	0	0	1	41	0	0	71	0	0	0	0	0	0	<b>113</b>
Taking on board, transshipping or landing undersized fish in contravention of the legislation	1	50	0	4	0	247	31	16	698	1	6	0	0	0	0	<b>1,054</b>
Carrying out fishing activities [...] in contravention of the conservation measures	0	0	0	0	0	1	37	1	0	0	0	0	0	0	0	<b>39</b>
Fishing without a valid licence, authorisation or permit [...]	8	30	1	41	2	643	19	18	123	3	0	0	0	0	0	<b>888</b>
Fishing in a closed area or during a closed season	5	48	1	12	28	824	72	23	2,591	1	0	0	0	0	0	<b>3,605</b>
Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited	0	47	0	1	3	105	8	16	136	0	0	0	0	0	0	<b>316</b>
Obstruction of work of officials [...]	0	9	1	0	6	274	4	37	180	0	0	0	0	387	0	<b>898</b>
Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as having engaged in IUU fishing [...]	0	5	0	0	0	0	0	0	0	0	0	0	0	0	0	<b>5</b>
Use of a fishing vessel with no nationality [...]	0	10	0	0	0	0	0	0	0	0	0	0	0	0	0	<b>10</b>
Prohibited sale or acquisition of species whose weight, size or quantity is prohibited	0	0	0	0	0	0	41	0	0	0	0	0	0	0	0	<b>41</b>
Illegal landing	0	0	0	0	0	0	19	0	2	0	0	0	0	0	0	<b>21</b>
Storage of fish whose size or weight is prohibited	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	<b>2</b>
Fishing, possession, transshipment, landing, transport and marketing of the species whose capture is prohibited [...]	0	0	0	0	0	0	0	0	96	0	0	0	0	0	0	<b>96</b>
Direct fishing of fish stocks for which fishing is suspended for the purpose of restocking for the recovery of the same.	0	0	0	0	0	0	0	0	55	0	0	0	0	0	0	<b>55</b>
<b>Total</b>	<b>21</b>	<b>807</b>	<b>17</b>	<b>64</b>	<b>81</b>	<b>5,001</b>	<b>425</b>	<b>268</b>	<b>6,893</b>	<b>40</b>	<b>11</b>	<b>2</b>	<b>0</b>	<b>437</b>	<b>0</b>	<b>14,067</b>

Source: Author based on responses from the Member States (see Annex II)

## 5. PENALTIES AND POINT SYSTEM

### KEY FINDINGS

- The Member States decide on the most adequate system of penalties and determine criteria for defining serious infringements.
- Some Member States consider that it is necessary to clarify the criteria for the calculation of fines and points, as well as for the definition of serious infringements.
- The point system has been implemented in all Member States (except Ireland that implemented it between 2014-2016). There are differences in the implementation: some Member States impose points on a case by case system (e.g. France, Germany), others consider aggravating and attenuating circumstances (e.g. Denmark).
- Most Member States coincide that the point system should not add more complexity to the existing procedures in place in the Member States.
- The adequate implementation of the point system is closely related to a suitable system of registering the infringements, sanctions and points.

### 5.1. EU overview: penalties by law in each Member State

This section provides information on the type of penalties by law per Member States. As noted in section 4.2 one of the main goals of the sanctioning system is to ensure that sanctions should be a deterrent to those not complying with the rules of the CFP. In this sense, the Member States decide on the most adequate system of penalties and determine criteria for defining serious infringements. A substantial number of Member States consulted consider that it is necessary to clarify the criteria for the calculation of fines and points, as well as for the definition of serious infringements (Denmark, Greece, Spain, Ireland, Italy, Latvia, and Lithuania)

This section identifies the Member States that make use of fines, imprisonment, or a combination of both. Although there are other types of sanctions foreseen, such as confiscation of catches, gear and other equipment, we have only focused on the suspension of the fishing license (explained by data constraints). It is important to note that imprisonment is foreseen and in principle a possible sanction in all criminal sanctioning systems, even when combined with an administrative system, even though this appears to be used seldomly. For illustration purposes, the following **Table 7** also includes the number of cases where a license has been suspended. The available feedback from Member States indicates that only Italy applied it in substantial number of cases (118 cases for the period 2014-2019). For the other the Member States this was applied in only a few cases; Denmark – eight cases, Spain – six cases, and Ireland – two cases while the point system was being implemented. Future research could explore the reasons or the main difficulties encountered by the relevant authorities to suspend a license. It appears that many Member States have in place the possibility of suspending licenses, irrespective of the point system, but this type of sanction is used seldomly, albeit based on limited information.

**Table 7: Penalties imposed in the EU Member States**

Member State	Fines	Imprisonment	Suspension of fishing licence	Number of cases where a license has been suspended (2014-2019)
Bulgaria	x		x	0
Croatia	x		x	0
Cyprus	x	X	x	NA
Denmark	x	X	x	8
Estonia	x	X	x	0
Finland	x		x	0
France	x	X	x	NA
Germany	x		x	NA
Greece	x	X	x	0
Ireland	x	X	x	2 <sup>37</sup>
Italy	x	X	x	118
Latvia	x	X	x	0
Lithuania	x		x	0
Poland	x		x	0
Romania	x	X	x	0
Slovenia	x		x	0
Spain	x		x	6

Source: Author based on desk research

## 5.2. Point system for serious infringements

This section refers to the main legislation related to the implementation of the point system for serious infringements in the EU. The section also includes data collected on the implementation of the point system in ten Member States between 2014 and 2019: Bulgaria, Denmark, Germany, Estonia, Spain, France, Italy, Latvia, Lithuania and Poland. The data is based on the information provided by these Member States.

### 5.2.1. Implementation of the point system

All Member States have implemented the system. Most of them have done this between 2013 and 2014, although there are some countries, such as Croatia, that only implemented it in 2017. In the case of Ireland, the implementation of the point system was in force from 2014 to 2016.

Case study work identified differences in the way the Member States allocate points, for example:

- in Denmark and Lithuania, in order to allocate points the authorities consider aggravating or attenuating circumstances and the corresponding criteria are established by law.
- in France, the allocation of points is done on a case by case basis with authorities disposing of substantial discretion; in the context of a single control a maximum of 12 points can be allocated.
- in Germany, in the case of several infringements resulting from one action only the points for the infringement with the highest number of points are registered.

<sup>37</sup> While the point system was being implemented.



- In Italy, inspectors have the power to immediately impose economic penalties and to officially propose the assignation of points when they detect an infringement. Whilst in other Member States the inspectors only have the power to detect the infringement and then different authorities are competent for imposing the penalties.

Whilst all Member States have implemented the point system established in the EU Regulation some of them have included more severe rules for certain cases. For instance, in France the obstruction of 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 Union rules results in 7 points. Moreover, the French law broadens the range of activities that would fall under this category of violation. The law punishes with a six months prison sentence and a EUR 15,000 fine the refusal or obstructing of visits by fisheries control agents, while it also punishes with a one year prison sentence and a EUR 75,000 fine the commanders that try to evade controls at sea.

It is worth noting the different systems implemented by certain Member States for rewarding good behaviour, resulting in the subtraction of penalty points.

- Some countries, such as Bulgaria, Croatia, Lithuania, Poland, Romania, Slovenia, Spain do not have their own specific system, however they follow the provisions established in the Article 92.4 of Regulation (EU) No 404/2011 and the Article 133 of Regulation (EU) No 404/2011, i.e. if the holder of a fishing license does not commit, within three years from the date of the last serious infringement, another infringement, all points on the fishing license shall be deleted.
- Some other countries, such as Denmark have implemented the rewarding system, however so far nobody has applied for this opportunity in Denmark.
- France, Greece, Latvia follow Article 133 of Regulation (EU) No 404/2011. Besides, in France points might be cancelled if the master of the vessel pursues an awareness training. In this case, the master might obtain a cancellation of four points every two years.
- In Latvia, if a master of the vessel does not commit other serious infringements within a year since the last one, each year 10 penalty points are deleted.<sup>38</sup>

Feedback provided by Member States authorities and other stakeholders note different perspectives and concerns related to the implementation of the point system:

- The system should not add more complexity to the existing procedures followed by the Member States and should allow appropriate flexibility to take into account the national requirements of their sanctioning system (Estonia, Denmark, and Germany). In that sense, some Member States propose a simpler system. For example, in Estonia if the master has two serious infringements, the licence is suspended and no new licence is issued as long as the sanction is in force.
- Although Italy is the country that has attributed the highest number of points between 2014 and 2019, the procedure for the allocation of points and subsequent suspension or revocation of licences, as well as appeal process is lengthy and bureaucratically complex.
- There is lack of clarity in the implementation of some aspects of the attribution of points. For example, Estonia and Denmark wonder how to take into consideration the points attributed by a different Member States. Similarly, in Lithuania, feedback from industry appears to show that

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<sup>38</sup> Rules of Minister Cabinet No. 808.

the point system is not well understood, and probably not well known, but appears to be of minor aspect of a strong and effective sanctioning system. In order to increase clarity, Denmark has published a guide to the application rules concerning the point system in case of serious violations of fisheries law was published by the Danish Fisheries Agency on 17 October 2019.

- The implementation of the point system has increased the culture of compliance and the motivation of the inspectors (Finland).
- The implementation of the point system should be accompanied by a strict system of registering the infringements and interconnection of all data related to fisheries. Failure to comply with a complete, updated and rigorous registering system might result in inequalities between Member States (Spain).
- In France, although the European Court of Auditors reported in 2017 that the penalty point system was not yet implemented, authorities confirmed that the point system has been in place since 2015, with the national registry of infringements active since January 2016. Criteria have been developed for assigning points on the basis of specific aggravating circumstances.

The following **Table 8** summarises the specific national legislations regulating the point system and the date of implementation.

**Table 8: Legislation implementing the penalty point system**

Member State	Legislation	Date of implementation
Belgium	Flemish Government Decree of 14.12.2012 establishing a penalty point system for serious infringements to the CFP	14.12.2012
Bulgaria	ORDINANCE No 3 of 19.02.2013 on the application of a point system for serious infringements within the meaning of Council Regulation (EC) No 1005/2008 of 29.09.2008	19.02.2013, amended on 20.02.2017
Croatia	Maritime Fisheries Law (No. 62/2017, 14/2019)	21.11.2017, amended on 15.02.2019
Cyprus	Decree 403/2014 and 354/118 laid down the principles of the point system and its implementation procedures	
Denmark	Fisheries Act 2012, Executive Order No. 1058 of 13.11.2012 (revised in 2019) Executive Order N. 978 of 22.09.2019	13.11.2012, amended on 22.09.2019
Estonia	Fishing Act of 19.02.2015	01.07.2015, amended on 01.03.2013
Finland	Act on the Sanction System and Control of the Common Fisheries Policy 1188/2014	01.01.2015
France	Act No 2010-874 of 27.07.2010 amending article L 946-1 of the Rural and Maritime Fisheries Code	27.07.2010, amended on 24.01.2014

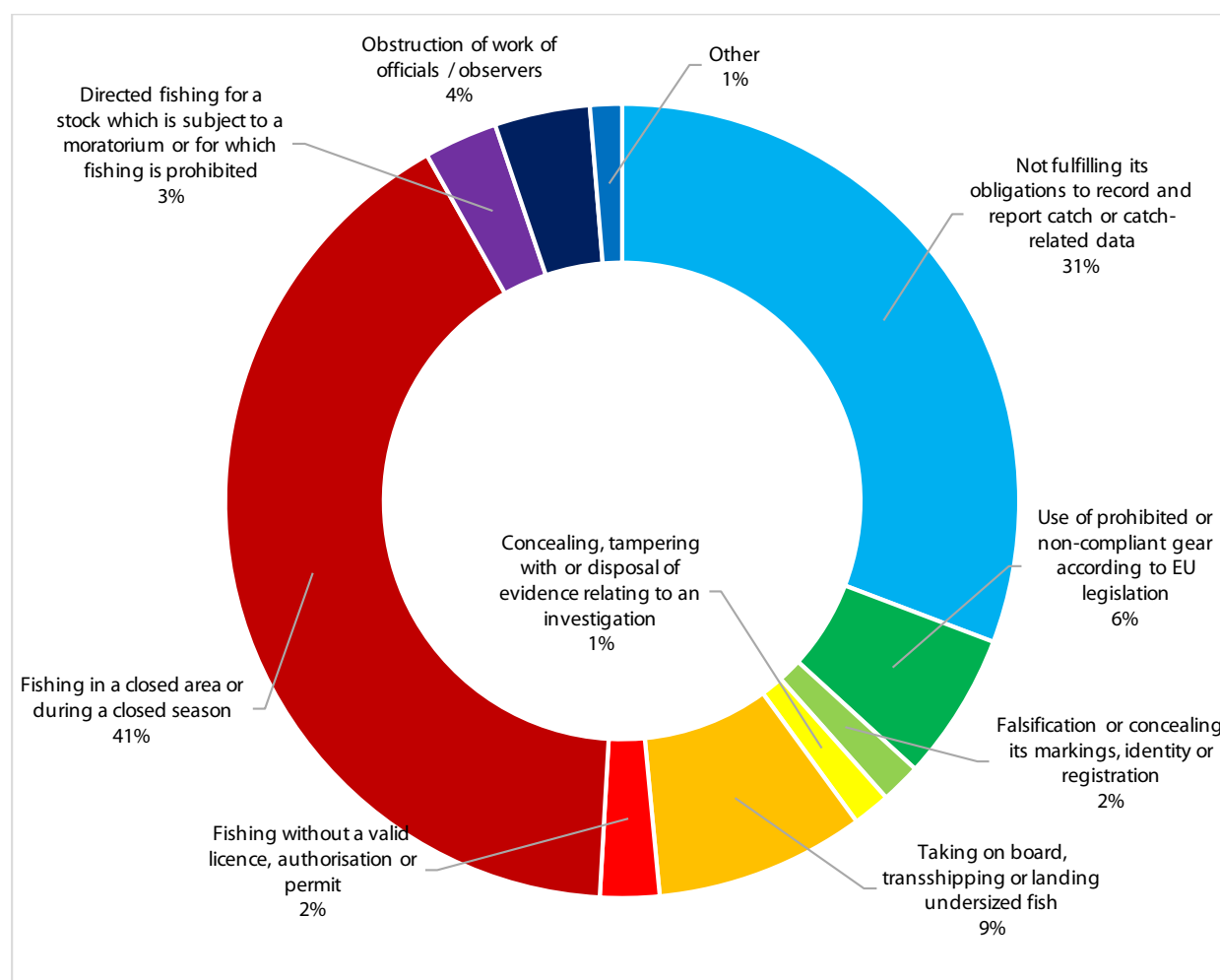
Member State	Legislation	Date of implementation
Germany	Sea Fisheries Act (Seefischereigesetz- SeeFischG)	2012
Greece	Ministerial Decision no.3866/78486/14.7.2015 (Government Gazette 1587 B)	14.07.2015
Ireland	SI 3 of 2014 European Union (Common Fisheries Policy) (Point System) Regulations 2014	Implementation of points regulation remained in force from 2014 to 2016
Italy	Legislative Decree No. 4 of 09.01.2012, introducing the penalty point system	24.01.2012
Latvia	Rules of Minister Cabinet No. 808 "Procedures for applying the point system to holders of fishing licenses and to masters of fishing vessels under European Union legislation on the CFP"	31.12.2014
Lithuania	Law on Fisheries amendments, of 20.06.2013	01.07.2013
Malta	Subsidiary legislation 425.10 on the point system for serious infringements order (2013)	22.11.2013
The Netherlands	Implementing Regulation on Sea Fisheries (2011)	01.12.2012
Poland	Law of 19 December 2014 on maritime fisheries	04.03.2015
Portugal	Decree-Law 10/2017 introducing the point system for license holders and masters. Decree-Law 35/2019	10.01.2017
Romania	Ministry Order of MARD no 807/13.05.2016	2016
Slovenia	National decree: "Decree defining pecuniary penalties for violations of provisions of Community Regulations applicable in the field governed by the maritime Act"	30.11.2016
Spain	Royal Decree 114/2013, of 15.02.2013 establishing and regulating the national register of serious infringements of the CFP, establishing the rules of application of the point system and updating the amounts of the sanctions provided for in Law 3/2001, of March 26, on State Maritime Fisheries	01.03.2013
Sweden	SFS 2014: 1026 Act on amendments to the Fisheries Act (1993: 787)	2014

Source: Author based on desk research and responses from the Member State (see Annex II)

### 5.2.2. Points attributed

This section refers to the number of points that have been attributed by the Member States. Even if all the Member States have transposed the Control Regulation in their national legislation, not all of them actually attribute points. The following **Table 9** shows the number of points attributed by Member States between 2014 and 2019 per type of infringement. This table and **Figure 8** below show substantial differences between the Member States. With 3,210 cases where points were assigned, Italy has attributed more points than all other Member States combined (3,607 cases for 13 Member States that provided data on points). Other Member States with more than 10 cases with points assigned are Spain (237 cases) France (57 cases only in 2017 and 2018) and Latvia (40 cases).

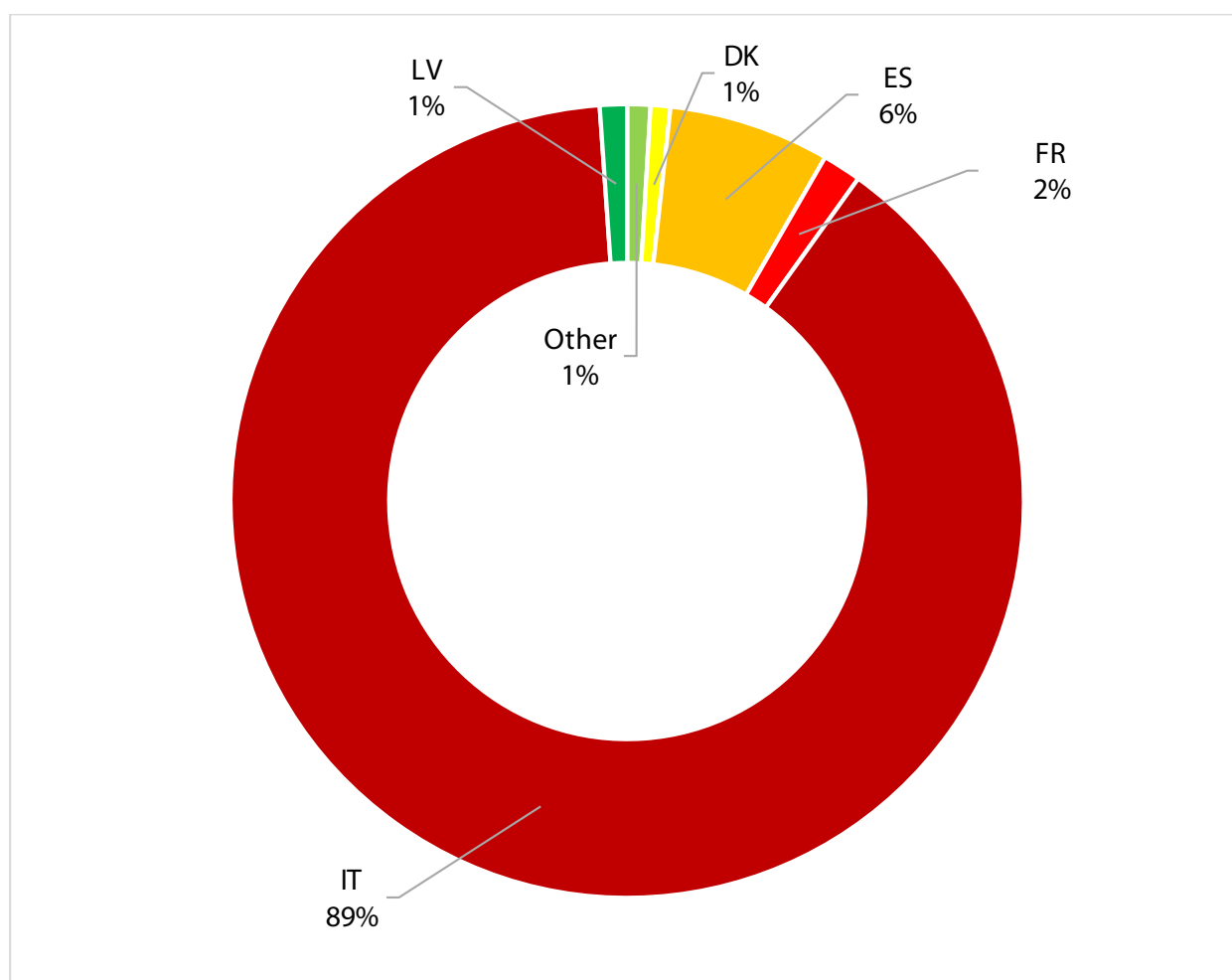
Some Member States with very limited number of points assigned over the years, see the value of the penalty point system more as a rehabilitation and educational tool rather than for deterrence of punishment.

**Figure 7: Points per infringement (2014-2019)**<sup>39</sup>

Source: Author based on data provided by the Member States

<sup>39</sup> The category 'Other' includes: Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels engaged in IUU fishing; Fishing, possession, transshipment, landing, transport and marketing of the species whose capture is prohibited at any stage of growth, in violation of the legislation in force; Illegal landing; Direct fishing of fish stocks for which fishing is suspended for the purpose of restocking for the recovery of the same; Prohibited sale or acquisition of species whose weight, size or quantity is prohibited; Use of a fishing vessel with no nationality; Transfer of catches without authorization; Carrying out fishing activities in contravention of the conservation measures.

**Figure 8: Points per country (2014-2019)**<sup>40</sup>



Source: Author based on data provided by the Member States

<sup>40</sup> The category 'Other' includes; BG, DE, EE, LT and PL.

**Table 9: Cases where points were attributed per Member State and per type of infringement (2014 – 2019)<sup>41</sup>**

Type of infringement	BG	DK	DE	EE	ES	FR	IT	LV	LT	PL	TOTAL
Not fulfilling its obligations to record and report catch or catch-related data [...]	1	12	14	0	120	21	905	34	1	2	<b>1,110</b>
Use of prohibited or non-compliant gear according to EU legislation	0	9	0	1	18	10	178	1	0	0	<b>217</b>
Falsification or concealing its markings, identity or registration	0	0	0	0	1	0	58	0	0	0	<b>59</b>
Concealing, tampering with or disposal of evidence relating to an investigation	0	0	0	0	5	0	50	0	0	0	<b>55</b>
Taking on board, transshipping or landing undersized fish in contravention of the legislation	0	0	0	0	10	2	293	1	2	0	<b>308</b>
Carrying out fishing activities [...] in contravention of the conservation measures	0	0	0	0	0	12	0	0	0	0	<b>12</b>
Fishing without a valid licence, authorisation or permit [...]	2	0	1	5	14	5	57	3	0	0	<b>87</b>
Fishing in a closed area or during a closed season [...]	0	8	1	3	42	4	1,417	1	0	0	<b>1,476</b>
Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited	0	0	0	0	4	0	104	0	0	0	<b>108</b>
Obstruction of work of officials [...]	0	0	1	0	23	2	114	0	0	0	<b>140</b>
Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as having engaged in IUU fishing [...]	0	0	0	0	0	0	0	0	0	0	<b>0</b>
Use of a fishing vessel with no nationality [...]	0	0	0	0	0	0	0	0	0	0	<b>0</b>
Prohibited sale or acquisition of species whose weight, size or quantity is prohibited	0	0	0	0	0	0	0	0	0	0	<b>0</b>
Illegal landing	0	0	0	0	0	1	2	0	0	0	<b>3</b>
Transfer of catches without authorization	0	0	0	0	0	0	0	0	0	0	<b>0</b>
Fishing, possession, transshipment, landing, transport and marketing of the species whose capture is prohibited at any stage of growth, in violation of the legislation in force.	0	0	0	0	0	0	12	0	0	0	<b>12</b>
Direct fishing of fish stocks for which fishing is suspended for the purpose of restocking for the recovery of the same.	0	0	0	0	0	0	20	0	0	0	<b>20</b>
<b>Total</b>	<b>3</b>	<b>29</b>	<b>17</b>	<b>9</b>	<b>237</b>	<b>57</b>	<b>3,210</b>	<b>40</b>	<b>3</b>	<b>2</b>	<b>3,607</b>

Source: Author based on responses from the Member State (see Annex II)

<sup>41</sup> Notes: Member States that did not provide information on the number of cases where points have been assigned: BE, EL, CY, HR, MT, NL, PT, SE; for FI, RO and SI the number of cases with points is zero. In IE the system is not currently in place. Data for FR only relate to 2017 and 2018.





## 6. CASE STUDIES

### KEY FINDINGS

- In 2019 Denmark has reviewed the application of penalty points. The new legislation establishes clearer criteria for assessing serious infringements and rules for the application of the penalty point system.
- In Denmark, the sanctioning system includes administrative and criminal sanctions. Administrative sanctions are mostly used in relation to fishing authorisations and can imply a withdrawal of the authorisation, issue an injunction, or determine a period where the vessel must remain in port. Criminal may be related to forfeiture of illegally caught fish and/or gear.
- Denmark, Germany, Spain had made significant efforts to comply with the penalty point system.
- The number of annual infringements in France seems relatively high, however data show a limited follow up on infringements since only a small number resulted into cases initiated and sanctions applied.
- In Italy and France, the deterrence effect of sanctions, administrative or criminal, appears to be low.
- In Germany and Spain competences for fishery control and sanctioning are divided into federal and regional level.
- The point system was implemented in Ireland between 2014 and 2016, but it is no longer in place. In the absence of a functioning point system, infringement procedures and sanctions follow criminal process.
- The procedure for allocation of points in Italy is lengthy and bureaucratically complex. This appears to be a relatively effective detection of infringements and follow up sanctions. This might be due to the power of inspectors to impose sanctions and propose points.
- Spain has articulated a very complete system for registering infringements, sanctions and points that allows a comprehensive monitoring of the cases.
- Fisheries control in Spain is a huge task and this involved over 60,000 inspections for the period 2014-2019. This control activities resulted in the detection of about 8,000 infringements. 65% of the infringement cases led to sanctions.

In the following, we attempt to summarise the main insights from the case studies, focusing on certain aspects.

### 6.1. Case study summaries

#### 6.1.1. Denmark

Denmark implemented the penalty point system in 2012 as required by the Control Regulation (article 92). However, a review carried out by Rigsrevisionen (National Audit Office) in 2018 identified problems in the application of the point system during the period 2014-2017. The focus of this review

was the management of support from the European Maritime and Fisheries Fund (EMFF), but the relevance of the penalty point system in this context was that fishing license holders / masters, who were been penalised by points (and still in force), do not in principle qualify as beneficiaries of the EMFF. In summary, the review found an inconsistent application of penalty points and a lack of clearly formulated rules to be used by the Danish Fisheries Agency.

This led to a series of corrective actions such as the Executive Order (no. 978) adopted in 2019, clearly establishing criteria for assessing serious infringements, clearer internal rules and instructions on application of the penalty point system, and a re-assessment of about 1,000 cases during the period 2016-2019, which is currently ongoing.

The Danish sanctioning system includes both administrative and criminal sanctions. When an infringement is detected, the Danish Fisheries Agency typically either issues a warning, an administrative fixed penalty notice, or refers the case to the police for prosecution. Administrative sanctions are mostly used in relation to fishing authorisations and can imply a withdrawal of the authorisation, issue an injunction, or determine a period where the vessel must remain in port. Criminal prosecution may involve sanctions such as forfeiture of illegally caught fish and/or gear, as well as the value of illegally caught fish. Penalties are set according to the principle of proportionality (no maximum penalties are stipulated), considering the various types of infringements and accounting for aggravating and mitigating circumstances, which indicates that the sanctioning system acts as an effective deterrent.

Denmark is an important EU fishing nation with landings ranging between 0.9 and 1.2 million tonnes annually during the period 2014-2018. This involved around 67 – 81 thousand landing events and control activities covered roughly 4-5% of this fishing activity (port and at-sea inspections included). This resulted in 904 infringements which lead to 807 cases and applied sanctions, hence a follow up of about 90% of cases. Of these, 29 cases resulted in assigned penalty points, of which 8 led to the suspension of fishing licenses, although it is important to note that many cases from the period 2016-2019 are being re-assessed. A coarse indicator of the number of sanctions in relation to inspections is roughly 4-5%, although this is based on fragmented and somewhat inconsistent data.

The case of Denmark shows a Member State that has made significant efforts in complying with the requirements of implementing the penalty point system, albeit there have been difficulties in implementation and adapting this to the national context. This has been carried out in spite of strong opposition from the fishing industry and what appears to be some scepticism on whether the intended goal of achieving a level playing field is being met or should be the goal. Some of the CFP rules are not considered to be enforceable and/or impossible to comply with, leading to disproportionate sanctions. Due attention should be given to the specificities of the regions/fisheries in the goal of harmonising control across the EU should take into account. Emphasis is placed on the approach of assessing on a case-by-case basis, taking into account the circumstances and characteristics of the fishery, as well as aggravating and attenuating circumstances.

#### 6.1.2. France

In France, there is a combined administrative and criminal sanctioning system where all serious violations are subject to a basic fines regime, where fines are calculated taking into account the value of the product involved in the violation. On top of the basic sanctions regime, French law punishes serious violations with additional measures which include administrative sanctions (the point system included) and/or criminal sanctions. The range of additional measures available in the French legal system is highly diversified, sometimes including prison sentences in combination with fines, but often entails the same sanction (EUR 22,500) for a wide variety of offences, and additional sanctions

for all serious offences based on amount of product involved in an IUU fishing operation. Possibility for further sanctioning exists in the form of confiscation of vessel and/or catch/gear, suspension/withdrawal of licenses.

Although the European Court of Auditors reported in 2017 that France had not yet implemented the penalty point system, authorities confirmed that the point system has been in place since 2015, with the national registry of infringements active since Jan 2016. Criteria have been developed for assigning points on the basis of specific aggravating circumstances.

The number of control inspections have been around 10,000 in recent years, although this estimate appears uncertain based on the available data. Data on infringements tend to differ depending on the source, and information is often lacking as to whether these procedures eventually resulted in the application of sanctions. In 2018, there were an estimated 1,065 infringements, which resulted in only 142 cases initiated and sanctions applied, which indicates a low follow up on infringements. However, points were assigned in 22 cases which led to suspensions of licenses in 14 cases, which is relatively high on an annual basis compared to other Member States.

In general, sanctions imposed by French authorities appear to be relatively low and the industry appears to consider them as a fixed cost to be taken into account during operations. Criminal sanctions usually result in out-of-court settlements (almost 90% of cases in 2014) while fines imposed by courts amounted to an average of EUR 1,675 for 2014 (suggesting the out-of-court settlements normally result in even lower fines). The deterrence effect of sanctions, administrative or criminal, appears to be low. The point system does not appear to have the intended effect, but could also be linked to the low follow up on infringements. Only few cases were initiated, roughly 10%, that can lead to sanctions.

### 6.1.3. Germany

In 2012, the point system for serious infringements was introduced in Germany in accordance with the requirements of the Control Regulation. The sanctioning system in place is primarily administrative with stipulated minimum fines for various types of infringements. Sanctions are determined on a case-by-case basis, taking into account aggravating and attenuating circumstances.

Due to Germany's federal structure, competences for fishery control and sanctioning are divided into federal and regional level. The Federal Office of Agriculture and Food (BLE) is the authority competent for monitoring fisheries in the Exclusive Economic Zone (EEZ). This means outside the area of 12 nautical miles in Schleswig-Holstein and Lower Saxony and outside the area of 3 nautical miles in Mecklenburg-Western Pomerania, the BLE monitors compliance with fishery regulations in the North Sea and the Baltic Sea.

A total of 17 infringements led to 17 sanctions, including points assigned, during the period 2014-2019. However, these data do not appear to be complete. Data concerning controls and sanctions is not readily available, so using publicly available information, it appears that inspections at sea and in port covered about 1.6-1.7% of fishing trips in the North Sea and 5.1-5.3% in the Baltic Sea. Published annual reports for Schleswig-Holstein show total controls of about 10,000 per year and infringements of about 50-62 per year. This seems to imply low detection of infringements and low follow up with sanctions, albeit the available data is limited, fragmented and uncertain.

### 6.1.4. Ireland

There have been three attempts to implement the point system in Ireland but in each case the application of the legislation has been short-lived. The first two statutory instruments (S.I. No. 3 of 2014

and S.I. No. 125 of 2016) were withdrawn following judicial reviews. The third (S.I. 89 of 2018) has not been applied. In the absence of a functioning point system, infringement procedures and sanctions follow criminal process, covered primarily by the Sea-Fisheries and Maritime Jurisdiction Act 2006 (SFMJA), and by the Criminal Justice Act 2007.

Feedback from the industry indicates that it does not object to the point system itself, but it does however object to the way in which it was introduced in Ireland. The main point concern the right to appeal, the involvement of the Sea Fisheries Protection Authority (SFPA) in the appeal process, allocation of points even when acquitted, and going further than required by EU regulations by linking points to vessel capacity.

Maximum fines are defined in and applicable 'on conviction on indictment', but no minimum penalties are specified. A fine has generally a maximum limit of EUR 100,000, but the SFMJA does not specify minimum penalties. The infringements in the SFMJA do not correspond directly to the serious infringements listed in Annex XXX of the Commission Implementing Regulation (EU) No. 404/2011, although there is some overlap, and it should be noted that penalties are based on vessel size. Additional sanctions may be applied such as withdraw/suspend fishing licenses as well as forfeiture, at the discretion of the court, of '*all or any fish and fishing gear*'. For minor offences, there is a possibility for the judge that has jurisdiction to try summarily such offences for which a conviction could result in a fine of up to EUR 5,000 and forfeiture of fish and/ or gear. An overview of the fines and sanctions applied in the period 2014-2017 indicates that these were rather low and not sufficiently high to be dissuasive.

Fisheries controls are carried out by the SFPA and the Naval Service. A total of 15,913 inspections were carried out from 2014 to 2018. In terms of landing events, inspections covered 8-12% of these landings, which is relatively high. The number of infringement cases initiated were 183 in the period 2014-2018, but conclusion of these cases was low. During the time that the point system was being implemented, it appears that this facilitated the sanctioning of infringements with 244 cases initiated, but sanctions were applied in only 81 cases. The available information appears to indicate that low detection of infringements (about 1%) in relation to control and even fewer, almost negligible cases of convictions.

#### 6.1.5. Italy

The penalty point system was introduced in Italy in 2012 and this was followed, in 2016, with a law that significantly increased the sanctions for serious violations and established a special regime for the protection of Atlantic Bluefin tuna (*Thunnus thynnus*) and Swordfish (*Xiphias gladius*). However, these sanctions were made more lenient with a new law in 2019, as a result of strong contestation from the industry. In general, the minimum and maximum fines stipulated appear to be low and not dissuasive enough to act as a deterrent to violations of the rules. However, the possibility for further sanctions in the form of confiscation of catch/gear, suspension/withdrawal of licenses is available.

Italian authorities consider that the reform of the sanctioning system resulted in a weaker system, since it reduced previously existing penal sanctions, but the industry had a different interpretation. Administrative sanctions were probably seen as of more direct concern than criminal sanctions because of the perceived inefficiency of the Italian judicial system. The view is that criminal sanctions, no matter how severe or strict, in practice may never materialize, while administrative ones are arguably more likely to do.

Although the point system has been adopted, the procedure for the allocation of points and subsequent suspension or revocation of licences, as well as appeal process, be it for licence holders or

vessels masters, is lengthy and bureaucratically complex. Italy is the country with the highest number of cases where points have been attributed. This might be due to the fact that inspectors have the power to detect infringements and to impose economic penalties as well as to propose the assignation of points.

Despite the multiple agencies involved, the overwhelming majority of controls are carried out directly by, in coordination with, or under supervision of the Coast Guard. The number of control inspections carried out were around 64-65,000 per year, but these almost doubled since 2016 onwards. The reason for this sudden doubling of control activities is not clear. According to the figures provided by the national authorities, Italy is also the country that has identified the highest number of infringements and imposed the highest number of sanctions from all the Member States that have provided data.

#### 6.1.6. Lithuania

Fishing in Lithuania is a relatively small economic sector, limited by the size of the territorial waters and EEZ. The fishing sector is struggling because of the state of cod stock, in particular. The number of fishing companies is low, most of them are concentrated in a few port towns (Klaipėda, Nida and Palanga), and the whole fleet consists of 132 vessels, 103 of which are coastal. There is also a distant-water fleet consisting of 6 vessels of which 5 currently operational. Nonetheless, the penalty point system was implemented, while taking into account criteria to determine whether a violation can be considered a serious infringement.

All serious violations warrant a fine as a primary sanction and these must amount to at least twice the full value of the products involved in the violation of IUU fishing regulations, but no more than 5 times the full value. In case of reiterated infringements, the thresholds are increased. Hence, the sanctioning system is predominantly administrative and Lithuanian law does not set pre-determined fine thresholds, using a proportionate approach in determining the fine, while taking into account attenuating or aggravating circumstances. Other sanctions such as confiscation of catch/gear and suspension/withdrawal of licenses are available.

Total number of controls are about 1,200 and these constitute roughly about 30% of landing events, which is based on a data subset from the port of Klaipėda. Only 11 cases were initiated and these all led to sanctions, including the assignation of points in three cases. This is notable and can be explained by generally high control rates, small fleet, high compliance, and a sanctioning system that is deterrent and applied strictly, a legacy from Soviet times. Feedback from industry appears to show that the point system is not well understood, and probably not well known, but appears to be of minor aspect of a strong and effective sanctioning system.

#### 6.1.7. Spain

Spain implemented the penalty point system in 2013 but it is important to note that the sanctioning system was reformed and strengthened overall through a number of legislative acts carried out during the same period. This has strengthened the capacity for Spanish authorities to deal with IUU fishing involving Spanish companies and nationals in EU waters, as well as in external waters.

The sanctioning system is primarily an administrative procedure with stipulated minimum and maximum fines, which are significant. For example, a maximum fine of EUR 600,000 is fixed for very serious infringements. As a case may involve several infringements, this may involve much higher fines such as in the case of the 'Sparrow operations' which imposed fines of over EUR 30 million. Suspension or withdrawal of the fishing license, confiscation of the gear or catch, and the inability to get loans, grants or public aid are all envisaged, irrespective of the penalty point system.

Spain has the largest fleet in the EU in terms of capacity, 23.6% of the total, and 8,884 vessels in 2019. Fisheries control is a huge task and this involved 60,658 inspections for the period 2014-2019, including inspections at-sea, in port, transport, etc. This control activities resulted in the detection of 7,989 infringements which led to 5,191 sanctions, which is a follow up of 65% of infringements. Of these, 237 cases resulted in assigned penalty points, using the criteria for determining the gravity of the infringement, of which 6 led to the suspension of fishing licenses. A general indicator on sanctioning can be calculated in relation to total number of inspections, which gives a relatively high rate of 9%.

Spain has articulated a very complete system for registering infringements, sanctions and points that permits a comprehensive monitoring of the cases.

Spain has made significant efforts to address IUU fishing, both in EU and external waters, including a reform of the legislation to strengthen the sanctioning system. In this context, it appears that the penalty point system does not play a prominent role. It is applied in relatively few cases, using the criteria defined for the purpose, but the general sanctioning system in place is considered to be a strong deterrent. Other Member States are encouraged to follow the example of Spain and there appears to be support for this from industry. However, there are concerns on the control of the landing obligation which is considered to be problematic and needs to be addressed through the introduction of flexible mechanisms.



## 6.2. Denmark

### 6.2.1. Legal framework

#### a. Overview

Denmark is part of the EU since 1973, when it joined the European Economic Community together with Ireland and the United Kingdom. Hence, fisheries policy and management came under the umbrella of the CFP, including its 2013 revision. Denmark is considered to be among the more 'loyal' EU Member States when it comes to the national implementation of the CFP, albeit there may be challenges when adapting the CFP to national circumstances.<sup>42</sup>

Council Regulation (EC) No 1224/2009 describes a penalty point system for serious infringements (Article 92), which is part of efforts to promote a level playing field throughout the EU, advocating the equal application of infringement procedures as well as aiming at the harmonisation of sanctions imposed on EU vessels for breaches of CFP rules.

The point system applies only to serious infringements and each Member State is required to set up a system, including a national register of infringements, which holds record of infringements committed, including the imposed sanctions and assigned points.<sup>43</sup> The flag state authority is responsible for the assigning of points, even when the infringements are detected in another Member State.

#### b. Relevant laws and regulations

Member States were required to have introduced the point system for serious infringements as from 1 January 2012. Denmark complied with this with the adoption of Executive Order No. 1058 which entered into force on 1 December 2012.<sup>44</sup>

The following constitute the main elements of relevant laws, regulations and guidelines at national level (not considering EU regulations such as the Control Regulation, IUU Regulations, etc.):

- Fisheries Law (or Act) No. 261 of 21 March 2019<sup>45</sup> which concerns fishing and aquaculture activities. This is the result of successive revisions of the Law and modifications over time.
- Executive Order No. 1058<sup>46</sup> of 13 November 2012, establishing a penalty points to be assigned to fishing license holders and masters of vessels in connection with IUU fishing.
- Executive Order No. 978 of 22 September 2019<sup>47</sup> (supersedes Exec. Order No. 1058) concerning penalty points to be assigned to fishing license holders and masters of vessels in connection with serious infringements of the rules of the CFP.

In the Fisheries Law, Chapter 3 concerns the administration of legal acts in the context of the EU and international agreements on fisheries and aquaculture. It is stated the Minister (of Fisheries and Gender Equality) may lay down rules or make provisions for the purpose of compliance with EU

<sup>42</sup> Hegland, T.J. and Raakjaer, J. 2008. Implementation Politics: The Case of Denmark under the Common Fisheries Policy. In: Making Fisheries Management Work: Implementation of Policies for Sustainable Fishing; (eds) Stig S. Gezelius & Jesper Raakjaer. Springer. P161-198.

<sup>43</sup> Beke et al. 2014. Blomeyer & Sanz. The CFP- Infringement Procedures and Imposed Sanctions Throughout the EU. European Parliament Studies. Policy Department B: Structural and Cohesion Policies.

<sup>44</sup> [https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-PECH\\_NT\(2014\)514003](https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-PECH_NT(2014)514003)

<sup>45</sup> Bekendtgørelse: BEK nr 1058 af 13/11/2012; Udenrigsministeriet (Ministry of Foreign Affairs), superseded by BEK nr 978 af 22/09/2019; [www.retsinformation.dk](http://www.retsinformation.dk)

<sup>46</sup> Lov nr. 261 af 21. marts 2019 om fiskeri og fiskeopdræt (fiskeriloven); [www.retsinformation.dk](http://www.retsinformation.dk)

<sup>47</sup> Bekendtgørelse nr. 1058 af 13. November 2012; [www.retsinformation.dk](http://www.retsinformation.dk)

<sup>47</sup> Bekendtgørelse nr. 978 af 22. September 2019; [www.retsinformation.dk](http://www.retsinformation.dk)

directives and decisions on fisheries and aquaculture. Furthermore, this may include establishing rules and implementing measures necessary to fulfil EU regulations.

Chapter 23 concerns sanctions, prosecution and confiscation in the case of violations of the law. It states that unless higher penalties are imposed under other legislation, sanctions are to be imposed with the use of fines, which implies that the system in place is predominantly through administrative sanctioning. The types of infringements are specified and further establishes jurisdiction for fisheries violations that are carried out by Danish nationals or Danish residents (not including Greenland the Faroes Islands) outside Denmark. The possibility for searches and confiscation of fish catch and/or fishing gear is established, including through administrative sanctioning without resorting to prosecution through the court, if there is recognition of guilt to the violation and an acceptance of the sanctions imposed.

As mentioned above, Executive Order No. 978 adopted in 2019 (supersedes Exec. Order No. 1058) concerns the system of penalty points that has been in place in Denmark since 2012. In its current form, emphasis is placed on the application of penalty points in the case of serious infringements and these are specified in accordance with EU regulations. However, it is important to note that the violation of the landing obligation has been added (#13) as a separate category. Also, this Executive Order indicates that each case will be assessed to determine how serious the infringement is.

When considering the 12 types of infringements (as per EU Regulations), the assessment will take into account the damage caused, the extent of the violation, the value, and whether it is a repeated violation. For violations of the landing obligation (#13), the assessment will take into species in question, the value of the damage (for this species), account the damage caused, the violator's economic situation, the extent of the violation, the value, and whether it is a repeated violation. There is therefore some room for flexibility concerning sanctions for violations of the landing obligation, which is an issue which will be considered in more detail in the following sections.

When assessing the gravity of the infringement, the following are specified as aggravating circumstances:

- 1) The violation was committed intentionally or through gross negligence.
- 2) Damage to the fish stocks.
- 3) Efforts in fisheries control are undermined.
- 4) Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited.

Mitigating circumstance when assessing the gravity of the infringement are:

- 1) The violation was committed in excusable ignorance of or excusable misunderstanding of the rules.
- 2) The violation was of lesser importance in terms of magnitude (volume/value).

The rules for the suspension of fishing licenses, depending on the number of points, follow EU regulations, as well as the criteria for rewarding good behaviour (i.e. deduction of two penalty points).

This Executive Order (No. 978) entered into force on 1 October 2019.

### *c. Maximum and minimum penalties laid down in law*

No minimum or maximum penalties are laid down in fisheries law.

Penalties are set according to the principle of proportionality, considering the various types of infringements and accounting for aggravating and mitigating circumstances.



Sanctioning practices have developed over the years and fines are normally set at one third of the catch value with a minimum fine (DKK 5,000),<sup>48</sup> which is usually supplemented by the confiscation of the illegal catch and if relevant, the illegal gear or gear used for illegal fishing.<sup>49</sup> Fines are thus set on the basis of catch value instead of a fixed sum and particularly serious infringements can be further sanctioned with the withdrawal of a vessel license for a fixed period as well as a part of an individual vessel quota related to that period.<sup>50</sup>

Administrative penalties are used for violations of the fishing authorisations or conditions set therein, as explained in the following section (1.2.2). Withdrawal of the fishing authorisation is used primarily in commercial fisheries and otherwise only to a limited extent in well-defined areas where a rapid response to fishing has been both necessary and proportionate.<sup>51</sup>

#### *d. Application of the penalty point system*

As referred above, the penalty point system has been in place in Denmark since 2012, as required by EU regulations.

There is also a requirement for Member States to have in place a system to record the infringements, the imposed sanctions and assigned points, as per Article 93 of the EU control regulation 1224/2009. The Danish Fisheries Agency (Fiskeristyrelsen) has confirmed that this is in place, although the information is not publicly available.

In this context, it is important to refer to a report by Rigsrevisionen (National Audit Office) which identified problems with the management of support from the European Maritime and Fisheries Fund (EMFF) in the period 2014-2017, including potential problems concerning the eligibility of beneficiaries.<sup>52</sup> The relevance of the penalty point system in this context is that fishing license holders / masters, who have been penalised by points (which are still in force or valid), do not in principle qualify as beneficiaries of the EMFF. However, Rigsrevisionen criticises the inconsistent application of the penalty point system. Quoting from the report:

*“First, the Ministry of Foreign Affairs has assessed the basic admissibility requirements on an incorrect basis, because the ministry has failed to manage the EU penalty point system for fishing vessels in compliance with the regulatory framework. The ministry has not to the extent required imposed penalty points for serious infringements of the fisheries rules. The ministry has imposed penalty points in 34 cases in the period 2013-2017. In Rigsrevisionen's assessment, the ministry should have imposed penalty points in additionally 29 cases. Rigsrevisionen assesses that, in failing to do so, 24% of the examined funding has been provided to fishers who would have been excluded from receiving funding had the penalty point system been managed correctly. The inadequate and incorrect management of the penalty point system has also had the consequence that fishers have not been treated equally when penalty points have been applied. Thus, some applicants have been better positioned than others to receive support. The Ministry of Foreign Affairs has informed Rigsrevisionen that it will carry out a legal analysis of the cases where penalty points should have been applied, according to Rigsrevisionen's assessment.*

<sup>48</sup> Used for example in relation to reporting obligations. Pers comm. Danish Fisheries Agency.

<sup>49</sup> Dalskov, J., Olesen, H.J., Møller, E., Jensen, S.P., Jensen, M., Schultz, F., Schou, M. 2012. Danish Catch Quota Management trials – application and results. DTU Aqua Report No 256-2012.

<sup>50</sup> *Ibid.*

<sup>51</sup> Pers comm. Danish Fisheries Agency.

<sup>52</sup> Rigsrevisionen 2018. Support to the fisheries sector from EMFF. October 2018. 59p;

<https://www.rigsrevisionen.dk/media/2104921/sr0118.pdf>

English extract available at: <https://uk.rigsrevisionen.dk/media/2104934/1-2018.pdf>

*Second, the Ministry of Foreign Affairs has not adequately checked whether the applicants were admissible for funding, and the ministry is therefore unable to provide evidence of their admissibility.*

*Third, the Ministry of Foreign Affairs has interpreted the admissibility requirement in-correctly in relation to limitations. This may have deterred fishers from applying for funding, despite the fact that they, in the assessment of Rigsrevisionen, fulfilled the basic admissibility requirements."*

Note that the responsibility for fisheries policy and administration was transferred from the Danish Ministry of Environment and Food to the Ministry of Foreign Affairs in 2017, and then back to the Ministry of Environment and Food in 2019. Although Rigsrevisionen carried out the study while fisheries policy was in the remit of the Ministry of Foreign Affairs, the findings apply back in time for the period 2014-2017. More detail on institutional changes during recent years are provided in the following section on competent authorities.

The following is a selected list of issues identified by Rigsrevisionen with specific relevance to the application of the penalty point system. These give an overview, but it should be noted that various actions have taken place to address these issues.

**On implementation in Danish law:** when establishing the penalty point system in 2012, statutory remarks to the Fisheries Law indicated criteria to be used to determine the gravity of infringements and aggravating circumstances. However, the Ministry did not follow up by developing the administrative guidelines and rules for application of these criteria. In practice, the Ministry applied points only when these concerned infringements of EU regulations and measures, not national fishing rules.<sup>53</sup>

**Register of infringements:** although a register was established on infringements and sanctions applied, this did not cover cases of infringements committed by Danish vessels outside Denmark. Since 2012, foreign authorities communicated 30 cases of infringements by Danish vessels/captains to the Danish authorities. Penalty points were not assigned in any of these cases and there is one case (i.e. incident in Irish waters in 2014) where the handling of the case was criticised strongly.

**Assigning penalty points:** a sample of 299 infringements cases were reviewed and various issues were identified, indicating inconsistent application and a lack of clearly formulated rules.<sup>54</sup> In some cases, points should have been assigned for clear cases of serious infringements, but this did not happen. In other cases, infringements of national rules were sanctioned with points, even though they did not fall under the category of serious infringements, which goes against the interpretation being used by the Ministry at the time. Penalty points were assigned in 34 cases in the period 2013-2017, but the Ministry should have imposed penalty points in 29 additional cases according to Rigsrevisionen.

**Application over time:** of the 34 cases where penalty points were assigned, 22 (65%) occurred in 2013. The Ministry indicated that this strong decline over time was due to the introduction of the landing obligation in 2015. Although not clear, this appears related to the high number of cases where points were assigned in relation to infringements concerning undersized fish (26 cases). With the landing obligation, the minimum size rules became irrelevant.

It should be noted that the findings and conclusions of Rigsrevisionen's report led to, or contributed to, significant changes and actions to address all of the above. This included institutional changes, a revised Executive Order (no. 978) clearly establishing criteria for assessing serious infringements,

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<sup>53</sup> Consultations with the European Commission on this point indicate that penalty points are to be applied for all serious infringements, whether determined at EU or national level, if these go against the CFP.

<sup>54</sup> Although not stated here, there appears to have been a general problem of proper documentation when processing cases. See section on competent authorities.

clearer internal rules and instructions on application of the penalty point system, and a re-assessment of about 1,000 cases during the period 2016-2019, which is currently ongoing.

A guide to the application rules concerning the penalty point system in case of serious violations of fisheries law was published by the Danish Fisheries Agency on 17 October 2019.<sup>55</sup> Also, the following was published on the re-assessment process:<sup>56</sup>

- All fisheries license holders and vessel operators who have an infringement case from 1 June 2016 onwards will be notified, although this does not entail that points will be assigned.
- Infringement cases that have been settled before 1 June 2016, and there has been no correspondence on the case between the fishery license holder and the authorities after this date, will not be processed.
- The Danish Fisheries Agency expects to begin to send draft decisions on assigned points from June 2019 onwards.
- A notice is also published on the re-assessment of admissibility, in particular, cases in relation to grants from the vessel scheme under the European Maritime and Fisheries Fund.

## 6.2.2. Infringement procedures

### a. Brief description of the procedure

#### Box 1: Procedure in the case of infringements

An infringement case concerning a fishing vessel or master is initiated based on the fisheries inspector's assessment of compliance with fisheries legislation. If violations are found, a report is drawn up and parties are consulted in accordance with the general rules. The offender is informed if the infringement may result in the issuing of penalty points.

Once the circumstances of the case are clarified, the Ministry decides whether the violation should lead to a general sanction, such as the withdrawal of a license or a request to the police for a fine and possible confiscation of an illegal catch.

Specific aggravating or mitigating circumstances are taken into consideration when evaluating the case, which are documented and support the Ministry's decision. This forms the basis evaluating the seriousness of the infringement and whether penalty points should be given in addition to applied sanctions. The offender is informed of the outcomes by letter.

Source: Author's adapted translation from Rigsrevisionen 2018. Support to the fisheries sector from EMFF

The Danish sanctioning system includes both administrative and criminal sanctions. The following description was provided by the Danish Fisheries Agency, unless otherwise stated.

The sanctioning process proceeds along three parallel paths (points i-iii below) when an infringement is detected:

#### i) Administrative sanctions in relation to the fishing authorisation

The Danish authorities are empowered to apply administrative sanctions both to the fishing license holder and to the fishing authorisation. Administrative sanctions are mostly used in relation to fishing

<sup>55</sup> Fiskeristyrelsen: <https://fiskeristyrelsen.dk/media/11406/17-10-2019-vejledning-om-anvendelsen-af-reglerne-om-point-ved-almindelige-overtraedelser-af-fiskerilovgivning.pdf>

<sup>56</sup> Danish Fisheries Agency/Fiskeristyrelsen: <https://fiskeristyrelsen.dk/erhvervsfiskeri/kontrol/eus-pointsystem/>; consulted 26/04/2020.

authorisations. When an infringement is detected, the Danish Fisheries Agency examines whether the infringement constitutes a violation of the fishing authorisation or one of the conditions in the authorisation.

If a violation is detected, the Danish Fisheries Agency can withdraw the authorisation, issue an injunction or determine a period of time where the vessel must remain in port. In addition, the vessel's quota will be deducted e.g. 1/12 when the designated time in port is one month.

#### *ii) Criminal sanctions*

When an infringement is detected, the Danish Fisheries Agency typically either issues a warning, an administrative fixed penalty notice, or refer the case to the police for prosecution. At this point, the case is referred for the possible application of points (see point c below).

The Danish Fisheries Agency can issue an administrative fixed-penalty notice when:

- 1) there is a "clear infringement of the law" to the effect that the assessment of evidence does not give rise to significant doubts,
- 2) it is not found that a criminal investigation would lead to a higher penalty, and
- 3) the party who committed the infringement admits to being guilty of the infringement and declares acceptance of a fine indicated in the fixed penalty notice within a specified time limit.

If one or more of the three criteria are not met, the Danish Fisheries Agency will refer the case to the police for prosecution.

Criminal sanctions can be appealed which then trigger review proceedings. In relation to criminal sanctions, forfeiture of the following items can be ordered:

- The illegally caught fish and/or illegal gear.
- The value of the illegally caught fish and/or illegal gear.

If the infringement case is brought before court, the person can be deprived of the right to be engaged in commercial fishing for a period of one to five years as from the date of the final judgment or until further notice.

#### *iii) Administrative sanctions in relation to the assignment of points*

As required by article 92 (1) and (6) of the Regulation (EC) No 1224/2009, Denmark applies a point system for serious infringements for both the holder of a fishing license and the master of the vessel.

Whether points shall be assigned when an infringement case is detected, will be initiated and determined after a case has resulted in either a warning, an administrative sanction in relation to the fishing authorisation, administrative fixed penalty notice, or when the case has been referred to the police for prosecution. However, points will be applied before the finalization of possible appeal/review proceedings in relation to the above point a) and b).

If the review proceedings change the outcome of the case (i.e. acquittal), the Agency will then re-evaluate the case. This way, it is ensured that the infringement is sufficiently clarified when the decision on points is made, and the point system is not rendered ineffective due to possible suspensory effects of review proceedings.

### *b. Average length of infringement procedures*

The time of infringement procedures vary greatly from 2 weeks and 3 years, depending on the infringement. As explained above, this depends on whether it was a straightforward case of issuing a warning or an administrative fixed penalty, or whether it implied criminal prosecution.

### *c. Competent authorities*

The Danish Fisheries Agency (Fiskeristyrelsen) is the authority responsible for fisheries control and compliance, including the application of the penalty point system in Denmark. It is currently placed under the Ministry of Environment and Food (in 2019). However, there have been frequent institutional and structural changes over the last decade, normally linked with changes in the political environment, and this appears to have impacted on the performance of fisheries administration in general.<sup>57</sup>

Deloitte (2019) gives an overview of these institutional changes over time. Fisheries administration, including the specific area of fisheries control, was placed under the Directorate of Fisheries during 1995 - 2011, which was an autonomous directorate under the Ministry of Food, Agriculture and Fisheries. The Ministry of Fisheries thus ceased to exist in 1995 as a separate institution. In 2011, a restructuring process was initiated with the placement of fisheries under a Directorate of Natural Resources (Natur Erhvervstyrelsen). Various structural and institutional changes were implemented (2011-2017), but it is important to note that fisheries ceased to be autonomous and was placed together with agriculture. Moreover, in 2015, the policy area for the environment was placed together with food production in the Ministry of Environment and Food. There was again a separation of agricultural and fisheries affairs in 2017, but fisheries affairs were moved to the Ministry of Foreign Affairs under the Department for Fisheries Policy. In 2019, fisheries affairs were moved back to the Ministry of Environment and Food but maintaining a separate structure from agriculture.

In early 2019, the Ministry of Foreign Affairs initiated a general study on the administration of fisheries in Denmark, considering the various reports that were critical, more specifically on the management of quotas (including limits on quota concentration), fisheries control, and management of support from the European Maritime and Fisheries Fund (EMFF).<sup>58</sup> Some of the findings with specific reference to fisheries control were:

- Poor documentation of processes and lack of clear administrative guidelines and rules to be applied, resulting in disparate or contradictory practices, and that management had not provided the required oversight.
- Lack of adequate resources, including legal and accounting oversight, to deal with an expanding portfolio and increased complexity of issues related to quota management and fisheries control.

However, Deloitte (2019) indicates that these weaknesses cannot be attributed solely to increasing demands and resource constraints but are linked to a management style or culture that was prevalent in the sector. This was characterised by a strong fishing industry combined with a pragmatic, informal and oral form of cooperation, where the focus has been largely on ensuring a smooth and reliable administration and to a lesser extent on compliance with procedures. In the past, this provided

<sup>57</sup> Deloitte 2019. Undersøgelse af Fiskeriforvaltningen. 147p.

Kammeradvokaten 2018. Forvaltningseftersyn af Landbrugs og Fiskeristyrelsens sagsbehandling i nogle specifikke sagsforløb. 256p. Deloitte 2017. Ekstern analyse af Landbrugs og Fiskeristyrelsens administration af dansk erhvervsfiskeri. 89p.

Rigsrevisionen 2017. Kvotekoncentrationen i dansk farvande. 58p.

<sup>58</sup> Deloitte 2019. Undersøgelse af Fiskeriforvaltningen. 147p.

effective management carried out by experienced government employees and managers, but less attention was given to administrative and legal requirements for proper documentation.

This tradition of a more pragmatic approach to management of the sector functioned well in the past, but the constantly changing institutional and structural setup appears to have impacted negatively on fisheries administration, compounded with a lack of capacity and oversight. Based on the findings and recommendations of the various studies/reviews carried out between 2017 and 2019, significant change and actions were taken to address the various weaknesses identified, as explained in the preceding.

### 6.2.3. Controls implemented and sanctions imposed (2014-2019)

One of the most important tasks of the Danish Fisheries Agency is to monitor that fisheries in Danish waters comply with rules and regulations, including commercial fishing as well as angling and recreational fishing in inland waters. Inspections are carried out by the units in Frederikshavn, Nykøbing Mors, Nymindegab, Kolding, Ringsted, Randers and Rønne, as well as by three fishing inspection vessels "West Coast", "Sea Eagle" and "Havternen". Staff consist of approx. 150 that are involved control activities at sea, on land, and more limited air surveillance, as well as administrative control and electronic monitoring (FMC - Fisheries Monitoring Centre).<sup>59</sup>

Administrative control refers to crosschecking of information from different sources such as landing declarations, sale notes, auctions, etc. as well as real-time monitoring of vessels. The latter involves VMS – a satellite-based system vessel monitoring system – monitored at the FMC which receives information every hour on vessel activity, including data on vessel identification, position, course and speed, every hour from the vessel. This supplemented by AIS - Automatic Identification System – which is a radar-based system to monitor vessels for safety purposes, primarily.

The Danish Fisheries Agency uses a risk-based approach to inspection activities, where available information is used to assess higher risk of infringement and thus directing inspection efforts towards these vessels and/or fisheries, thereby ensuring a higher level of compliance in the fisheries sector.<sup>60</sup>

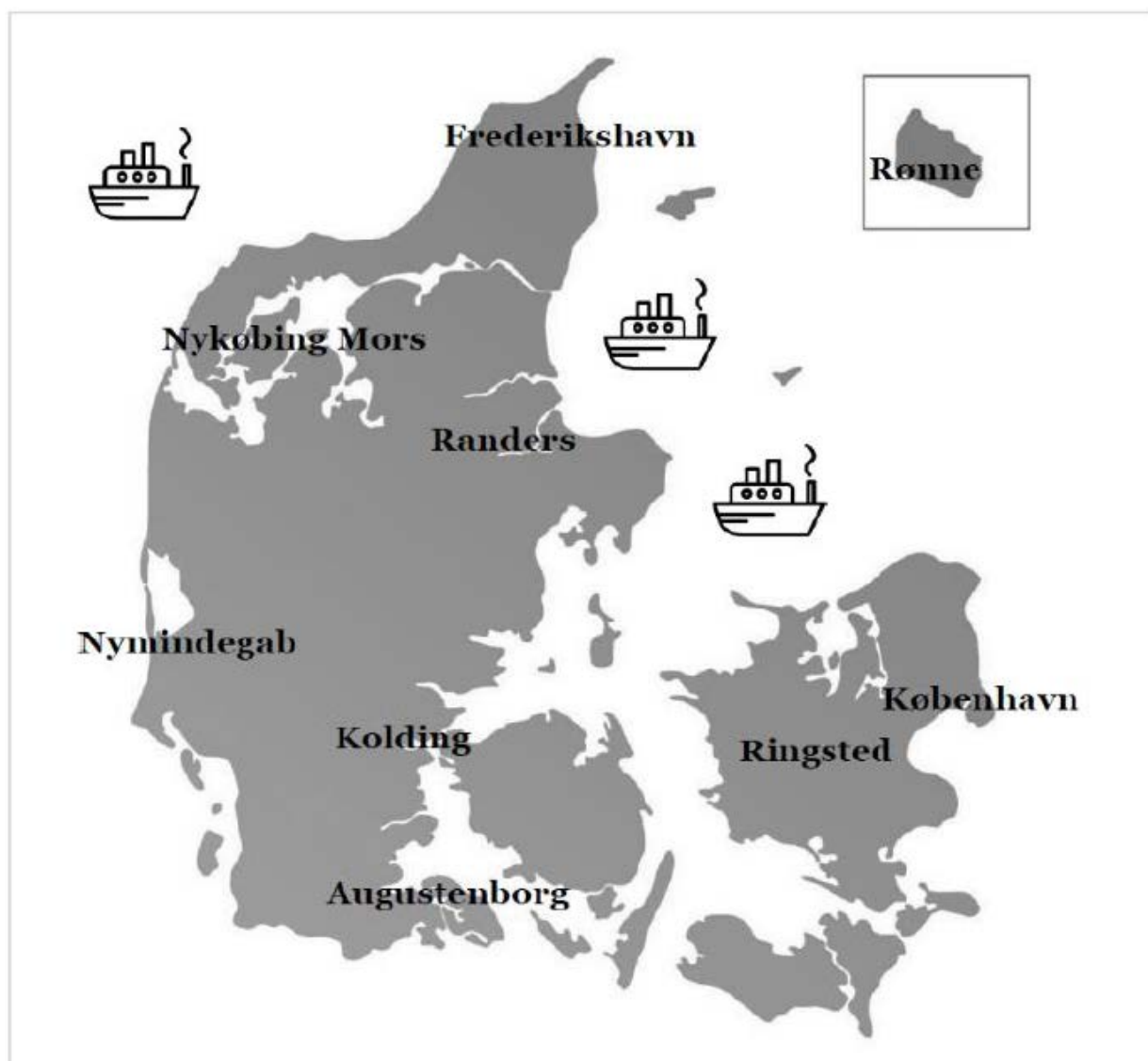
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<sup>59</sup> Annual report on inspection of commercial and recreational fisheries 2018. Danish Fisheries Agency. Ministry of Environment and Food. 16 p. <https://fiskeristyrelsen.dk/erhvervsfiskeri/kontrol/aarsrapport/>

<sup>60</sup> Annual report on inspection of commercial and recreational fisheries 2017. Danish Fisheries Agency. Ministry of Foreign Affairs. 25p. <https://fiskeristyrelsen.dk/erhvervsfiskeri/kontrol/aarsrapport/>



**Figure 9: Location map of headquarters (Copenhagen) and decentralised units of the Danish Fisheries Agency**



Source: Danish Fisheries Agency Annual Report 2017

#### *a. Types of control and coverage*

The Danish Fisheries Agency regularly publishes annual reports with information on control activities.<sup>61</sup> The **Table 10** below presents this for commercial fisheries over the period 2014-2018, showing that the total number of landing events decreased from about 81,000 to 68,000 during this period, although the volume of landings increased from 989 to 1,131 thousand tonnes. This is primarily due to increasing landings of fish for industrial purposes (i.e. for fish oil and fishmeal). The total number of inspections decreased over time, but the overall coverage in percentage was maintained at close to 5 %. Most inspections are carried in port during the landing, although the number of inspections at sea are still significant (about 17% of total).

The cod fishery is traditionally the most valuable fishery in Denmark and a significant proportion of total number of inspections are dedicated to monitor this fishery both at sea (36-52%) and in port (29-

<sup>61</sup> <https://fiskeristyrelsen.dk/erhvervsfiskeri/kontrol/aarsrapport/>

37%). Inspections of two other major fisheries concern high-volume pelagic and industrial fisheries, where inspections of catches are normally carried out in port. In 2018, 7.5% of the total number of inspections were dedicated to pelagic fisheries and 18% to industrial fisheries. These numbers have decreased over time, which appears to be related to the time required for each inspection.

**Table 10: Landings and inspections with respective coverage carried out in port and at sea (2014-2018) (Denmark)<sup>62</sup>**

		2014	2015	2016	2017	2018
<b>Landings (No.)</b>		81,125	75,374	73,867	67,024	67,711
<b>Landings (t)</b>		989,397	1,156,900	887,029	1,196,124	1,131,168
<b>Inspections (No.)</b>	in port	3,141	2,624	2,812	2,727	2,759
	at sea	767	624	560	547	551
<b>Total inspections</b>		<b>3,908</b>	<b>3,248</b>	<b>3,372</b>	<b>3,274</b>	<b>3,310</b>
<b>Coverage in %</b>						
<b>Overall</b>		4.8	4.3	4.6	4.9	4.9
<b>Cod</b>	landings	37	36	35	36	29
	at sea	46	47	52	44	36
<b>Pelagic</b>	landings	12	13	9.0	10	7.5
	at sea					
<b>Industrial</b>	landings	28	16	22	17	18
	at sea					

Source: Compiled from annual reports of the Danish Fisheries Agency

Not covered in the table are other control activities related to fisheries for plaice, sole, salmon, herring, and sprat. There are also specific control efforts directed to the Baltic Sea, North Sea and Skagerrak, including inspections carried out on foreign vessels (normally EU vessels).

All the fisheries mentioned above are covered by so-called "Specific Control and Inspection Programs" (SCIP), which set special rules for control in specific fisheries. The detailed rules for SCIPs are established in EU regulations, where the specific interests of Denmark concern the North Sea, Skagerrak, Kattegat the Baltic Sea, and Western Waters to a lesser extent.

Denmark also participates in joint international inspection campaigns (Joint Deployment Plans - JDP) which are coordinated by the European Fisheries Control Agency according to these SCIPs.<sup>63</sup>

In international waters, EFCA coordinates the implementation of specific JDPs. In the JDP concerning the North East Atlantic Fisheries Commission (NEAFC), Denmark is expected to contribute with an inspection platform for 15 days a year to ensure that fisheries are complying with the joint rules and

<sup>62</sup> Note: Coverage is given overall and according to type of fishery

<sup>63</sup> <https://www.efca.europa.eu/en/content/operational-coordination-0>



to ensure that no other countries besides the contracting parties are fishing in the area. The Danish Fisheries Agency sends the fisheries inspection vessel “Vestkysten” north into the international waters in the Norwegian Sea, which is located between Greenland and Norway.<sup>64</sup>

### *b. Landing obligation*

The landing obligation and Member States compliance with this has been a major issue in recent years in the context of the revised CFP, more specifically how to monitor this and how to enforce it. A recent review was carried out by EFCA in cooperation with the Member States Control Expert Groups (CEGs) on compliance with the landing obligation in selected fisheries in the North Sea (2016-2017) and North Western Waters (2015-2017). Overall, the findings were that non-compliance with the landing obligation appears to have been widespread during the evaluation period, albeit this is based on indicators and indirect observations.<sup>65</sup> <sup>66</sup> Acknowledging that traditional control tools have not been effective in relation to the landing obligation, the use of camera systems (CCTV or Remote Electronic Monitoring – REM) are being proposed as a potentially effective tool to monitor this as well as other issues.

### **Box 2: The Last Haul Programme**

The collection of catch composition data during inspections at sea by EU Member States occurs under the framework of joint deployment plans (JDPs). It is known as “the last haul” programme and has been a fundamental tool in allowing the estimation of discards and the derivation of indicators of compliance with the landing obligation. During sea inspections, measures of quantities of fish below and above the minimum conservation reference size and grade categories of the legal-size catch are used to derive estimates of discards. The methods to estimate discards assume that the relative catch composition (discard ratios) obtained with the data collected during last haul inspections reflects the true catch composition of the fleet segment operating with the same gear and mesh size and in that area. The comparison between these discard ratios and with what is reported in fishers’ logbook is then used to estimate the discard component.

Source: Nuevo *et al.* 2019<sup>67</sup>

In Denmark, inspections carried out at sea have been strengthened and collect additional data on catch composition and size distribution of selected species to be used as indicators of compliance with the landing obligation (e.g. Last Haul). This data collection is labour-intensive, but efforts have gone into increasing this type of monitoring. Samples have increased over time, reaching 113 samples in the Baltic Sea and 94 samples in the North Sea, Skagerrak and Kattegat in 2018.<sup>68</sup>

Data from the Last Haul Programme has indicated that non-compliance with the landing obligation is occurring, but only 7 breaches of the landing obligation have been sanctioned so far.<sup>69</sup> This was

<sup>64</sup> Annual report on inspection of commercial and recreational fisheries 2017. Danish Fisheries Agency. Ministry of Foreign Affairs. 25p.

<sup>65</sup> <https://www.efca.europa.eu/en/content/pressroom/evaluation-suggests-non-compliance-landing-obligations-certain-fisheries-north-sea>

<sup>66</sup> <https://www.efca.europa.eu/en/content/compliance-evaluation>

<sup>67</sup> Nuevo, M., Morgado, C., Sala, A. 2019. Monitoring the implementation of the landing obligation: The Last Haul Programme. In: Uhlmann, S.S., Ulrich C., & Kennelly, S.J. (eds), *The European Landing Obligation Reducing Discards in Complex, Multi-Species and Multi-Jurisdictional Fisheries*. Springer Open.

<sup>68</sup> Annual reports 2017 & 2018. Danish Fisheries Agency.

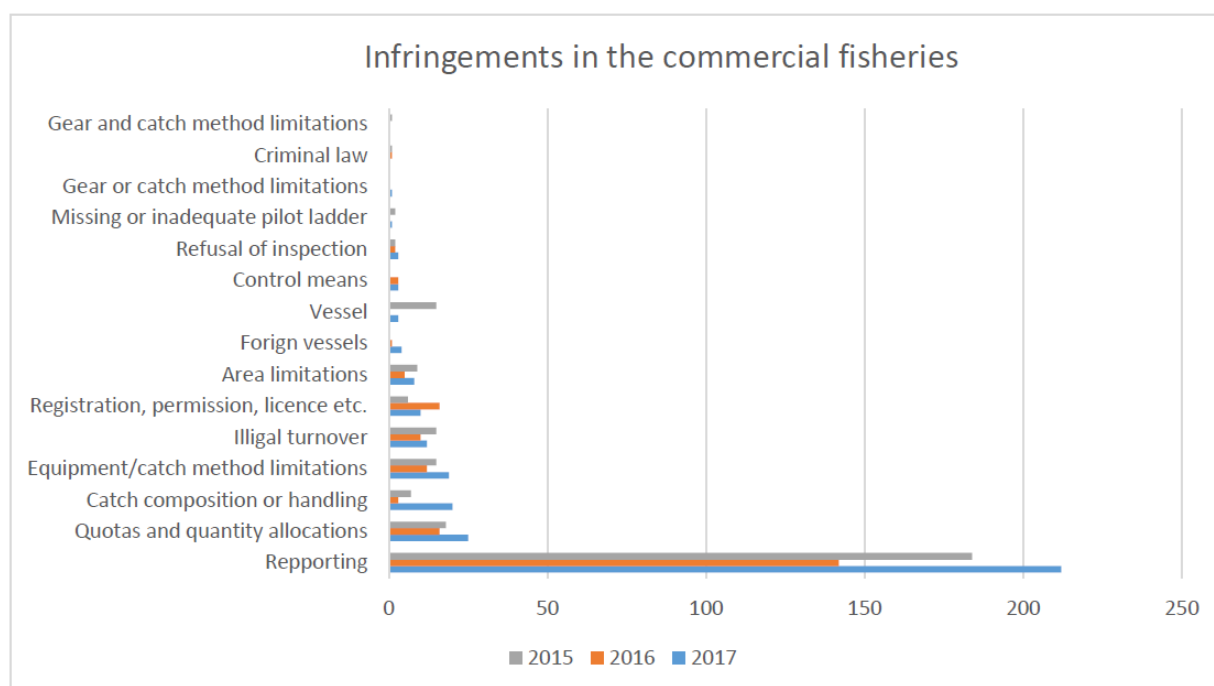
<sup>69</sup> *Ibid.*

presumably detected in a follow-up landing inspection (after collecting data at sea), where it is confirmed that undersized fish that were caught during the Last Haul inspection have been discarded.

### c. Identified infringements

The number of detected infringements has been increasing, e.g. 321 infringements in 2017 and 211 infringements in 2016.<sup>70</sup> A large proportion of these infringements concerns reporting regulations (logbooks, reports and sales notes), which roughly account for 66 %. This increasing number of infringements is explained by the Danish Fisheries Agency as the result of more systematic and administrative crosschecks and follow-up, as well as the increased focus on Last Haul and follow up onshore, which have uncovered a number of infringements.

**Figure 10: Detected infringements per type (2015-2017) (Denmark)**



Source: Annual Report 2017. Danish Fisheries Agency. Note that a single case concerning a vessel may consist of several types of infringements.

### d. Number of sanctions

The following **Table 11** presents the aggregated data for the period 2014-2019 concerning infringements and sanctions applied, which was provided by the Danish Fisheries Agency.

1. Preliminary pending the re-assessment of cases during the 2016-2019.
2. All recorded infringements pertain to DK vessels and have been sanctioned. The main part concern the use of smaller unregistered boats (dinghies) in the pound net fishery for eel.

A total of 904 infringements were detected between 2014 and 2019, although these do not refer necessarily to separate incidents as more than one infringement may be detected on inspection of a single vessel. Of these, 628 concerned incomplete or non-fulfilment of reporting obligations which corresponds to almost 70% of the total, which were generally not considered to be serious based on the cases where penalty points were assigned.

<sup>70</sup> *Ibid.*

A total of 807 infringements were sanctioned according to administrative and/or criminal proceedings, hence 90% of the total. Only 286 cases were initiated, which is interpreted as the infringements that were considered more serious and involved proceedings involving the courts (see also section 1.2.1). Many of the infringements concerning reporting obligations (#1) and non-compliant gear (#2) appear to have been considered not serious, based on the interpretation and application of the law.

However, it is important to note that some 1,000 infringement cases are being re-assessed and this may result in that cases with assigned penalty points (29) will increase accordingly. Of these 29 cases that resulted in assigned penalty points, 8 led to the suspension of fishing licenses. The table presents only finalised cases (after the conclusion of hearing and administrative appeal).

As mentioned in preceding sections, Denmark has revised its implementation of the EU point system in 2019, following a national audit which identified a number of issues. A re-assessment of more than 1,000 infringements is currently underway to determine whether penalty points should be assigned, covering the period from 1 June 2016 onwards.

#### *e. Sanctions in relation to controls*

A coarse indicator of the number of sanctions in relation to control can be estimated by taking into account the total number of inspections carried out during the period 2014-2018 and the total number of infringements sanctioned during 2014-2019. A total 17,112 inspections were carried out and 807 infringements were sanctioned, which gives an indicator of roughly 4-5 %, noting that the time periods do not coincide completely and that this is just to give an indication.

**Table 11: Number of serious infringements detected, and sanctions applied (2014-2019) (Denmark)<sup>71</sup>**

Type of Infringement	Number of infringements	Number of cases initiated	Cases of sanctions applied	Cases where points were assigned <sup>1</sup>	Cases of suspension of fishing licence <sup>1</sup>
Not fulfilling its obligations to record and report catch or catch-related data[...]	628	78	550	12	1
Use of prohibited or non-compliant gear according to EU legislation.	58	5	54	9	2
Falsification or concealing its markings, identity or registration.	4	4	4	0	0
Concealing, tampering with or disposal of evidence relating to an investigation.	0	0	0	0	0
Taking on board, transshipping or landing undersized fish in contravention of the legislation in force.	50	50	50	0	0
Carrying out fishing activities in the area of a regional fisheries management organisation in a manner inconsistent [...]	0	0	0	0	0
Fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State	35	30	30	0	0
Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth	55	48	48	8	4
Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited.	50	47	47	0	0
Obstruction of work of officials [...]	9	9	9	0	1
Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as having engaged in IUU fishing [...]	5	5	5	0	0
Use of a fishing vessel with no nationality [...]. <sup>2</sup>	10	10	10	0	0
<b>Total</b>	<b>904</b>	<b>286</b>	<b>807</b>	<b>29</b>	<b>8</b>

Source: Danish Fisheries Agency

<sup>71</sup> Note that the table includes serious infringements as stipulated in Council Regulation (EC) No 1005/2008 (IUU Regulation)

## 6.3. France

### 6.3.1. Legal framework

#### *a. Overview*

France's legal framework does not define specific regimes for operators on the Mediterranean and Atlantic coasts or for those operating in Oversea France. Fleets based in Overseas Territories account for 37% of the French fleet and 17% of the workforce,<sup>72</sup> but not all operate within territorial waters. Some vessels operate under different regimes, as some French overseas territories<sup>73</sup> are considered as third countries.

Despite the different environmental and socio-economic conditions of these areas, a differentiated legal framework to tackle specific issues of the Mediterranean, for example, is not considered justified. Fishing operations in the Mediterranean Sea account for 3% of France's fisheries catch, while the most important area, North-East Atlantic, accounts for 79% of operations.<sup>74</sup> As to fisheries in Oversea France, specific regulations may exist but the sanctions regime is applicable in general.

IUU fishing regulations are defined in the CRPM (Code rural et de la pêche maritime, Rural and Maritime Fishing Code), amended several times to incorporate EU IUU fishing regulations. Key changes were introduced with Law 2010-874 of 27 July 2010 for the modernization of agriculture and fisheries, which modified Art. L946-1 of the CRPM, introducing the points system, and with Decree 2014-1608 of 26 December 2014 for the codification of the regulatory part of Book IX of the CRPM, which defined the conditions for the allocation of points to licences. Decree 2014-54 of 24 January 2014 then expanded the system to vessels commanders. Law 2016-816 of 20 June 2016 for the "blue economy" clarified additional provisions about sanctions.

#### *b. Laws and date of entry into force.*

Law 2010-874 for the modernization of agriculture and fisheries, approved on 27 July 2010, modified Art. L946-1 of the CRPM introducing the points system and regulating the other sanctionary measures; it came into force on 29 July 2010.

Law 2011-525, approved on 17 May 2011 and entered into force on 19 May, confirmed additional details about sanctions, as did Law 816, approved on 20 June 2016 and entered into force on 22 June 2016.

The CRPM itself was introduced in its current form in the Third Republic but took the current name with Ordinance 2010-462, adopted on 6 May 2010 and entered into force with Law 874, which included a new chapter (Book IX) to regulate fisheries.

Decree 2014-54, adopted on 24 January 2014, entered into force on 27 January. Similarly, Decree 2014-1608, adopted on 26 December 2014 entered into force on 28 December.

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<sup>72</sup> INSEE (2016). *Tableaux de l'Économie Française, Édition 2016. Pêche – Aquaculture*. Available from: <https://www.insee.fr/fr/statistiques/1906727?sommaire=1906743>

<sup>73</sup> These "territoires français non-communautaires" are New Caledonia (Nouvelle-Calédonie), French Polynesia (Polynésie française), Saint-Pierre et Miquelon, the Antarctic waters under French sovereignty (Terres australes et antarctiques françaises) and Saint-Barthélemy.

<sup>74</sup> INSEE (2016).

### c. *Maximum and minimum penalties laid down in the law*

According to the combined sanctionatory system in place at this stage, **all serious violations** are subject to a **basic fines regime** defined at Art. L946-1 CRPM:

- A fine of up to five times the value of the product involved in the violation.
- If value cannot be defined, a EUR 1,500 fine applies for serious violations for up to 100 kg of products. Above 100 kg, the fine is multiplied by the number of quintals<sup>75</sup> of products caught, transported, traded, held or landed.
- If the violation involves failure to follow GPS surveillance requirements, the fine is multiplied by the number of hours spent in violation of requirements.
- In case of failure to follow declaration obligations, the fine is applied as many times as the number of violations.
- The fine can be doubled if offences are repeated within 5 years. The sanction can be transferred entirely to the vessel owner if the working conditions of the crew or captain that committed the violation make this necessary.

On top of the basic sanction regime, French law punishes serious violations with additional measures: these include **administrative sanctions** (the point system included) and/or **penal** ones. The range of additional measures available in the French legal system is **highly diversified**, sometimes including prison sentences in combination with fines, but often entails the same sanction (EUR 22,500) for a wide variety of offences, and an additional basic sanctionary regime to all serious offences based on amount of product involved in an IUU fishing operation.

Crucially, **prison sentences** are only applied if violations happened within **French waters (territorial or EEZ)**. Beyond the limits of French territorial waters, only fines can be imposed (Art. 945-4-1 CRPM introduced by Law 2014-1170 of 13 October 2014). Environmental protection NGO ClientEarth pointed out, in a 2017 report, that this is the result of an erroneous interpretation of a UN convention,<sup>76</sup> which results in impunity for French industry operators.<sup>77</sup>

The serious infringements defined by Annex XXX of Regulation (EU) No. 404/2011 are regulated both by the changes to the CRPM created by Law 874 and, for vessels commanders, by Decree 54.

- **Administrative sanctions** are regulated by Chapter VI, Title IV, Book IX, Legislative Part of the CRPM, Art. L946-1 to L946-8.
- The **point system** is regulated by Section II, Chapter VI, Title IV, Book IX of the Regulatory Part of the CRPM, Art. R946-4 to R946-21.
- **Penal sanctions** are regulated under Chapter V of the same section of the CRPM, Art. L945-1 to L954-4-2.

<sup>75</sup> A quintal is a unit of measurement commonly used in France, consisting of 100 kg.

<sup>76</sup> United Nations (1982). *United Nations Convention on the Law of the Sea*. Available from:

[https://www.un.org/depts/los/convention\\_agreements/texts/undocs/undocs\\_e.pdf](https://www.un.org/depts/los/convention_agreements/texts/undocs/undocs_e.pdf), Art. 73.3

<sup>77</sup> ClientEarth (2017). *The control and enforcement of fisheries in France*. Brussels, London, Warsaw, Sept 2017. Available from: <https://www.documents.clientearth.org/wp-content/uploads/library/2016-12-02-the-control-and-enforcement-of-fisheries-in-france-ce-en.pdf>, p. 15

There are slight **discrepancies** between the serious infringements in Annex XXX of Regulation (EU) No. 404/2011 and those resulting in penal sanctions in French law, although most of the cases can be categorised according to those specified in Annex XXX. Sometimes, different infringements falling within the same serious violation in Annex XXX result in vastly different sanctions.

**On top of the basic sanctionatory regime** described earlier:<sup>78</sup>

- Not fulfilling obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system, results in the allocation of **3 points**. It is important to note, however, that points are applied **only if at least one of several conditions are fulfilled**:
  - Fishing, transboarding or landing operations of regulated or restricted species, involving at least 100 kg or 20% of the declared amounts.
  - Operations take place in a forbidden area, time or depth.
  - Operations take place outside French or EU waters.
  - Recording errors amounting to more than 20% of the weight or number of quantities of regulated species take place.
  - Infringements are noted threetimes in a period of three consecutive months.
  - The sale value of the catch resulting from the infringement amounts to over EUR 10,000 or at least 20% of the value of the catch of the operation.

Failure to fulfil the recording and reporting obligations results in a **EUR 22,500 fine**.

In an internal document shared with the authors of this paper, French authorities have remarked that exemptions from the monitoring requirements are only granted upon rigorous monitoring. Besides, for some types of fishing activities, such as those of the sole in the Eastern English Channel, France imposes monitoring requirements stricter than those imposed by EU law.<sup>79</sup>

- Use of prohibited or non-compliant gear according to EU legislation results in **4 points**. Some instances of use of prohibited gear result in the application of points **only in specific circumstances**, though: detention on board of prohibited gear, use of greater-than-allowed quantities of gear, use of gear in areas or times when their use is forbidden, and detention or use of gear not in line with marine resources' management policies result in points only if:
  - The use/detention happens outside of French or EU waters.
  - Nets have a mesh that is at least 2mm smaller than allowed.
  - Use of at least 10% more gear than allowed.
  - Length of nets is at least 10% more than allowed.
  - A device that significantly alters the selectivity of fishing gear is used.

The law also defines a detailed list of additional cases of usage, detention, ownership, manufacture or sale of prohibited gear that result in a **EUR 22,500 fine**.

<sup>78</sup> The additional sanctions are described in Art. R945 to Art. R946, CRPM as introduced by Decree 1608 and Art. 945-3 CRPM modified by Ordinance 2010-462.

<sup>79</sup> Internal document provided by French authorities, response to 2017 ECA report.

- Falsification or concealing of markings, identity or registration results in **5 points**. Points are assigned automatically. The law punishes this infringement with **one year prison term** and a **EUR 75,000 fine**.
- Concealing, tampering with or disposal of evidence relating to an investigation results in **5 points**. Points are assigned automatically. Concealing or trying to conceal fishing data or gear also results in a **six months prison sentence** and **EUR 15,000 fine**.
- Taking on board, transshipping or landing undersized fish<sup>80</sup> in contravention of the legislation in force results in **5 points**. French law also assigns 5 points for failure to fulfil obligations related to stowage, sorting, weighing, rejection, marking, cutting, preparation and processing of catches. However, points are assigned **only if at least one of these conditions are fulfilled**:
  - Fishing, transboarding or landing operations of regulated or restricted species, involving at least 100 kg or 20% of the declared amounts.
  - Operations take place outside French or EU water.
  - Recording errors amounting to more than 20% of the weight or number of quantities of regulated species take place.
  - The sale value of the catch resulting from the infringement amounts to over EUR 10,000 or at least 20% of the value of the catch of the operation.

This infringement also results in a **EUR 22,500 fine**. The law also punishes the act of knowingly selling or purchasing undersized fish, as well as stowage, sorting, weighing, rejection, marking, cutting, preparation and processing of undersized fish.

- Carrying 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 results in **5 points**. Points are assigned **only if at least one of these conditions are fulfilled**:
  - Fishing, transboarding or landing operations of regulated or restricted species, involving at least 100 kg or 20% of the declared amounts.
  - Operations take place in a forbidden area, time or depth.
  - Recording errors amounting to more than 20% of the weight or number of quantities of regulated species take place.
  - Nets have a mesh that is at least 2mm smaller than allowed.
  - Use of at least 10% more gear than allowed.
  - Length of nets is at least 10% more than allowed.
  - A device that significantly alters the selectivity of fishing gear is used.
  - The sale value of the catch resulting from the infringement amounts to over EUR 10,000 or at least 20% of the value of the catch of the operation.
- Fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State results in **7 points** but only if at least one of these conditions are fulfilled:
  - Fishing, transboarding or landing operations of regulated or restricted species, involving at least 100 kg or 20% of the declared amounts.

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<sup>80</sup> Has in many cases become redundant with the Landing Obligation



- Operations take place in a forbidden area, time or depth.
- Operations take place outside French or EU waters.
- The sale value of the catch resulting from the infringement amounts to over EUR 10,000 or at least 20% of the value of the catch of the operation.

Fishing without a valid licence or authorization, or with a boat with characteristics other than those defined in the authorization also results in a **EUR 22,500 fine**, as does the act of knowingly purchasing, detaining on board, selling or carrying fish caught by unauthorised boats.

Vessel commanders of boats that do not fly French flag and carry out operations in French waters without authorisation or in violations of their conditions, as well as anyone who fishes with a boat that is not registered or has expired registration number are punished with a **one year prison sentence** and a **fine of EUR 75,000**. Helping, supplying, participating in joint operations or accept an engagement on board of such a vessel results in a **EUR 22,500 fine**.

- Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth, or any operation involving the catch resulting from this activity, results in **6 points** but **only if at least one of these conditions are fulfilled**:
  - Fishing, transboarding or landing operations of regulated or restricted species, involving at least 100 kg or 20% of the declared amounts.
  - Operations take place outside French or EU waters.
  - The sale value of the catch resulting from the infringement amounts to over EUR 10,000 or at least 20% of the value of the catch of the operation.

Fishing in a forbidden area, depth or period results in a **EUR 22,500 fine**. As to quotas violation, an IUU fishing expert consulted for this study reported that at the moment it entails points, sanctions and "payback" (sometimes in combination): in case of fishing overquota, a company or vessel can be obliged to fish less the following year.<sup>81</sup>

- Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited, or any operation involving the catch resulting from this activity, results in **7 points**, but **only if at least one of these conditions are fulfilled**:
  - The violation involves forbidden species for at least 100 kg or 20% of the declared amounts.
  - Operations take place outside French or EU waters.
  - The sale value of the catch resulting from the infringement amounts to over EUR 10,000 or at least 20% of the value of the catch of the operation.
- Obstruction of 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 Union rules results in **7 points**, applied automatically. French law broadens the range of activities that would fall under this category of violation. The law punishes with a **six months prison sentence** and a **EUR 15,000 fine** the refusal or obstructing of visits by fisheries control agents, while it also punishes with a **one year prison sentence** and a **EUR 75,000 fine** the commanders that try to evade controls at sea.

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<sup>81</sup> Interview with environmental protection organisation IUU fishing officer, 3 April 2020.

- Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as having engaged in IUU fishing under Regulation (EC) No 1005/2008, in particular those included in the Union IUU vessel list or in the IUU vessel list of a regional fisheries management organisation results in **7 points**. Application of points is automatic

A separate regime is envisaged for the act of operating, managing or owning an IUU vessel or a vessel flying flag of a non-compliant country: this results in **one year prison sentence** and a **EUR 75,000 fine**. Helping, supplying, participating in joint operations or accept an engagement on board of such a vessel results in a **fine of EUR 22,500**.

- Use of a fishing vessel with no nationality and that is therefore a stateless vessel results in **7 points**. Application of points is automatic.

The criteria for allocation of points differentiates the French system from that of some other countries, where points are assigned automatically or based on more forgiving criteria. In practice, **this may result in lenience when applying points**. Fisheries Control Unit officials of the Directorate for Sea Fisheries and Aquaculture consulted accepted this possibility but confirmed that **these criteria are in line with existing EU legislation** (and at any rate, this is one of the areas subject to current discussion at EU level to ensure harmonization in the way Member States define the violations for the purpose of allocating points).<sup>82</sup>

Feedback from stakeholders however revealed that **the point system is not well known** and is not taken very much into account when calculating the risks related to non-compliance in fisheries' operations. The concerns relate to the **amount of the fines and the strictness of the technical requirements**, rather than the point system.<sup>83</sup>

The **Table 13** provides a summary overview of the logic of conditions needed for the application of the point system for the serious infringements, among those defined by Annex XXX of Regulation (EU) No. 404/2011. As at least one condition is needed for the application of points, the fewer the conditions envisaged, the higher the chance that a violation can go unpunished.

For some serious infringements, the theoretical risk that they will not result in any point is relatively low. This is the case for violations of **reporting obligations or fishing in regional fisheries organisations areas**, which require one out of as many as 6 or 7 conditions to trigger the application of points.

The maximum fines are calculated assuming that the court has not confirmed the application of discretionary fines for damage to the environment (up to EUR 3,000/day for up to 3 months).

However, for other violations, including some that are **highly damaging to maritime resources' conservation**, this is not the case. For example, a violation of quotas or closed areas restrictions, or fishing of a stock subject to moratorium that took place within French or EU water, involving 20% of declared amounts and resulting in EUR 10,000 from sales of the products of IUU fishing **would not result in any points**, despite the violation being among the most serious ones. The low number of conditions envisaged to make the application of points possible therefore **makes the deterrence power of the point system dubious**.

<sup>82</sup> Interview with Fisheries Control Unit officers, 7 May 2020.

<sup>83</sup> Interview with medium-large industry stakeholder, Brittany region, 17 April 2020.

**Table 12: Summary of serious infringements, points and fines (France)**

	Serious infringements Annex XXX of Regulation (EU) No. 404/2011	Points	Min. fine	Max. fine	Prison
1	Not fulfilling its obligations to record and report catch or catch-related data [...]	3	<p>Basic fine regime options:</p> <p>Fine of <b>up to five times the value</b> of the product involved in the violation</p> <p>Or:</p> <p>Fine of <b>EUR 1.500 multiplied by:</b></p> <p>A) Quintals of fishing products caught, transported, traded, held or landed</p> <p>B) Hours spent in violation of GPS tracking requirements</p> <p>C) Number of violations of declaration obligations</p>	EUR 22,500	No
2	Use of prohibited or non-compliant gear according to EU legislation	4		EUR 22,500	No
3	Falsification or concealing its markings, identity or registration	5		EUR 75,000	1 year
4	Concealing, tampering with or disposal of evidence relating to an investigation	5		EUR 15,000	6 months
5	Taking on board, transshipping or landing undersized fish in contravention of the legislation in force	5		EUR 22,500	No
6	Carrying out fishing activities in the area of a regional fisheries management organisation in a manner [...]	5		N/A	No
7	Fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State	7		EUR 22,500 or 75,000 depending on the licence violation	1 year
8	Fishing in a closed area or during a closed season, without or after attainment of a quota [...]	6		EUR 22,500	No
9	Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited.	7		N/A	No
10	Obstruction of work of officials / observers [...]	7		EUR 15,000 or 75,000 depending on the obstruction	6 months or 1 year
11	Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as having engaged in IUU fishing [...]	7		EUR 25,000 or EUR 75,000 depending on the type of IUU fishing violation	1 year
12	Use of a fishing vessel with no nationality [...]	7		N/A	No

Source: Rural and Maritime Fishing Code

**Table 13: Conditions for application of the point system (France)**

Type of infringement	Recording/ reporting obligations	Prohibited/ non-compliant gear	Undersized fish regulations	Regional fisheries organisation management area violation	License / authorisation violations	Closed area, season, quota or depth violation	Fishing of stock under moratorium
Device used that significantly alters selectivity of fishing gear		Envisaged		Envisaged			
Operations involve regulated/restricted species for min. 100 kg / 20% of declared amounts			Envisaged	Envisaged	Envisaged	Envisaged	Envisaged
Infringements noted three times in three consecutive months	Envisaged						
Length / number of gears at least 10% above limit		Envisaged		Envisaged			
Nets mesh is at least 2mm smaller than limit		Envisaged		Envisaged			
Operations in a forbidden area, time or depth	Envisaged			Envisaged	Envisaged		
Operations outside French or EU waters	Envisaged	Envisaged	Envisaged				
Recording errors for min. 20% of weight/number of quantities of regulated species	Envisaged		Envisaged	Envisaged			
Sale value of infringement catch amounts to min EUR 10,000 / 20% of value of total catch	Envisaged		Envisaged	Envisaged	Envisaged	Envisaged	Envisaged
Use/detention outside of French or EU waters					Envisaged	Envisaged	Envisaged
Violation involves forbidden species for at least 100 kg / 20% of declared amounts	Envisaged						
Use of at least 10% more gear than allowed							

Source: Rural and Maritime Fishing Code

**Additional criminal sanctions**<sup>84</sup> for all violations, including serious ones, defined by the CRPM include:

- The order to restore the places or repair the damage to the environment caused by the infringement: tribunals can condemn to a daily penalty of **up to EUR 3,000** for a period of **three months at most**.
- **Suspension or revocation of the fishing licence**; this measure pre-dates the point system and can be applied regardless of the accumulation of points.
- **Confiscation of catch and gear**.
- **Confiscation of ships**.
- **Ban** (for up to 5 years) **from conducting the professional or social activity** during which the IUU fishing infringement was committed.
- **Dissolution of legal entities involved**.

**Additional violations**,<sup>85</sup> not listed in Annex XXX of Regulation (EU) No. 404/2011, can result in tougher punishments. Destruction or attempted destruction of confiscated catch and gear, as well as failure to comply with orders related to the destination of use of confiscated catch and gear can result in a **two years prison sentence** and a **fine of EUR 375,000**.

Furthermore, Law 2016-1087 of 8 August 2016 added provisions to punish the violation of protected maritime areas, which can result in up to **six months jail term** and a **fine of EUR 22,500** and in the **immobilization of any vehicle or ship** used for up to one year.

#### *d. Application of the point system*

As of 2017, the Court of Auditors reported that France had not yet implemented the penalty point system, noticing that “[t]here was a lack of clear national rules and procedures on responsibility for sanctions and points.”<sup>86</sup> In particular, France used an electronic reporting system that did not allow to properly track the fulfilment of landing obligations.<sup>87</sup> However, French authorities have confirmed that **the point system has been in place since 2015**, with the national register of infringements active since Jan 2016.<sup>88</sup>

As far as the procedure now applied, the application of **points for vessels commanders**, results in the suspension of the licence as follows:

- Upon achievement of 18 - 35 points: 1 month suspension.
- From 36 to 53 points: 2 months suspension.
- From 54 to 62 points: 4 months suspension.

<sup>84</sup> Art. L945 RPM.

<sup>85</sup> Art. L945 RPM and Art. L945-1 CRPM, modified by Law 874.

<sup>86</sup> European Court of Auditors (2017). *Special Report EU fisheries controls: more efforts needed*. Luxembourg, 2017. Available from: [https://www.eca.europa.eu/Lists/ECADocuments/SR17\\_8/SR\\_FISHERIES\\_CONTROL\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR17_8/SR_FISHERIES_CONTROL_EN.pdf), p. 50.

<sup>87</sup> ClientEarth (2017), p. 22.

<sup>88</sup> Interview with Fisheries Control Unit officials, 7 May 2020.

- From 63 to 71 points: 8 months suspension.
- From 72 to 89 points: 12 months suspension.
- 90 points: permanent suspension.

In case of suspension, new points are added to the existing ones. A maximum of 12 points can be assigned in a single control.

When it comes to **licence holders**, the logic for suspension is the following:<sup>89</sup>

- Upon achievement of 18 - 35 points: 2 months suspension.
- From 36 to 53 points: 4 months suspension.
- From 54 to 71 points: 8 months suspension.
- From 72 to 89 points: 12 months suspension.
- 90 points: permanent suspension.

Measures are in place to **reward positive behaviour** and allow licence holders and vessels captains to cancel points.<sup>90</sup> Points are cancelled after 3 years since the last infringement: this can be anticipated by taking part in one of the following activities:

**Vessels commanders** can remove up to 4 points every 2 years if they agree to follow a training on sustainable fishing, PCP regulations and fight against IUU fishing.

**Licence holders** can remove points by:

- Agreeing to use a VMS when not normally required or voluntarily using the electronic recording and transmission of logbook data and the declaration of transshipment and landing.
- Voluntarily participating in scientific campaigns for the improvement of the selectivity of fishing gear.
- Being member of an association of producers and agreeing to a fishing plan that will result in a 10% reduction of fishing quotas for the year following the sanction.
- Conducting certified and labelled sustainable and traceable fishing.

Undertaking each of these activities can result in the removal of up to 2 points, but only after at least 3 points have been accumulated. It can only be done once in the 3 years following the violation. In any case cannot result in the complete cancellation of all points.

The possibility to remove points by being a member of a producer organisation and agreeing to a fishing plan with lower quotas is of special importance in the French context due to the **importance of POs in distributing quotas**.

The Court of Auditors remarked in 2017 that there is **lack of transparency** with regards to the way France allocates quotas, as authorities do not always know how quotas are distributed among OP

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<sup>89</sup> Comité National des Pêches CNPME (2014). *Le Permis à Points*. Available from: <http://www.cdpmem56.fr/wp-content/uploads/2014/01/Memento-permis-%C3%A0-points-2014-1.pdf>

<sup>90</sup> Ibid.

members.<sup>91</sup> The Court concluded that this issue makes it hard to reconstruct who are the real beneficiaries of fishing opportunities and **calculate the actual impact on the environment**, as "[l]ack of transparent distribution of quotas increases the risk that specific interests of certain economic operators are favoured at the expense of others".<sup>92</sup> However, French authorities have responded to the criticism by commenting that:

*"France has [...] **completed its monitoring system for producer organizations** for a better understanding of their organization, management and transparency of operation. **The OPs also send a management plan each year** indicating, for sensitive species, the procedures for using the sub-quotas allocated to them".*<sup>93</sup> [Emphasis added]

At this stage it is not possible to conclusively determine if the Court of Auditors' assessment is a fair criticism of the French system's peculiarities as far as the management of quotas are concerned. The clarifications provided by French authorities are solid and the legal system<sup>94</sup> to define quotas is highly detailed and appears to leave little room for arbitrariness.

Furthermore, the role of the POs has been praised by the Court of Auditors for requiring members to "comply with additional technical and control measures **beyond those required** by the EU regulatory framework" [emphasis added], including in crucial areas such as minimum sizes and VMS obligations for smaller vessels; such requirements have been recognised as "more tailored to the specificities of the regions concerned and therefore easier for fishermen to understand and apply".<sup>95</sup>

### 6.3.2. Infringement procedures

#### a. Brief description of the procedure

Officers in charge of controls can apply provisional measures such as the confiscation of catch and gear, but for other sanctions, be it administrative or penal, a longer process is needed.

If the violation requires an administrative process, this is the responsibility of the **Préfet de région** (Regional prefect), while the penal process is the responsibility of the "**parquet**", or **Ministère public**, an institution with functions broadly comparable with those of an attorney general.<sup>96</sup>

The Court of Auditors remarked that "[a]dministrative and criminal procedures were used, at the discretion of the inspection authority",<sup>97</sup> but authorities clarified that the decision is never left to the arbitrary decision of the inspecting authority.<sup>98</sup>

The procedure varies based on whether the official that registered the violation opts for a **criminal** or **administrative** process, or a combination of both.

- If the procedure followed is the criminal one, the official in charge will send the evidence and a "**procès verbal**" (a report) to the prosecutor and the Interregional Directorate of the Sea (Directions Interrégionales de la Mer, Interregional Directorates for the Sea), the latter of which

<sup>91</sup> European Court of Auditors (2017), p. 29.

<sup>92</sup> Ibid.

<sup>93</sup> Internal document provided by French authorities, response to 2017 ECA report.

<sup>94</sup> Art. R921-33 to R921-65 of the CRPM.

<sup>95</sup> European Court of Auditors (2017), p. 31.

<sup>96</sup> Internal document provided by French authorities, response to 2017 ECA report.

<sup>97</sup> European Court of Auditors (2017), p. 47.

<sup>98</sup> Internal document provided by French authorities, response to 2017 ECA report.



will provide advice to the former as to whether criminal proceedings should be pursued: It is then up to the public prosecutor to decide whether to begin formal criminal proceedings, suggest alternative measures or drop the case.<sup>99</sup>

- For administrative proceedings, on the other hand, **local administrative authorities** review the report from the investigators, then refer the case to the Interregional Directorate of the Sea which can impose sanctions upon authorization from the Regional Prefect.

According to ClientEarth, the administrative process creates a loophole because administrative authorities are the only ones responsible and "can decide not to begin proceedings to administer a sanction, **even when an infringement has clearly been committed**".<sup>100</sup> This allegedly leaves room for impunity of serious violations, as the French procedure **does not guarantee** that the "procès verbal" will result in any sanction, administrative or criminal.<sup>101</sup>

French authorities have however clarified that it is indeed normal that the issuing of a report does not automatically result in sanctions: the sanction procedure is only initiated if an offense is supported by sufficient evidence. Once this is the case, administrative or criminal process is initiated.<sup>102</sup> As far as this specific aspect is concerned, therefore, the procedure appears to provide **standard guarantees of due process**.

As far as the level of sanctions itself, this is defined on a case by case basis following **principles of dissuasion**. Sanctions are **set proportionately to the economic advantages** caused by the irregular behaviours.<sup>103</sup>

#### *b. Competent authorities (sanctions and controls)*

Controls and sanctions are applied based on indications and coordination from a range of central and regional authorities:

- At a central level, the definition of fisheries strategies and control policies is the responsibility of the **DPMA** (Direction des Pêches Maritimes et de l'Aquaculture, Directorate for Maritime Fisheries and Aquaculture) of the Ministry of Ecology, Sustainable Development and Energy. This department establishes the priorities for controls over a certain period,<sup>104</sup> following a bi-annual meeting of competent administrative authorities within a national steering committee for fisheries control.<sup>105</sup>
- Once the general plan has been defined, it is the responsibility of Interregional Directorates of the Sea, in Metropolitan France, and of **Regional Directorates of the Sea** (DRM, Directions de la Mer, Directorates for the Sea) in Overseas France to define the fisheries control.<sup>106</sup> Interregional Directorate of the Seas and Regional Directorates of the Sea regularly arrange coordination meetings with the regional and interregional level of the administrations participating in fisheries control.

<sup>99</sup> ClientEarth (2017), p. 7-8.

<sup>100</sup> ClientEarth (2017), p. 8.

<sup>101</sup> Ibid., p. 4.

<sup>102</sup> Internal document provided by French authorities, response to ClientEarth's report.

<sup>103</sup> Internal document provided by French authorities, response to 2017 ECA report.

<sup>104</sup> ClientEarth (2017), p. 6.

<sup>105</sup> Internal document provided by French authorities, response to ClientEarth's report.

<sup>106</sup> ClientEarth (2017), p. 6.



- The **CNSP** (Centre National de Surveillance des Pêches, National Centre for Fisheries Surveillance), which disposes of the technical expertise to guide the controls and ensure their daily management, manages the operational coordination of agencies and officers engaged in fisheries surveillance.<sup>107</sup>

The DPMA also issued a series of instructions for inspectors to follow during controls, one of which raised criticism as it stipulated that a vessel that has already been subject to control **should not be inspected again for 30 days** unless in case of "(a) flagrant infringements, (b) if there is serious evidence that an infringement has been or is being committed, or (c) if there is a need to reach the control objectives set in the European legislation."<sup>108</sup> Fisheries Control Unit officials have however clarified that this provision does not apply anymore. Instead, the CNSP now operates by simply **de-prioritizing already inspected vessels**, and there is nothing that prevents inspectors from re-checking the same vessel if violations are suspected.<sup>109</sup>

The process of control itself is the responsibility of officers from different agencies. Locally, controls **can in theory be carried out by a variety of officials**.<sup>110</sup> Among them, those in **bold** are also allowed to investigate infringements, while the others are only responsible for administrative sanctions:<sup>111 112</sup>

- **Administrators and officers of the technical and administrative corps of Maritime affairs**<sup>113</sup>.
- **Commanders and deputy commanders of the French Navy.**
- **Commanders of military aircrafts tasked with maritime surveillance.**
- Navy officers designated by the Ministries of Defence and the ministry in charge of maritime fisheries.
- **Officials assigned to services exercising control missions** in maritime affairs, under the authority / at the disposal of the Minister in charge of the sea.
- **Customs officers.**
- **Officers of competition, consumers protection and fraud prevention agencies.**
- **National gendarmerie.**
- Sworn guards and Labour Courts officers.
- CNSP and DMPA agents.
- National Office for Water and Aquatic Environment officials.
- **Environment inspectors**, in specific circumstances.
- National Office for Hunting and Wildlife officials.

<sup>107</sup> Internal document provided by French authorities, response to 2017 ECA report. The CNSP is also tasked with monitoring VMS data and coordinating sea controls and supporting with landing controls; it functions as FMC under the EU control regulation.

<sup>108</sup> ClientEarth (2017), p. 7.

<sup>109</sup> Interview with Fisheries Control Unit officials, 7 May 2020.

<sup>110</sup> Additionally, a separate list of other officers and technical experts can carry out controls over serious violations pertaining to hygiene regulations (Art. L231-2 CRPM).

<sup>111</sup> The list includes only habilitated officials as far as Metropolitan France and EU-jurisdiction French territories are concerned. Annex XXX violations are not relevant for non-EU French territories and waters.

<sup>112</sup> Art. R941-1.1 CRPM to Art. L942-1.2.6 CRPM.

<sup>113</sup> Unless otherwise noted, all regulatory articles (RXXX-X) defining the list of agents and officials in charge of controls were introduced by Decree 1608, all legislative articles (LXXX-X) were modified by Law 1087.

- **National Parks and Natural Reserves officers**, for the maritime part of these areas, and Maritime areas agents.
- FranceAgriMer officials.
- Observers designated based on Art. 42 and 73 of Regulation (EC) 1224/2009.

As far as the control of **imports, exports and operations of third country vessels' landings** in Metropolitan France and EU territories of Overseas France are concerned, the Ministry of Agriculture defines this as the responsibility of: CNSP CROSS A Etel, customs (for imports), and DMLs (Délégations à la mer et au littoral, Sea and Coastal Areas Delegations), DDTMs (Directions départementales des territoires et de la mer, Departmental Directions of Territories and Sea) and the CNSP (for ships landing in a third country port) for exports.<sup>114</sup>

In **practice** most checks are carried out by:<sup>115</sup>

- **Maritime affair administrations** for EEZ and coastal controls.
- **Customs**.
- **French navy** for the high seas.
- **National gendarmerie** (for coastal areas).
- **Maritime gendarmerie** (also for coastal areas).

Infringements registered by the **maritime gendarmerie** are reportedly more likely to result in judicial prosecution than those identified by maritime affairs administrations.<sup>116</sup>

### *c. Average length of infringement procedure*

The length of the infringement procedure varies considerably depending on whether the violation triggered an administrative or penal procedure. French authorities could not provide an exact estimate of the length of the two procedures. However, they mentioned that both can be rather long, especially the penal one.<sup>117</sup>

In any case, authorities confirmed that the process has a **maximum** limit of **one year for administrative procedures** and **three years for penal ones**. **Nevertheless, the actual length is usually much shorter**, especially for the administrative sanctions. Calculating an exact average is not possible because some sanctions require very rapid intervention and resolution, while others require much longer procedures due to administrative reasons.<sup>118</sup>

<sup>114</sup> Ministère de l'Agriculture et de l'Alimentation (2018). *La lutte contre la pêche illicite, non déclarée et non réglementée (INN)*. 15 March 2018. Available from: <https://agriculture.gouv.fr/la-lutte-contre-la-peche-illicite-non-declaree-et-non-reglementee-inn>

<sup>115</sup> ClientEarth (2017), p. 6.

<sup>116</sup> Ibid., p. 24.

<sup>117</sup> Interview with Fisheries Control Unit officials, 7 May 2020.

<sup>118</sup> Ibid.

### 6.3.3. Controls implemented and sanctions imposed (2014-2019)

#### a. Types of controls implemented (sea, port, fisheries, region, etc.)

Data about the split of controls for 2014-2017 indicates that controls consistently concentrate on the supply chain rather than at sea or landing points (see **Table 14** and **15** below). Controls at sea are however reported to be **far more effective** in identifying infringements.<sup>119</sup> **As a proportion** of the total of controls, nevertheless, sea and air controls have increased since 2014 (from 23 to 29%):<sup>120</sup>

**Table 14: Number of controls per type (2014-2017) (France)**

Year/controls type	2014	2015	2016	2017	Total
Sea / air controls	4,067	2,981	3,089	2,705	<b>12,842</b>
Controls at landing points	3,947	2,370	2,614	2,380	<b>11,311</b>
Controls on supply chain and vehicles	9,944	4,244	5,282	4,402	<b>23,872</b>
<b>Total</b>	<b>17,958</b>	<b>9,595</b>	<b>10,985</b>	<b>9,487</b>	

Source: Internal document provided by French authorities, response to the 2017 ClientEarth Report.

**Table 15: Percentage of controls per type (2014-2017) (France)**

Year/controls type	2014	2015	2016	2017
Sea / air controls	23%	31%	28%	29%
Controls at landing points	22%	25%	24%	25%
Controls on supply chain and vehicles	55%	44%	48%	46%

Source: Internal document provided by French authorities, response to the 2017 ClientEarth Report.

The trends in controls show a **drastic decrease of all types**, particularly between 2014 and 2015. This was followed by a minor re-bounce in 2015-2016, and a further decline in 2016-2017. Supply chain controls have decreased considerably. In this sense, French authorities have noted that "increase in the number of inspections cannot be considered as the only level of quality or efficiency of the control". While that is certainly the case, it is not clear how quality of controls can be maintained in light of such a significant overall decrease.

<sup>119</sup> ClientEarth (2017), p. 16 and 23.

<sup>120</sup> Data from internal document provided by French authorities, response to the 2017 ClientEarth Report.

**Table 16: Trends in types of controls (2014-2017) (France)**

Year	2014-2015 change	2015-2016 change	2016-2017 change	2014-2017 change
Sea / air controls	-26.70%	4%	-12%	-33%
Controls at landing points	-39.95%	10%	-9%	-40%
Controls on supply chain and vehicles	-57.32%	24%	-17%	-56%
<b>Total</b>	<b>-46.57%</b>	<b>14%</b>	<b>-14%</b>	<b>-47%</b>

Source: Author's elaboration of data from internal document provided by French authorities, response to the 2017 ClientEarth Report

There is considerable discrepancy in reported data, possibly because of the need to collect information from various regional divisions, and the complexity of working on separate regimes for Metropolitan France and Overseas France. When consulted, the Fisheries Control Unit officials provided the following data for Metropolitan France controls for 2017 and 2018, on the basis of their internal database.<sup>121</sup>

**Table 17: Number of controls per type (2017-2018) (Metropolitan France)**

Type of control	2017	2018
Controls at sea	4.704	2.614
Controls at landing points	4.232	2.790
Controls in supply chain	7.300	4.175
Controls on transports	995	590
<b>Total</b>	<b>17,231</b>	<b>10,169</b>

Source: Feedback provided by the Fisheries Control Unit<sup>122</sup>

The figure for 2017 differs by 7,744 additional controls compared to the figures provided in the response to the ClientEarth report. These figures still appear to confirm a decreasing trend. French authorities have clarified that the decrease in the number of controls in 2018 is mostly caused by an issue with reporting, rather than an actual decline, due to the switching to a new system that encountered issues during the roll-out phase. While it is a positive sign that the actual decline is not as significant as indicated in the figures, the **lack of available data** seems problematic.

**Additional discrepancy** emerges when comparing the figures provided by authorities with the CNSP's ones, due to inconsistencies between databases:

Following an Order from 3 November 2011, France has established the RNIP, (*Répertoire National des Infractions de la pêche, National Register of Fisheries Infractions*). This has been made available to all relevant services from 2017. It covers administrative and penal sanctions including points.

<sup>121</sup> Data provided during interview with Fisheries Control Unit officials, 7 May 2020.

<sup>122</sup> Data provided during interview with Fisheries Control Unit officials, 7 May 2020

Beside the RNIP, however, France also has a database called "**SATI**" that includes not only the CNSP data but also those reported by other authorities.<sup>123</sup> This database allows to consolidate information in one place.

For comparison, the figures provided by the CNSP, reported below, indicate the following numbers of controls and decreasing trends:<sup>124</sup>

**Table 18: Number of controls according to CNSP (2014-2016) (France)**

Number of controls	2014	2015	2016
Total number of controls	5,252	4,775	4,531
Decrease from previous year	-12.7%	-13.5%	-5.1%

Source: ClientEarth's elaboration of CNSP data<sup>125</sup>

**Exact and detailed data** – even anonymised - **is not publicly available**, and when it is, questions remain as to which data set can be considered more reliable.

French authorities point out that the assessment of control operations cannot be based only on rough figures.<sup>126</sup> However, the lack of reliable and easily-accessible data on controls makes public scrutiny challenging. This issue has been flagged also by environmental organisations representatives,<sup>127</sup> although organisations based in other Member States consider France to perform relatively better, transparency-wise.<sup>128</sup>

Responding to the Court of Auditors 2017 report on this point, French authorities noted that France has put in place a system to **correct previous issues in fisheries controls**.<sup>129</sup> They also mentioned that boats under 10m are obliged to report monthly about their catch, and that the rate of reporting for these small vessels has tripled since 2014 (although details about the absolute numbers were not provided).<sup>130</sup>

#### *b. Coverage (%) as a total of fishing activity (catch volume, fishing trips, etc.)*

France has reported difficulties in providing consolidated and correct information about the number of controls and coverage, as authorities have **limited access to readily-available data** that could allow to create a complete picture of coverage controls.<sup>131</sup>

As competent authorities' data differs so much depending on who is reporting, with the DPMA at times reporting over 3.5 times more controls than the CNSP,<sup>132</sup> accurately estimating the coverage is impossible. However, French authorities confirmed that **controls are conducted based on precise definitions of the target** based on the assessment of which vessels are more at risk of causing

<sup>123</sup> Internal document provided by French authorities, response to ClientEarth's report.

<sup>124</sup> Data from CNSP reports based on ClientEarth elaborations. ClientEarth (2017), p. 17.

<sup>125</sup> ClientEarth (2017), p. 17.

<sup>126</sup> Internal document provided by French authorities, response to ClientEarth's report.

<sup>127</sup> Interview with environmental protection organisation IUU fishing officer, 3 April 2020.

<sup>128</sup> Interview with national environmental protection NGO from Italy, 23 April 2020.

<sup>129</sup> Internal document provided by French authorities, response to 2017 ECA report.

<sup>130</sup> Ibid.

<sup>131</sup> Interview with Fisheries Control Unit officials, 7 May 2020.

<sup>132</sup> ClientEarth (2017), p. 17.

infringements and which control priorities were defined. In light of these, the **2020 objectives for controls at sea** have been set higher than in 2019.<sup>133</sup>

As of 2017, estimates on the number of controls indicate that around **1/3 of vessels** are inspected in Metropolitan France.<sup>134</sup> Stakeholders consulted alleged that **infringements are poorly monitored**, few sanctions are applied and implementation is incomplete. Even though the size of the fleet is large, penalties are low, controls are not thorough and prison sentences are not comparable with those of other countries.<sup>135</sup> Whether intentional or resulting from administrative hurdles, the limited control coverage appears to reduce pressure on the fishing sector.

Related to this, the feedback from other stakeholders also alleged **reticence of local authorities in securing the necessary control coverage**. While small scale fisheries are checked more frequently, **larger companies are reported to enjoy impunity**, thanks to alleged political connections at a local level. Stakeholder stated that agents in charge of controls might receive intimidations from industry stakeholders and fear carrying out controls. National authorities therefore sometimes have to send EU or foreign inspectors instead.<sup>136</sup> This confirms similar allegation advanced in 2012 by the French Court of Auditors.<sup>137</sup>

Besides, in 2017, Court of Auditors noted that there is **additional discrepancy** between reported catches and amounts of fisheries products sold. French authorities have replied that this is caused in part by the fact that the direct sale of products is allowed in France, and that this is not subject to a sales note as long as the products are sold to individuals, and within a 30 kg limit.<sup>138</sup> While this partially explains the discrepancy, it also reduces the scope of control coverage.

### *c. Identified infringements and sanctions imposed by type of infringement (including points)*

Figures about the infringements identified by French authorities tend to differ depending on the source, and information is often lacking as to whether these procedures eventually resulted in the application of sanctions. There are discrepancies between CNSP and DPMA data, and between them and data provided by the Ministry of Justice, resulting in the impossibility to determine a reliable picture of the current situation.<sup>139</sup> French authorities do however seem to have a preference for **administrative sanctions**, and tend to apply the minimum sanctioning regime.<sup>140</sup>

According a stakeholder consulted, punishment for serious IUU fishing violations often has to be done indirectly, via tax fraud regulations. The sanctions for fishing illegally is not used properly, and when it is, the legal basis is not very strong. The only solution is to use other regulations as workarounds, which is costly and time-consuming.<sup>141</sup>

<sup>133</sup> Interview with Fisheries Control Unit officials, 7 May 2020.

<sup>134</sup> Ibid., p. 16.

<sup>135</sup> Interview with environmental protection organisation IUU fishing officer, 3 April 2020.

<sup>136</sup> Interview with environmental protection organisation IUU fishing officer, 3 April 2020.

<sup>137</sup> Cour de comptes (2012). French Court of Auditors (2012), *Référé No 64384 12 juillet 2012*. Available from: [https://www.smidap.fr/images/pdf/Textes\\_juridiques/Reglementation\\_nationale/Contrôle/Rfr%20de%20la%20Cour%20des%20comptes%20du%2012%2007%202012%20sur%20le%20contrôle%20des%20pêches%20maritimes.pdf](https://www.smidap.fr/images/pdf/Textes_juridiques/Reglementation_nationale/Contrôle/Rfr%20de%20la%20Cour%20des%20comptes%20du%2012%2007%202012%20sur%20le%20contrôle%20des%20pêches%20maritimes.pdf)

<sup>138</sup> Internal document provided by French authorities, response to 2017 ECA report.

<sup>139</sup> ClientEarth (2017), p. 17.

<sup>140</sup> 1-5 the value of products or EUR 1.500 (See logic detailed under section 1.1.3).

<sup>141</sup> Interview with environmental protection organisation IUU fishing officer, 3 April 2020.

*d. Sanctions imposed and points attributed*

French authorities provided data related to the 2017 and 2018 infringements. The figures do not fully reflect the reality of sanctions since they are based on the national register. The entry time varies due to technical reasons. It is not possible to extract all the sanctions imposed.<sup>142</sup>

The data includes only **administrative procedures**, since the services involved have little feedback from the prosecution for the criminal ones. It is not possible to know the length of the procedures, whether criminal or administrative. This information is not entered in the national register of fishing offenses.<sup>143</sup>

With regards to **criminal procedures**, authorities pointed out that around 166 cases were transmitted to the prosecution for criminal proceedings in 2018. Prosecutions generally result in a "**rappel à la loi**",<sup>144</sup> a **warning**, a "**composition pénale**"<sup>145</sup> or the payment of a fee to avoid trial.<sup>146</sup> Often the services do not have information about the final sanction imposed, or whether the file is closed.

Additional data has been provided about the activity of the Interregional Directorates of the Sea involved in controls in Metropolitan France. **Each Interregional Directorate of the Sea follows different criteria and format** when reporting about controls and violations, which makes data elaboration difficult both for authorities and CSOs or other stakeholders. In particular, infringements are often registered using categories that **do not coincide** with the standard serious infringements, and often do not coincide between Interregional Directorates of the Sea, either. There can be year-on-year discrepancies in the databases of the same Interregional Directorate of the Sea. Data often presents **inconsistencies** that make quantitative analyses difficult.

**The Interregional Directorate of the Sea Eastern Channel & North Sea (DIRM MEMN)** appears to have the most consolidated information, covering violations and sanctions for **2015-2019**. They are based on the date of **administrative sanction**, although inconsistencies and internal contradictions still exist in the way sanctions are recorded. Unfortunately, in case of multiple violation it is not always clear what sanction was applied for what violation.

In most cases, multiple violations are grouped under one category, resulting in over 550 unique entries made of combinations of single violations. Thus, only an indicative list of some of the **more frequently recurring violations** can be provided. More than one violation can be registered in the same control.<sup>147</sup>

<sup>142</sup> Email communication with French Fisheries Service officials, 26 May 2020.

<sup>143</sup> Ibid.

<sup>144</sup> In the French system, a "rappel à la loi" allows prosecutors to simply remind the accused of obligations under the law (As per Art. 41-1 of the Code of Criminal Procedure). With a "rappel à la loi", the alleged violator can avoid legal proceedings and receive only what amounts to a reprimand or a reminder.

<sup>145</sup> This is a procedure in which the accused recognises the fault and ends the litigation.

<sup>146</sup> Email communication with French Fisheries Service officials, 26 May 2020.

<sup>147</sup> All tables in this section are the team's elaboration of raw data provided by French authorities. Email communication with French authorities, 26-28 May 2020.

**Table 19: Number of infringements identified and sanctions applied (2017) (France)**

Type of Infringement	Number of infringements	Number of cases initiated	Cases of sanctions applied	Type of sanction applied	Cases where points were assigned	Cases of suspension of fishing licence
Not fulfilling its obligations to record and report catch or catch-related data, including data to be transmitted by satellite [...]	677 (no split available)	91	91	Fines: EUR 150 - 10,300 Points assigned: 3 - 8 points Suspension of licence: up to 7 days Seizure of catch. "Rappel à la loi"	11	2
Use of prohibited or non-compliant gear according to EU legislation		24	24	Fines: EUR 300 to EUR 6,000 Points assigned: up to 8 points Suspension of licence: up to 14 days "Rappel à la loi"	8	1
Falsification or concealing its markings, identity or registration.		3	3	N/A	0	0
Concealing, tampering with or disposal of evidence		0	0	N/A	0	0
Taking on board, transshipping or landing undersized fish in contravention of the legislation		13	13	Fines: EUR 200 - 1,800 Points assigned: up to 12 points Suspension of licence: 2 - 40 days Confiscation of catch	1	2
Carrying out fishing activities in the area of a regional fisheries management organisation [...]		32	32	Fines: EUR 300 - 1,800 Points assigned: up to 12 points Suspensions of licence: up to 40 days Confiscation of catch	11	3
Fishing without a valid licence, authorisation or permit issued by the flag State [...]		12	12	Fines: EUR 150 - 3,000 Points assigned: up to 10 points Confiscation of catch. "Rappel à la loi"	0	2



Type of Infraction	Number of infringements	Number of cases initiated	Cases of sanctions applied	Type of sanction applied	Cases where points were assigned	Cases of suspension of fishing licence
Fishing in a closed area or during a closed season, without or after attainment of a quota [...]		56	56	Fines: EUR 600 - 6,144 Up to 12 points Suspension of licences: 1 - 40 days Confiscation of catch. "Rappel à la loi"	3	19
Directed fishing for a stock which is subject to a moratorium [...]		6	6	Fines: up to EUR 1,800		
Obstruction of work of officials / observers		2	2	Points assigned: up to 7 points Suspension of licence: up to 14 days	1	1
Transshipping to or participating in joint fishing operations [...]		0	0	N/A	0	0
Use of a fishing vessel with no nationality [...]		0	0	N/A	0	0
Prohibited sale or acquisition of species whose weight, size or quantity is prohibited		38	38	Fines: EUR 200 - 10.300 Suspensions of licence for 1 day "Rappel à la loi"	0	1
Illegal landing [...]		5	5	Fines: EUR 200 - 1,000	0	0
Storage of fish [...] size prohibited		1	1	Fines: up to EUR 400		0

Source: Information provided by the Fisheries Control Unit, Directorate for Sea Fisheries and Aquaculture, Ministry of Agriculture and Food of France<sup>148</sup>

<sup>148</sup> Email communication with French Fisheries Service officials, 26 May 2020.

**Table 20. Number of infringements identified and sanctions (2018) (France)**

Type of Infringement	Number of infringements	Number of cases initiated	Cases of sanctions applied	Type of sanction applied	Cases where points were assigned	Cases of suspension fishing licence
Not fulfilling its obligations to record and report catch or catch-related data	1,065 (no split available)	64	64	Fines: EUR 30 - 3,000 Points assigned: 3 to 7 Suspensions of licence "Rappel à la loi"	10	2
Use of prohibited or non-compliant gear according to EU legislation		10	10	Fines: EUR 200 - 3,000 Points assigned: up to 4 points Suspensions of licence: 7 days, Confiscation of gear	2	1
Falsification or concealing its markings, identity or registration.		0	0	N/A	0	0
Concealing, tampering with or disposal of evidence relating to an investigation		0	0	N/A	0	0
Taking on board, transshipping or landing undersized fish in contravention of the legislation		18	18	Fines: EUR 300 - 1,500 Points assigned: up to 7 points Suspensions of licence: 7 days	1	1
Carrying out fishing activities in contravention of the conservation and management measures of that organisation		5	5	Fines: EUR 50 - EUR 2,000 Points assigned: up to 6 points Suspensions of licence: up to 3 months	1	1
Fishing without a valid licence, authorisation or permit		7	7	Fines: EUR 300 - 3,000 Points assigned: 7 - 10	5	

Type of Infraction	Number of infringements	Number of cases initiated	Cases of sanctions applied	Type of sanction applied	Cases where points were assigned	Cases of suspension fishing licence
Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth		16	16	Fines: EUR 1,000 - 7,400 Points assigned: up to 2 points Suspension licence: 7 days - 1 year	1	7
Directed fishing for a stock subject to a moratorium or prohibited		2	2	Fines: up to EUR 1,500		
Obstruction of work of officials / observers		2	2	Fines: up to EUR 600 Points assigned: up to 7 points	1	
Transshipping to or participating in joint fishing operations [...] fishing vessels engaged in IUU fishing		0	0	N/A	0	0
Use of a fishing vessel with no nationality		0	0	N/A	0	0
Prohibited sale or acquisition of species whose weight, size or quantity is prohibited		3	3	Fines: up to EUR 2,100	0	0
Illegal landing (without prior notification, without sorting the catches, or without weighing before sale)		14	14	Fines: EUR 50 - 3,000 Points assigned: up to 3 points Suspensions of licence: 7 days - 2 weeks	1	2
Transfer of catches without authorization		1	1	N/A	0	0

Source: Information provided by the Fisheries Control Unit, Directorate for Sea Fisheries and Aquaculture, Ministry of Agriculture and Food of France<sup>149</sup>

<sup>149</sup> Email communication with French Fisheries Service officials, 26 May 2020.

**Table 21: Common types of infringements, Eastern Channel & North Sea region (2015-2019) (France)**

Type of infringement	2015	2016	2017	2018	2019
Weight, size or quantity limitations violation	77	78	78	123	147
Forbidden area violation	34	59	42	94	75
Licence violations	13	9	11	17	21
Electronic registration violation	14	16	3	15	16
Landing obligation violations	31	6	7	8	13
Overexploitation of maritime resources	5	1	0	0	0
Logbook violations	10	3	0	0	0
Aquaculture violation	47	28	32	92	90
Non-compliant gear or engine violation	42	61	43	19	40
Sales violation	12	13	5	17	26
Quota violation	4	4	2	1	2
Fishing in forbidden period	10	25	13	15	33
Declaration violation	42	54	3	25	66

Source: Author's elaboration of shared by Fisheries Control Unit officials

The following tables provide information about the fines imposed by authorities of the Eastern Channel and North Sea region, the suspensions of licence imposed, and the split of violations by type of control.

**Table 22: Economic sanctions, Eastern Channel & North Sea region (2015-2019) (France)**

Amount of the fine	2015	2016	2017	2018	2019
No fine imposed	111	43	44	44	78
Less than EUR 100	14	19	27	60	36
EUR 100 to EUR 299	27	56	49	92	82
EUR 300 to EUR 499	18	26	20	18	37
EUR 500 to EUR 999	22	55	49	41	33
EUR 1,000 to 2.499	25	36	50	78	46
EUR 2.500 to 5,000	4	9	16	14	15
EUR 5,000 to 9.999	3	5	10	8	10
EUR 10,000 to 15,000	1	2	2	9	0
Over EUR 15,000	0	0	2	4	6
Not clarified	4	0	8	4	6
<b>Total</b>	<b>229</b>	<b>251</b>	<b>277</b>	<b>372</b>	<b>349</b>

Source: Author's elaboration of data shared by Fisheries Control Unit officials

**Table 23: Licences suspensions, Eastern Channel & North Sea region (2015-2019) (France)**

<b>Suspension duration</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
No suspension	192	196	240	326	309
Not clarified	7	10	0	3	0
1 to 6 days	20	13	6	0	13
7 to 15 days	9	27	31	28	22
15 days to 1 month	0	4	0	14	5
1 month or more	1	1	0	1	0
<b>Total</b>	<b>229</b>	<b>251</b>	<b>277</b>	<b>372</b>	<b>349</b>

Source: Author's elaboration of data shared by Fisheries Control Unit officials

**Table 24: Infringements per type of control, Eastern Channel & North Sea region (2015-2019) (France)**

<b>Type of control</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
On land	68	113	108	186	173
Cross-check	47	41	72	96	50
At sea	37	46	39	33	46
At landing point	25	43	56	51	45
In harbour	8	0	0	3	0
Aerial control	1	2	2	2	13
At sale point	1	0	0	0	13
Not specified	32	2	0	0	0
Other type of control	10	4	0	1	9
<b>Total</b>	<b>229</b>	<b>251</b>	<b>277</b>	<b>372</b>	<b>349</b>

Source: Author's elaboration of data shared by Fisheries Control Unit officials

Data indicate that controls are **overwhelmingly conducted on land**, rather than at sea. Furthermore, **fines are often not imposed or tend to be low** (EUR 0 – 499). Fines of EUR 500 or more are given only in a minority of cases: 25.76% of times in 2015; 33.23% in 2019; 42.5% in 2016 and 2018 and 49% 2017. **Suspensions of licence tend to be avoided**. When imposed, they are **usually assigned for up to 15 days**. Only in 1.76% of cases licences have been suspended for more than 15 days. The following table provides an overview of the number of sanctions that resulted in allocating points in the Eastern Channel & North Sea region.

**Table 25: Points assigned per number of serious infringements, Eastern Channel & North Sea region (2015-19) (France)**

Number of points assigned	2016		2017		2018		2019	
	Owner	VC <sup>150</sup>	Owner	VC	Owner	VC	Owner	VC
0 points or N/A	232	232	247	249	345	345	332	329
3 points	0	0	0	0	0	0	2	1
4 points	0	0	3	3	0	0	0	0
6 points	17	18	22	19	21	21	12	17
7 points	1	1	5	6	4	5	3	2
Not clarified	1	0	0	0	2	1	0	0
<b>Number of violations where points were assigned</b>	<b>18</b>	<b>19</b>	<b>30</b>	<b>28</b>	<b>25</b>	<b>26</b>	<b>17</b>	<b>19</b>
<b>Total number of points</b>	<b>109</b>	<b>115</b>	<b>179</b>	<b>168</b>	<b>154</b>	<b>161</b>	<b>99</b>	<b>119</b>

Source: Author's elaboration of data shared by Fisheries Control Unit officials

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<sup>150</sup> Vessel commander

The **Interregional Directorate of the Sea South Atlantic (DIRM SA)** reported data for 2016, indicating a total of 785 separate procedures. Just as with the Mediterranean Sea region, there are issues resulting from the way multiple violations have been recorded. Only an indicative list of some of the **more frequent violations** can be provided.

**Table 26: Common types of infringements, South Atlantic region (2016) (France)**

Common violation	Number of occurrences
Declaration obligations violation	70
Fishing of undersized fish or sale of such catch	167
Non-compliant gear violation	105
Lack of authorization or other license violations	37
Quantity or weight restriction violation	127
Electronic log requirements violation	12
Fishing in forbidden area	33

Source: Author's elaboration of data shared by Fisheries Control Unit officials

It is however possible to draw conclusions on other criteria, such as the **type of control**, the **type of sanctions imposed**, and some information about the **number of points**.

**Table 27: Infringements per type of control, South Atlantic region (2016) (France)**

Type of control	Total
On land	368
At sea	239
Cross-check	94
At landing point	54
Not specified	24
At auction	6
<b>Total</b>	<b>785</b>

Source: Author's elaboration of data shared by Fisheries Control Unit officials

**Table 28: Sanctions, South Atlantic region (2016) (France)**

<b>Total number of infringements</b>		<b>785</b>
<b>Licence suspension</b>	<b>Duration of suspensions</b>	<b>No. of cases</b>
	Infringement did not result in suspension	781
	Infringements that resulted in suspension	4
	Yes (3 weeks)	1
	Yes (2 months)	2
	Yes (not specified)	1
<b>Fines inflicted</b>	<b>Amount (range)</b>	<b>No. of fines</b>
	No fine	42
	Less than EUR 100	2
	EUR 100 - EUR 199	127
	EUR 200 - EUR 499	208
	EUR 500 - EUR 999	294
	EUR 1,000 - EUR 2,999	96
	EUR 3,000 - EUR 4,999	6
	EUR 5,000 - EUR 15,000	6
	Fine not disclosed	4
<b>Confiscation measures</b>	<b>Type of confiscation</b>	<b>No. of occurrences</b>
	No confiscation	550
	Unspecified confiscation	133
	Confiscation and refunding of damage	1
	Confiscation of catch and gear	9
	Confiscation of catch or products	30
	Confiscation of gear	61
	Restoration of damaged area; penal prosecution	1

Source: Author's elaboration of data shared by Fisheries Control Unit officials

**Table 29: Points per number of serious infringements, South Atlantic region (2016) (France)**

<b>Allocation of points</b>	<b>Of which:</b>		<b>Total no. of infringements</b>
	<b>Infringements were points assigned to ship owner</b>	<b>Infringements where points were assigned to vessel commander</b>	
3 points	0	25	25
4 points	1	7	8
5 points	1	2	3
6 points	0	2	2
7 points	0	3	3
<b>Total No. of infringements</b>	<b>2</b>	<b>39</b>	<b>41</b>
<b>Total No. of points assigned</b>	<b>9</b>	<b>146</b>	<b>155</b>

Source: Author's elaboration of data shared by Fisheries Control Unit officials



From the data provided for 2016, it seems clear that **few violations in the South Atlantic region resulted in significant sanctions**. Almost no violations caused suspensions of licences. The overwhelming majority of violations resulted in no fine, or in a fine of less than EUR 1,000. Only in less than 1/7 of violations did the fine amount to more than EUR 1,000. Only in 1.52% of cases fines were above EUR 3,000.

The following tables illustrate the most common violations in the **Interregional Directorate of the Mediterranean Sea (DIRM MED)** in 2014-2018, and the sanctions applied.

**Table 30: Infringements identified, Mediterranean Sea region (2014-2017) (France)**

Type of infringement identified	No. of infringements
Declaration irregularity	3
Engine violation	11
Fishing in a ZNP or other forbidden area	16
Gear violation	9
Illegal fishing, detention or other activity of <i>Thunnus thynnus</i>	13
Illegal sale	1
Labelling violation	1
Landing violation	1
License violation or unauthorised professional fishing	8
Non-compliance with trawler schedules	7
Over-quota or other allowed quantity violation	6
Refusal to submit to controls	2
Trawling in forbidden area	1
Undersize fishing	7
Other infringements	11
<b>Total</b>	<b>97</b>

Source: Author's elaboration of data shared by Fisheries Control Unit officials

**Table 31: Sanctions, Mediterranean Sea region (2014-2017) (France)**

License suspensions	Duration of suspensions	No. of suspensions
	No suspension	86
	7 days	1
	15 days	2
	21 days	3
	45 days	2
	6 months	1
	1 year	1
	2 years	1
Fines imposed	Amount (range)	No. of fines
	No fine inflicted	20
	Less than EUR 100	1
	EUR 100 to EUR 499	33
	EUR 500 to EUR 999	22
	EUR 1,000 to EUR 2,999	17
	EUR 3,000 to EUR 5,000	4

Source: Author's elaboration of data shared by Fisheries Control Unit officials

**Rarely** did the violation result in a **suspension of licence**. In terms of fines, the vast majority of violations resulted **either in no fines or fines of less than EUR 500**.

Another set of data provided by French authorities covers infringements in the Mediterranean Sea region in 2016-2019; the databases show partial duplications and format inconsistencies, including missing dates of infringement. There are also differences with the figures presented in the report of the Mediterranean Sea region (for example, the 2018 report mentions the allocation of 24 points following controls, which appears to be incorrect).<sup>151</sup> However, looking at the raw data allows to get an idea of the amount of **points assigned in the Mediterranean Sea region for serious infringements**. For 5 violations, the RNIP information is not up-to-date. It is not clear whether authorities can keep track of points accumulated.

<sup>151</sup> Direction interrégionale de la Mer Méditerranée (2018). *Rapport d'activité*. Marseille, 2018. Available from: [http://www.dirm.mediterranee.developpement-durable.gouv.fr/IMG/pdf/ra\\_2018\\_a4.pdf](http://www.dirm.mediterranee.developpement-durable.gouv.fr/IMG/pdf/ra_2018_a4.pdf), p.3

**Table 32: Points per type and number of serious infringements, Mediterranean Sea region (2016-2020) (France)**

Number of infringements that resulted in the allocation of points	Of which:				
	Infringements where points were assigned to ship owner		Infringements where points were assigned to vessel commander		Total no. of infringements
Infringements and points assigned	Trawler	Other vessel	Trawler	Other vessel	
Fishing in a ZNP or other forbidden area	1	1	2	1	5
3 points			2		2
6 points	1	1		1	3
Gear violation	4	2	1		7
4 points	4	2	1		7
Landing violation		1		3	4
5 points		1		3	4
Refusal to submit to controls	3		5		8
7 points	3		5		8
Not specified		1	2		3
4 points			1		1
5 points		1			1
7 points			1		1
Total number of infringements resulting in points	8	5	10	4	27

Source: Author's elaboration of data shared by Fisheries Control Unit officials

**Table 33: Points per year and number of serious infringements, Mediterranean Sea region (2016-19) (France)**

Allocation of points per year	2016	2017	2018	2019	Total
3 points			1	1	2
4 points		3	2	3	8
5 points		4	1		5
6 points	1	1		1	3
7 points	3	1	1	4	9
<b>Total of infringements resulting in points</b>	<b>4</b>	<b>9</b>	<b>5</b>	<b>9</b>	<b>27</b>
<b>Total number of points assigned</b>	<b>27</b>	<b>45</b>	<b>23</b>	<b>49</b>	<b>144</b>

Source: Author's elaboration of data shared by Fisheries Control Unit officials

The **Interregional Directorate of the Northern Atlantic-&Western Channel (DIRM NAMO)** provides data that allow only to track the **aggregated number of administrative sanctions, points, fines and licence suspensions**:

**Table 34: Sanctions indicators, Northern Atlantic-&Western Channel region (2015-2018) (France)**

Sanctions activity	2015	2016	2017	2018
Number of administrative decisions	42	55	76	83
Fines inflicted (in total)	EUR 6,700	EUR 20,250	EUR 31,250	EUR 49,650
Fines recovered	N/A	N/A	15,700 EUR	27,000 EUR
Suspensions of license	457 days	563 days	1,744 days	1,644 days
Points assigned	N/A	N/A	71	111

Source: Author's elaboration of data shared by Fisheries Control Unit officials

Sanctions imposed appear to be **relatively low**: ClientEarth's 2017 study confirmed that fines are usually within EUR 1,000.<sup>152</sup> **Suspension of licences** following accumulation of points are infrequent.

<sup>152</sup> ClientEarth (2017), p. 4.

Suspensions are mostly applied as standard administrative sanctions, regardless of points accumulated, upon decision of the regional prefect.<sup>153</sup>

A stakeholder consulted did report **not knowing the point system well**, and overwhelmingly focused on controls and fines imposed by British authorities as a reason for concern.<sup>154</sup> This suggests a **low impact of sanctions from the French side**. Different stakeholder reported that French sanctions are so low that many industry operators simply **consider them as a fixed cost** to be taken into account during operations. The situation worsens by the lack of effective systems to target the **final owner** of a fishing company, who often controls several companies and is not directly affected by the sanctions.<sup>155</sup>

Fishermen have also protested in recent years against EU regulation about **non-compliant gear**, particularly about mesh size.<sup>156</sup> This is also one of the issues flagged by some stakeholders as a reason for perceived disproportionate sanctions.<sup>157</sup> This also supports the idea that the main deterrents against IUU fishing derives from external sources rather than from French authorities.

Penal sanctions usually result in **out-of-court settlements** (almost 90% of cases in 2014) while fines imposed by courts amounted to an average of EUR 1,675 for 2014 (suggesting the out-of-court settlements normally result in even lower fines). Foreign vessels reportedly receive a more severe treatment.<sup>158</sup> This may lead to the perception that France is rather protective of its industry. The **deterrence effect** of sanctions, administrative or penal, appears to be **overall minimal**.

#### *e. Number of sanctions related to the number of controls*

Because of the discrepancies in the information provided by CNSP and DPMA and the lack of correspondence with the number of criminal sanctions reported by the Ministry of Justice, it is not possible to firmly establish how many sanctions are applied over the total of controls carried out.

Until 2015 the figures provided by CNSP and DPMA differed. They have aligned since, but they show discrepancies with the figures that had been provided in 2014.<sup>159</sup> The figures from the Ministry of Justice differ vastly from those of the CNSP and DPMA, to such an extent that this "raises the **issue of the reliability of the data** used by the French competent authorities to establish their performance indicators regarding their fisheries control policy. In the end, **it questions the effectiveness of the information system** used by officials to report on their inspection activities and follow-up actions".<sup>160</sup> [Emphasis added]

Furthermore, existing figures, usually focus on "procès verbal" opened against suspected violations, but **there is no means to establish** how many resulted in an actual sanction.

<sup>153</sup> Interview with Fisheries Control Unit officials, 7 May 2020.

<sup>154</sup> Interview with medium-large industry stakeholder, Brittany region, 17 April 2020.

<sup>155</sup> Interview with environmental protection organisation IUU fishing officer, 3 April 2020.

<sup>156</sup> Dubault, P. (2015). "Un pêcheur du Grau-du-Roi condamné pour refus des contrôles". *Franceinfo.fr*, 21 April 2015, updated 2 January 2017. Available from: <https://france3-regions.francetvinfo.fr/occitanie/pecheur-du-grau-du-roi-condamne-refus-contrôles-709185.html>

<sup>157</sup> Interview with medium-large industry stakeholder, Brittany region, 17 April 2020.

<sup>158</sup> ClientEarth (2017), p. 4.

<sup>159</sup> ClientEarth (2017), p. 17.

<sup>160</sup> Ibid., p. 18.

## 6.4. Germany

### 6.4.1. Legal framework

#### a. Overview

The Sea Fisheries Act (SeeFischG)<sup>161</sup> stipulates in Article 1 that it serves the implementation of the regulation of sea fishing and the implementation of the provisions of the Treaty on the Functioning of the European Union and the legal acts of the European Community or the European Union regulating the exercise of sea fishing. This includes Council Regulation (EC) No 1224/2009.

The legal basis for the penalty point system for serious violations is stipulated in Article 13 of the Sea Fisheries Act and was introduced in 2012.

Formally, the CFP and control regulations seem to be well implemented in the national legal framework.

#### b. Laws and date of entry into force

Major amendments concerning the control regulations and infringement and sanctions entered into force as of 30 December 2011. The table below provides an overview of major amendments relevant to infringements and sanctions.

**Table 35: Major amendments to implement CFP regulations (Germany)**

Section of Sea Fisheries Act	30 December 2011
Title	Changed to: Law regulating sea fishing and implementing European Union fisheries law
Article 1	Changed: referring in particular to: Council Regulation (EC) No 1224/2009
Article 13	New Article: Point system for serious violations
Article 14	New Article: 'National Infringement Register'
Article 18	Fine regulations
Article 19	Criminal provisions

Source: Author based on desk research

Since 2012, the federal states have reported violations of the provisions of the CFP to the National Infringement Register set up by the Federal Institute for Food and Agriculture in accordance with the

<sup>161</sup> Gesetz zur Regelung der Seefischerei und zur Durchführung des Fischereirechts der Europäischen Union (Seefischereigesetz – SeeFischG, date of issue: 12 July 1984 available at: <http://www.gesetze-im-internet.de/seefischg/BJNR008760984.html>

Sea Fisheries Act.<sup>162</sup> Besides, the Sea Fisheries Act regulates the application of the point system for serious violations in accordance with Annex XXX of Regulation (EU) No. 404/2011.

*c. Maximum and minimum penalties laid down in the law*

CFP rules have been implemented into national provisions on administrative fines. Article 18 of the Sea Fisheries Act lists infringements and stipulates in section 4 the maximum amount of sanctions for infringements,<sup>163</sup> amounting to EUR 50,000 - EUR 100,000. Those infringements as described in the Act may result in fines up to EUR 100,000, and up to EUR 50,000 for remaining infringements as listed in Article 18. The Sea Fisheries Ordinance,<sup>164</sup> stipulates the evaluation of the crimes and administrative offenses, within the framework of the point system.

Article 19 of the Sea Fisheries Act stipulates the conditions for a sentence of imprisonment amounting to maximum one year.

An internal document provided by the responsible authority indicates the minimum sanctions for serious infringements. Within the framework of sanctions for violations, the general sentence principles, such as the extent of the violation, multiple violation of fine regulations, and continuation of the administrative offense as well as the repeated committing of the infringement will be considered. The minimum fines as presented in the table below are multiplied by values assigned to several factors (e.g. negligence, intent, catch, size of vessel, repetition, economic situation). The basic minimum fine is set at between EUR 500 and EUR 2,000 depending on violation. Sanctions are determined on a case-by-case basis.

**Table 36: Serious infringement points and minimum fine (Germany)**

	<b>Serious infringements Annex XXX of Regulation (EU) No. 404/2011</b>	<b>Points</b>	<b>Min. fine (EUR)</b>
1	Not fulfilling its obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system	3	500
2	Use of prohibited or non-compliant gear according to EU legislation	4	1,200
3	Falsification or concealing its markings, identity or registration	5	1,500
4	Concealing, tampering with or disposal of evidence relating to an investigation	5	1,500
5	Taking on board, transshipping or landing undersized fish in contravention of the legislation in force	5	1,500
6	Carrying 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	5	1,500
7	Fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State	7	2,000

<sup>162</sup> Article 14 of the Sea Fisheries Act.

<sup>163</sup> Described in section 1, section 2 number 1-3, 4 a, 7-10, 11a and section 3 of the Act.

<sup>164</sup> Section 16 and Annex 5.

	<b>Serious infringements Annex XXX of Regulation (EU) No. 404/2011</b>	<b>Points</b>	<b>Min. fine (EUR)</b>
8	Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth	6	1,700
9	Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited	7	2,000
10	Obstruction of 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 Union rules	7	2,000
11	Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as having engaged in IUU fishing under Regulation (EC) No 1005/2008, in particular those included in the Union IUU vessel list or in the IUU vessel list of a regional fisheries management organisation	7	2,000
12	Use of a fishing vessel with no nationality and that is therefore a stateless vessel in accordance with international law	7	2,000

Source: Author based on internal BLE document

#### *d. Application of the penalty point system*

In 2012, the point system for serious infringements was introduced in Germany in Section 13 of the Sea Fisheries Act. Article 13 regulates the application of the point system for serious violations in accordance with Annex XXX of Regulation (EU) No. 404/2011. The Sea Fisheries Ordinance further classifies the infringements listed in the Fishery Act falling under the list of serious violations and resulting in the attribution of points. Article 14 of the Sea Fisheries Act stipulates the registration of points in the National Infringement Register.

Points can be attributed to the master of vessel or the owner of the fishing license. However, only after an amendment in 2016, the legal framework included the possibility to assign points also to the license holder.

In case of several infringements resulting from one action, only the points for the infringement with the highest number are registered.

The license of a master of the vessel will be suspended when:

- Reaching 18 points for the **first time**, for a period of **two months**.
- Reaching 18 points for the **second time**, for a period of **four months**.
- Reaching 18 points for the **third time**, for a period of **eight months**.
- Reaching 18 points for the **fourth time**, for a period of **one year**.

After the expiry of the corresponding period, all points will be deleted immediately, if no further points have been set against the master within the period. Otherwise, the period and the suspension of the certificate per point is extended by another month. When reaching 18 points for the fifth time, the license shall be withdrawn.



Due to Germany's federal structure, competences for fishery control and sanctioning are divided on federal and national level. The federal states and the BLE are responsible for controlling and the sanctioning infringements under the sea fisheries legislation. This is further explained in the following section. The competent authorities on federal or regional level have access to the National Infringement Register in order to enter imposed sanctions and penalty points.

#### 6.4.2. Infringement procedures

##### *a. Brief description of the procedure*

The rules of the CFP have been implemented into national provisions on administrative fines in order to be able to sanction infringements within the frame of existing legal possibilities. Compliance with stipulations of public law is enforced based on the provisions of the Administrative Offences Act, the Code of Criminal Procedure and the special statutory provisions of the legislation governing sea fisheries. The federal states and the BLE are responsible for sanctioning infringements under the sea fisheries legislation (Sea Fisheries Act, Ordinance on regulatory fines pertaining to sea fisheries and Sea Fisheries Ordinance). The Administrative Offences Act also applies.

If an appeal is lodged (objection), the case is referred to the competent public prosecutor's office to carry out the legal proceedings.

The respective public prosecutor's offices are responsible for conducting criminal proceedings.

##### *b. Competent authorities (sanctions and controls)*

The infringement procedures are dealt with at the level of the responsible authority, either on federal or national level. The division of responsibilities is laid down in the Sea Fisheries Act. The central government is responsible for all tasks laid down in Annex to §2. Tasks of the 'Fisheries control centre' are exercised by the central government alone.<sup>165</sup> This includes the satellite surveillance of vessels at sea. The surveillance in harbours is competence of the federal states.

The Federal Office for Agriculture and Food (BLE) is the authority competent for monitoring fisheries in the Exclusive Economic Zone (EEZ). This means outside the area of 12 nautical miles in Schleswig-Holstein and Lower Saxony and outside the area of 3 nautical miles in Mecklenburg-Western Pomerania, the BLE monitors compliance with fishery regulations in the North Sea and the Baltic Sea.

The competent state/regional authorities for sea- and landing controls are:

For the Baltic Sea:

- Mecklenburg-Western Pomerania: The State Office for Agriculture, Food Safety and fishing monitors at Sea within the area of three nautical miles.
- Schleswig-Holstein: State Office for Agriculture, Environment and Rural Areas and the Water Police within area of 12 nautical miles.

For the North Sea:

- Schleswig-Holstein: Schleswig Holstein Water Police performs controls at sea and the State Office for Agriculture, Environment and Rural Areas performs landing controls.
- Lower Saxony and Bremen: The State Fisheries Office (Staatliches Fischereiamt) performs sea as well as landing controls.

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<sup>165</sup> Sea Fisheries Act §6.

An exception from the above-mentioned division of tasks is the control of domestic landings for EU vehicles over 500 gross tonnage, under the responsibility of the BLE.

#### *c. Average length of infringement procedure*

Based on the feedback to the survey provided by the Federal Ministry of Food and Agriculture, the average length of the infringement procedures amounts to 10.25 months.

Lengthy proceedings could prevent the accumulation of penalty points, due to the fact that the defined period for the deletion of points may end before new points are imposed. This concern was formulated by several stakeholders.

### **6.4.3. Controls implemented and sanctions imposed (2014-2019)**

#### *a. Types of controls implemented*

The control measures to implement the rules of the CFP include physical checks at sea and on land as well as the analysis of existing data streams on fishing activities. This data undergoes a plausibility check based on a risks-based approach and is checked upon risk indicators. In case of relevant findings, recommendation for physical controls of fishing vessels are formulated. Also, findings on EU and international level, gained through cooperation with EU Member States and the EFCA, are taken into account.<sup>166</sup>

The duty to cross-check data (e-logbook, e-sales statement and VMS) is implemented through the database FIT (Fishery Information Technology). It shall allow area-wide cross-checks in order to uncover and resolve inconsistencies and to sanction infringements.

Controls are carried out by the responsible authority on regional or federal level as described above. Control measures include maritime control checks of the last haul to determine the catch composition and verification of the logbook data; the latter also for reference purposes for subsequent landing checks. As part of the landing controls, a data comparison of the landing data with the logbook data and any existing control data is carried out.

Data concerning controls and sanctions is difficult to access. The here mentioned data is based on desk research and the reply to the survey. Statistics and percentages can therefore not be presented in a consistent manner. The available statistics do not always cover all geographic areas, type of controls or the timely scope of this study. Only Schleswig-Holstein publishes annual reports providing relevant statistics on controls and sanctions.

#### *b. Coverage (%) as a total of fishing activity (catch volume, fishing trips, etc.)*

As presented in the following table, in 2018 only 1.6% of fishing trips were inspected in the North Sea and 5.3% in the Baltic Sea. For the North Sea this percentage has been equally low in previous years, whereas for the Baltic Sea the number of controls has increased from 0.7% in 2016.

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<sup>166</sup> Deutscher Bundestag Drucksache 18/13369.

**Table 37: Percentage of controlled fishing trips in relation to the total number of fishing trips (2016-2018) (Germany)**

Area	2016	2017	2018
North Sea	1.6 %	1.4 %	1.6 %
Baltic Sea	0.7 %	6.0 %	5.3 %

Source: Deutscher Bundestag Drucksache 19/11378

The following tables include more statistics on sea controls. As presented in Table 38 in the area of responsibility of the federal government only 0.3% in the North Sea and 1.1% in the Baltic Sea are covered by inspections. Environmental Organisation criticise, that the control efforts in the Baltic mainly focused on passive fisheries, despite the fact that the use of active fishing methods such as towed gear poses a much higher risk of generating large amounts of bycatch and not complying with the landing obligation.<sup>167</sup>

German authorities consider the sea controls as being 'highly effective'. This is based in particular on the presence of the control vessels in the fishing areas and their deterrent effect. On the basis of the results of the controls carried out, an increasingly high degree of compliance with the rules of German fisheries in the corresponding areas is said to be observed.<sup>168</sup>

The data presented for Schleswig-Holstein in the following tables does not allow for calculating the percentage of coverage of fishing trips. The data is however interesting in the sense that it allows insight in the types of controls performed. It turns out that logbook check and mesh size controls are performed least frequent. In 2018, logbook checks constitute 6.7% of controls and mesh size controls constituted only 1.1% of controls on land and respectively 3.4 and 4.6 at sea.

**Table 38: Coverage of fishing trips by sea controls in the area of responsibility of the federal government (2016-2018) (Germany)\***

Area	Type of fishery	2016	2017	2018
North Sea	Passive	0.0%	0.7%	0.0%
	Active	0.2%	0.3%	0.3%
Baltic Sea	Passive	0.1%	0.1%	0.1%
	Active	1.7%	1.2%	1.0%

Source: Deutscher Bundestag Drucksache 19/11378, Table 3.

Note: \*Controls of the federal states are not included in this table. The overall control density is assumed to be higher, especially in the coastal area.

<sup>167</sup> Environmental Action Germany (DUH), 2019.

<sup>168</sup> Deutscher Bundestag Drucksache 19/11378.

**Table 39: Sea Controls Schleswig Holstein through Water Police (2016-2018) (Germany)**

Type of Control	2019	2018	2017	2016
Logbook checks on board	89	92	108	99
Fish area controls	70	67	70	64
Fishing papers to be carried	607	515	139	560
Marking gear and Ships	1050	998	779	848
Mesh size controls	116	103	132	108
Fishing license checks	655	750	829	1,202
Other controls	0	0	-	0
<b>Total</b>	<b>2,587</b>	<b>2,525</b>	<b>2,057</b>	<b>2,434</b>

Source: Author based on Annual Reports, Schleswig-Holstein

The following tables provide more statistics on the landing controls. Landing obligations are inspected through last haul inspections to determine real by-catch rates. During last haul inspections, the catch composition is determined by hauling in the net in the presence of inspectors. When looking at longer time series, there is a slight trend towards approximating the real last catch data to the catch data registered in the logbooks.

**Table 40** indicates that in 2018, 1.7% of total landings were covered in the North Sea compared to 5.1% in the Baltic Sea. However, controls in the Baltic Sea have reduced by 1% since 2016. Furthermore, large differences seem to exist concerning the percentage of landing controls in relation to total landings, depending on the vessel length. Coverage of vessels in the category of 8-12 m length amounts to 2.2% in the Baltic Sea and only 0.4% in the North Sea. Coverage of vessels above 24 m length amounts to 10.8% for the Baltic and 5.1% for the North Sea. In the Baltic Sea, especially the coverage of vessels between 18-24m and >24 has increased since 2017.

**Table 40: Percentage of landing controls in relation to total landings (2016-2018) (Germany)**

Area	2016	2017	2018
<b>North Sea</b>	1.7 %	1.3 %	1.7 %
<b>Baltic Sea</b>	6.1 %	5.8 %	5.1 %

Source: Deutscher Bundestag Drucksache 19/11378

**Table 41: Percentage of landing controls in German ports in the Baltic Sea fishing area in relation to total landings by vessel length (2017-2019)**

Vessel length	2017	2018	2019
< 8 m	1.3	3.7	3.3
8 – 12 m	0.8	2.7	2.2
12 – 15 m	1.7	11.8	8.6
15 – 18 m	2.2	5.1	4.6
18 – 24 m	2.3	11.5	12.3
> 24 m	3.8	7.9	10.8
<b>Total</b>	<b>1.1</b>	<b>3.9</b>	<b>3.4</b>

Source: Author based on Deutscher Bundestag Drucksache 19/16507

**Table 42: Percentage of landing controls in German ports in the North Sea fishing area in relation to total landings by vessel length (2017-2019)**

Vessel length	2017	2018	2019
< 8 m	0.0	0.0	0.0
8 – 12 m	0.0	0.0	0.4
12 – 15 m	0.2	0.7	1.0
15 – 18 m	0.2	1.1	0.8
18 – 24 m	0.5	1.7	1.4
> 24 m	2.3	2.9	5.1
<b>Total</b>	<b>0.3</b>	<b>1.3</b>	<b>1.1</b>

Source: Author based on Deutscher Bundestag Drucksache 19/16507

**Table 43: Schleswig-Holstein Controls at land through State Office for Agriculture, Environment and Rural Areas (2016-2019) (Germany)**

Year	2016	2017	2018	2019
Total No. of controls	8,252	7,407	8,635	7,429

Source: Author based on Annual Reports Schleswig Holstein

Note: \* Cross-checks of: logbooks, landing documents, catch statements, catch reports from vessels under 8m.

*c. Identified infringements and sanctions imposed by type of infringement (including points)<sup>169</sup>*

**Table 44** below was provided by the BMEL in response to the survey. Between 2014 and 2019 a total of only 17 serious infringements were detected, of which 14 concerned the violation of reporting obligations. All 17 infringements were sanctioned with fines. Unfortunately, information on the level of the fines is not accessible. There were no cases of suspension of fishing licence for the period.

**Table 44: Types of serious infringements (2014-2019) (Germany)**

Type of Infringement	No. of infringements	No. cases initiated	Cases of sanctions applied	Type of sanction applied	Cases where points assigned
Not fulfilling its obligations to record and report catch or catch-related data	14	14	14	fine	14
Fishing without a valid licence, authorisation or permit	1	1	1	fine	1
Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth	1	1	1	fine	1
Obstruction of work of officials in the exercise of their duties	1	1	1	fine	1
<b>Total</b>	<b>17</b>	<b>17</b>	<b>17</b>		<b>17</b>

Source: BMEL, survey response

*d. Sanctions imposed and points attributed*

Access to statistics concerning sanctions is very limited and not transparent. This section can only provide fragments of data concerning sanctions. The available data cover only infringements detected during sea controls.

In 2015 and 2016, the Federal Agency for Agriculture and Food (BLE) and the competent control authorities in the federal states had, as of 1 January 2017, not found any violations of the landing requirement during sea controls.<sup>170</sup>

Further, the fisheries supervision of the states of Lower Saxony and Mecklenburg-Western Pomerania found no violations of the landing obligation and other fishery regulations during sea controls between 2016 and 2018. (Deutscher Bundestag Drucksache (19/11378).

The identified infringements registered under responsibility of Schleswig Holstein and the federal authority (BLE) are presented in the following tables. **Table 45** indicates the procedures started and the outcome per year and area. Infringements in the area of jurisdiction of Schleswig Holstein during sea controls only amounted to one sanctioned case in 2016 and 6 cases in 2018.

<sup>169</sup> Serious violations without infringements detected are not included in the table.

<sup>170</sup> Reported by the government following a party inquiry of information on the implementation of the CFP.

**Table 45: Infringements in the area of jurisdiction of Schleswig Holstein during sea controls (2016-2018) (Germany)**

Year	Landing obligation North Sea	Landing obligation Baltic Sea	Other fishery regulation North Sea	Other fishery regulation Baltic Sea	Total No. of sanctions
<b>2016</b>	0	0	3 procedures. All handed over to traffic association	1 procedure EUR 3,500 fine	<b>1</b>
<b>2017</b>	0	1 procedure, proceedings closed	1 procedure, proceedings closed	0	<b>0</b>
<b>2018</b>	0	0	5 procedures, 1 referred to Dutch authorities, 3 fines, 1 exemplary fine	4 procedures, 2 fines, 2 in progress	<b>6</b>

Source: Deutscher Bundestag Drucksache 19/11378

Infringements in the area of jurisdiction of the federal authorities (BLE) during sea controls lead to 4 sanctioned cases in 2016, 9 in 2017 and 4 in 2018. Sanctions included fines and confiscation of fishing nets as presented in **Table 46** below.

**Table 46: Infringements in the area of jurisdiction of the federal authorities (BLE) during sea controls (2016-2018) (Germany)**

Year	Infringement	Infringements suspected	Infringements sanctioned	Sanctions imposed	Baltic (B) or North Sea (N)
2016	Landing obligation	-	-	-	-
	Prohibition of high-grading	1	1	Fine	B
	Mesh size	1	1	Fine / confiscation of fishing net	B
	Separate preserving of species	1	-	Proceedings closed	N
	Illicit fishing	1	-	Referred to Mecklenburg-Western Pomerania	B
	Irregular fishing gear	2	2	Fine / confiscation of fishing net (1)	B
<b>Total</b>		<b>6</b>	<b>4</b>		
2017	Landing obligation	-	-	-	-
	Separate preserving of species / Logbook not kept correctly	1	1	Fine	N
	Mesh size	1	1	Fine / confiscation of fishing net	N
	Logbook not kept correctly	3	1	Fine (1), proceedings closed (2)	B
	Logbook kept incomplete	1	1	Fine	N
	Fishing cod below 20m	1	-	Proceedings closed	B
	Obstruction of work of officials in the exercise of their duties	1	1	Fine	B
	Irregular fishing gear	4	4	Fine	B (2) & N (2)
<b>Total</b>		<b>12</b>	<b>9</b>		
2018	Landing obligation	-	-	-	-
	Mesh size	2	2	Fine / confiscation of fishing net (1)	B (1) & N (1)
	Fishing cod in closed area	1	1	Fine / deprivation of economic profit	B
	Obstruction of work of officials in the exercise of their duties	1	1	Fine	N
	Illicit fishing	1	-	Referred to Mecklenburg-Western Pomerania	B
<b>Total</b>		<b>5</b>	<b>4</b>		

Source: Deutscher Bundestag Drucksache (19/11378)



*e. Number of sanctions related to the number of controls*

Due to the lack of consistent data, no reliable conclusion towards the number of sanctions related to controls can be made.

The statistics available in the annual report of Schleswig-Holstein are hinting at the number of sanctions related to controls being low. The data available on total number of controls and total numbers of infringements procedures started, as presented below, allow to calculate the percentage of controls leading to an infringement procedure. Between 2016 and 2019 this was only the case in 0.5-0.6% of controls. Based on the available data, it is not possible to say how many of the procedures lead to sanctions.

**Table 47: Schleswig Holstein – Controls Land and Sea in relation to Infringement Procedures (2016-2019) (Germany)**

	<b>2019</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>
Control Sea	2,587	2,525	2,057	2,434
Control Land	7,429	8,635	7,407	8,252
<b>Total</b>	<b>10,016</b>	<b>11,160</b>	<b>9,464</b>	<b>10,686</b>
Infringement procedures started	50	53	49	62
<b>Percentage</b>	<b>0.5</b>	<b>0.5</b>	<b>0.5</b>	<b>0.6</b>

Source: Author based on Annual Report Schleswig-Holstein

## 6.5. Ireland

### 6.5.1. Legal framework

#### a. Overview

There have been three attempts to implement the point system in Ireland but in each case the application of the legislation has been short-lived. The first two statutory instruments (S.I. No. 3 of 2014, and S.I. No. 125 of 2016) were withdrawn following judicial reviews. The third (S.I. 89 of 2018) has not been applied.<sup>171</sup>

In the absence of a functioning point system, enforcement and sanctions are covered primarily by the Sea-Fisheries and Maritime Jurisdiction Act 2006, and also by the Criminal Justice Act 2007.

Feedback from the industry indicates that it does not object to the point system itself. It does however object to the way in which it has been introduced in Ireland. It has four main objections:

- A licence holder has no right of appeal to a higher court except on a point of law. This is potentially very expensive, and the industry believes that this was included in Irish legislation with a view to deterring appeals.
- The SFPA was involved in the internal appeal process.
- Points are still allocated, even if the defendant is acquitted of the alleged offence(s) by a court.
- It is considered that Irish legislation went further than required by EU regulations by linking points to vessel capacity.

Industry feedback indicates that S.I. No. 89 of 2018 does not resolve all of the issues and it has not been applied because the minority government at that time faced opposition from one of its coalition partners on this issue.

In the second and third statutory instruments, the role of the Sea-Fisheries Protection Authority<sup>172</sup> (SFPA) was progressively eliminated from determining whether or not a serious infringement had taken place. The legal challenges to the point system relate to the fairness of the system, as applied by statutory instruments in Ireland. A Supreme Court decision issued on 12 December 2017 confirmed an earlier High Court decision addressing an appeal by a fishing company on the grounds of the fairness of the infringement procedure. In that instance, it was argued that the company *'had been given no opportunity to make representations on its own behalf or test or challenge the evidence produced by the SFPOs and furthermore reasons had not been given for the decision.'*<sup>173</sup> A second Supreme Court decision issued on the same date and relating to another case confirmed the lack of fairness of the infringement procedures, as applied by S.I. No. 3 of 2014.<sup>174</sup>

In S.I. No. 3 of 2014, the determination of whether or not a serious infringement had been committed was done by the SFPA. Subsequently, S.I. No. 125 of 2016 introduced a Determination Panel (Regulation 5), comprised of three members: a representative of the SFPA, an independent legal professional nominated by the Office of the Attorney General, and a serving member of the Naval Services

<sup>171</sup> S.I. No. 89 of 2018 is listed on the SFPA website. It is listed in the Irish Statute Book as having been enacted on 20 March 2018, revoking S.I. No. 125 of 2016.

<sup>172</sup> see <https://www.sfpa.ie/>

<sup>173</sup> Supreme Court (12 December 2017), *Crayden Fishing Company Limited -v- Sea Fisheries Protection Authority & ors*, [https://beta.courts.ie/view/judgments/8b198cd5-386c-4d44-a039-6f768eeacd64/22dc2220-14fb-4bde-b849-86b123d12b39/2017\\_IESC\\_74\\_1.pdf/pdf](https://beta.courts.ie/view/judgments/8b198cd5-386c-4d44-a039-6f768eeacd64/22dc2220-14fb-4bde-b849-86b123d12b39/2017_IESC_74_1.pdf/pdf)

<sup>174</sup> Supreme Court (12 December 2017), *O'Sullivan -v- Sea Fisheries Protection Authority & ors*, [https://beta.courts.ie/view/judgments/42b77346-a9c9-455e-945b-e38c3cc91e8/cf4aeec5a1c-440d-8c62-18d02cd769db/2017\\_IESC\\_75\\_1.pdf/pdf](https://beta.courts.ie/view/judgments/42b77346-a9c9-455e-945b-e38c3cc91e8/cf4aeec5a1c-440d-8c62-18d02cd769db/2017_IESC_75_1.pdf/pdf)

nominated by the Minister for Defence. Regulation 6 provided procedures for informing the licence holder of the SFPA's intention to pass a serious infringement report to the Determination Panel and providing the possibility for the licence holder to make a written submission to the Determination Panel. S.I. No. 89 of 2018 eliminated the SFPA from the Determination Panel, which was to be comprised of three independent legal professionals nominated by the Attorney General. It also introduced the possibility for the licence holder to make both written and oral submissions to the Determination Panel. The infringement process in S.I. No. 89 of 2018 is described in more detail below.

The SFPA is supportive of the point system, as it is faster and less expensive than taking cases through the courts. It notes that some operators have accepted points and licence suspensions.

Feedback from the industry indicates that it too is supportive of the point system, including the proposed strengthening of the system, on the basis that it contributes to a 'level playing field'. Its opposition relates to the way the system has been applied in Ireland.

#### *b. Laws and date of entry into force*

Council Regulation (EC) No. 1224/2009 (Article 92) was incorporated into Irish law through successive statutory instruments. The first, S.I. No. 3 of 2014 European Union (Common Fisheries Policy) (Point System) Regulations 2014,<sup>175</sup> was published on the 08 January 2014 and came into operation on, and was applied to offences detected after, 20 January 2014. The second statutory instrument, S.I. No. 125 of 2016 European Union (Common Fisheries Policy) (Point System) Regulations 2016, was published on 01 March 2016.<sup>176</sup> The third statutory instrument, S.I. No. 89 of 2018 European Union (Common Fisheries Policy) (Point System) Regulations 2018 was enacted on 20 March 2018, revoking S.I. No. 125 of 2016.<sup>177</sup>

Feedback from the SFPA indicates that, owing to the outcome of judicial reviews on the application of the point system, it has not been applied since 2016 (i.e. S.I. No. 89 of 2018 has not been applied). Infringements and sanctions are therefore currently addressed exclusively through Irish law, primarily **The Sea-Fisheries and Maritime Jurisdiction Act 2006 (SFMJA)**, which was enacted on 04 April 2006.<sup>178</sup> Section 44 of the **Criminal Justice Act 2007** (enacted on 09 May 2007) introduces three amendments to the SFMJA.

#### **Overview of 'The Sea-Fisheries and Maritime Jurisdiction Act 2006'**

Chapter 2, Section 11 deals with '*Contravention of EC Regulation (common fisheries policy)*', while Chapter 4 deals with '*Matters relating to indictable fishery offences, proceedings, forfeiture*'. In particular, Section 28 in Chapter 4 covers '*Penalties and forfeiture for certain indictable fishery offences*'.

Section 11 in Chapter 2 states that '*Unless otherwise provided by law, a person who contravenes or fails to comply with an obligation imposed on the person by a Community Regulation commits an offence.*'

It applies to:

- (a) *sea-fishing boats within the exclusive fishery limits,*
- (b) *an Irish sea-fishing boat in waters, wherever it may be, and*

<sup>175</sup> S.I. No. 3 of 2014 European Union (Common Fisheries Policy) (Point System) Regulations 2014, <http://www.irishstatutebook.ie/eli/2014/si/3/made/en/print>

<sup>176</sup> S.I. No. 125 of 2016 European Union (Common Fisheries Policy) (Point System) Regulations, [http://www.irishstatutebook.ie/eli/2016/si/125/made/en/print?num=125&years=2016&search\\_type=sj](http://www.irishstatutebook.ie/eli/2016/si/125/made/en/print?num=125&years=2016&search_type=sj)

<sup>177</sup> S.I. No. 89 of 2018 European Union (Common Fisheries Policy) (Point System) Regulations 2018, [http://www.irishstatutebook.ie/eli/2018/si/89/made/en/print?num=89&years=2018&search\\_type=sj](http://www.irishstatutebook.ie/eli/2018/si/89/made/en/print?num=89&years=2018&search_type=sj)

<sup>178</sup> The Sea-Fisheries and Maritime Jurisdiction Act 2006, <http://www.irishstatutebook.ie/eli/2006/act/8/enacted/en/html?q=sea+fisheries+and+maritime+jurisdiction+act&years=2006>

(c) any person engaged in landing, trans-shipping, buying, handling, weighing, transporting, processing, storing, documenting or selling fish within the State or the exclusive fishery limits.

Where there is an infringement of EU regulations on or by a sea-fishing boat, and where EU regulations do not specify a person responsible for the offence, both the master and owner of the boat are considered to have committed an offence.

Where the infringement relates to landing, trans-shipping, buying, handling, weighing, transporting, processing, storing, documenting or selling fish, the person contravening or failing to with the obligations of EU regulations is considered to have committed an offence.

Section 44 of The Criminal Justice Act 2007<sup>179</sup> added a provision to section 28, sub-section (1) of the SFMJA, whereby offences<sup>180</sup> that are committed on a sea-fishing vessel are subject a fine not exceeding EUR 100,000 and forfeiture of any fish relating to the offence.

### c. Maximum and minimum penalties laid down in law

Chapter 4, Section 28 of the SFMJA includes two tables specifying the maximum fines for different offences. The following tables relate to offences under Chapter 2 of the SFMJA (i.e. **infringement of EU regulations**), and to offences under Part 2 of the Act of 2003. **Table 48** and **Table 49**, which are reproduced below, indicate the **maximum** fines applicable '**on conviction on indictment**'. The SFMJA does not specify minimum penalties.

The infringements in the SFMJA do not correspond directly to the serious infringements listed in Annex XXX of the Commission Implementing Regulation (EU) No. 404/2011, although there is some overlap. The SFPA notes that, in the SFMJA, the infringements and penalties are based more on vessel size.

Section 28 of the SFMJA states that a person guilty of an offence listed in either table is liable, '**on conviction on indictment**' (emphasis added), to a fine up to the amount indicated in the table and to forfeiture, **at the discretion of the court**, of '*all or any fish and fishing gear*', and depending on the offence, this may apply only to fish and fishing gear found on the boat to which the offence relates, or also to fish and fishing gear located in any other place.

Where a district court judge is of the opinion that the alleged or proven facts constitute a minor offence, the judge has jurisdiction to **try summarily** such offences provided that the prosecutor consents and the defendant does not object (i.e. the defendant could opt for a jury trial instead). In these cases, a conviction could result in a **fine of up to EUR 5,000 and forfeiture of fish and/ or gear**. Summary court procedures can also be used if the defendant '*wishes to plead guilty and the judge is satisfied that the person understands the nature of the offence and the facts charged*' and the prosecutor agrees.

Section 28, sub-section 7(a) of the SFMJA also provides for the possibility for the court to '**revoke or suspend, for such period as it sees fit, the sea-fishing boat licence granted in relation to the boat concerned**' (emphasis added).

In the SFMJA, imprisonment is reserved for offences such as failing to obey the instructions of a sea-fisheries protection officer, impeding a sea-fisheries protection officer (e.g. refusing to answer questions, providing false information), and assault of a sea-fisheries protection officer (which could lead to a fine and/ or a prison sentence of up to five years).

<sup>179</sup> The Criminal Justice Act 2007 <http://www.irishstatutebook.ie/eli/2007/act/29/enacted/en/index.html>

<sup>180</sup> The provision deals with offences relating to buying, handling, weighing, transshipping, transporting, landing, processing, storing, documenting or selling of fish.

**Table 48: Fines – Provisions of Chapter 2 of the SFMJA (Ireland)**

Reference Number	Provision	Fine on conviction on indictment not exceeding amount specified below		
		Category 1 - sea-fishing boat of <b>&gt;12 m</b> in length overall	Category 2 - sea-fishing boat of <b>12 m to 18 m</b> in length overall	Category 3 - sea-fishing boat of <b>&gt; 18 m</b> in length overall
1.	Section 11, 14 or 15 in so far as it relates to—			
(a)	a contravention relating to fish storage capacity of a sea-fishing boat	EUR 20,000	EUR 50,000	EUR100,000
(b)	illegal nets or other equipment, or	EUR 20,000	EUR 40,000	EUR 80,000
(c)	any other contravention or failure of compliance.	EUR 10,000	EUR 20,000	EUR 35,000
2.	Section 8(2), 9(3) or 10(2)	EUR 20,000	EUR 50,000	EUR 75,000
3.	Section 12 or 13	EUR 10,000	EUR 20,000	EUR 35,000

Source: Irish Statute Book<sup>181</sup>

<sup>181</sup> The Sea-Fisheries and Maritime Jurisdiction Act 2006  
<http://www.irishstatutebook.ie/eli/2006/act/8/enacted/en/html?q=sea+fisheries+and+maritime+jurisdiction+act&years=2006>

**Table 49: Fines – Provisions of Act of 2003’ as included in the SFMJA (Ireland)**

Reference Number	Provision	Fine on conviction on indictment not exceeding amount specified below		
		Category 1 - sea-fishing boat of < 12 m in length overall	Category 2 - sea-fishing boat of 12 m to 18 m in length overall	Category 3 - sea-fishing boat of > 18 m in length overall
1.	Section 4(12) (fishing without or in contravention of sea-fishing boat <b>licence</b> )	EUR 20,000	EUR 50,000	EUR 75,000
2.	Section 25(3) (fishing in contravention of <b>conservation</b> regulations)	EUR 20,000	EUR 50,000	EUR 100,000
3.	Section 27(5) (failure to <b>return to port</b> immediately on order of sea-fisheries protection officer)	EUR 20,000	EUR 50,000	EUR 100,000

Source: Irish Statute Book<sup>182</sup>**Penalties indicated in S.I. No. 89 of 2018**

As noted elsewhere in this case study, the point system is not currently applied in Ireland. Thus, the following information does not currently apply. Under Regulation 14(1) of S.I. No 89 of 2018, **failure to comply with Article 128 of the Commission Implementing Regulation is subject to a Class B fine (i.e. up to EUR 4,000)**,<sup>183</sup> upon summary conviction. Regulation 14(3) extends this to cover situations where the SFPA has notified a licence holder of its proposal to apply points, but where the points have not yet been applied.

In the event of failure to comply with Article 130 paragraph 2 of the Commission Implementing Regulation (immediate cessation of fishing activities upon suspension or permanent withdrawal of a fishing licence), Regulation 15(1) of S.I. No. 89 of 2018 provides for **either a Class A fine (i.e. up to EUR 5,000)**<sup>184</sup> upon summary conviction, or a fine of up to EUR 100,000 on conviction on indictment. This applies to the licence holder.

Under regulation 15(2) of S.I. No. 89 of 2018, **if a vessel fails to cease fishing immediately, proceed to port immediately, lash gear, and deal with catch as instructed**<sup>185</sup> upon suspension or permanent withdrawal of a fishing licence, the **master of the vessel is subject either to a Class A fine (i.e. up to**

<sup>182</sup> The Sea-Fisheries and Maritime Jurisdiction Act 2006<http://www.irishstatutebook.ie/eli/2006/act/8/enacted/en/html?q=sea+fisheries+and+maritime+jurisdiction+act&years=2006><sup>183</sup> Citizens Information (08 August 2016), *Maximum fines on summary conviction*, [https://www.citizensinformation.ie/en/justice/criminal\\_law/criminal\\_trial/maximum\\_fines\\_on\\_summary\\_conviction.html](https://www.citizensinformation.ie/en/justice/criminal_law/criminal_trial/maximum_fines_on_summary_conviction.html)<sup>184</sup> Citizens Information (08 August 2016), *Maximum fines on summary conviction*, [https://www.citizensinformation.ie/en/justice/criminal\\_law/criminal\\_trial/maximum\\_fines\\_on\\_summary\\_conviction.html](https://www.citizensinformation.ie/en/justice/criminal_law/criminal_trial/maximum_fines_on_summary_conviction.html)<sup>185</sup> S.I. No. 89 of 2018 does not specifically refer to the Commission Implementing Regulation here, but the steps it describes are taken directly from Article 130 paragraph 2 of the Implementing Regulation.

**EUR 5,000) upon summary conviction or a fine of up to EUR 50,000 upon conviction on indictment.**

#### *d. Application of the penalty point system*

As noted above, the point system is not currently applied in Ireland as a result of judicial challenges. Infringements in Ireland are therefore currently handled by the Irish criminal justice system.

Information from the SFPA indicates that there have been **22 cases where points were assigned**. Two cases have been subject to conviction, but the others have not so far. Thus, the assignment of points has not automatically incurred financial penalties or forfeiture of fish and/ or fishing gear, which can only be imposed by courts under the provisions of the SFMJA and the Criminal Justice Act 2007.

Points have been awarded in respect of two categories of infringement:

- Not fulfilling its obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system;
- Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth.

The two convictions to date relate to the first of these categories. One case in each of these two categories has involved the suspension of a fishing licence.

Further details, based on information in the SFPA's annual reports, are provided below.

### **6.5.2. Infringement procedures**

#### *a. Brief description of the procedure*

This section summarises the procedures specified in S.I. No. 89 of 2018.<sup>186</sup> However, as explained above, **the point system is currently not applied in Ireland.**

- Upon detection of an alleged infringement, a report is submitted to the SFPA by the official who detected the infringement;
- The SFPA notifies the licence holder that an alleged serious infringement has been detected and that it intends to send a report to the Determination Panel.<sup>187</sup> It also informs the licence holder of his/ her rights in the procedure;
- The SFPA sends the report and any material collected to the Determination Panel to determine if a serious infringement has occurred.
- The SFPA provides the licence holder with a copy of the material submitted to the Determination Panel;
- The licence holder has 10 days from the point of notification by the SFPA to make a written submission to the Determination Panel and to request, in writing, the opportunity to provide an oral submission to the Determination Panel;
- The Determination Panel has 35 days from the date on which the licence holder was notified to determine if there has been a serious infringement;

<sup>186</sup> S.I. No. 89 of 2018 European Union (Common Fisheries Policy) (Point System) Regulations 2018 [http://www.irishstatutebook.ie/eli/2018/si/89/made/en/print?num=89&years=2018&search\\_type=sj](http://www.irishstatutebook.ie/eli/2018/si/89/made/en/print?num=89&years=2018&search_type=sj)

<sup>187</sup> The Determination Panel consists of three independent legal professionals nominated by the Attorney General. Its job is to determine if there has been a serious infringement.



- The Determination Panel communicates its determination and reasons for its determination to the SFPA;
- If the Determination Panel decides that there has been a serious infringement, the SFPA, it proposes to assign points in accordance with Annex XXX of Commission Implementing Regulation (EU) No. 404/2011 and informs the licence holder. In the case of foreign vessels, it informs the licence holder (or master if the licence holder is not contactable) that it intends to notify the flag Member State concerned of the detection of the serious infringement, and the Determination Panel's reasons for its decision;
- The licence holder has 20 days from the date of the SFPA's notification of its intention to assign points (or inform the flag Member State) to appeal, in writing, to the Appeals Officer. The licence holder has a further 10 days to make a written request for an oral hearing.
- The Appeals Officer has 30 days from the date of the written appeal in which to make a decision. The Appeals Officer may confirm the assignment of points, or may find in favour of the licence holder, in which case the points are not applied.
- The licence holder may appeal to the High Court regarding the decision of the Appeals Officer, but this must be within 14 days of being notified of the decision.

**Table 50** below summarises the potential duration of each step in the process. However, S.I. No. 89 of 2018 does not give a time limit for steps 1 and 2, and it cannot give a limit for Step 8. On the basis of steps 3, 5, 6, and 7 alone, the process could last up to 99 days. Depending on the actual duration of steps 1, 2, and 8, the process could take significantly longer. This is important because Regulation 7(7) of S.I. No. 89 2018 states that:

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

Regulations 9(2) states that:

*'Points notified to the Licensing Authority shall be recorded as applying from the date of detection of the serious infringement concerned.'*

The same wording is also present in the previous statutory instruments, S.I. No. 3 of 2014<sup>188</sup> and S.I. No. 125 of 2016.<sup>189</sup>

**This means that the length of time that the points are 'active' is reduced as the duration of the infringement procedure is increased – a long procedure may thus benefit those found to have committed serious infringements, by reducing the length of time before the points are deleted.** Feedback from the SFPA indicates that this has provided an incentive for those alleged to have committed a serious infringement to prolong the procedure. As indicated in the **Table 50** below, **the average duration of infringement procedures in Ireland is approximately 419 days.**

Article 126, paragraph 4 of the Commission Implementing Regulation states:

*The points are assigned to the holder of the licence on the date set in the decision assigning them. Member States shall ensure that the application of national rules concerning the suspensory effects of review proceedings do not render the point system ineffective.*

<sup>188</sup> S.I. No. 3 of 2014 European Union (Common Fisheries Policy) (Point System) Regulations 2014, <http://www.irishstatutebook.ie/eli/2014/si/3/made/en/print>

<sup>189</sup> S.I. No. 125 of 2016 European Union (Common Fisheries Policy) (Point System) Regulations, [http://www.irishstatutebook.ie/eli/2016/si/125/made/en/print?num=125&years=2016&search\\_type=sj](http://www.irishstatutebook.ie/eli/2016/si/125/made/en/print?num=125&years=2016&search_type=sj)



Thus it appears that, S.I. No. 89 of 2018 (and the two previous statutory instruments) does not comply with the Commission Implementing Regulation with respect to the date from which the points apply.

**Table 50: Potential number of days between detection of infringement and assignment of points (Ireland)**

Step		Maximum number of days
1	Report of alleged infringement to SFPA	?
2	Report of SFPA to the Determination Panel	?
3	Determination of serious infringement by the Determination Panel	35
4	SFPA informs the licence holder of intention to award points	?
5	Licence holder makes appeal to the Appeals Officer	20
6	Appeals Officer makes decision	30
7	Licence holder appeals to High Court	14
8	Judicial proceedings	?
<b>Total days</b>		<b>99 (+?)</b>

Source: Author, based on S.I. No. 89 2018

The SFPA maintains a database listing all infringements notified to the Enforcement Unit. This database tracks infringements until conclusion and records sanctions imposed. During the period 2014 – 2016 points assigned were recorded on the Irish Fisheries Information System. The system has been developed in house from own resources, based on historic reporting requirements. The SFPA is working on a project to provide for automatic recording of infringements from inspection reports.

#### *b. Competent authorities (sanctions and controls)*

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

The **Licensing Authority** is designated as the competent authority for the purposes of Article 125(c) and (d) of the Commission Regulation. According to Article 3 of the Fisheries (Amendment) Act 2003<sup>190</sup> the licensing authority for sea-fishing boats is either the Registrar General of Fishing Boats, or the Deputy Registrar General of Fishing Boats under the supervision of the Registrar General of Fishing Boats.

<sup>190</sup> The Fisheries (Amendment) Act 2003 <http://www.irishstatutebook.ie/eli/2003/a.ct/21/enacted/en/print.html>

*c. Average length of infringement procedure*

The SFPA indicates that the average duration of infringement proceedings in Ireland is approximately 419 days.

The **Table 51** below shows year in which offences were detected and the year in which cases were concluded with convictions. This shows, for example, that of three cases initiated in 2007, one was concluded in 2014 and two in 2015. Similarly, the seven cases starting in 2014 were concluded in 2014.

**Table 51: Year of offence and year cases concluded with conviction (Ireland)**

Year of offence	Year case concluded with conviction				Total
	2014	2015	2016	2017	
2007	1	2			3
2010		1			1
2012	1	1			2
2013	1	9			10
2014	7				7
2015		1	3		4
2016			5	2	7
2017				2	2
<b>Total</b>	<b>10</b>	<b>14</b>	<b>8</b>	<b>4</b>	<b>36</b>

Source: Author based on SFPA annual reports 2014 - 2017<sup>191</sup>

The **Table 52** below shows the number of months between the dates of the suspected offence. This calculation is based on the date of the offence and the date of the conviction in court. The exact duration of 12 cases cannot be calculated as dates are not provided in the SFPA's annual reports for 2016, 2017, or 2018 and (these are indicated in the column 'No dates'). 15 of these cases have taken between 14 and 104 months to conclude and nine have taken between zero and 6 months to conclude. **The longer durations appear to relate to offences committed before the start of the period under review.**

<sup>191</sup> The SFPA annual reports are available at <https://www.sfpa.ie/What-We-Do/Corporate-Affairs/Annual-Reports>

**Table 52: Months between date of offence & date of conviction (Ireland)**

Year of offence	Months between data of offence and date of conviction in court															Total
	0	4	5	6	14	16	19	21	22	32	62	80	99	104	No dates	
2007												1	1	1		3
2010											1					1
2012									1	1						2
2013				1	1	3	3	1	1							10
2014	5	1	1													7
2015			1												3	4
2016															7	7
2017															2	2
<b>Total</b>	<b>5</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>12</b>	<b>36</b>

Source: Author based on SFPA annual reports 2014 - 2017<sup>192</sup>

### 6.5.3. Controls implemented and sanctions imposed (2014-2019)

In Ireland, controls are carried out by the SFPA and the Naval Service. Information relating to these two bodies is sometimes presented differently in the SFPA's annual reports, and there are differences between annual reports in the type of information presented.

For example, in the SFPA's Annual Report 2018, two tables disaggregate inspections by vessel length. SFPA inspections are grouped into 'under 18 metres' and 'over 18 metre', while the Naval Service inspections are grouped into the following categories:

- Under 10 metres;
- >10 metres to 12 metres;
- >12 metres to 15 metres;
- Over 15 metres.

Similarly, information relating to the nationality of vessels inspected by the two bodies uses different country naming conventions – SFPA data uses fully country names, while Naval Service data uses three letter country abbreviations.

In the SFPA's Annual Report 2017, the data is presented in a more consistent way. The Annual Report 2016 gives SFPA inspection refers to landings and inspections, while the Naval Service inspection data refers to sightings and boardings. The Annual Report 2016 does not provide information on inspections disaggregated by vessel length, but it does provide information on types of controls.

<sup>192</sup> The SFPA annual reports are available at <https://www.sfpa.ie/What-We-Do/Corporate-Affairs/Annual-Reports>

*a. Types of controls implemented (sea, port, fisheries, region, etc.)*

The SFPA undertakes port inspections and, in summer, inshore inspections using rigid inflatable boats (RIB). The SFPA also undertakes controls remotely by means of cameras at ports. The Irish Naval Service undertakes inspections at sea under a service-level agreement with the SFPA.

The SFPA's Annual Report 2016 indicates that it undertook a total of 3,543 controls of five different types. These are summarised in **Table 53** below.

**Table 53: SFPA controls (2016) (Ireland)**

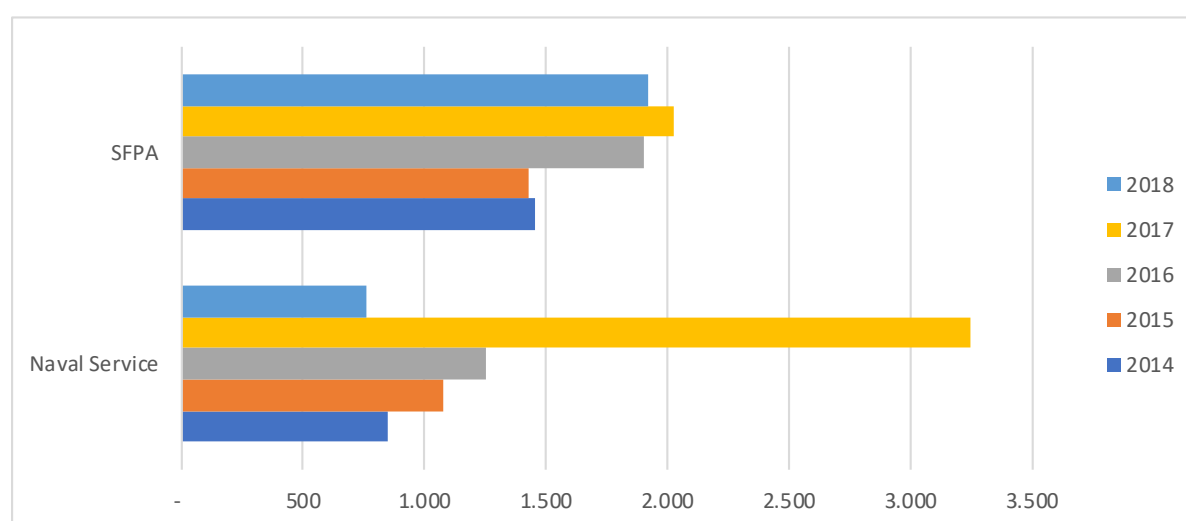
Control Type	Number of controls
Inspections at Landing	1,765
Administrative Crosschecks	1,220
Transport Inspections	226
Fish Quality Assessment	192
Inspections at Sea	140
<b>Total</b>	<b>3,543</b>

Source: SFPA Annual Report 2016<sup>193</sup>

This analysis does not appear to be available in other SFPA annual reports. It is understood that SFPA vessel inspection figures in all annual reports are the total of landing inspections and inspections at sea.

The SFPA and the Irish Naval Service undertook a total of 15,913 vessel inspections from 2014 to 2018. The number of inspections by nationality and per year is summarised in **Table 55** below. There appears to have been a surge in inspections in 2017, which is accounted for by a significant increase in the number undertaken by the Naval Service compared with 2016.

<sup>193</sup> Sea-Fisheries Protection Authority (undated), *Annual Report 2016*, p33, <https://www.sfpa.ie/Search/resource/407>

**Figure 11: Vessel inspections (2014-2018) (Ireland)**

Source: Author based on SFPA annual reports 2014 - 2018<sup>194</sup>

Further details on inspections are presented in **Figure 11** above.

*b. Coverage (%) as a total of fishing activity (catch volume, fishing trips, etc.)*

Inspections are based on risk assessment following the EFCA model. There are generally no 'quotas' for inspections, which are undertaken as needed and when the opportunity arises. One exception is pelagic species, where the SFPA inspects 5% of landings by number and 7.5% by weight. The **Table 54** below indicates that, in the years for which the data is available, the SFPA has exceeded the target for the number of landings.

**Table 54: Landing inspections as % of landings (2014, 2016, 2018) (Ireland)**

Years	Landings	Inspections	Inspections as % of landing
2014	19,485	2,306	12%
2016	25,304	1,905	8%
2018	20,114	1,922	10%
<b>Total</b>	<b>64,903</b>	<b>6,133</b>	<b>9%</b>

Source: Author based on SFPA annual reports 2014, 2016, and 2018<sup>195</sup>

<sup>194</sup> The SFPA annual reports are available at <https://www.sfpa.ie/What-We-Do/Corporate-Affairs/Annual-Reports>

<sup>195</sup> The SFPA annual reports are available at <https://www.sfpa.ie/What-We-Do/Corporate-Affairs/Annual-Reports>

**Table 55: Vessel inspections by nationality of vessel (2014 – 2018) (Ireland)**

Vessel nationality	2014		2015		2016		2017		2018		Total	
	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%
Ireland	1,506	65.25%	1,699	67.91%	2,171	68.81%	4,103	77.93%	1,999	74.51%	11,478	72.13%
France	301	13.04%	280	11.19%	372	11.79%	440	8.36%	195	7.27%	1,588	9.98%
Spain	269	11.66%	289	11.55%	336	10.65%	360	6.84%	236	8.80%	1,490	9.36%
United Kingdom	146	6.33%	149	5.96%	220	6.97%	253	4.81%	148	5.52%	916	5.76%
Norway	34	1.47%	26	1.04%	5	0.16%	23	0.44%	35	1.30%	123	0.77%
Denmark	17	0.74%	19	0.76%	13	0.41%	21	0.40%	28	1.04%	98	0.62%
The Netherlands	13	0.56%	15	0.60%	10	0.32%	13	0.25%	9	0.34%	60	0.38%
Germany		0.00%	11	0.44%	8	0.25%	16	0.30%	7	0.26%	42	0.26%
Russia		0.00%	8	0.32%	13	0.41%	12	0.23%	5	0.19%	38	0.24%
Belgium		0.00%	3	0.12%	4	0.13%	17	0.32%	10	0.37%	34	0.21%
Others	22	0.95%		0.00%		0.00%		0.00%		0.00%	22	0.14%
Faroe Islands		0.00%		0.00%	1	0.03%	5	0.09%	4	0.15%	10	0.06%
Lithuania		0.00%	3	0.12%	1	0.03%		0.00%		0.00%	4	0.03%
Iceland		0.00%		0.00%		0.00%		0.00%	3	0.11%	3	0.02%
Poland		0.00%		0.00%		0.00%	2	0.04%		0.00%	2	0.01%
Panama		0.00%		0.00%		0.00%		0.00%	1	0.04%	1	0.01%
Mongolia		0.00%		0.00%	1	0.03%		0.00%		0.00%	1	0.01%
Portugal		0.00%		0.00%		0.00%		0.00%	1	0.04%	1	0.01%
Bahamas		0.00%		0.00%		0.00%		0.00%	1	0.04%	1	0.01%
Mauritania		0.00%		0.00%		0.00%		0.00%	1	0.04%	1	0.01%
<b>Total</b>	<b>2,308</b>	<b>100%</b>	<b>2,502</b>	<b>100%</b>	<b>3,155</b>	<b>100%</b>	<b>5,265</b>	<b>100%</b>	<b>2,683</b>	<b>100%</b>	<b>15,913</b>	<b>100%</b>

Source: Author based on SFPA annual reports 2014 - 2018<sup>196</sup><sup>196</sup> The SFPA annual reports are available at <https://www.sfpa.ie/What-We-Do/Corporate-Affairs/Annual-Reports>

c. *Identified infringements and sanctions imposed by type of infringement (including points)*

The **Table 56** below summarises the number of infringement casefiles opened in Ireland from 2014 to 2018. It also shows the number of suspected offences involved, the number of cases initiated in a year that were completed in court in same year and the number of files passed to the Director of Public Prosecutions (excluding those that were already completed in court). Of the 183 case files indicated here, 19 have ended in convictions and a further 61 were submitted to the Director of Public Prosecutions (i.e. a total of 80 cases). It is understood that the remaining 103 case files will have been handled in one of the following ways:

- Closed without action.
- Closed with official warning letter.
- Closed with summary prosecution in a subsequent reporting year.
- Submitted to the Director of Public Prosecutions in subsequent reporting years with one of the possible outcomes:
  - Not prosecuted. No action taken.
  - Not prosecuted. Case closed with official warning letter.
  - Prosecution under consideration or pending.
  - Prosecution leading to conviction and possible sanction.
  - Prosecution leading to acquittal.

It is not possible to quantify these outcomes on the basis of the information provided in the SFPA's annual reports. Nevertheless, on the basis of the number of files opened from 2014 to 2018 (183), the number of files submitted to the Director of Public Prosecutions between 2014 and 2017 (61) and the number of recorded convictions from 2014 to 2017 it seems **possible that a backlog of cases has built up within the system**. In this regard, the SFPA's 2018 Annual Report states that *'There was a substantial review of unclosed case files and progress towards a protocol with the DPP.'*<sup>197</sup>

**Table 56: Case files opened (2014 – 2018) (Ireland)**

Year	Number of case files initiated	Number of suspected offences involved	Cases completed in the courts in the year the file was opened	Files forwarded to the Director of Public Prosecutions <sup>198</sup>
2018	61	100	4	-
2017	34	54	2	16
2016	23	42	5	13
2015	35	70	1	21
2014	30	75	7	11
<b>Total</b>	<b>183</b>	<b>341</b>	<b>19</b>	<b>61</b>

Source: Author based on SFPA annual reports 2014 - 2018<sup>199</sup>

<sup>197</sup> Sea Fisheries Protection Authority (undated), *Annual Report 2018*, p.60, <https://www.sfpa.ie/LinkClick.aspx?fileticket=xnMdDGB6WLk%3d&portalid=0>

<sup>198</sup> Excluding files leading to conviction in the same year (previous column).

<sup>199</sup> The SFPA annual reports are available at <https://www.sfpa.ie/What-We-Do/Corporate-Affairs/Annual-Reports>

**Table 57: Infringements, cases, and sanctions (2014 – 2019) (Ireland)**

Type of Infringement	Number of infringements	Number of cases initiated	Cases of sanctions applied	Type of sanction applied	Average time of infringement procedures	Cases where points assigned	Cases of suspension of fishing licence
Not fulfilling its obligations to record and report catch [...]	224	117	37 <sup>200</sup>	criminal (Fine)	418.7 days	2+ (9) = 11 <sup>201</sup>	1
Use of prohibited or non-compliant gear according to EU legislation	7	4	3				
Falsification or concealing its markings, identity or registration	1	1	1				
Concealing, tampering with or disposal of evidence relating to an investigation	10	8	1			1	
Taking on board, transshipping or landing undersized fish in contravention [...]	14	1					
Carrying out fishing activities in the area of a regional fisheries management organisation in a manner inconsistent [...]							
Fishing without a valid licence, authorisation or permit [...]	20	12	2				
Fishing in a closed area or during a closed season [...]	117	89	28			4+(6)=10	1
Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited	3	3	3				
Obstruction of work of officials [...]	17	9	6				
Transshipping to or participating in joint fishing operations [...] engaged in IUU fishing [...]							
Use of a fishing vessel with no nationality [...]							
<b>Total</b>	<b>413</b>	<b>244</b>	<b>81</b>			<b>22</b>	<b>2</b>

Source: SFPAs survey responses

<sup>200</sup> A case may involve a number of infringements and in these cases, the 'additional' infringements may only be 'taken into consideration' as the result of a plea.

<sup>201</sup> Total 11 of which 2 were subject to a conviction and 9 have not been convicted to date.



*d. Sanctions imposed and points attributed***The point system**

The SFPA's annual reports for 2014 and 2015 provide details of points applied but more recent annual reports do not provide this information. The information for 2014 and 2015 is summarised in **Table 58** below. This information does not appear to correspond to the information provided above.

**Table 58: Summary of application of point system (2014-2015) (Ireland)**

		2014	2015
Detection	Infringements detected		52
	Vessels involved		19
Outcome of determination process	Serious infringements determined	3	16
	Vessels involved		11
Outcome after appeals process	Points assigned	27	55
	Vessels involved	2 <sup>202</sup>	7
	Licence suspensions	1 <sup>203</sup>	1 <sup>204</sup>

Source: Author based on SFPA annual reports for 2014 and 2015

**Convictions**

The **Table 59** below shows the number of convictions per year from 2014 to 2017, the year of the offence(s), the fines applied and the value of catch and gear forfeitures. **Many of these are unrelated to the application of the point system.** For example, in 2014 there were 10 convictions relating to offences committed in 2007, 2012, 2013, and 2014. The total value of sanctions applied in 2014 was EUR 132,496. This was comprised of fines amounting to EUR 14,500, forfeiture of catch amounting to EUR 12,500, and forfeiture of gear amounting to EUR 105,496. Individual convictions are listed below in **Table 60**.

<sup>202</sup> One of the licence holders appealed to the High Court. The 2014 Annual Report does not indicate the outcome of that appeal.

<sup>203</sup> One vessel licence suspended for two months.

<sup>204</sup> One vessel licence suspended for two months.

**Table 59: Convictions by year & fines and forfeitures applied (2014 – 2017) (Ireland)**

Year case closed	Year of offence(s)	2007	2010	2012	2013	2014	2015	2016	2017	Total
2014	Convictions	1		1	1	7				10
	Fine	1,000		5,000	2,500	6,000				14,500
	Catch				12,500					12,500
	Gear			12,996	92,500					105,496
	<b>Total</b>	<b>1,000</b>		<b>17,996</b>	<b>107,500</b>	<b>6,000</b>				<b>132,496</b>
2015	Convictions	2	1	1	9		1			14
	Fine	7,000			117,000		500			124,500
	Catch		24,000	5,000	67,750		344,960			441,710
	Gear						55,000			55,000
	<b>Total</b>	<b>7,000</b>	<b>24,000</b>	<b>5,000</b>	<b>184,750</b>		<b>400,460</b>			<b>621,210</b>
2016	Convictions						3	5		8
	Fine						2,500	8,800		11,300
	Catch						10,000	8,000		18,000
	Gear						10,000	21,000		31,000
	<b>Total</b>						<b>22,500</b>	<b>37,800</b>		<b>60,300</b>
2017	Convictions							2	2	4
	Fine							12,000	450	12,450
	Catch								18,500	18,500
	Gear							8,000	11,500	19,500
	<b>Total</b>							<b>20,000</b>	<b>30,450</b>	<b>50,450</b>
<b>Total 2014-2017</b>	Convictions	3	1	2	10	7	4	7	2	36
	Fine	8,000		5,000	119,500	6,000	3,000	20,800	450	162,750
	Catch		24,000	5,000	80,250		354,960	8,000	18,500	490,710
	Gear			12,996	92,500		65,000	29,000	11,500	210,996
	<b>Total</b>	<b>8,000</b>	<b>24,000</b>	<b>22,996</b>	<b>292,250</b>	<b>6,000</b>	<b>422,960</b>	<b>57,800</b>	<b>30,450</b>	<b>864,456</b>

Source: Author based on SFPA annual reports 2014 - 2017<sup>205</sup><sup>205</sup> The SFPA annual reports are available at <https://www.sfpa.ie/What-We-Do/Corporate-Affairs/Annual-Reports>

**Table 60: List of convictions recorded in SFPA annual reports (2014 - 2017) (Ireland)**

<b>Vessel nationality</b>	<b>Detection authority</b>	<b>Year of offence</b>	<b>Year of conviction</b>	<b>Offence date</b>	<b>Conviction date</b>	<b>Fine</b>	<b>Forfeiture of catch</b>	<b>Forfeiture of gear</b>	<b>Total value of sanction (EUR)</b>
Ireland	Navy	2016	2017			7,000		8,000	15,000
UK	Navy	2016	2017			5,000			5,000
Ireland	SFPA	2017	2017			350			350
UK	Navy	2017	2017			100	18,500	11,500	30,100
Ireland	SFPA	2015	2016			1,000	10,000	10,000	21,000
Ireland	SFPA	2015	2016			500			500
Ireland	SFPA	2015	2016			1,000			1,000
Ireland	SFPA	2016	2016			100		15,000	15,100
Ireland	SFPA	2016	2016			500			500
Ireland	SFPA	2016	2016			200			200
Spain	SFPA	2016	2016			1,000		6,000	7,000
Ireland	Navy	2016	2016			7,000	8,000		15,000
Ireland		2007	2015	27/07/2007	03/11/2015				0
Ireland		2007	2015	01/02/2007	29/10/2015	7,000			7,000
UK		2015	2015	19/02/2015	27/07/2015	500	344,960	55,000	400,460
Ireland		2013	2015	13/12/2013	21/07/2015	1,000			1,000
Ireland		2013	2015	13/12/2013	21/07/2015	1,000	7,000		8,000
Ireland		2010	2015	07/05/2010	14/07/2015		24,000		24,000
Ireland		2013	2015	06/09/2013	21/04/2015	5,000	39,000		44,000

<b>Vessel nationality</b>	<b>Detection authority</b>	<b>Year of offence</b>	<b>Year of conviction</b>	<b>Offence date</b>	<b>Conviction date</b>	<b>Fine</b>	<b>Forfeiture of catch</b>	<b>Forfeiture of gear</b>	<b>Total value of sanction (EUR)</b>
Ireland		2013	2015	31/05/2013	31/03/2015				0
Ireland		2013	2015	31/05/2013	03/03/2015				0
The Netherlands		2013	2015	22/11/2013	27/03/2015	35,000			35,000
The Netherlands		2013	2015	22/11/2013	27/03/2015	35,000			35,000
The Netherlands		2013	2015	22/11/2013	27/03/2015	35,000			35,000
Ireland		2012	2015	23/05/2012	17/02/2015		5,000		5,000
Ireland		2013	2015	10/12/2013	16/02/2015	5,000	21,750		26,750
UK	SFPA	2007	2014	30/08/2007	20/05/2014	1,000			1,000
Ireland	SFPA	2012	2014	23/05/2012	01/04/2014	5,000		12,996	17,996
Spain	SFPA	2013	2014	05/08/2013	28/02/2014	2,500	12,500	92,500	107,500
Ireland	Navy	2014	2014	09/04/2014	12/04/2014	300			300
Spain	Navy	2014	2014	18/04/2014	19/04/2014	750			750
Ireland	Navy	2014	2014	08/08/2014	14/08/2014	1,500			1,500
Ireland	Navy	2014	2014	09/04/2014	29/08/2014	500			500
Ireland	Navy	2014	2014	10/09/2014	15/09/2014	350			350
Ireland	SFPA	2014	2014	16/09/2014	17/09/2014	600			600
Spain	Navy	2014	2014	30/04/2014	03/10/2014	2,000			2,000

Source: Author based on SFPA annual reports 2014 - 2017<sup>206</sup>

<sup>206</sup> The SFPA annual reports are available at <https://www.sfpa.ie/What-We-Do/Corporate-Affairs/Annual-Reports>

*e. Number of sanctions related to the number of controls*

It is not possible, on the basis of the available information, to reliably link the number of controls and the number of sanctions. This is because:

- All control activities are not consistently included in SFPA annual reports;
- It is not possible to link sanctions to different types of controls;
- The outcome of a number of case files initiated during the period under review cannot be determined from the information available in the annual reports.

The **Table 61** below summarises the number of vessel inspections from 2014 to 2018, the number of case files opened in each of those years, and the number of convictions of offences that were detected in each of those years. Thus, not all of the 36 convictions included in **Table 59** above are included here as they relate to offences detected before 2014. The relevant conviction information for 2018 is not available.

**Table 61: Vessel inspections, case files opened, & convictions (2014-2018) (Ireland)**

Year	Vessel inspections	Case files opened	Convictions
2014	2,308	30	7
2015	2,502	35	4
2016	3,155	23	7
2017	5,265	34	2
2018	2,683	61	Not available
<b>Total</b>	<b>15,913</b>	<b>183</b>	<b>20</b>

Source: Author based on SFPA annual reports 2014 - 2018<sup>207</sup>

<sup>207</sup> The SFPA annual reports are available at <https://www.sfpa.ie/What-We-Do/Corporate-Affairs/Annual-Reports>

## 6.6. Italy

### 6.6.1. Legal framework

#### a. Overview

The Italian approach to the management of fisheries has long been characterised by fragmentation, inefficiency and confusion. The legal framework has long been based on Law 963 of 1965, followed by successive legislative acts.<sup>208</sup>

Despite the abundance of acts, the legal framework still suffers from **duplications, contradictions and gaps** in synchronization with European law. It struggles to address the problems of the fisheries sector: decline in output, lack of generational change, and increasing competition with Asian countries.<sup>209</sup>

This has encouraged the legislators to simplify the procedures resulting in **three main legislative acts** since the approval of the penalty point system.

#### b. Laws and date of entry into force

The key legal instruments regulating IUU fishing violations in Italy are:

- **Legislative decree n. 4**, approved on **9 January 2012**,<sup>210</sup> introduced the penalty point system in the Italian legislative framework and set the basis for future changes. The decree entered into force on 2 February.<sup>211</sup> Such decrees are adopted by the government on the basis of a “delegating law” approved by the Parliament.<sup>212</sup>
- **Law 154**, approved on **28 July 2016**, introduced significant pecuniary sanctions for serious violations and established a special regime for the protection of *Thunnus thynnus* (Atlantic Bluefin tuna) and *Xiphias gladius* (Swordfish), while leaving the articles that regulated the implementation of the point system untouched. Law 154 entered into force on 25 August.
- **Law 44**, approved on **21 May 2019**, considerably decreased many of the pecuniary sanctions established by Law 154, while maintaining a special regime for the two above-mentioned species and leaving the point system unchanged. Law 44 entered into force on the 29 May.

In Italy the legislative measures for fisheries have often been defined in the framework of **other legislative interventions** involving reorganisations of the agricultural and food production legislation.

The legal fragmentation makes **difficult for stakeholders** to keep track of legislative changes.

The Italian legislative system includes some special provisions aimed at the protection of especially valuable and threatened fisheries resources. The Mediterranean Sea, in which most of the Italian fleet operates, shows specific issues in terms of over-exploitation of fisheries resources and diversity of habitats that create challenges for which **a clear solution through legislative means is not yet in sight**. However, opinions are divided:

<sup>208</sup> Italian Parliament – Chamber of Deputies (2019). *Settore ittico, audizioni capitanerie di porto*. Available from: <https://webtv.camera.it/evento/14555>

<sup>209</sup> Ibid.

<sup>210</sup> D.Lgs. 9 gennaio 2012, n. 4

<sup>211</sup> Gazzetta Ufficiale della Repubblica Italiana (2012). *DECRETO LEGISLATIVO 9 gennaio 2012, n. 4 Misure per il riassetto della normativa in materia di pesca e acquacoltura, a norma dell'articolo 28 della legge 4 giugno 2010, n. 96. (12G0012)*. GU Serie Generale n.26, 01-02-2012. Available from: <https://www.gazzettaufficiale.it/eli/id/2012/02/01/012G0012/sq>

<sup>212</sup> These laws entrusts the government with the task of designing the appropriate legislative measures for highly technical topics, which the Parliament does not have sufficient technical knowledge of.

- Industry operators often regret that the sanction system is not suitable to address the specificities of the Mediterranean Sea. In particular, they complain that for the small- and medium-sized industries that operate on the Italian coast many of the restrictions are too strict.
- However, a stakeholder consulted rejected the idea that the Mediterranean Sea requires a different regime against IUU fishing. He noted instead that it is positive that the situation in the Mediterranean Sea has moved beyond the state of affairs of the previous decade, when the Sea was treated as a “permanent exception” to the regime established for the management of Atlantic and North Sea fisheries. Mediterranean issues were tackled without the same degree of strategic thinking applied for Atlantic resources, leaving instead too much room for delays and exceptions in Mediterranean Member States’ management of the local resources.<sup>213</sup>
- Another stakeholder commented that very positive steps have in fact been recently taken at European level after EU authorities realised that Mediterranean resources were not bouncing back as Atlantic ones are. This has led to the introduction of pluriennial regimes for stocks repopulation and measures to reduce overfishing, with clear results in some parts of the Mediterranean.<sup>214</sup>

However, it seems uncontested is that the impact of the Italian fleet on Mediterranean resources, especially in the Adriatic, severely threatens their sustainability. According to a fisheries expert interviewed by Italian newspaper *La Stampa* “Italy occupies the fourth place, among fishing fleets that registered the highest intensity of fishing operations in 2016, calculated by number of hours. Whereas China, Spain, Taiwan, Japan and South Korea extensively fish all around the world [...] the Italian fleet is essentially concentrated in the Mediterranean Sea. That would be like **concentrating the whole global Spanish fishing effort within our [Italian] waters.**”<sup>215</sup>

Recent limitations in fishing efforts (in terms of days at sea) established by the Council of the European Union for the Western Mediterranean in 2019 **have been judged to be insufficient** by environmental protection NGOs.<sup>216</sup> Italy had previously been accused of playing a key role in pressuring the Council to adopt these more permissive restrictions.<sup>217</sup> Similarly, Italy has been accused of being instrumental in pushing forward Parliament’s PECH Committee agreement from 19 February 2019 on the management of demersal species in the Western Mediterranean, which has also been **criticised by environmental campaigners** for failing to stop overfishing in the area.<sup>218</sup>

Despite the concentration of Italian fleets in its own Mediterranean waters, the impact of the Italian fleet in other regions should not be underestimated. In 2014 and 2015 Italian vessels were found to be the main violators of EU law with regards to **fishing activities in Gambian waters**, in terms of number of

<sup>213</sup> Interview with fisheries expert, 8 May 2020

<sup>214</sup> Interview with national environmental protection NGO, 23 April 2020

<sup>215</sup> Francesco Ferretti interviewed in Mazzali, M. (2019). “Pesca industriale, l’Adriatico tra le aree più sfruttate al mondo”. *La Stampa*, 25 November 2019. Available from: <https://www.lastampa.it/tuttogreen/2018/02/26/news/pesca-industriale-l-adriatico-tra-le-aree-piu-sfruttate-al-mondo-1.33985163>

<sup>216</sup> Oceana (2019a). *Council of the EU endorses overfishing in 2020*. 18 December 2019. Available from: <https://eu.oceana.org/en/press-center/press-releases/council-eu-endorses-overfishing-2020>

<sup>217</sup> Oceana (2018a). *France, Italy and Spain team up to delay EU overfishing deadline for the Mediterranean*. 13 December 2018. Available from: <https://eu.oceana.org/en/press-center/press-releases/france-italy-and-spain-team-delay-eu-overfishing-deadline-mediterranean>

<sup>218</sup> Oceana (2019b). *France, Spain and Italy unite to breach EU fisheries law*. 19 February 2019. Available from: <https://eu.oceana.org/en/press-center/press-releases/france-spain-and-italy-unite-breach-eu-fisheries-law>

hours spent at sea.<sup>219</sup> Italian import policies were alleged to contribute to the use of illegal gear in Moroccan waters.<sup>220</sup> A 2017 report also found Italian vessels among the **key perpetrators of IUU fishing violations in West Africa**.<sup>221</sup>

The question of whether the existing Italian sanctioning system has sufficient deterrent effect is of crucial significance for the Mediterranean, in light of the scenario described above.

### *c. Maximum and minimum penalties laid down in the law*

The penalties are defined by the modifications introduced with Law 44 (2019). Nevertheless Law 154 (2016) introduced a broader range of pecuniary sanctions and prison terms (alongside the point system) that sought to toughen the penalty system already established and added more deterrence to the existing sanctions. It also sought to address the fragile situation of ***Thunnus thynnus* and *Xiphias gladius* stocks**,<sup>222</sup> by introducing a **special regime** to punish their illegal or unreported fishing.

However, the toughening of sanctions introduced in 2016 caused a **strong reaction from industry operators**, in particular small and medium ones. They argued that the sanctions could endanger the viability and sustainability of the sector and that the penalties would not fulfil the requirement of effectiveness, proportionality and dissuasion,<sup>223</sup> being considered disproportionately harsh. Organisations of industry stakeholders gathered to protest in Rome in 2017.<sup>224</sup>

This happened on the context of a **crisis for a sector characterised mostly by small and medium enterprises**.<sup>225</sup> The sector has seen steady declines in workforce over the last two decades. Some stakeholders consider that the sector suffers also from EU regulations' lack of applicability to the local context.<sup>226</sup>

Partly as a result of the talks between industry stakeholders and the government following the 2017 protests, the **sanctions were reduced considerably with Law 44 of 2019**. Industry stakeholders did not consider this enough and protested again in Bari in October 2019.<sup>227</sup> A Coast Guard commander

<sup>219</sup> Oceana (2017). *Fishing the Boundaries of Law. How the Exclusivity Clause in EU Fisheries Agreements was Undermined*. September 2017. Available from: [https://usa.oceana.org/sites/default/files/fishing\\_the\\_boundaries\\_of\\_law\\_final.pdf](https://usa.oceana.org/sites/default/files/fishing_the_boundaries_of_law_final.pdf), p. 6-7

<sup>220</sup> Oceana (2014). *Oceana exposes illegal driftnet fisheries, while Italy denies it*. 19 July 2014. Available from: <https://eu.oceana.org/en/press-center/press-releases/oceana-exposes-illegal-driftnet-fisheries-while-italy-denies-it>

<sup>221</sup> Gatti, M. (2017). "L'oceano grabbing che depreda l'Africa". *Nigrizia*, 29 May 2017. Available from: <https://www.nigrizia.it/notizia/loceano-grabbing-che-depreda-lafrica>

<sup>222</sup> Oceana (2015). *Oceana estimates illegal swordfish landings cost Italy more than EUR25 million every year*. 23 September 2015. Available from: <https://eu.oceana.org/en/press-center/press-releases/oceana-estimates-illegal-swordfish-landings-cost-italy-more-eu25-million>

<sup>223</sup> Imperia Post (2017). "IMPERIA. PESCATORI SUL PIEDE DI GUERRA CONTRO LE NUOVE NORMATIVE EUROPEE. ROSSETTI: "PESCA ARTIGIANALE A RISCHIO DI ESTINZIONE" / I DETTAGLI. *ImperiaPost.it*, 16 February 2017. Available from: <https://www.imperiapost.it/232640/imperia-pescatori-sul-piede-di-querra-contro-le-nuove-normative-europee-rossetti-pesca-artigianale-a-rischio-di-estinzioe-i-dettagli>

<sup>224</sup> Il Fatto Quotidiano (2017). "Protestano i pescatori: bombe carta e petardi a Montecitorio. "Sanzioni sproporzionate, Martina ci riceva"". *Il Fatto Quotidiano*, 28 February 2017. Available from: <https://www.ilfattoquotidiano.it/2017/02/28/protestano-i-pescatori-bombe-carta-e-petardi-a-montecitorio-sanzioni-sproporzionate-vogliamo-parlare-con-martina/3422857/>

<sup>225</sup> Paolo Tiozzo, vice-president of Fedagri pesca, interviewed in Guarasci, A. (2020). "Il Coronavirus mette in ginocchio il settore della pesca". *VaticanNews*, 24 April 2020. Available from: <https://www.vaticannews.va/it/mondo/news/2020-04/coronavirus-mette-in-ginocchio-il-settore-pesca.html>

<sup>226</sup> Salvatore Quinci, mayor of Mazara del vallo, interviewed in Casadio, G. (2020). "Il sindaco di Mazara del Vallo: "Il virus dà il colpo di grazia alla pesca locale. Anche la comunità tunisina non sa di che vivere"". *La Repubblica*, 12 April 2020. Available from: [https://www.repubblica.it/dossier/politica/virus-in-comune/2020/04/12/news/intervista\\_sindaco\\_mazara\\_del\\_vallo\\_pesca\\_coronavirus-253823373/](https://www.repubblica.it/dossier/politica/virus-in-comune/2020/04/12/news/intervista_sindaco_mazara_del_vallo_pesca_coronavirus-253823373/)

<sup>227</sup> La Gazzetta del Mezzogiorno Redazione Online, Turi, L., (2019). "Bari, tensione durante la protesta dei pescatori: agenti feriti da bomba carta. Bloccato varco Porto per alcune ore". *La Gazzetta del Mezzogiorno*, 8 October 2019. <https://www.lagazzettadelmezzogiorno.it/video/gdm-tv/1177952/bari-tensione-durante-la-protesta-dei-pescatori-agente-ferito-da-bomba-carta.html>



speaking at the Chamber of Deputies in 2019 ascribed the changes of Law 44 directly to the requests coming from the industry, praising the rebalancing of punitive measures and the harmonization with other Member States.<sup>228</sup>

No changes were applied to the point system, but most sanctions' bases were reduced by half and others were restructured. Some experts link the protests and the effort to reduce sanctions more to an issue of **lack of a culture of compliance** rather than actual needs of the industry to protect themselves from disproportionate sanctions.<sup>229</sup>

In particular, the same expert also commented that in many parts of the country there is no reliable information about the actual payment of sanctions. It has been reported that many violators simply **refuse to pay and are never prosecuted**, while others exploit the generous appeal terms and the bureaucratic inefficiency of the Italian judicial system to avoid paying altogether. The deterrence power of the sanction is therefore removed.<sup>230</sup>

While the law has kept a special sanctioning regime for *Thunnus thynnus* and *Xiphias gladius*, the sanctions for violations affecting these species were **significantly decreased**. While Law 154 generally doubled the fine for violations involving the two species, Law 44 only established an increase of **up to 1/3**. In this sense environmental organisations and journalists have reported that the **use of illegal gear for *Xiphias gladius* has far from stopped**, and authorities fail to carry out enough controls.<sup>231</sup>

Serious infringements as defined by Annex XXX of Regulation (EU) No. 404/2011 currently result in the following main sanctions:

- Not fulfilling obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system, results in the allocation of **3 points** and a **sanction of EUR 1,000-6,000**.
  - Italian law also specifies that if these violations relate to species subject to multi-annual plans or fished outside of the Mediterranean Sea, the same sanction can be **increased by up to 50%** (if the violation is repeated and takes place within the 5 years following the first violation) and a further **one-third increase** can be applied if the violation involved *Thunnus thynnus* or *Xiphias gladius*, bringing the upper limit to **EUR 11,000**. A 50% increase is also to be taken into account, if violation involves satellite reporting obligations.
  - Furthermore, there is lack of clarity regarding the actual amount of the fine imposed. The Law 154 establishes a **EUR 2,000-12,000** fine in case of violation of existing regulations regarding landing obligations. This includes obligations in terms of registration and counting against quota,<sup>232</sup> which is however also covered by Art. 11.3, and warrants instead a EUR 1,000 - 6,000 fine.
- Use of prohibited or non-compliant gear according to EU legislation results in the allocation of **4 points** and a **fine of EUR 1,000-6,000** that can be **increased by up to 50%** if the violation is repeated and takes place within the 5 years following the first violation; the sanction can also

<sup>228</sup> Italian Parliament – Chamber of Deputies (2019).

<sup>229</sup> Interview with national environmental protection NGO, 23 April 2020.

<sup>230</sup> Ibid.

<sup>231</sup> Ibid.; also confirmed by journalist Sabrina Giannini in a 23 September 2019 follow-up to her 16 November 2008 “Mare Nostrum” investigation for RAI, Italy’s national TV. Giannini, S. (2019). *Indovina chi viene a cena*. RAI, 23 September 2019.

<sup>232</sup> European Commission (2020). *Discarding and the landing obligation*. Available from: [https://ec.europa.eu/fisheries/cfp/fishing\\_rules/discards\\_en#Landing%20obligation](https://ec.europa.eu/fisheries/cfp/fishing_rules/discards_en#Landing%20obligation)

be **increased by one third** in case the violation involved *Thunnus thynnus* or *Xiphias gladius*, bringing the upper limit to **EUR 11,000**.

- In case of falsification or concealing of markings, identity or registration, **5 points** are given and a **fine of EUR 1,000-6,000** is applied; the fine can be **increased by up to 50%** if the violation is repeated and takes place within the 5 years following the first violation bringing the upper limit to **EUR 9,000**. No special provisions for *Thunnus thynnus* or *Xiphias gladius* are envisioned for this violation.
- Concealing, tampering with or disposal of evidence relating to an investigation results in the same sanctions as falsification or concealing of markings.
- Taking on board, transshipping or landing undersized fish in contravention of the legislation in force results in the allocation of **5 points**, as well as a **fine that ranges from EUR 100 to EUR 75,000**, with the exact amount of determined based on weight and additional secondary circumstances; in case of violation involving *Thunnus thynnus* or *Xiphias gladius*, the fine can be **increased by one third**, bringing the upper limit to **EUR 100,000**.
- Carrying 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 results in the allocation of **5 points**, a **2-24 months prison, or a fine of EUR 2,000-12,000**. No special provisions for *Thunnus thynnus* or *Xiphias gladius* envisioned.
- Fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State results in the allocation of **7 points** and a **fine of EUR 1,000-6,000** that can be **increased by up to 50%** if the violation is repeated and takes place within the 5 years following the first violation; the sanction can also be **increased by one third** in case the violation involved *Thunnus thynnus* or *Xiphias gladius*, bringing the upper limit to **EUR 11,000**.
- Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth results in an **identical regime of fines as fishing without a valid licence**, but in the allocation of **6 points**.
- Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited results in two scenarios:
  - If the moratorium is established on a temporary basis for the repopulation of the stock, an **identical sanctionary regime as fishing without a valid licence applies**, both in terms of fines and points given.
  - However if fishing is forbidden altogether regarding of the growth stage, then the sanction is a **2 months – 2 years jail term** or a **fine of EUR 2,000-12,000**.
- Obstruction of 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 Union rules, results in **7 points** and a **fine of EUR 1,000-6,000**; the fine can be **increased by up to 50%** if the violation is repeated and takes place within the 5 years following the first violation, bringing the upper limit to **EUR 9,000**. No special provisions for *Thunnus thynnus* or *Xiphias gladius* envisioned.
- Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as having engaged in IUU fishing under Regulation (EC) No 1005/2008, in particular those included in the Union IUU vessel list or in the IUU vessel list of a regional

fisheries management organisation results in an **identical sanctionatory regime as fishing without a valid licence**, both in terms of fines and points given.

- Use of a fishing vessel with no nationality and that is therefore a stateless vessel in accordance with international law results in **7 points** and a **fine of EUR 1,000-6,000**; the fine can be **increased by up to 50%** if the violation is repeated and takes place within the 5 years following the first violation, bringing the upper limit to **EUR 9,000**. No special provisions for *Thunnus thynnus* or *Xiphias gladius* are envisioned.

It is worth noting that sanctions for taking on board, transshipping or landing undersized fish were reduced from the previous levels of EUR 1,000-75,000 (or EUR 2,000-150,000 for *Thunnus thynnus* or *Xiphias gladius*). **These fines were considered among the more controversial measures imposed by the law, resulting in the 2017 protests.**

Italian authorities considered the reorganisation of the sanction system introduced in 2016 as a depenalization, since it reduced previously existing penal sanctions.<sup>233</sup> Nevertheless the industry interpreted them in an opposite way. Administrative sanctions were probably seen as a more direct concern than penal ones. In their view, the inefficiency of the Italian judicial system in confirming penal sanctions often means that such sanctions in practice may never materialise, while administrative ones are arguably more likely to do.

Fishermen in Italy accused European legislators of setting a minimum size based on measurements that were **not reflective of the situation of the Mediterranean Sea**.<sup>234</sup> Besides the limits are not considered suitable to the conditions of Mediterranean fleets.<sup>235</sup> The changes introduced in 2019 were welcome by industry stakeholders who appreciated the reduction of administrative sanctions as well as the establishment of 5 levels of sanction, instead of 4, depending on catch size.<sup>236</sup>

A stakeholder consulted noted that while there was certainly a need to make sanctions more proportionate, the government's decision to decrease penalties **sets a dangerous precedent** and sends a wrong signal that could be interpreted as a "green light" to operators who are willing to carry out IUU fishing operations.

Other stakeholders consulted mentioned that if quotas or measurements defined at EU level are indeed not reflective of the situation in the Mediterranean context, this has largely to do with the half-heartedness of Italian authorities' participation in the decision-making process at EU level, where they often fail to represent the interests of Mediterranean industry operators. The key issue to address is therefore the **absence of central institutions in Rome** from EU decision making, rather than the EU's policies per se.<sup>237</sup>

<sup>233</sup> Poerio, A. (2017). *La Capitaneria di Porto – competenze ed attività*. *La Pesca Marittima*. Available from: <https://www.asl.fr.it/sites/default/files/field/file/poerio-la-capitaneria-di-porto-competenze-ed-attivita.pdf>, Page 21.

<sup>234</sup> La Gazzetta del Mezzogiorno Redazione Online, Turi, L., (2019).

<sup>235</sup> Imperia Post (2017).

<sup>236</sup> AGCI Sicilia (2019). "Abbassate le sanzioni per il settore Pesca, decisione unanime in XIII Commissione della Camera per la conversione del Decreto Emergenze 27/2019". *L'Altra Sicilia – Cooperazione Siciliana*. 12 April 2019. Available from: <https://altrasicilia.it/lista-di-notiziario/150-abbassate-le-sanzioni-per-il-settore-pesca-decisione-unanime-in-xiii-commissione-della-camera-per-la-conversione-del-decreto-emergenze-27-2019.html>

<sup>237</sup> Interview with fisheries expert, 8 May 2020.

Some NGOs fear that **industry stakeholders might push for additional relaxations** making the case that the hardship caused by COVID-19 requires a stimulus for the sector.<sup>238</sup> The revenues of the fishing industry will have experienced a 70% decline.<sup>239 240</sup>

**Table 62: Summary of serious infringements points and fines (Italy)**

	<b>Serious infringements Annex XXX of Regulation (EU) No. 404/2011</b>	<b>Points</b>	<b>Min. fine</b>	<b>Max. fine</b>
1	Not fulfilling its obligations to record and report catch or catch-related data	3	1,000 <sup>241</sup>	6,000 <sup>242</sup>
2	Use of prohibited or non-compliant gear according to EU legislation	4	1,000	11,000
3	Falsification or concealing its markings, identity or registration	5	1,000	9,000
4	Concealing, tampering with or disposal of evidence relating to an investigation	5	1,000	9,000
5	Taking on board, transshipping or landing undersized fish in contravention of the legislation in force	5	100	100,000
6	Carrying 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	5	2,000	12,000
7	Fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State	7	1,000	11,000
8	Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth	6	1,000	11,000
9	Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited	7	1,000	12,000 <sup>243</sup>
10	Obstruction of work of officials / observers	7	1,000	9,000
11	Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as having engaged in IUU fishing under Regulation (EC) No 1005/2008	7	1,000	11,000
12	Use of a fishing vessel with no nationality and that is therefore a stateless vessel in accordance with international law	7	1,000	9,000

Source: Legislative decree n. 4, 9 January 2012; Law 154, 28 July 2016; Law 44, 21 May 2019<sup>244</sup>

<sup>238</sup> Interview with national environmental protection NGO, 23 April 2020.

<sup>239</sup> Paolo Tiozzo, vice-president of Fedagri pesca, in Guarasci, A. (2020).

<sup>240</sup> Riviera24 Redazione (2020). "Pesca, Coldiretti: «La crisi del settore non frena la flotta ligure»". *Riviera24.it*, 28 April 2020. Available from: <https://www.riviera24.it/2020/04/pesca-coldiretti-la-crisi-del-settore-non-frena-la-flotta-ligure-623206/>

<sup>241</sup> This can be EUR 2,000 if Art. 11.2 of D.Lgs. 4 modified by Law 154 is applied, instead of Art. 11.3 of the same regulation.

<sup>242</sup> This can increase to EUR 11,000 for a series of circumstances defined only by Italian law but not technically mandated by EU one. It may also be 12,000 in case of application of Art. 11.2 of D.Lgs. 4 modified by Law 154, instead of Art. 11.3 of the same regulation.

<sup>243</sup> If a complete ban on fishing is in place. In case the moratorium is temporary and aimed at repopulation of the stock, the maximum fine is EUR 11,000.

<sup>244</sup> DECRETO LEGISLATIVO 9 gennaio 2012, n. 4 Misure per il riassetto della normativa in materia di pesca e acquacoltura, a norma dell'articolo 28 della legge 4 giugno 2010, n. 96. (12G0012). Available from: <https://www.gazzettaufficiale.it/eli/id/2012/02/01/012G0012/sq>

Italian law also assigns points for a series of violations that do not fall within the categories defined by EU legislation. Art. 14.5 of D.Lgs. 4, as modified by Art. 39.1.b of Law 154, extends the point system to **non-commercial, underwater fishing** licence.

For commercial fishing, accidental capture of undersized fish is also subject to the allocation of **5 points** and a **fine that ranges from EUR 100 to EUR 75,000**, with the exact amount of determined based on weight and additional secondary circumstances; in case of violation involving *Thunnus thynnus* or *Xiphias gladius*, the fine can be **increased by one third**, bringing the upper limit to **EUR 100,000**.

Exemptions to all prohibitions are stipulated for **scientific fishing**, but abuses in case of scientific fishing – such as the commercialization of its products – result in fines of **EUR 100 – 75,000**, with sanctions tiers based on weight and other measurements, that can be increased by up to one third in case of infringements involving *Thunnus thynnus* or *Xiphias gladius*.

A complex system of **accessory sanctions**, which include confiscations of catch and gear and provisions about suspension/revocation of various types of licences, can also be applied. These include:

A) Sanctions that apply to **all serious violations** defined in Annex XXX of Commission Implementing Regulation (EU) No. 404/2011:

- **Licence holder and commander hold joint responsibility** for pecuniary administrative sanctions imposed to their subordinates for any violation of maritime fishing regulations.
- **Confiscation of catch and gear** used to carry out the violation;
- **Obligation to restore the areas damaged** by the installation of prohibited gear used to carry out the violation

B) Sanctions that apply **only to specific violations**:

- **Suspension of licence** for periods of 3-6 months (or up to three months for some violations), regardless of the number of points previously accumulated.
- **Revocation of fishing licence** in case of repeated offence.
- **Suspension from registry of licenced fishermen** for 15-30 days, or 30 days to 3 months in case of repeated offence.
- **Suspension of business licence** for 5-10 working days for businesses that resell products caught as a result of IUU fishing.

The sanctions are applied as shown in **Table 63**:

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; LEGGE 28 luglio 2016, n. 154 Deleghe al Governo e ulteriori disposizioni in materia di semplificazione, razionalizzazione e competitività dei settori agricolo e agroalimentare, nonché sanzioni in materia di pesca illegale. (16G00169). Available from: [https://www.gazzettaufficiale.it/eli/id/2016/08/10/16G00169/sq\\_](https://www.gazzettaufficiale.it/eli/id/2016/08/10/16G00169/sq_); LEGGE 21 maggio 2019, n. 44 Conversione in legge, con modificazioni, del decreto-legge 29 marzo 2019, n. 27, recante disposizioni urgenti in materia di rilancio dei settori agricoli in crisi e di sostegno alle imprese agroalimentari colpite da eventi atmosferici avversi di carattere eccezionale e per l'emergenza nello stabilimento Stoppani, sito nel Comune di Cogoleto. (19G00050). Available from: <https://www.gazzettaufficiale.it/eli/id/2019/05/28/19G00050/sq>

**Table 63: Serious infringements accessory sanctions (Italy)**

Serious infringements Annex XXX of Regulation (EU) No. 404/2011	Suspension of licence	Revocation of licence for repeated offences	Suspension from registry of licenced fishermen	Suspension of business licence
Not fulfilling obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system	Yes (3-6 months), if violation relates to <i>Thunnus thynnus</i> or <i>Xiphias gladius</i>	Yes, if violation relates to <i>Thunnus thynnus</i> or <i>Xiphias gladius</i>	No	No
Legal ground <sup>245</sup>	Art. 12.3		N/A	N/A
Falsification or concealing its markings, identity or registration	No	No	No	No
Legal ground	N/A		N/A	N/A
Concealing, tampering with or disposal of evidence relating to an investigation	No	No	Yes, if violation using an unregistered boat	No
Legal ground	N/A		Art. 12.4	N/A
Taking on board, transshipping or landing undersized fish in contravention of the legislation in force	Yes, for up to three months if violation relates to <i>Thunnus thynnus</i> or <i>Xiphias gladius</i>	Yes, if violation relates to <i>Thunnus thynnus</i> or <i>Xiphias gladius</i>	Yes, if violation using an unregistered boat	No
Legal ground	Ch. IV-bis, Art. 11-ter Law 44		Art. 12.4	N/A
Carrying out fishing activities in the area of a regional fisheries management organisation in contravention of the conservation and management measures of that organisation	Yes (3-6 months), if violation relates to <i>Thunnus thynnus</i> or <i>Xiphias gladius</i>	Yes, if violation relates to <i>Thunnus thynnus</i> or <i>Xiphias gladius</i>	Yes, if violation using an unregistered boat	No
Legal ground	Art 9.2		Art. 9.3	N/A
Fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State	No	No	Yes, if violation using an unregistered boat	No

<sup>245</sup> Unless otherwise specified the legal ground for accessory sanctions is always D.Lgs. 4 as modified by Art 39 of Law 154.

Serious infringements Annex XXX of Regulation (EU) No. 404/2011	Suspension of licence	Revocation of licence for repeated offences	Suspension from registry of licenced fishermen	Suspension of business licence
Legal ground	N/A		Art. 12.4	N/A
Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth	Yes, for up to three months if violation relates to <i>Thunnus thynnus</i> or <i>Xiphias gladius</i>	Yes, if violation relates to <i>Thunnus thynnus</i> or <i>Xiphias gladius</i>	Yes, if violation using an unregistered boat	No
Legal ground	Ch. IV-bis, Art. 11-ter Law 44		Art. 12.4	N/A
Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited	Yes, for up to three months if violation relates to <i>Thunnus thynnus</i> or <i>Xiphias gladius</i>	Yes, if violation relates to <i>Thunnus thynnus</i> or <i>Xiphias gladius</i>	Yes, if violation using an unregistered boat	Yes, if sale of species whose capture is forbidden
Legal ground	Ch. IV-bis, Art. 11-ter Law 44		Art. 9.3	Art. 9.1
Obstruction of work of officials/ observers	No	No	Yes, if violation using an unregistered boat	No
Legal ground	N/A		Art. 12.4	N/A
Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as having engaged in IUU fishing	Yes, for up to three months if violation relates to <i>Thunnus thynnus</i> or <i>Xiphias gladius</i>	Yes, if violation relates to <i>Thunnus thynnus</i> or <i>Xiphias gladius</i>	No	No
Legal ground	Ch. IV-bis, Art. 11-ter Law 44		N/A	N/A
Use of a fishing vessel with no nationality	No	No	No	No

Source: Legislative decree n. 4, 9 January 2012; Law 154, 28 July 2016; Law 44, 21 May 2019



The Italian system also considers additional violations as serious ones, and while not allocating points, it does establish fines, sometimes stricter than those set for serious violations by EU legislation. Some violations are listed in the relevant laws with full overlap with the serious violations of Annex XXX of Regulation (EU) No. 404/2011.

Some violations, such as those related to the alteration of engine power, are considered by environmental protection NGOs as the most serious and among the ones that cause the **main threat to the sustainability of fisheries resources**.<sup>246</sup> A significant part of industrial fisheries fleets are **believed to use over-powered engines**. Controls operations fail to address this specific issue.<sup>247</sup> This might be related to the fact that controls protocols appear ill-suited to identify engine power irregularities.<sup>248</sup> A European Commission report from 2019 looked at two samples of Italian fishing vessels and found “mixed results of both compliance and non-compliance”<sup>249</sup> in one sample and “[n]on-compliance [...] in all cases”<sup>250</sup> in the other one.

The report concluded that “the reported non-compliance concerning engine power is a **significant underestimation** of the actual situation” [emphasis added],<sup>251</sup> and revealed that **serious shortcomings** exist when it comes to authorities’ plans for engine power control, adding that “a sampling plan has been developed in 2012 or 2013, but an actual sampling plan could not be located by the Italian fisheries authorities [...] [T]his sampling plan was discussed, but apparently no sampling or engine power verification plan for fishing vessels has been implemented. No sampling plan has been received by the contractor since the [...] meeting [with Italian authorities].”<sup>252</sup>

This is of special concern because Italian-based classification societies believed to be respectable and competent were found to be **supplying inaccurate certificates of engine power** in which the nominal power did not correspond to the actual maximum power.<sup>253</sup>

In the Italian sanctioning systems, altering engine power results in the standard sanction of a **fine of EUR 1,000-6,000**, increasable by **up to half** if the violation is repeated within the first 5 years following the first violation. Given the seriousness of the violation this amount is not enough to act as a deterrent.

Other serious violations worth mentioning for their significance for the sustainability of maritime resources include the use of **explosives or electricity** (and sale of catch obtained), and **fishing in other states’ territorial waters without agreement**. These violations are all punished primarily with a **2 months – 2 years imprisonment or a fee of EUR 2,000-12,000**. The latter is especially important since the high competition between coastal states’ fleets in the Mediterranean often results in territorial waters violations.<sup>254</sup>

<sup>246</sup> Interview with national environmental protection NGO, 23 April 2020.

<sup>247</sup> Ibid.

<sup>248</sup> In 2014 and 2016 engine irregularities resulted in only 17 sanctions (Coast guard data, 2014 and 2016 reports).

<sup>249</sup> European Commission (2019). *Study on engine power verification by Member States. Final report*. Luxembourg: Publications Office of the European Union, 2019. Available from: [https://www.europarl.europa.eu/meetdocs/2014\\_2019/plmrep/COMMITTEES/PECH/DV/2019/09-04/StudyonenginepowerverificationbyMemberStates-June2019\\_EN.pdf](https://www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/PECH/DV/2019/09-04/StudyonenginepowerverificationbyMemberStates-June2019_EN.pdf), p. 19

<sup>250</sup> Ibid., p. 97.

<sup>251</sup> Ibid., p. 97.

<sup>252</sup> Ibid., p. 64.

<sup>253</sup> Ibid., p. 103.

<sup>254</sup> Interview with national environmental protection NGO, 23 April 2020.



Some violations are also designed to address **specific issues of Mediterranean resources' sustainability**, such as the use of banned driftnets. Despite several attempts to suppress it, this has been widely practiced in the past and is still practiced, especially in Southern regions like Calabria, Sicily, Puglia and Sardinia with a negative impact on the ecosystem.<sup>255</sup>

The usage of driftnets is already punished by the provisions put in place in observation of the serious infringements of Annex XXX of Regulation (EU) No. 404/2011. However, the Italian law also punishes the **possession of such gear with the suspension of the licence** for 3-6 months (and its revocation in case of repeated offence). One of the experts consulted commented that the use of driftnets will probably never be entirely solved.<sup>256</sup>

#### *d. Application of the penalty point system*

The penalty point system has been in use since 2012.

The thresholds for the suspension of **fishing licences** are as follows:

- Upon achievement of 18 - 35 points: 2 months suspension.
- From 36 to 53 points: 4 months suspension.
- From 54 to 71 points: 8 months suspension.
- 72 or more points: 12 months suspension.

12 is the maximum number of points that can be assigned in each control.

For **vessels commanders**, the Italian legal system applies a **lenient approach**, resulting in rather short suspensions when compared with other Member States' systems:

- Upon achievement of 18 - 53 points: 15 days suspension.
- From 54 to 89 points: 30 days suspension.
- 90 or more points: 2 months suspension.

The maximum suspension for vessels commanders in the Italian system corresponds to the minimum one set by other systems.<sup>257</sup> It also does not include any provision for permanent suspensions as in other legal systems.<sup>258</sup> However, it does not give commanders the possibility to remove points through positive behaviour. **The deterrence power of the licence suspensions for commanders is dubious.**

Measures are in place to **reward positive behaviour** and allow **licence holders** to cancel points. Normally, all points are cancelled after three years since the last infringement. It is possible for **licence holders only** to anticipate the process by taking part in one of the following activities:

- Agreeing to use a VMS when not normally required or voluntarily using the electronic recording and transmission of logbook data and the declaration of transshipment and landing.
- Voluntarily participating in scientific campaigns for the improvement of the selectivity of fishing gear.

<sup>255</sup> *bid.*; for Puglia's case, see Brindisi Oggi Redazione (2018). "Pesca a strascico illegale, sanzionati sei pescherecci: multe per 24mila euro". *BrindisiOggi.it*, 4 October 2018. Available from: <http://www.brindisioggi.it/pesca-strascico-illegale-sanzionati-pescherecci-multe-24mila-euro/>

<sup>256</sup> Interview with national environmental protection NGO, 23 April 2020.

<sup>257</sup> For example Germany and Lithuania.

<sup>258</sup> Such as France.

- Being member of an association of producers and agree to a fishing plan that will result in a 10% reduction of fishing quotas for the year following the sanction.
- Conducting certified and labelled sustainable and traceable fishing.

In any case, no more than one virtuous behaviour can be used to remove points in the three years following the latest infringement. The removal of points cannot result in the cancellation of all points.

If points are removed, either because of the expiration of the three-year period or because of good behaviour, the General Directorate for Maritime Fishing and Aquaculture informs the licence holder.

Feedback from the Italian authorities describe the point system as a useful tool to discourage illegal fisheries.

#### *e. Brief description of the procedure*

The procedures of allocation of points are defined by **ministerial decrees** of MIPAAF (Ministero delle Politiche Agricole, Alimentari e Forestali / Ministry of Agricultural, Food and Forestry Policies). The most recent are from 2 March 2017 (for licences) and 20 July 2017 (for commanders).

The procedure for the allocation of points and subsequent suspension or revocation of licences, as well as appeals, be it for licence holders or vessels commanders, is **lengthy and bureaucratically complex**. It involves a large number of offices that have to intercommunicate and notify each other at every step.

Offices involved include the “Compartimento marittimo”, or Maritime district, an administrative unit in which the Italian coast is divided for the purposes of the Coast Guard’s activity;<sup>259</sup> the maritime office where the vessel is registered; the courts; the Pe.M.Acq (Direzione Generale della Pesca Marittima e dell’Acquacoltura / General Directorate for Maritime Fishing and Aquaculture) at MIPAAF; the National centre for fisheries control of the Coast Guard, and other secondary offices.

According to the latest decree, points for the **fishing licence** are assigned based on the following **verification procedure**.<sup>260</sup>

- Upon registration of a serious infringement, controlling agents write a record of the circumstances of the violation to the commander of the vessel.
- They also notify the holder of the fishing licence of the vessel regarding the number of points applied.
- A copy of both acts is passed to the Head of the relevant Maritime district, responsible for the area where the violation was committed.
- The accused have 30 days to send any supportive documents to the Head of the Maritime District.
- At the end of the 30-day period, or upon revision of the supporting documents, the Head of the Maritime District makes a decision regarding the allocation of points or drops the charges; the accused subjects are notified accordingly.
- If points are assigned, the Head of the Maritime District notifies Pe.M.Acq, and the maritime office where the fishing vessel is registered.

<sup>259</sup> Not to be confused with the Maritime Departments, administrative units employed by the Italian Navy.

<sup>260</sup> Unless otherwise specified, articles mentioned in this section all refer to the MIPAAF Ministerial Decree of 2 March 2017.

- The same officer also informs the CCNP (Centro controllo nazionale pesca / National centre for fisheries control) of the Coast Guard.
- If points thresholds that result in the suspension or revocation of the licence are achieved, the maritime office where the vessel is registered notifies the licence holder, and notifies the Pe.M.Acq. (Direzione Generale della Pesca Marittima e dell'Acquacoltura / Directorate General of Maritime Fisheries and Aquaculture) and the Head of the Maritime District where the vessel is registered, if different from the one involved up until that point.
- Violation committed outside of the limit of Italian territorial waters are handled by the Head of the Maritime District where the vessel is registered.

Upon conclusion of this stage of the procedure, **if a licence is temporarily suspended:**

- An additional period of 30 days is granted to the accused to provide exculpatory documentation.
- The Head of the Maritime District can uphold the decision or revoke the suspension of the licence; the accused is then notified.
- The maritime office where the vessel is registered has up to 10 days to proceed to the withdrawal of the fishing licence; the same office then notifies Pe.M.Acq. and CCNP. Fishing gear is kept under authorities' custody.
- If the licence is revoked or suspended, the vessel is listed in the un-licensed vessels' registry at national level, and in the Fleet Register at EU level. This step is the responsibility of Pe.M.Acq.

An almost identical procedure is set for the **revocation of the licence**. All decisions with regards to **assignment of points, suspension or revocation of licences** can be appealed against:

- If the court decides to annul the procedure, the licence holder notifies the Head of the Maritime District where the vessel is registered.
- The Head of the Maritime District has 30 days to proceed to the cancellation of the points/suspension; notifies the CCNP and Pe.M.Acq., and reinstates the licence, unless the licence had been revoked, in which case the task is the responsibility of Pe.M.Acq.

If the vessel is sold, the owner must produce relevant documentation about the number of points assigned to the vessel. There is also a procedure in case of cancellation of points for good behaviour.

As far as the **allocation of points for vessels commanders**, the process is defined by Ministerial decree of 20 Jul 2017.<sup>261</sup> The **verification procedure**, the **appeal procedure** and the process for **cancellation of points** are almost identical to the one for licence. It involves almost all of the same offices, except for provisions related to registries, as the register of fishermen are separate from those of the vessels.

#### *f. Competent authorities (sanctions and controls)*

**Pe.M.Acq.** within MIPAAF, is responsible for the implementation of fisheries regulations.

The duty of control and monitoring and the management of the National Registry of Infringements is entrusted to the **Corps of the Port Captaincies – Coast Guard** under the Ministry of Infrastructures and Transport. However, the law also assigns duties of control to:

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<sup>261</sup> Unless otherwise specified, the articles mentioned in the following section all refer to this decree.

- The Police.
- The Financial Police (Guardia di Finanza).
- Carabinieri.
- “Sworn agents” (Agenti giurati).

Despite the multiple agencies involved, the majority of controls are carried out **directly by, in coordination with, or under supervision of the Coast Guard**. The Coast Guard carries controls at sea, and part of the land inspections (for example, at restaurants). The Coast Guard in turn responds to MIPAAF for all issues related to fisheries controls, but is primarily subordinated to the Ministry of Infrastructures and Transports for its key institutional duties, and to the Ministry of Environment for some operations.

Due to the Coast Guard’s leading role, the data about controls carried out in Italy often **refers only to those performed by the Coast Guard itself**. This fact results into an **incomplete picture** of controls operations, even if the other agencies have only secondary roles.

#### *g. Average length of infringement procedure*

The average length of the infringement procedures in Italy is 87 days. The length very much depends on the individual cases.

### 6.6.2. Controls implemented and sanctions imposed (2014-2019)

#### *a. Types of controls implemented (sea, port, fisheries, region, etc.)*

Most controls take place at landing points, rather than at sea. Italian authorities have often failed to provide comprehensive and detailed figures about the number and type of controls conducted. The picture of the control and sanction regime seems incomplete due to limited data.<sup>262</sup>

Controls take place as follows:<sup>263</sup>

- At sea.
- At landing points.
- At fish markets and small retailers, including street vendors.
- At wholesale points.
- In large-scale distribution points.
- In restaurants.
- At airports.

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<sup>262</sup> The authors of the study have not received any answer to the data requests sent to the Italian Ministry of Agriculture and to the Coast Guard.

<sup>263</sup> Ministero delle politiche agricole alimentari e forestali (2015). *Nel 2014 oltre 64 mila controlli della guardia costiera in tutta la filiera Martina: Sicurezza dei prodotti assicurata da una capillare attività ispettiva*. 4 May 2015. Available from: <https://www.politicheagricole.it/flex/cm/pages/ServeBLOB.php/L/IT/IDPagina/8614>

Unless otherwise specified, the data in the following tables and sections are from the **2014 and 2016 reports** on the fisheries control operations of the Coast Guard, the **2015 general report** and the **2019 audition** at the Chamber of Deputies on the 2018 operations of the Coast Guard.<sup>264</sup>

**Table 64: Controls implemented by the Coast Guard by type (2014-2019) (Italy)**

Type	2014	2015	2016	2017	2018	2019
Sea	12,388	12,959	26,118	N/A	Split by type not available	N/A
Landing points	30,865	32,846	70,934			
Fish markets	3,828	2,500	2,094			
Wholesale points	2,088	1,232	1,476			
Large-scale distribution	1,390	1,250	1,849			
Restaurants	3,614	3,376	4,869			
Airports	21	13	34			
Street <sup>265</sup>	5,149	4,957	9,433			
Small retail	4,986	4,199	5,506			
<b>Total</b>	<b>64,279</b>	<b>63,332</b>	<b>122,268</b>		<b>128,361</b>	

Source: Author's compiling of Coast Guard reports data, 2014, 2015 and 2016<sup>266</sup>

For 2018, some data was provided to NGO ClientEarth, covering only the first 9 months. However, these figures only cover the number of **sanctions** by type of control, but do not provide data about the absolute number of **controls** by type.<sup>267</sup>

<sup>264</sup> Comando Generale del Corpo delle Capitanerie di Porto Guardia Costiera Reparto III – Ufficio Relazioni CCNP (2014). *RELAZIONE CONTROLLO PESCA 2014*. Rome, Centro di controllo nazionale della pesca; for the 2016 report, see: Comando Generale del Corpo delle Capitanerie di Porto Guardia Costiera Reparto III – Ufficio Relazioni CCNP (2016). *DATI ATTIVITA' CONTROLLO PESCA 2016*. Available from: <https://www.guardiacostiera.gov.it/stampa/Documents/RELAZIONE%20ANALISI%20COMPLESSIVA%20ANNO%202016%20PER%20SIT%20Q.pdf>; for the 2019 Audition, see: Ministero delle Infrastrutture e dei Trasporti - Comando Generale del Corpo delle Capitanerie di porto (2019). *AUDIZIONE DEL 06.03.2019 PRESSO LA XIII COMMISSIONE AGRICOLTURA DELLA CAMERA DEI DEPUTATI. Intervento del C.V. (CP) Paolo MARZIO, del Reparto Pesca Marittima del Corpo delle Capitanerie di porto – Guardia costiera presso il MIPAAFT*. Available from: [https://www.camera.it/application/xmanager/projects/leg18/attachments/upload\\_file\\_doc\\_acquisiti/pdfs/000/001/206/Documento\\_Capitanerie.pdf](https://www.camera.it/application/xmanager/projects/leg18/attachments/upload_file_doc_acquisiti/pdfs/000/001/206/Documento_Capitanerie.pdf)

Comando Generale del Corpo delle Capitanerie di Porto Guardia Costiera 3° Reparto - Piani e Operazioni (2015). *Rapporto annuale attività operativa 2015*. Rome, 2015. Available from: <https://www.guardiacostiera.gov.it/attivita/Documents/Rapporto-annuale-attivita-operativa/Rapporto%20annuale%202015.pdf>

<sup>265</sup> The definition in the original reports ("in strada") is very generic and may refer to controls on vehicles or street vendors (illegal street vendors being an issue in some parts of Italy: see for example Guardia Costiera Palermo (2019). *Controlli via mare e via terra sulla filiera della pesca*. 26 May 2019. Available from: <https://www.guardiacostiera.gov.it/palermo/Pages/Controlli-via-mare-e-via-terra-sulla-filiera-della-pesca.aspx>).

<sup>266</sup> Comando Generale del Corpo delle Capitanerie di Porto Guardia Costiera Reparto III – Ufficio Relazioni CCNP (2014); Comando Generale del Corpo delle Capitanerie di Porto Guardia Costiera 3° Reparto - Piani e Operazioni (2015); Comando Generale del Corpo delle Capitanerie di Porto Guardia Costiera Reparto III – Ufficio Relazioni CCNP (2016).

<sup>267</sup> ClientEarth (2018). *The control and enforcement of fisheries in Italy*. Brussels, London, Warsaw, December 2018. Available from: <https://www.documents.clientearth.org/wp-content/uploads/library/2018-12-19-the-control-and-enforcement-of-fisheries-in-italy-ce-en.pdf>, p.33

Overall, controls at sea represent only a small part of Italian authorities' control operations. A key issue reported during interviews has to do with the ease with which sanctions imposed after controls at sea can be appealed by fishermen.<sup>268</sup> The collection of evidence at sea is logistically more challenging, and sometimes results in an insufficient amount of evidence being accumulated against alleged IUU fishing perpetrators. The result is that **infringements registered at sea are too easily contested** and result in long appeals, trials, reductions or outright cancellations of sanctions.

For the Coast Guard, therefore, sea controls can be expensive often ineffective. Increasing controls at sea is therefore important, but in practice it can be inefficient unless the possibility to appeal is kept within reasonable limits.<sup>269</sup> However another expert interviewed remarked that it is **only through more controls at sea** that it will be possible to properly contrast the still-practices use of driftnets.<sup>270</sup>

*b. Coverage (%) as a total of fishing activity (catch volume, fishing trips, etc.)*

In **2014**, the Coast Guard carried out over 64,000 controls, assigning 4,244 administrative sanctions and 1,007 penal ones. In total, it allocated fines for over EUR 7 million and confiscated around 800 tons of fish products. No information is available regarding the percentage of controlled operations as a total of fishing activities.

In **2016**, the total number of controls had almost doubled compared to 2014, reaching 122,268 controls, assigning 4,745 administrative sanctions and 743 penal ones. Despite the drastic increase in controls since 2014, the number of violations recorded **has therefore decreased relatively to the total number of controls**. Thanks to the new measures of Law 154 the total **amount of fines had increased** from over EUR 7 million to over 8 million.

The limited data available for **2018** reflect a **similar proportion** of sanctions per control carried out, but also **fewer penal sanctions** and a considerably **higher amount of fines collected**, as a result of the shift from penal to administrative sanctions determined by Law 154.

**Table 65: Changes in number of controls and sanctions (2014-2019) (Italy)**

Infringement type	2014	2015	2016	2017	2018	2019
Controls carried out	64,279	63,332	122,268	N/A	128,000	N/A
Sanctions inflicted	5,251	5,537	5,488		6,144	
Sanctions/controls ratio	8.17%	8.74%	4.48%		4.80%	

Source: Author's compiling of Coast Guard reports data, 2014, 2015, 2016 and 2019 Chamber of Deputies audition

Experts consulted hinted at the possibility that local **dynamics of intimidation**, especially in some regions, might reduce the Coast Guard's ability and willingness to carry out enough controls.<sup>271</sup>

<sup>268</sup> Interview with fisheries expert, 8 May 2020.

<sup>269</sup> Ibid.

<sup>270</sup> Interview with national environmental protection NGO, 23 April 2020.

<sup>271</sup> Interview with fisheries expert, 8 May 2020, and interview with national environmental protection NGO, 23 April 2020.

In particular, in the past the fact that Coast Guard officers often live alongside the people they are supposed to control has resulted in **failure to prosecute violators**, forcing central authorities to use Coast Guard officers from other maritime districts to conduct control operations.<sup>272</sup>

At this stage, it is not possible to independently verify the extent to which this assessment reflects a general situation in the country. However, the experts' opinion is indeed confirmed by individual episodes of **death threats, physical attacks at sea and other intimidations** directed against Coast Guard officers, which have been reported in the media over the last few years.<sup>273</sup>

One of the interviewees alleged that in at least one case during the period under analysis, control authorities in Sardinia not only failed to protect smaller industry operators from the damage caused by IUU fishing practices of larger operators, but **actually subjected the whistle blowers to controls, rather than the alleged offenders**; the Minister, when notified, did not react.<sup>274</sup> The expert commented that such bad practices worsen the current situation of crisis of the fisheries sector by pushing more and more smaller actors to quit.

### *c. Identified infringements and sanctions imposed by type of infringement (including points)*

The most common violations identified by Italian authorities in 2014 and 2016 related to **traceability issues** (1,917 sanctions imposed out of 4,244 in 2014 and 1,967 out of 4,745 in 2016) **rather than serious infringements**. Traceability has also been mentioned as a key issue regarding the 2018 controls.

**Traceability** has often been a major concern for the authorities and the industry. The violations of such requirements undermine the sustainability of the Italian fleets' operations due to the competition of larger, non-EU industries and the flooding of the local market with products of unclear origin, often fraudulently labelled as Mediterranean fish.<sup>275</sup> Traceability checks also help protect the industry from competition of non-EU Mediterranean fisheries that do not face the same kind of restrictions as EU fleets and are therefore able to sell products that are cheaper, but less sustainably-fished.<sup>276</sup>

Stakeholders consulted have also explained the predominance of controls that focus on traceability issues by the need to avoid unfair competition from mis-labelled products. Besides, traceability controls are **cheaper and far easier to implement** than IUU controls, especially those at sea.<sup>277</sup>

<sup>272</sup> Interview with national environmental protection NGO, 23 April 2020.

<sup>273</sup> La Nuova Sardegna (2019). "Bosa, minacce alla comandante della Guardia Costiera". *La Nuova sardegna*, 6 September 2019. Available from: <https://www.lanuovasardegna.it/oristano/cronaca/2019/09/06/news/bosa-minacce-a-lla-comandante-della-guardia-costiera-1.17877342>; Guardia Costiera Augusta (2017). *Arresto in flagranza di un soggetto, per i reati di oltraggio e minaccia a Pubblico Ufficiale, operato dalla Capitaneria di Porto-Guardia Costiera di Augusta congiuntamente alla Compagnia Carabinieri di Augusta – Sequestro di circa 1,000 metri di rete* in. 3 March 2017. Available from: <https://www.guardiacostiera.gov.it/augusta/Pages/030317-ARRESTO.aspx>; Positano News Redazione (2019). "Castellammare. Indagato il 48enne stabiese che aggredì un militare della Capitaneria di Porto". *PositanoNews.it*, 14 November 2019. Available from: <https://www.positanonews.it/2019/11/castellammare-indagato-48enne-stabiese-aggre-di-un-militare-della-capitaneria-porto/3342853/>; La Gazzetta del Mezzogiorno Redazione Online (2018). "Pesca a strascico, il grande fratello inchioda 11 barche: in cella comandante di peschereccio". *La Gazzetta del Mezzogiorno*, 17 September 2018. Available from: <https://www.lagazzettadelmezzogiorno.it/video/gdm-tv/1058595/pesca-a-strascico-il-grande-fratello-inchioda-11-barche-in-cella-comandante-di-peschereccio.html>

<sup>274</sup> Interview with national environmental protection NGO, 23 April 2020. During the interview it was also reported that there have been several cases of Coast Guard officers deliberately warning fishermen of impending "unannounced" controls to give them an opportunity to hide evidence of IUU fishing violations. As these episodes allegedly took place before the period under analysis in this essay, they are reported here only for context.

<sup>275</sup> Coast Guard, 2014 Report on fisheries control.

<sup>276</sup> Interview with fisheries expert, 8 May 2020.

<sup>277</sup> Ibid.



Lastly, major issues appear to exist with regards to Italian authorities' ability or readiness to **prevent the import of fisheries products from yellow-carded third countries**, despite the focus of controls on traceability. In 2018 a coalition of NGOs studied the rise in import volumes from such countries in combination with increased trade from Italy to other EU Member States, and hypothesised that "due to less stringent import controls under the IUU Regulation, Italy was seen as an entry point for seafood destined for other EU countries", arguing for "the need for all Member States to introduce robust and effective import controls at their borders. If just one country becomes an easy access route for high-risk products, consumers from any European Member State may be unknowingly buying products originating from a potentially illegal source".<sup>278</sup>

The following **Table 66** shows the data provided by the Italian authorities regarding the number of infringements identified per type of infringements. It is worth noting the substantial number of infringements identified for fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth (2,591 cases between 2014 and 2019). Besides, it is important to note that the number of infringements reported by the Italian authorities do not always coincide with the figure included in the report of ClientEarth.<sup>279</sup> For the purpose of this case study, we have considered both figures, when possible.

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<sup>278</sup> Oceana (2018b). *Increased imports of seafood products to Italy following the yellow-carding of third-countries*. 6 February 2018. Available from:

<sup>279</sup> <https://eu.oceana.org/en/blog/increased-imports-seafood-products-italy-following-yellow-carding-third-countries>  
ClientEarth (2018).



**Table 66: Serious infringements per type of infringement (2014-2018) (Italy)**

Type of infringement	No. of cases
Not fulfilling its obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system.	1,209
Use of prohibited or non-compliant gear according to EU legislation.	1,434
Falsification or concealing its markings, identity or registration.	298
Concealing, tampering with or disposal of evidence relating to an investigation.	71
Taking on board, transshipping or landing undersized fish in contravention of the legislation in force.	698
Carrying 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.	0
Fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State	123
Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth	2,591
Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited.	136
Obstruction of 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 Union rules.	180
Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as having engaged in IUU fishing under Regulation (EC) No 1005/2008, in particular those included in the Union IUU vessel list or in the IUU vessel list of a regional fisheries management organisation.	0
Use of a fishing vessel with no nationality and that is therefore a stateless vessel in accordance with international law.	0
Fishing, possession, transshipment, landing, transport and marketing of the species whose capture is prohibited at any stage of growth, in violation of the legislation in force.	96
Direct fishing of fish stocks for which fishing is suspended for the purpose of restocking for the recovery of the same.	55
Violation of the obligations established by the European and national regulations in force concerning the landing obligation.	2
<b>Total</b>	<b>6,893</b>

Source: Data provided by the Italian authorities in response to the Survey questions

#### *d. Sanctions imposed and points attributed*

The **Table 67** below shows the number of sanctions imposed per type of infringement and the number of points attributed according to the information provided by the Italian authorities. Besides, the

authorities have reported that they have imposed a total number of 118 suspensions of fishing licences for the 2014-2019 period

**Table 67: Sanctions imposed per type and points attributed (2014-2018) (Italy)**

Type of infringement	No. cases with sanctions imposed	No. cases with points
Not fulfilling its obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system.	1,209	905
Use of prohibited or non-compliant gear according to EU legislation.	1,434	178
Falsification or concealing its markings, identity or registration.	298	58
Concealing, tampering with or disposal of evidence relating to an investigation.	71	50
Taking on board, transshipping or landing undersized fish in contravention of the legislation in force.	698	293
Carrying 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.	0	0
Fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State	123	57
Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth	2,591	1,417
Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited.	136	104
Obstruction of 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 Union rules.	180	114
Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as having engaged in IUU fishing under Regulation (EC) No 1005/2008, in particular those included in the Union IUU vessel list or in the IUU vessel list of a regional fisheries management organisation.	0	0
Use of a fishing vessel with no nationality and that is therefore a stateless vessel in accordance with international law.	0	0
Fishing, possession, transshipment, landing, transport and marketing of the species whose capture is prohibited at any stage of growth, in violation of the legislation in force.	96	12
Direct fishing of fish stocks for which fishing is suspended for the purpose of restocking for the recovery of the same.	55	20
Violation of the obligations established by the European and national regulations in force concerning the landing obligation.	2	2
<b>Total</b>	<b>6,893</b>	<b>3,210</b>

Source: Data provided by the Italian authorities in response to the Survey questions

The following table shows the economic impact of the sanctions imposed. The data do not coincide exactly with the data provided by the national authorities, however they are significant for showing the different weight of administrative and penal sanctions.

**Table 68: Sanctions type and economic impact by year (2014-2018) (Italy)<sup>280</sup>**

Sanction type	2014	2015	2016	2018
Administrative sanctions	4,244	4,548	4,745	5,658
Penal sanctions	1,007	989	743	486
Amount of sanctions	EUR 7,330,250	EUR 7,356,928	EUR 8,287,317	EUR 12,347,145 <sup>281</sup>
Confiscated catch (kg)	787,141	602,695	762,054	460,000 <sup>282</sup>
Confiscated undersized catch (kg)	N/A	N/A	N/A	12,000 <sup>283</sup>

Source: Author's compiling of Coast Guard reports data, 2014, 2015, 2016, and 2019 Chamber of Deputies audition<sup>284</sup>

The 2018 report by ClientEarth reports different figures for the first 9 months of 2018: 3,312 administrative sanctions, 296 criminal ones, 184,106 kg of confiscated products and EUR 7,968.921 in fines. This would suggest that up to 40% of the total of administrative and penal sanctions, 35% of fines, and as much as 59.9% of the confiscation were imposed in just three months of 2018, i.e. the October-December period not covered by the report. This suggests either an issue in the way the Coast Guard provided data to ClientEarth, or a delay in data recording, especially about confiscations, resulting in a significant under-counting of data for the first 9 months.

*e. Number of sanctions related to the number of controls*

Available information about the number of sanctions related to the number of controls is provided in section 6.6.d.

<sup>280</sup> Data for 2017 and 2019 are not available

<sup>281</sup> Approximate estimate provided by Coast Guard officials, 2019, in Ministero delle Infrastrutture e dei Trasporti Comando Generale del Corpo delle Capitanerie di porto (2019).

<sup>282</sup> Only approximate estimate was provided.

<sup>283</sup> Only approximate estimate was provided.

<sup>284</sup> Comando Generale del Corpo delle Capitanerie di Porto Guardia Costiera Reparto III – Ufficio Relazioni CCNP (2014); Comando Generale del Corpo delle Capitanerie di Porto Guardia Costiera 3° Reparto - Piani e Operazioni (2015); Comando Generale del Corpo delle Capitanerie di Porto Guardia Costiera Reparto III – Ufficio Relazioni CCNP (2016); Ministero delle Infrastrutture e dei Trasporti - Comando Generale del Corpo delle Capitanerie di porto (2019).

## 6.7. Lithuania

### 6.7.1. Legal framework

#### a. Overview

Within the context of the Lithuanian economy, fisheries constitute a secondary source of income; as Lithuania is the smallest of the countries on the Baltic Sea by size of the territorial waters and exclusive economic zone, the number of companies operating in the fishing industry is low. Most of them are concentrated in a few port towns (Klaipėda, Nida and Palanga) along the same stretch of Baltic Sea coast, characterised by limited variation in ecosystems and available resources.

The overwhelming majority of Lithuanian fisheries operators in the Baltic Sea have historically focused on the *Sprattus sprattus* (sprat) and *Clupea harengus membras* (herring) species. This has become even more apparent after the ban on Eastern Baltic *Gadus morhua* (Cod) fishing reduced its catch to almost zero in 2019. As of 2019 *Sprattus sprattus* and *Clupea harengus membras* make up 99.14% of all catches of the Baltic fleet (in ton), in constant percentage growth since at least 2013 (when they represented 82.37% of the tonnes of catch).<sup>285</sup> Lithuanian legislators therefore do not face the challenges of other Member States who have to adjust their fisheries legal framework to the different conditions of highly diversified fleets operating in different environments.

The long distance fleet accounts for considerably more kW and GT than the Baltic Sea fleet, but it is small in size: 6 vessels of which 5 currently operational.<sup>286</sup> The main vessel flying Lithuanian flag is however the highly controversial "Margiris" super trawler, which alone accounts for over 26% of the GT of the entire Lithuanian fishing fleet, and over 30% of the GT of the long-distance fleet.<sup>287</sup>

The Lithuanian legal system is mostly based on the **Amendments No. XII-397 of 20 June 2013 to the Law on fisheries N. VIII-1756 of 27 June 2000**. Additional amendments were approved with the **Amendments to the Fisheries law No. XII-2532 of 29 June 2016**. Legal changes were discussed in 2018 following consultations with industry stakeholders, aiming to introduce legal changes in 2019 or 2020.<sup>288</sup> However this did not result in any modifications, and the concerns of the industry were left unaddressed.<sup>289</sup>

Additional provisions regulating the responsibility of **vessel commanders** were introduced with the **Law on procedures of approval, entry into force and implementation of the Code of Administrative Offences N. XII-1869 of 25 June 2015**.

Lithuanian authorities initially faced issues establishing a point system for commanders, as this figure was not regulated by law. They had to agree with the Lithuanian Transport Safety Administration, engaged in the certification of seafarer, to establish the legal ground for this profession. Furthermore, the Ministry of Agriculture did not consider the suspension of commanders' licenses to be a proportionate punishment.<sup>290</sup>

<sup>285</sup> Žuvininkystės tarnyba (2020). ŽUVININKYSTĖS TARNYBA PRIE LIETUVOS RESPUBLIKOS ŽEMĖS ŪKIO MINISTERIJOS 201 9 METŲ VEIKLOS ATASKAITA. 2020 m., Klaipėda. p. 11

<sup>286</sup> Interview with Fisheries Service official, 19 May 2020.

<sup>287</sup> "Margiris" has a GT of 9.499 and measures 142 meters. Data from: Ross, M. (2012). "Super trawler: destructive or sustainable?". ABC, 13 September 2012. Available from: <https://www.abc.net.au/news/2012-08-15/super-trawler-debate/4200114?nw=0> Data on the fleet from Žuvininkystės tarnyba (2020).

<sup>288</sup> Bikauskaitė, D. (2018). "Žvejybos įmonės susikibo dėl kvotų Baltijos jūroje: kiekviena lenkia įstatymą į savo pusę". Alfa.lt, 16 April 2018. Available from: <https://www.alfa.lt/straipsnis/50281159/zvejybos-imonės-susikibo-dėl-kvotų-baltijos-jūroje-kiekviena-lenkia-įstatymą-į-savo-pusę>

<sup>289</sup> Interview with industry stakeholder and fishing companies association leader, 9 April 2020.

<sup>290</sup> Written communication with Lithuanian authorities, 23 Mar 2020.

*b. Laws and date of entry into force*

The Fisheries Law was adopted on 27 June 2000 and amended multiple times over the following years. As far as the sanction system is concerned, the relevant amendments were adopted in 2013 and 2016.

The original law entered into force on 12 July 2000, while the 2013 Amendments entered into force on 1 July 2013, and the 2016 amendments entered into force on 15 July 2016. Additional minor amendments were adopted at various stages for individual articles.

The 2015 amendments to CAO regulating the point system for commanders was approved on 25 June 2015, and entered into force on 10 July 2015.

The versions currently in place of the two legislative acts, which will be referred to throughout this case study, are the Consolidate Version of 1 January 2020 for the Fisheries Law and the 2013 Amendments, and the Consolidated Version of 3 April.

*c. Maximum and minimum penalties laid down in the law*

Serious violations in Lithuanian law are defined by referring directly to the relevant EU legislation: EC regulations 1005/2008 and 1224/2009 and Annex XXX of Commission Regulation (EU) No. 404/2011. They are also listed in Art 57 of the Fisheries Law.

However, the serious infringements are considered as such only if **at least one** of these **key criteria** is satisfied:<sup>291</sup>

- Damage to maritime resources caused by the violation amounts to at least 50 times the BBND (Bazinis bausmių ir nuobaudų dydis, minimal threshold for fines, which at the moment amounts to EUR 50).
- IUU activities result in catch or sales worth at least 10 BBND.
- Catch resulting from violations amounts to more than 10% (margin of error) and is worth more than 10 times the BBND.
- Landing obligations are not fulfilled.
- Quotas are exceeded by more than 10%.
- Engine power is exceeded by more than 10%.
- Documents have been falsified, tampered with, or investigations have been obstructed.
- An attempt has been made to hide or conceal the identifying numbers.
- Commercial fishing was conducted without licence or in violation of its conditions.
- Commercial fishing involved prohibited species, or was conducted during a prohibited time period.
- Any fishing activity was carried out using or in collaboration with boats in the IUU register or the IUU register of regional fisheries management organisation.

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<sup>291</sup> Art. 53 of the Fisheries Law, points 1-14, as updated by the 2013 and 2016 Amendments.

- The worth of the catch or the unreported portion of the catch amounts to more than 10% the average monthly revenues of the business entity calculated over the previous 12 months and resulting from fisheries-related activities.<sup>292</sup>
- The violation constitutes the third repeated offense in a period of three years.

The presence of pre-requisites for serious violations to be considered as such does not appear to undermine the deterrence power of the sanctions system. Small industry stakeholders are aware of the existing sanctions and clearly feel a strong need to take them into account and comply when operating.<sup>293</sup> Lithuanian authorities consulted remarked that the sanctions system is **applied very strictly**, partly because the officers and institutions involved in controls still abide by a severe policing mentality derived from Soviet times.<sup>294</sup>

All serious violations warrant a **fine as a primary sanction**.<sup>295</sup> Fines must amount to **at least twice the full value** of the products involved in the violation of IUU fishing regulations, **but no more than 5 times** the full value. In case of **reiterated infringement** the thresholds are increased: from a minimum of 2 and a maximum of 5 times to a **minimum of 5 and a maximum of 8 times** the value of the products.

Therefore, in general, **Lithuanian law does not set pre-determined fine thresholds**, using instead the specific circumstances of the violation as a basis for the calculation of the sanction. The responsibility for determining the value of the product falls on the officials of the Ministry of Agriculture in case of violations resulting from fishing activities, and on Customs officials in case of import of products resulting from IUU fishing.<sup>296</sup>

In case no fishing products were achieved or traded, the fine is calculated as **1% to 5% of the revenues of the legal person** derived from fisheries activity (calculated based on the previous fiscal year). In case an IUU fishing violation that did not result in any catch is committed by a **new company** that has not yet completed a full fiscal year of activity, Art. 57.5 defines alternative methods for calculating the fine. These are not reported here as they are almost never used, due to the scarcity of new companies in the fishing industry in Lithuania.

By default, the fine is set at the average between the minimum and maximum thresholds. **Attenuating or aggravating circumstances**<sup>297</sup> are used to determine the amount of the fine:<sup>298</sup>

- **Attenuating circumstances** include collaboration with investigators, and voluntary prevention or remedying of the damage caused.
- **Aggravating circumstances** include hiding the serious infringement or obstructing investigations; failing to stop the violation when ordered to do so; repeating the same offence within 5 years, or committing two or more offences of a different kind over the same time period; carrying out a violation for over 15 days; causing a damage equal to more than 1,000 times the BBND (i.e., at the current level, a damage of EUR 50,000); committing a violation that results in 6 or 7 points as per Annex XXX of Commission Regulation (EU) No. 404/2011.

<sup>292</sup> If the business entity was not operational in the previous 12 months, the amount is calculated by looking at the available months of operation.

<sup>293</sup> Interview with industry stakeholder and fishing companies association leader, 9 April 2020.

<sup>294</sup> Interview with Fisheries service officials, 13 May 2020.

<sup>295</sup> Art 57, points 1-3 of the Law on Fisheries, in accordance with Article 44(2) of Regulation (EC) No 1005/2008.

<sup>296</sup> Art. 57.4

<sup>297</sup> Defined by Art. 57.10 and 11 of the Fisheries Law.

<sup>298</sup> If the application of the fine results in overall losses for the company, the fine is reduced.

In addition, the licence holder is required to **pay compensation for the damage to the marine environment** concerned, also depending on the value of the fishery products obtained by committing the serious infringement (or to the same rule based on average annual income).

The level of sanctions is different for licence holders held liable for a serious infringement and for the master of the vessel. For **masters of vessel** the minimum fine is **EUR 560** and a maximum fine is set at **EUR 4,400 depending on the gravity and repetition of the infringement**, based on the number of points in Annex XXX of Commission Regulation (EU) No. 404/2011. Fines for vessels commanders are regulated by Art. 301, points 1-11. A summary is provided in **Table 69** below.

**Additional sanctions** can be imposed by competent authorities:

- Confiscation of catch, gear and/or revenues deriving from the violation.
- Revocation or temporary suspension of the fishing licence.
- Withdrawal of the status of approved economic operator.

These sanctions can be imposed if there are two or more aggravating circumstances or if the following conditions apply:

- Gear is confiscated if it is not in line with European regulations.
- Catch and revenues are confiscated if the catch is not declared according to EU legislation regarding IUU fishing.
- The status of approved economic operator can be revoked if the violation took place at the level of import of products resulting from IUU fishing.
- For the suspension or revocation of the licence, Lithuanian law refers verbatim to the measures defined by EU law at Art. 92.3 of Council Regulation (EC) No 1224/2009 of 20 November 2009 and Art. 129 of Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011.

#### *d. Application of the penalty point system*

The process of allocation of points to licence holders is described in Art. 59 of the Fisheries law, while for vessels commanders the procedure is described at Art. 61.

The allocation of points to **licence holders** results also in the allocation of points to the vessel. The commission that investigates the violation assigns points following the conclusion of the procedure.

Points are assigned both to the licence holder and to the vessel and in case of sale of the vessel they are transferred to the buyer.<sup>299</sup>

Lithuanian law does not explicitly define the thresholds for **temporary licence suspensions**. When consulted on this point, Lithuanian authorities clarified that:<sup>300</sup>

- The licence can indeed be suspended or withdrawn, as defined in Article 60 of the Law on Fisheries, but the country has not set the thresholds of points for the licence holders and simply included the reference to Article 129 of Regulation No. 404/2011.

<sup>299</sup> Section III, Art. 11 of Order Nr. 3D-551

<sup>300</sup> Email communication with Lithuanian authorities, 20 May 2020.



**Table 69: Summary of serious infringements points and fines (Lithuania)**

	Serious infringements Annex XXX of Regulation (EU) No. 404/2011	Points	Min. fine	Max. fine	Fines for vessels commander
1	Not fulfilling its obligations to record and report catch or catch-related data	3	2 times the value of the products obtained with the violation, or 1% of the revenues of the juridical subject derived from fisheries activity	8 times the value of the products, or 5% of the revenue.	EUR 560-1,200, or EUR 1,000-2,000 (repeated offences)
2	Use of prohibited or non-compliant gear according to EU legislation	4			EUR 1,200 - EUR 1,700; EUR 1,750-2,600 (repeated offences)
3	Falsification or concealing its markings, identity or registration	5			EUR 1,700-2,800 or EUR 2,300-3,200 (repeated offences)
4	Concealing, tampering with or disposal of evidence relating to an investigation	5			
5	Taking on board, transshipping or landing under-sized fish in contravention of the legislation in force	5			
6	Carrying out fishing activities in a manner inconsistent with or in contravention of the conservation and management measures of that organisation	5			
7	Fishing without a valid licence, authorisation or permit	7	As infringements that result in 6 or 7 points always constitute aggravating circumstances, the fine is set at the highest threshold: 8 times the value of the products, or 5% of the revenues.	EUR 3,000-3,400 or EUR 3,400-4.400 (repeated offences) <sup>301</sup>	
8	Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth	6		EUR 2,300-2,900 or EUR 2,800-3,900 (repeated offences)	
9	Directed fishing for a stock which is subject to a moratorium [...]	7		EUR 3,000-3,400 or EUR 3,400-4,400 (repeated offences)	
10	Obstruction of work of officials / observers	7			
11	Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as having engaged in IUU fishing	7			
12	Use of a fishing vessel with no nationality	7			

Source: Lithuanian Fisheries Law and CAO<sup>302</sup>

<sup>301</sup> This does not include circumstances in which “fishing without a valid licence” happens when fishing whilst licence is suspended. In these cases, sanctions: EUR 3,600-4,000. Art. 301.11 CAO.

<sup>302</sup> Lietuvos Respublikos žuvininkystės įstatymas. Suvestinė redakcija nuo 2020-01-01. Available from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.104591/asr> and Lietuvos Respublikos administracinių nusižengimų kodekso patvirtinimo, įsigaliojimo ir įgyvendinimo tvarkos įstatymas. Lietuvos Respublikos administracinių nusižengimų kodeksas. Suvestinė redakcija nuo 2020-05-26 iki 2020-06-30. Available from: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/b8d908c0215b11e58a4198cd62929b7a/asr>



- Lithuanian authorities interpreted Regulation 404/2011 as stipulating that it is enough to reach the lower limit of the number of points to make it possible to apply an additional sanction of suspension or withdrawal of the fishing licence.
- According to their interpretation if a licence holder accumulates, for example, 19 points from 16, he has already achieved 18 points, and his licence shall be suspended for the first time for **2 months**.
- If a number of points automatically trigger the second suspension of the licence, it shall be suspended for **4 months, and so on** until permanent suspension in accordance with Article 92(3) of Control Regulation.

Once points are assigned, the Fisheries Service is in charge of transferring them to other business entities in case of sale or transfer of the vessel to which points have been assigned.

The application of **points for vessels commanders** results in the suspension of the licence with the following modalities:

- Upon achievement of 18 - 35 points: 2 months suspension.
- From 36 to 53 points: 4 months suspension.
- From 54 to 71 points: 8 months suspension.
- 72 or more points: 12 months suspension.

Points are removed if the commander does not commit any violations in the three years following the last serious offence.<sup>303</sup>

The **Lithuanian Transport Safety Administration** is in charge of recording of licence points in view of an eventual suspension for vessel commanders.<sup>304</sup> However, the actual allocation of points and withdrawal of licence remains the responsibility of the **Fisheries service**.<sup>305</sup>

Industry stakeholders remarked that the point system is applied in a way that **leaves room for misunderstandings**. Industry operators are not always fully aware of the reasons and conditions for the allocation of points, and sometimes struggle to see the logic behind the point system.<sup>306</sup> However, given the limited number of points assigned over the years in practice this scenario is likely to affect only a very small number of operators.

Other stakeholders noted that rather than a complex system of points and suspension upon accumulation of certain points thresholds, it might be easier to proceed directly to a temporary suspension or revocation of licences for serious infringements. However, they also appreciate and understand that the point system allows people to recognise the mistakes made, and adjust their behaviour accordingly. They admitted that existing regulations and sanctions are both necessary and beneficial for the sustainability of resources.<sup>307</sup>

Based on the feedback from the industry and in light of the limited number of points assigned over the years, the value of the point system in the Lithuanian context seems to be more about its function as a **rehabilitation and education tool** rather than for deterrence or punishment.

<sup>303</sup> Fisheries Law, Art. 61.3, following 2016 Amendments

<sup>304</sup> Email communication with Lithuanian authorities, Mar 2020; confirmed in interview with Fisheries Service officials, May 13 2020.

<sup>305</sup> Order Nr. 3D-551, Section 1, Art. 3

<sup>306</sup> Interview with industry stakeholder and fishing companies association leader, Apr 9 2020.

<sup>307</sup> Ibid.

## 6.7.2. Infringement procedures

### *a. Brief description of the procedure*

The procedure for the application of points and other sanctions is defined through the procedure described at Arts. 54 and 55 of the Fisheries Law, following changes in the 2016 Amendments. The process is informed by Art. 301 of the Code of Administrative Violations of the Lithuanian Republic. A Ministerial ordinance, Order No. 3D-55 from 26 September 2016, further defines the process.

Sanctions can be imposed in the form of warnings (which is immediately issued), points, fines, and/or obligation to refund damages; these are immediately effective. There is a timeframe for appealing, in which case **the sanction is suspended** until the completion of the judicial process.<sup>308</sup>

Sanctions can be applied to individual seafarers; points can also be applied to the vessel itself, while sanctions entailing **payment for damage to the environment** are usually imposed to the company.<sup>309</sup>

Fisheries Control Agents, once registered a violation, have the possibility to:

- Impose the interruption of fishing activities.
- Redirect the fishing vessel to port.
- Hold the vehicles involved in the violation for inspection.
- Confiscate catch and gear.
- Hold the vessel.
- Suspend the fishing licence.

Upon decision to apply one of the above-mentioned measures, **officials take note** of the following, for further investigation:

- Seriousness of the alleged violation.
- Impact of the violation on maritime resources.
- Duration of violation.
- Whether the offence is repeated or not.
- Previous violations.
- Cooperation with officials
- Losses/damage avoided.

In light of these circumstances, a protocol is prepared.<sup>310</sup> The protocol must be passed, within three days, to a **commission or officers**. The protocol must include:

- Date and place of the compilation of the protocol.
- Function, name and surname of the compiler of the protocol.
- Data about the business entity associated to the violation.

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<sup>308</sup> Interview with Fisheries service officials, 13 May 2020.

<sup>309</sup> Interview with Fisheries Service officials, 13 May 2020.

<sup>310</sup> Arts. 54 and 55 of the Fisheries Law.

- Date, time and description of the serious violation.
- Reference to the relevant article in EU Regulation No. 1224/2009 or No. 1005/2008 that defines the serious violation.
- Other information, such as contact details of witnesses.

The protocol has to be signed by the representative of the business entity and in case of refusal to do so, this is noted in the protocol itself. Violators have the possibility to include statements to explain their position and the circumstances of the violation in the protocol.

The **initial investigation** of the violation is conducted as follows:

- A commission is set up, upon deliberation of the head of the Fisheries Service, including agents of the fisheries control service and any other relevant officers of the Fisheries Service.
- In case the violation involves import or export of goods, then the responsibility for the initial investigation falls on customs officials.
- The Fisheries Service defines the times and procedure of the Commission's work.

The timelines of the procedure are defined under section 6.6.2.c. As to the procedure itself, the assessment of the evidence of the violation takes place in a public form, but it can be carried out in a private form if the trial would disclose confidential corporate information. The investigation results either in the **assignment of sanctions – including points for the fishing licence** - and **confiscation of catch and gear**, or the acquittal of the incriminated.

The procedure for infringement is clearly detailed in the law and appears to leave limited room for misinterpretations. The process for licence suspension is not entirely clear in the law but uniformly followed in practice. Lithuanian authorities themselves recognise that the legal process is defined in unambiguous and unequivocal ways.<sup>311</sup>

#### *b. Competent authorities (sanctions and controls)*

Fisheries control falls under the responsibilities of the **Fisheries Service under the Ministry of Agriculture** (Žuvininkystės tarnyba prie Lietuvos Respublikos žemės ūkio ministerijos).

Within the Fisheries Service, three separate divisions are responsible for controls:<sup>312</sup>

- The **Fisheries Monitoring and Control Division** controls information systems used to monitor all fisheries control and verification of long-distance fleets (6 vessels - 5 currently operational). Responsible for controls using electronic recording logbook and VMS systems. Since March 2020 it is also in charge of engine power controls.
- The **Baltic Sea Fisheries Control Division** is responsible for every activity in the Baltic and recreational fisheries.
- The **Fisheries Compliance and Enforcement Division**, which is mostly responsible for distributing quotas and was also taking care (until March 2020) of monitoring the fishing fleet's engine capacity, regardless of where the vessel operates.

<sup>311</sup> Interview with Fisheries Service officials, 13 May 2020.

<sup>312</sup> Details about the roles of the Divisions were provided during interview with Fisheries Service official, 19 May 2020.

The Fisheries Service coordinates control operations through its **Fisheries Control Agents**. Agents are responsible for carrying out most of the controls. Additional control roles are delegated to the **Customs Officials**, in charge of controls over imported or exported goods.

The authorities responsible for investigating violations and applying sanctions following the investigative procedure are defined by Art 55 of the Fisheries Law and they include a **commission** of Fisheries Service officers and agents, or custom officials when applicable. If needed, they can refer the decision on each case to each other.<sup>313</sup> The Fisheries Service is also in charge of managing the system to record the infringements, the imposed sanctions and assigned points.

The relationship between fisheries authorities and industry operators appears to be constructive, especially for long distance industry operators, who are very cooperative with authorities.<sup>314</sup> The officials responsible for long-distance fisheries control cooperate by conducting surveys on the quality of responses they get from the fisheries monitoring service.

The situation with the Baltic Sea fisheries is partly different: the smaller operators of the Baltic fleet are far more vulnerable to the impact of even minor changes in the amount of resources they are allowed to exploit. In recent years they have been struggling more and more because of the restrictions. There is **growing dissatisfaction** because of lack of income. Because of the *Gadus morhua* fishing ban, which has hit hard on industry operators for part of 2019 and will continue doing so for 2020 and beyond. Part of the fishing fleet will have to be phased out after reaching an agreement on compensations.

A separate but crucial note is needed regarding the super trawler "Margiris", at the centre of considerable controversy in 2014 in Australia and, more recently, in Ireland and the UK:<sup>315</sup> As "Margiris" operates globally and usually docks outside of Lithuania, the responsibility for monitoring its operations falls upon multiple countries' authorities. Lithuanian Fisheries Service officers inspected it most recently in 2017 and 2019. Inspections took place in Ijmuiden (the Netherlands) alongside Dutch inspectors. In both occasions no violations were registered.<sup>316</sup> Irish and British authorities inspected it in 2015 and 2019, again without registering violations, although in both circumstances high rates of dolphins stranding and other types of severe environmental damage were alleged to be linked to the ship's operation.<sup>317</sup>

<sup>313</sup> Art. 55.8 Fisheries Law.

<sup>314</sup> Interview with Fisheries Service official, 19 May 2020.

<sup>315</sup> Greenpeace (2014). *Monsters of the oceans: 7 criminal super trawlers that threaten our waters*. 19 November 2014. Available from: <https://www.greenpeace.org.au/blog/monsters-oceans-7-criminal-super-trawlers-threaten-waters/>; TheJournal (2015). "A super trawler banned from Australia is back in Irish waters". *TheJournal.ie*, 13 January 2015. Available from: <https://www.thejournal.ie/super-trawler-margiris-west-coast-ireland-1878199-Jan2015/>; Bird, S., Horton, H. (2019). "Trawler 14 times the size of UK fishing boats is plundering fish from British waters before Brexit". *The Telegraph*, 4 October 2019. Available from: <https://www.telegraph.co.uk/news/2019/10/04/trawler-14-times-size-uk-fishing-boats-plundering-fish-british/>. The fishing capacity issues derive mostly from its ability to remain at sea for longer periods of time than average trawlers, rather than the length of nets or capture capacity per se. On this point: Serong, J. (2012). *SUPER TRAWLER: The Curious Case of The FV Margiris*. *CoastalWatch*, 17 September 2012. Available from: <https://www.coastalwatch.com/environment/10868/super-trawler-the-curious-case-of-the-fv-margiris>

<sup>316</sup> Žuvininkystės tarnyba (2017b). *Žuvininkystės tarnybos žvejybos kontrolės pareigūnai dirba ir Ijmuideno (Nyderlandai) uoste*. 10 March 2017. Available from: <http://zuv.lt/index.php?4153181524>; Žuvininkystės tarnyba (2019b). *Patikrintas vienas didžiausių žvejybos tralerių – laivas „Margiris“*. 5 November 2019. Available from: <http://zuv.lt/index.php?1841672151>

<sup>317</sup> TheJournal (2016). "Foreign supertrawlers blamed for 'dolphin carnage' off Irish coast". *TheJournal.ie*, 4 March 2016. Available from: <https://www.thejournal.ie/stranded-dolphins-trawlers-2641304-Mar2016/>; Evelyn, R. (2019). "The supertrawler just 14 miles off Brighton capable of landing 6,000 tonnes of fish". *ITV*, 3 October 2019. Available from: <https://www.itv.com/news/2019-10-03/the-super-trawler-just-14-miles-off-brighton-capable-of-landing-6-000-tonnes-of-fish/>

### c. Average length of infringement procedure

Exact information regarding the average length of the infringement procedure is not available, but Lithuanian authorities indicate a 1-month time period for the conclusion of all of the procedures for serious infringements. This is within the 40 working day limit, defined by the law<sup>318</sup> as maximum time for the completion of the procedure.

Authorities consider the infringement procedure in Lithuania to be suitably designed to guarantee a rapid conclusion and avoid protracted legal proceedings. Only in rare cases the legal process has taken longer times of up to half a year.<sup>319</sup>

The application of sanctions has a time limit. No sanctions can be imposed if more than 5 years have passed since the violation was committed and more than 3 years since it was registered<sup>320</sup> (although Fisheries service officers remarked that they stick to a 2-years maximum limit).<sup>321</sup>

During the investigation itself, the presentation of additional evidence against the accused results in the allocation of 5 additional days to allow the accused to respond; condemned business entities can appeal within 20 days.<sup>322</sup>

## 6.7.3. Controls implemented and sanctions imposed (2014-2019)

### a. Types of controls implemented (sea, port, fisheries, region, etc.)

Lithuanian authorities release a yearly report on control operations. Reports are highly detailed and publicly available, providing **transparent information** about the Fisheries Service's work, often including yearly information divided by quarters of operation. A considerable amount of information provided in the reports focuses however on **internal waters** fishing, due to the importance of the sector.

Despite the focus on internal waters, the available data on maritime fisheries is sufficient to draw a picture especially for the last two years of the period of analysis.

The table below indicates the number of controls conducted by type for the last two years.

**Table 70: Number of controls per year by type of control (2018 – 2019) (Lithuania)**

Type of control	2018	2019
Landing from vessels operating in the Baltic Sea – over 24 meters	91	52
Landings from vessels operating in coastal area (8-15 meters)	52	20
Landings from vessels operating in coastal area (up to 8 meters)	83	74
Vehicles controls	29	16
Controls at sea	101	80
Recreational fishing	786	995

<sup>318</sup> Art. 55.3 of the Fisheries Law.

<sup>319</sup> Interview with Fisheries Service officials, 13 May 2020.

<sup>320</sup> Art. 55.3 of the Fisheries Law.

<sup>321</sup> Ibid.

<sup>322</sup> Art. 56 Fisheries Law.

Type of control	2018	2019
Planned controls at facility	11	11
Aerial controls	-	9
Unplanned checks	-	4
Controls within EU shared plan or EU-Canada joint controls	35	-
<b>Total</b>	<b>1,188</b>	<b>1,261</b>

Source: Author's compiling of Fisheries Service yearly reports data, 2018-2019<sup>323</sup>

Most types of controls have decreased in 2018 and 2019, while those on recreational fishing have drastically increased and are likely to increase further.<sup>324</sup> It is however note-worthy that **controls at sea**, despite a decline of over 20%, have not decreased as drastically as other controls. As a percentage of controls, they have in fact increased; for clarity, this includes only professional fisheries), as have controls at landing points for smaller vessels:

**Table 71: Type of controls on professional fisheries (%) (2018-2019) (Lithuania)**

Type of control	2018	2019
Landing from vessels operating in the Baltic Sea – over 24 meters	23%	20%
Landings from vessels operating in coastal area (8-15 meters)	13%	8%
Landings from vessels operating in coastal area (up to 8 meters)	21%	28%
Vehicles controls	7%	6%
Controls at sea	25%	30%
Planned controls at facility	3%	4%
Aerial controls	0%	3%
Unplanned checks	0%	2%
Controls within EU shared plan or EU-Canada joint controls	9%	0%
<b>Total</b>	<b>100%</b>	<b>100%</b>

Source: Author's compiling of Fisheries Service yearly reports data, 2018-2019<sup>325</sup>

<sup>323</sup> Žuvininkystės tarnyba (2019). ŽUVININKYSTĖS TARNYBA PRIE LIETUVOS RESPUBLIKOS ŽEMĖS ŪKIO MINISTERIJOS 2018 METŲ VEIKLOS ATASKAITA. 2019 m. vasario 9 d. Klaipėda; Žuvininkystės tarnyba (2020). ŽUVININKYSTĖS TARNYBA PRIE LIETUVOS RESPUBLIKOS ŽEMĖS ŪKIO MINISTERIJOS 2019 METŲ VEIKLOS ATASKAITA. 2020 m., Klaipėda. Available from: <http://zuv.lt/index.php?1178616535>

<sup>324</sup> Email communication with Lithuanian authorities, 3 June 2020.

<sup>325</sup> See note 229

According to preliminary information, **the decreasing trend in the number of controls has seen a reversal** in the first months of 2020, despite the quarantine period.<sup>326</sup> In particular, convenient weather conditions in the first half of the year have allowed to increase controls at sea compared to the same period in 2019 by one third, almost doubling the number of vessels inspected.<sup>327</sup>

Industry stakeholders commented that the control process is very efficient, thorough and effective and, at least until the beginning of the quarantine period, perceived it to take place mostly at sea.<sup>328</sup> Stakeholder consulted estimated that 60-70% of controls took place at sea as opposed to a 30-40% at shore. The exact figure is different, and **land controls are in fact more frequent**. Nevertheless the difference between perceived prevalence and actual incidence of controls at sea might indicate that the latter are more effective.

Stakeholders also remarked that **Fisheries Service agents' controls are conducted in a constructive way**, seeking to explain and persuade fishermen about the logic and need of fisheries regulations as a tool to preserve maritime resources in the long term.<sup>329</sup>

*b. Coverage (%) as a total of fishing activity (catch volume, fishing trips, etc.)*

The entire Lithuanian fishing fleet consists of 138 vessels, of which 29 operate in the Baltic Sea, 103 in the coastal area, and 6 in long-distance operations.<sup>330</sup> Controls conducted appear to be proportionate to the small size of the fleet.

As far as the coastal fisheries are concerned, in **2019, 57 control operations** were carried out, involving **137 vessels**.<sup>331</sup> It is however not possible to extrapolate what percentage of the fishing activity in terms of catch volume was covered by these operations.

More detailed information is available about the operations of the **Baltic Sea** division within the Fisheries Service, whose controls at landing points concentrate in the port of Klaipėda, given its primary importance for local industry, and are ensured by 24h presence of fisheries inspectors on the shore.

A massive effort focused on recreational fisheries, with 205 boats and 995 fishermen controlled.<sup>332</sup> Controls over recreational fishing are very important as, according to industry operators, they have a major impact on depleting fishing resources in the region.<sup>333</sup>

**Table 72** provides an overview of the numbers of Baltic Sea Fisheries Control Division's inspections at **landing points in Klaipėda**. For 2019 additional information has been added to the reports to better monitor controls of *Gadus morhua* catches by the coastal fleet. Data is from the yearly reports of the Fisheries Service for 2014 - 2019.<sup>334</sup> It is worth noting that **landings in Lithuania only involve Gadus**

<sup>326</sup> Delfi (2020). "Suintensyvejo žvejybos kontrolė Baltijos jūroje". *Delfi.lt*, 15 May 2020. Available from: [https://www.delfi.lt/kablys/zvejyba/suintensyvejo-zvejybos-kontrolė-baltijos-juroje.d?id=84292171#cxrecs\\_s](https://www.delfi.lt/kablys/zvejyba/suintensyvejo-zvejybos-kontrolė-baltijos-juroje.d?id=84292171#cxrecs_s)

<sup>327</sup> Ibid.

<sup>328</sup> Interview with industry stakeholder and fishing companies association leader, 9 April 2020.

<sup>329</sup> Ibid.

<sup>330</sup> End of 2019 data (2019 Report on the Fisheries service's activity, p. 12).

<sup>331</sup> Ibid., p. 16.

<sup>332</sup> Ibid., p. 17.

<sup>333</sup> Interview with industry stakeholder and fishing companies association leader, 9 April 2020.

<sup>334</sup> Žuvininkystės tarnyba (2015). *ŽUVININKYSTĖS TARNYBA PRIE LIETUVOS RESPUBLIKOS ŽEMĖS ŪKIO MINISTERIJOS 2014 METŲ VEIKLOS ATASKAITA*. 2015 m. vasario 10 d. Nr. 4E-2. Vilnius; Žuvininkystės tarnyba (2016). *ŽUVININKYSTĖS TARNYBA PRIE LIETUVOS RESPUBLIKOS ŽEMĖS ŪKIO MINISTERIJOS 2015 METŲ VEIKLOS ATASKAITA*. 2016 m. vasario 10 d. Nr. B21-27. Vilnius; Žuvininkystės tarnyba (2017a). *ŽUVININKYSTĖS TARNYBA PRIE LIETUVOS RESPUBLIKOS ŽEMĖS ŪKIO MINISTERIJOS 2016 METŲ VEIKLOS ATASKAITA*. 2017 m. vasario 10 d.



*morhua*, *Clupea harengus membras* and *Pleuronectes platessa*. Other species are landed elsewhere.<sup>335</sup>

**Table 73** reports the **percentage of landings subject to controls**. Data is elaborated on the basis of the yearly reports of the Fisheries Service for 2014 - 2019, including corrections based on the absolute number, when necessary.<sup>336</sup>

Controls in Klaipėda have been **decreasing since 2014**, but they remain relatively stable as a proportion of landings, fluctuating within the 27%-33% range. A different trend can be seen in the case of the landing of *Gadus morhua*, due to the unique status of the species. Controls have been **strengthened in 2019**, both for the Baltic Sea fleet and for the coastal fleet, although far more drastically for the former.

### c. Identified infringements and sanctions imposed by type of infringement (including points)

During the 2014-2019 period, a **limited number and range of violation** was registered by Lithuanian authorities:<sup>337</sup>

- By far the most widespread violation has been taking on board, transshipping or landing **undersized** fish in contravention of the legislation in force, which results in the application of 5 points. Six cases have been initiated for violations of this kind between 2014 and 2019. All have resulted in administrative fines, and 2 resulted in the application of points for the vessel commander and the licence holder.
- **Industry stakeholders** complain that existing regulation about undersized fishing do not reflect the practical conditions in which they operate, and remark that it is impossible to avoid catching undersized fish inadvertently.<sup>338</sup>
- **Not fulfilling obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system**, which results in 3 points, has been registered in 4 instances during the 2014-2019 period. This has resulted in 4 sanctions, but only 1 resulted in the application of points.
- Use of prohibited or non-compliant gear according to EU legislation, which normally results in 4 points, has been registered in only one instance, but has not caused the application of any points.

None of the violations or accumulation of points have resulted in suspension of licences during the period analysed. No other serious violations among those defined in Annex XXX of Regulation (EU) No. 404/2011 have been registered or resulted in sanctions during the period 2014-2019.

Vilnius; Žuvininkystės tarnyba (2018). ŽUVININKYSTĖS TARNYBA PRIE LIETUVOS RESPUBLIKOS ŽEMĖS ŪKIO MINISTERIJOS 2017 METŲ VEIKLOS ATASKAITA. 2018 m. vasario 9 d. Vilnius; Žuvininkystės tarnyba (2019a). ŽUVININKYSTĖS TARNYBA PRIE LIETUVOS RESPUBLIKOS ŽEMĖS ŪKIO MINISTERIJOS 2018 METŲ VEIKLOS ATASKAITA. 2019 m. vasario 9 d. Klaipėda; Žuvininkystės tarnyba (2020). ŽUVININKYSTĖS TARNYBA PRIE LIETUVOS RESPUBLIKOS ŽEMĖS ŪKIO MINISTERIJOS 2019 METŲ VEIKLOS ATASKAITA. 2020 m. Klaipėda.

<sup>335</sup> Email communication with Fisheries Service officials, 21 May 2020.

<sup>336</sup> Some minor calculation errors are present in the reports, resulting in slightly incorrect percentages (usually within a 1% discrepancy). Whenever the discrepancy was over 0.5%, it has been corrected. In all other cases the figure from the reports have been kept.

<sup>337</sup> Email communication with Fisheries Service officials, March 2020.

<sup>338</sup> Interview with industry stakeholder and fishing companies association leader, 9 April 2020.



**Table 72: Number of landings controlled at the port of Klaipėda (2014-2019) (Lithuania)**

Baltic Sea fleet	2014		2015		2016		2017		2018		2019	
	Reported	Inspected	Reported	Inspected	Reported	Inspected	Reported	Inspected	Reported	Inspected	Reported	Inspected
<b>All landings</b>	<b>399</b>	<b>114</b>	<b>439</b>	<b>132</b>	<b>420</b>	<b>137</b>	<b>346</b>	<b>101</b>	<b>326</b>	<b>91</b>	<b>136</b>	<b>43</b>
Landings of <i>Gadus morhua</i>	296	90	310	102	352	119	291	86	207	64	37	21
Landings of other fish	88	22	114	24	51	13	42	11	108	25	86	20
Landings of empty ships	15	2	15	6	17	5	13	4	11	2	13	2
Coastal Fleet	2014		2015		2016		2017		2018		2019	
	Reported	Inspected	Reported	Inspected	Reported	Inspected	Reported	Inspected	Reported	Inspected	Reported	Inspected
<b>All landings</b>	<b>362</b>	<b>73</b>	<b>303</b>	<b>68</b>	<b>265</b>	<b>74</b>	<b>145</b>	<b>39</b>	<b>219</b>	<b>52</b>	<b>103</b>	<b>20</b>
Landings of <i>Gadus morhua</i>	-	-	-	-	-	-	-	-	-	-	17	5

Source: author's compiling of Fisheries Service yearly reports data, 2014-2019<sup>339</sup>

<sup>339</sup> Žuvininkystės tarnyba (2015); Žuvininkystės tarnyba (2016); Žuvininkystės tarnyba (2017a); Žuvininkystės tarnyba (2018); Žuvininkystės tarnyba (2019a); Žuvininkystės tarnyba (2020). Available from: <http://zuv.lt/index.php?1178616535>

**Table 73: Percentage of landings controlled at the port of Klaipėda (2014-2019) (Lithuania)**

<b>Baltic Sea Fleet</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>% of landings controlled</b>	<b>28.5%</b>	<b>30%</b>	<b>32.6%</b>	<b>33%</b>	<b>27.9%</b>	<b>31.6%</b>
% of landings controlled for <i>Gadus morhua</i>	30.4%	33%	33.8%	33%	30.9%	56.8%
% of landings controlled for other fish	25%	21%	25.4%	31%	23%	23.3%
% of landings controlled (empty ships)	13%	40%	40%	31%	18.2%	15.4%
<b>Coastal Fleet</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>% of landings controlled</b>	<b>20%</b>	<b>22.4%</b>	<b>27.9%</b>	<b>26.9%</b>	<b>23.7%</b>	<b>19.4%</b>
% of landings controlled for <i>Gadus morhua</i>	20%	22%	30%	29.5%	21.9%	29.4%

Source: author's compiling of Fisheries Service yearly reports data, 2014-2019

There is preoccupation among small industry stakeholders regarding the risks related to increased recording requirements. Lithuanian fishermen already find that their logbooks are considerably longer than those in use in other Baltic countries, and fear that the more **electronic reporting and monitoring requirements** will be imposed, the more difficult it will be for small operators to remain compliant. Especially in the coastal area, most fishing companies employ staff that is often non-tech-savvy and fishes using small vessels, with limited technological tools and lack of space. The requirements of logging and monitoring via electronic means for such small boats is considered to be unrealistic.<sup>340</sup>

#### *d. Sanctions imposed and points attributed*

**Table 74** provides aggregated information about the sanctions and points applied between 2014 and 2019 for **serious infringements**. The data has been provided by the Fisheries Service.

As to why **not all serious infringements** have resulted in the allocation of points, Lithuanian authorities provided several reasons:

- Based on the criteria necessary for application of points infringements might not be considered serious in terms of damage done.
- The same infringement procedure might involve several people and the allocation of points might be decided only for some of the accused.

<sup>340</sup> Ibid.

- Points might be assigned by controlling authorities, but later removed by judicial authorities following the appeal process, even if the infringement remains classified as "serious". Authorities recognize that this kind of decision is rather unorthodox.<sup>341</sup>

Initial concerns from industry operators have not materialized. The introduction of the point system was seen with concern due to a lack of human resources in the industry, especially when it comes to experiences commanders, but in practice the **current sanction regime has not resulted in any licence suspension**. Officials relate this to the fact that industry operators have got used to the system and are compliant.<sup>342</sup>

Fisheries operators however remarked that while they understand the importance of the protection of fisheries resources, at the moment the number of restrictions is so vast that coastal fishing is practically impossible in summer. Moreover, part of the territorial water is a natural park. Fishermen feel that they are subject to very strict requirements about the types of fish that can be caught, the kind of nets and equipment that can be used. Authorities are often seen as a potential threat by industry operators who grew up during the Soviet era, and never fully trusted.<sup>343</sup>

#### *e. Number of sanctions related to the number of controls*

**Controls take place frequently and regularly.** Possibly because of the fact that fishermen are aware of the frequency of controls, the number of violations registered is very low in relation to controls. Sanctions imposed in the period 2014-2019 have been even fewer.<sup>344</sup>

Feedback from the industry sector and the comments received from the Fisheries Service indicate that the low number of infringements registered and punished is not caused by lenience in controls operations, but by **high degrees of compliance** in the industry. Controls have been confirmed to be thorough both by stakeholders and by EU audits.<sup>345</sup> The case of the long-distance fishing fleet stands out in this regard as there has not been a serious violation recorded since 2013-2014.<sup>346</sup>

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<sup>341</sup> Interview with Fisheries Service officials, 13 May 2020.

<sup>342</sup> Email communication with Fisheries Service officials, March 2020.

<sup>343</sup> Interview with industry stakeholder and fishing companies association leader, 9 April 2020.

<sup>344</sup> Email communication with Fisheries Service officials, March 2020.

<sup>345</sup> Interview with Fisheries Service official, 19 May, 2020, and interview with industry stakeholder and fishing companies association leader, 9 April 2020.

<sup>346</sup> Interview with Fisheries Service official, 19 May, 2020.

**Table 74: Type of infringements and sanctions applied (2014-2019) (Lithuania)**

Type of Infringement	Number of infringements	Number of cases initiated	Cases of sanctions applied	Type of sanction applied	Average time of infringement procedures	Cases where points were assigned	Cases of suspension of fishing licence
Not fulfilling its obligations to record and report catch or catch-related data	4	4	4	Administrative fines, penalty points for the master	1 month	1	Not applied
Use of prohibited or non-compliant gear according to EU legislation	0	1	1	Administrative fines	1 month	0	Not applied
Falsification or concealing its markings, identity or registration	0	0	0	0	0	0	0
Concealing, tampering with or disposal of evidence relating to an investigation	0	0	0	0	0	0	0
Taking on board, transshipping or landing undersized fish in contravention of the legislation in force	4	6	6	Administrative fines, penalty points for the master and for the fishery company	1 month	2	Not applied
Carrying out fishing activities in contravention of the conservation and management measures	0	0	0	0	0	0	0
Fishing without a valid licence, authorisation or permit issued	0	0	0	0	0	0	0
Fishing in a closed area or during a closed season	0	0	0	0	0	0	0
Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited	0	1	0	0	0	0	0
Obstruction of work of officials/observers	0	0	0	0	0	0	0
Transshipping to or participating in joint fishing operations with, support or resupply of fishing vessels identified as having engaged in IUU fishing	0	0	0	0	0	0	0
Use of a fishing vessel with no nationality	0	0	0	0	0	0	0

Source: feedback from Lithuanian authorities in response to the survey

## 6.8. Spain

### 6.8.1. Legal framework

#### *a. Overview and on the rules on management of fisheries resources*

The distribution of competences between the State and the regions (Autonomous Communities) laid down in article 149.1.19 of the Spanish Constitution provides that the State has exclusive competence in the field of maritime fishing. While establishing this general competence, the Constitution also provides that the State has competence in external waters and in the development of basic rules on management of fisheries resources. Autonomous communities have competence in inland waters, aquaculture and seafood.<sup>347</sup> Therefore, the competence of inspection and control related to fishing in external waters belongs to the State, whereas in inland waters it belongs to the regions. In the field of fisheries, the main national law applicable throughout the national territory is Law 3/2001. This law is further developed by a series of national and regional regulations. Since in Spain there are ten coastal regions (23 provinces), and each of them has developed its own legislation related to infringement procedures, control and inspections, the current study will not go into detailing regional legislation. Future research could explore the regional cases. However, as an example, we will make some references to the region of Andalusia.

#### *b. Laws and date of entry into force*

As mentioned above, the main law regulating the sanctioning system in Spain is *Law 3/2001, on State Marine Fisheries*.<sup>348</sup> Law 3/2001 is further developed by the Royal Decree 182/2015 concerning the rules of procedure of the sanctioning system.<sup>349</sup>

Council Regulation (EC) No. 1224/2009 (Article 92) was incorporated into Spanish law through two different laws:

(1) the *Royal Decree 114/2013, of February 15*,<sup>350</sup> establishing and regulating the national register of serious infringements of the common fisheries policy, establishing the rules of application of the point system and updating the amounts of the sanctions provided for in Law 3/2001, of March 26, on State Maritime Fisheries. It entered into force on 1 March 2013;

(2) *Royal Decree 182/2015, of March 13*, adopting the rules of procedure of the sanctioning regime for maritime fishing in foreign waters. It entered into force on 15 March 2015.

Furthermore, the Spanish sanctioning system is based on the principles established in *Law 40/2015, on the Legal Regime of the Public Sector*.<sup>351</sup>

#### *c. Maximum and minimum penalties laid down in law*

The sanctioning system and the penalties imposed are regulated in Law 3/2001, on State Marine Fisheries and Law 40/2014, on the Legal Regime of the Public Sector. The laws distinguish between minor and serious infringements. Minor infringements are addressed by the delegations of the

<sup>347</sup> Spanish Constitution (1978), art. 148.1.11.

<sup>348</sup> Ley 3/2001, de 26 de marzo, de Pesca Marítima del Estado (published in the oficial BOE n. 75 of 28.03.2001).

<sup>349</sup> Real Decreto 182/2015, de 13 de marzo, por el que se aprueba el Reglamento de procedimiento del régimen sancionador en materia de pesca marítima en aguas exteriores (published in the oficial BOE n. 63 of 14.03.2015).

<sup>350</sup> Real Decreto 114/2013, de 15 de febrero, por el que se crea y regula el registro nacional de infracciones graves a la política pesquera común, se establecen las normas de aplicación del sistema de puntos y se actualizan los importes de las sanciones previstas en la Ley 3/2001, de 26 de marzo, de Pesca Marítima del Estado (published in the oficial BOE n. 51 of 28.02.2013).

<sup>351</sup> Ley del Régimen Jurídico del Sector Público (BOE, n.236 of 02.10.2015).

Government in the provinces; whilst serious and very serious infringements are handled by the national authorities in Madrid.

The legislation details the administrative procedure to be implemented when an infringement is detected. This sanctioning system provides the following types of sanctions:

- Economic penalties:
  - Serious infringements: EUR 601 – EUR 60,000
  - Very serious infringements: EUR 60,001 – EUR 600,000
- Penalty points.
- Disqualification from fishing activities.
- Suspension or withdrawal of vessel's licenses, authorizations or permits.
  - Serious infringements: up to 3 years
  - Very serious infringements: up to 7 years
- Confiscation of the gear or the catch, according to the infringement.
- Inability to get loans, grants or public aid:
  - Serious infringements : up to 3 years
  - Very serious infringements : up to 7 years

It should be noted that a single sanctioning file/case might include several infringements. In this case, the final economic sanction could be much higher than EUR 600,000.

In this regard, Spain has even imposed fines of over EUR 30 million, during the so-called 'Sparrow operations'.<sup>352</sup> This relates to operations carried out by the General Secretariat of Fisheries since 2015 focusing on the participation of Spanish companies in illegal, unreported and unregulated fishing using flagged vessels in third states. In this case, the sanctioning ruling included economic fines, disqualification for fishing activities between 5 and 23 years, impossibility to obtain loans or public grants during 6 to 24 years, and the confiscation of the vessel.

#### *d. Application of the penalty point system*

The Spanish National Register of Serious Infringements and the point system for serious infringements (Articles 92 and 93 of the Control Regulation 1224/2009) were implemented through the Royal Decree 114/2013.

The relevant regulation offers the possibility of rewarding good behaviour, resulting in a subtraction of penalty points. If in the three years following an infringement, the concerned party does not commit any other infringement that implies the assignation of points, then the previously assigned points will be cancelled. Further details about the number of cases where points have been attributed can be found in **Table 78** and **Table 79**.

<sup>352</sup> More information about the Sparrow 1 and 2 operations can be found at: <https://www.mapa.gob.es/es/prensa/historico/el-ministerio-de-agricultura-y-pesca-alimentaci%C3%B3n-y-medio-ambiente-avanza-en-la-lucha-contrala-pesca-ilegal-no-declarada-y-no-reglamentada-/tcm:30-446049>; <https://www.eleconomista.es/economia/noticias/7214229/12/15/Economia-Agricultura-notifica-sanciones-de-178-millones-a-operadores-espanoles-por-la-operacion-Sparrow.html>

### e. Register of the sanctions, infringements and points

The Spanish authorities keep a National Registry for Serious Infringements to the CFP and the point system for serious infringements. It was implemented through the *Royal Decree 114/2013*, adopted in 28 February 2013 and entered into force on 1 March 2013.

All the information related to fisheries is included in a database called 'SIPE' (*Sistema de Información Pesquera Española*) of the General Secretariat of Fisheries. SIPE includes several different databases interconnected (fleet, licences, sanctions, etc.), and one of them is the Register of Infringements.

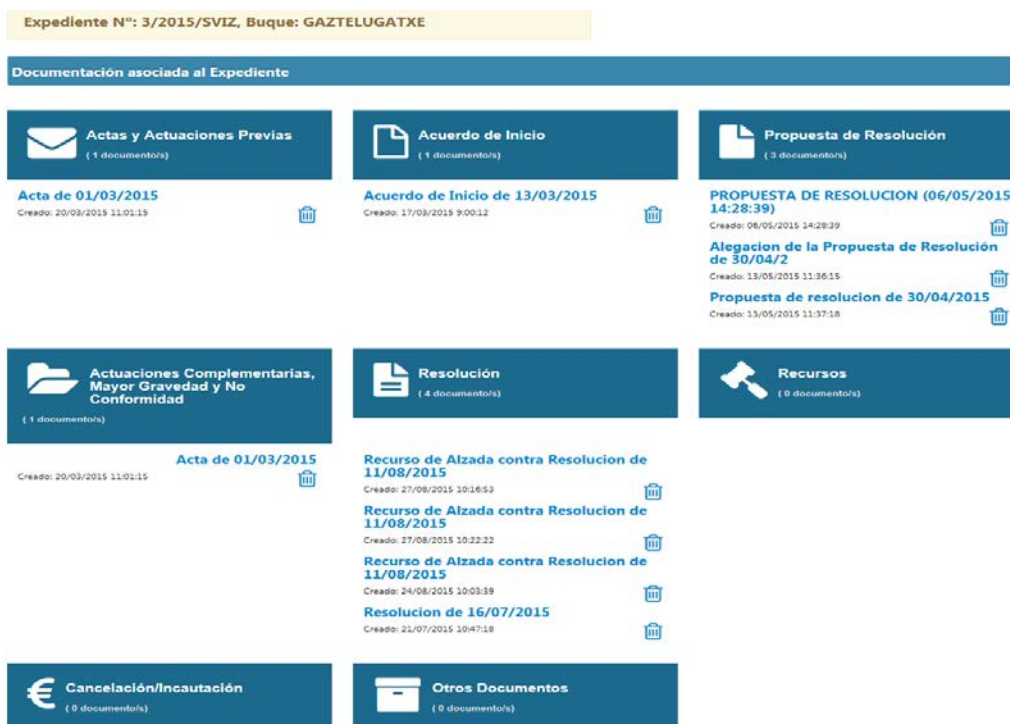
The Register of Infringements takes stock of the administrative procedures and all the related information concerning 'open' files/cases. As illustrated in the following figures, the database includes information related to the start of a file, the draft ruling, the economic sanction proposed, the points assigned, the appeals and the final ruling and points assigned. It includes a very sophisticated system of alerts that interconnects several databases related to fisheries (e.g. it is interconnected to the Operational Programme Fisheries and Maritime under the European Structural and Investment Funds, so that when a beneficiary applies for grants, the system immediately alerts if the beneficiary has an open infringement file or if he/she has been sanctioned in the past 5 years).

**Figure 12: Extract of the Register of infringements: data related to a case (Spain)**



Source: Ministry of Agriculture, Fisheries and Food: User guide of database SANCIPES

**Figure 13: Extract of the Register of infringements: documents (Spain)**



Source: Ministry of Agriculture, Fisheries and Food: User guide of database SANCIPES

Just for illustration purposes, the following figure shows how the register collects data on the number of points.

**Figure 14: Extract of the Register of infringements: register of points (Spain)**

The screenshot shows a web interface for the SANCIPES database. At the top, there's a blue header with 'Otros Informes'. Below it, there are four tabs: 'Tipologías (AI)', 'Registro de Puntos' (which is active), 'Suspensiones/Inhabilitaciones', and 'Revisión de Puntos'. Under the 'Registro de Puntos' tab, there are several filter fields: 'Infractor:' with a dropdown set to 'Todos', 'Tipo de puntos:' with a dropdown set to 'Todos', 'Buque:' with a dropdown set to 'Todos', 'Licencia. Agrupar por:' with a dropdown set to 'Sin Agrupar', 'Patrón:' with a dropdown set to 'Todos', and 'Patrón. Agrupar por:' with a dropdown set to 'Sin Agrupar'. A 'Generar Informe' button is located at the bottom right of the filter section.

Source: Ministry of Agriculture, Fisheries and Food: User guide of database SANCIPES

During the inspection the inspector collects all the necessary evidence (videos, photographs, etc.) and then prepares the electronic reports. All the information and documents are automatically uploaded in the database of the Secretariat of Fisheries. It should be noted that the inspectors have direct access to the Register and the SIPE at the time of inspection, to be fully informed about the situation of the vessel, licences, points, fisheries activities, etc. Due to the nature of the information registered in the database, and in order to guarantee confidentiality, only the authorised staff members of the inspection authorities have access to the register.

## 6.8.2. Infringement procedures

### a. Brief description of the procedure

The rules of procedure of the sanctioning system are established in the Law 3/2001 and further developed by the Royal Decree 182/2015. Prior to the start of the sanctioning procedure, the competent authorities might adopt some preliminary actions<sup>353</sup> in order to safeguard the procedure and the general interest, stop the effects of the infringement, or ensure the efficiency of the ruling. The actions might consist of:

- The seizure of the vessel.
- Return to port of the ship.
- Temporary suspension of activities.
- Suspension of fishing authorisations.
- The confiscation of the catch.

In Spain, the sanctioning system is mostly administrative. The competent authorities might initiate *ex officio* the sanctioning procedure. The start takes place as follows:<sup>354</sup>

- By own initiative of the inspector / competent authority.
- Referral by the General Director of Fisheries or other relevant authority.
- As a consequence of a complaint related to a behaviour that might constitute an infringement.
- As a consequence of the police or inspector's report.

<sup>353</sup> Royal Decree 182/2015 (art. 17).

<sup>354</sup> Royal Decree 182/2015 (arts. 20-25).



Once initiated, the agreement is notified to the authority/person in charge of investigating the case, to the plaintiff and to the concerned parties. The concerned parties will have 15 days to submit the relevant information. Then, the authority in charge of investigating the case might agree on the start of a period for the submission of the evidence. Once the evidence has been collected, the authority in charge of investigating the case will make a proposal of a ruling. The proposal will mention the facts, the person(s) involved, the type of infringement, the proposed sanctions, the declaration of responsibility, and the assignment of penalty points related to the sanction. Once the resolution is notified to the concerned parties, they have 15 days to submit preliminary comments. Then, the authority in charge of investigating the case will make a ruling that will be notified again to the parties. If the parties agree on the proposed sanction and the competent institutions submit their agreement, the process finalises within a two-month period. If the competent institutions do not agree on the proposed sanction, the process might take slightly longer in order to allow for further deliberations. The procedure is to be settled and notified within 6 months from the start.

Regarding the prescription of the infringements, the deadlines are specified in article 93 of the Law 3/2001. The law establishes that serious infringements prescribe two years after the incident of infringement. Very serious infringements prescribe three years after the incident of the infringement. In case of continuous infringements, the time period starts from the day when the last infringement was committed.

#### *b. Competent authorities (sanctions, controls and inspections)*

The Spanish legislation<sup>355</sup> establishes that, in case of serious and very serious infringements, the designated authorities for imposing sanctions are: the General Director of Fisheries and Aquaculture for serious infringements; the General Secretary of Fisheries for very serious infringements; the Ministry of Agriculture, Fisheries and Food for very serious infringements imposing sanctions over EUR 300,000.

Regarding the controls and inspections, the competent authorities are both national and regional. Royal Decree 176/2003 regulates the functions of control and inspection in external waters. The inspectors of the national administration are empowered to carry out surveillance, control and inspection in external waters. The Vice Directorate General of Control and Inspection (SGCI) of the Ministry of Agriculture, Fisheries and Food is in charge of planning and coordinating the control and inspection activities. At regional level the competent authorities for surveillance, control and inspection in internal waters are detailed in the following **Table 75**.<sup>356</sup>

<sup>355</sup> Royal Decree 182/2015 (art. 3.3).

<sup>356</sup> Data from the Operational Programme Fisheries and Maritime 2014-2020 of Spain.

**Table 75: Regional institutions responsible for the surveillance, control and inspection of fisheries in internal waters (Spain)**

Region	Institution
Andalusia	Dirección General de Pesca y Acuicultura
Asturias	Dirección General de Pesca Marítima
Balearic Islands	Dirección General Medio Rural y Marino
Canary Islands	Viceconsejería de Pesca y Aguas a través del Servicio de Inspección Pesquera. Servicio de Ordenación e Inspección Pesquera
Cantabria	Consejería de Ganadería, Pesca y Desarrollo Rural
Catalonia	Dirección General de Pesca y Asuntos Marítimos
Galicia	Subdirección General de Guardacostas de Galicia
Murcia	Servicio de Pesca y Acuicultura: Consejería de Agricultura y Agua. Dirección General de Ganadería y Pesca
Basque Country	Dirección de Pesca y Acuicultura del País Vasco. Servicios de Ordenación Pesquera y Servicio de Estructuras Pesqueras
Valencia	Dirección General de Empresas Agroalimentarias y Pesca. Subdirección General de Pesca. Servicio de Conservación de Recursos Pesqueros. Sección Inspección

Source: Author, based on Operational Programme Fisheries and Maritime 2014-2020, p. 159.

### c. Description of the inspections

At national level, there are about 160 inspectors. While carrying out inspections, all inspectors are connected to the database of the Ministry of Agriculture, Fisheries and Food before in real time, thanks to the use of technically advanced equipment. All the coastal regions have their own inspector in charge of the controls of the fisheries in inland waters. As an example, the region of Andalusia counts 46 inspectors and deputy inspectors for 8 provinces.

Focusing on the inspections at national level, and prior to the *in situ* inspection activity, the inspector conducts a risk assessment of the fisheries activity in the area and then chooses an objective(s). The choice is based on the analysis of the declared captures, the vessels operating in the area, the quota of the vessel, the previous inspections, etc. The main goal is to conduct efficient inspections. Besides, the activity of inspection takes place in the central offices. Thanks to the interconnectivity of different databases it is possible to analyse several factors, such as the position of the fleet in real time, for example if a vessel is in a forbidden area. In this case, the system automatically launches an alert to be followed by the inspector.

Regarding human resources, there are 841 persons dedicated to surveillance, control and inspection (40% belong to the national administration and 60% to the regions). According to the Ministry of Agriculture, Fisheries and Food<sup>357</sup> the number of inspectors is not sufficient considering the large size

<sup>357</sup> Operational Programme Fisheries and Maritime 2014-2020 of Spain, p. 160.

of the fleet. Stakeholders recommend to increase the number of inspectors in order to increase the effectiveness of sanctioning.<sup>358</sup> Moreover they recommend improving the working conditions of the inspectors as well as their training.<sup>359</sup>

Even if the inspection and control tasks are similar, inspectors from the national administration and inspectors from the regional administration face different difficulties, and count on different technical resources. As an example, the inspectors from the region of Andalusia do not have the same educational background as those from the national administration. There is no requirement for them to have a university degree. Stakeholders consulted<sup>360</sup> consider that it would be very positive to further professionalise the task. In some conflictive areas, such as the Gulf of Cadis, there is a considerable rotation of inspectors. Besides, regional/local inspectors face difficulties in stopping some illegal activities in the field, such as poaching, since they are not allowed to require any documentation without the support and presence of the police (*Guardia Civil*).

Regarding the technical resources, inspectors from the national authorities have laptops with internet connection to use onboard. On the contrary, inspectors in some regions (e.g. Andalusia) still have to write down their notes and, at a later stage, prepare a report and include all the data in a regional database.

#### *d. Average length of infringement procedure*

The Ministry of Agriculture, Fisheries and Food indicates that the average duration of infringement proceedings in Spain is approximately six months. It is not possible to establish an exact average duration between the detection of the infringement and the allocation of points, since this will depend on the complexity of the sanctioning procedure. However, procedures are usually initiated within a few weeks after a case file has been prepared (the maximum period for serious infringements is two years).

### **6.8.3. Controls implemented and sanctions imposed (2014-2019)**

Controls related to external waters are carried out by the national inspectors of the Ministry of Agriculture, Fisheries and Food; controls related to inland waters, ports, aquaculture and shellfishing are carried out by the regional inspectors from the competent regional authorities. Feedback from different stakeholders mention that the Spanish system of inspections and controls is very strict.<sup>361</sup>

#### *a. Types of controls*

In order to better understand the context of the inspections, it has to be noted that Spain has the largest fleet in the EU in terms of capacity: 23.6% of the total. According to the industry, in 2017 Spain ranked third in number of vessels, after Greece and Italy, with 11% of the total.<sup>362</sup> The region of Galicia has the largest fleet. In 2019, the number of vessels decreased to 8,884. The **Table 76** below illustrates the evolution of the fleet from 2014 to 2019.

<sup>358</sup> Telephone interview with ClientEarth, 23 April 2020.

<sup>359</sup> Telephone interview with the relevant authorities of the region of Andalusia, 1 May 2020.

<sup>360</sup> Telephone interview with ClientEarth, 23 April 2020.

<sup>361</sup> Ministry of Agriculture, Fisheries and Food: questionnaire sent to the authors of the study on the 8 April 2020; telephone interview to ClientEarth on the 23 April 2020; CEPESCA (industry sector): CEPESCA (2017) Report of the Spanish Fisheries Sector 2017.

<sup>362</sup> CEPESCA (2017) Report of the Spanish Fisheries Sector 2017, available at <http://cepesca.es/wp-content/uploads/2018/12/Informe-del-Sector-Pesquero-Espa%C3%B1ol-2017-CEPESCA.pdf>

**Table 76: Evolution of the fishing fleet (2014-2019) (Spain)**

Year	Number of vessels
2014	9,635
2015	9,409
2016	9,299
2017	9,146
2018	8,972
2019	8,884

Source: Author based on report of the Secretariat General of Fisheries<sup>363</sup>

The national authorities undertake port inspections, inspections at sea, and aerial inspections, as well as administrative control and cross-checks of different information sources at the Fisheries Monitoring Centre (FMC). Data provided by the Ministry of Agriculture, Fisheries and Food indicates that the total number of inspections is 60,658 for the period 2014-2019. The breakdown of the inspections per year, and per type in relation to the number of infringements is further developed in section 6.7.3.

During inspection activities, the inspectors register the flag of the vessel (Spanish, EU flag or third country). From the total number of inspections the following **Table 77** provides data related to inspections to vessels with a flag from an EU Member State (excluding Spanish flags) or from third countries. The number of infringements committed by EU vessels seems proportionally higher than the number of infringements committed by a vessel from a third country.

**Table 77: Inspections and infringements of EU (excluding Spain) and third country vessels, (2014-2019) (Spain)**<sup>364</sup>

	2014		2015		2016		2017		2018		2019	
	Insp.	Inf.	Insp.	Inf.	Insp.	Inf.	Insp.	Inf.	Insp.	Inf.	Insp.	Inf.
Third country	429	60	582	97	526	57	517	48	544	52	633	27
EU	514	84	417	79	431	74	438	88	452	71	469	109
<b>Total</b>	<b>943</b>	<b>144</b>	<b>999</b>	<b>176</b>	<b>957</b>	<b>131</b>	<b>955</b>	<b>136</b>	<b>996</b>	<b>123</b>	<b>1,102</b>	<b>136</b>

Source: data provided by the Ministry of Agriculture, Fisheries and Food<sup>365</sup>

<sup>363</sup> Secretariat General of Fisheries (2019), The Spanish Fleet – data of 31.12.2019. The report is available at [https://www.mapa.gob.es/es/pesca/temas/registro-flota/la-flota-espanola-situacion-a-31-12-2019\\_tcm30-525563.pdf](https://www.mapa.gob.es/es/pesca/temas/registro-flota/la-flota-espanola-situacion-a-31-12-2019_tcm30-525563.pdf)

<sup>364</sup> Insp.: Insections; Inf.: Infringements.

<sup>365</sup> Information provided by e-mail on the 20 May 2020.

Data provided by authorities of the region of Andalusia show a total of 29,189 reports of inspection between 2014 and 2019. 4,601 of the inspections led to reports with infringements. It is worth reminding here that regional inspections relate only to internal waters and shellfishing, so data at regional level cannot be compared with data at national level.

*b. Sanctions imposed and points attributed*

From 2014 to 2019 the Spanish authorities (at national level) initiated a total of 4,893 file cases, of which 4,544 concluded with the imposition of sanctions. From these 4,544 sanctioning cases, 164 attributed points, with a total number of points allocated of 876.

The following table shows the information by year.

**Table 78: Infringements, sanctions and points (2014 – 2019) (Spain)**

Year	Number of files initiated	Number of files imposing sanctions
2014	1,127	1,113
2015	900	839
2016	877	784
2017	714	635
2018	908	828
2019	367	345
<b>Total</b>	<b>4,893</b>	<b>4,544</b>

Year	Number of points attributed	Number of files attributing points
2014	160	36
2015	72	18
2016	121	20
2017	99	14
2018	255	39
2019	169	37
<b>Total</b>	<b>876</b>	<b>164</b>

Source: Ministry of Agriculture, Fisheries and Food <sup>366</sup>

<sup>366</sup> Information provided by e-mail on the 20 May 2020.

It is worth detailing the sanctions imposed and points attributed per type of infringement. The data provided by the national authorities shows that the most common type of infringement leading to sanctions and to the attribution of points is 'not fulfilling its obligations to record and report catch or catch-related data, including data to be transmitted by satellite vessel monitoring system' (with 3,750 infringements, 2,402 cases initiated, 2,355 cases of sanctions applied and 120 cases where points were attributed). The second most frequent infringement was 'fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth' (with 1,166 infringements, 831 cases initiated, 825 cases of sanctions applied and 42 cases where points were attributed). Together, these two types of infringements account for about 62% of all infringements.

The following table summarises the number of infringements, cases of sanctions and points attributed in Spain from 2014 to 2019. It is important to note here that one single case might result in points related to several types of infringements. For example, one case might include the attribution of points related to the use of prohibited or non-compliant gear according to EU legislation, and to the fact that the vessel is fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth. In that sense, if we consider the number of cases attributing points in general it is 164 (as shown in **Table 78**); however, if we consider the number of cases attributing points by type of infringement, it is 237 (as shown in **Table 79**).

Concerning the number of cases of infringement, the discrepancy between the data shown in **Table 4** and **Table 79** is explained by the fact that not all the cases are initiated within the calendar year of the incident (the authorities have 2 years to start a case). For example, **Table 78** shows that in 2019 the total number of cases initiated is 367. However, it is very likely that a considerable number of the incidents that took place in 2019 will be initiated in 2020 or 2021. In the long term, all the data correspond. However, they don't correspond exactly if analysed year by year.

Finally, it is important to note that some cases can combine several reports in a single file and treat the infringement as one continuous infringement. Likewise, there are some reports that end in agreements leading to not starting the procedure.

**Table 79: Infringements, cases, and sanctions (2014 – 2019) (Spain)**

Type of Infringement	No. infringements	No. cases initiated	No. cases of sanctions applied	Type of sanction applied	Average time infringement procedures	Cases points assigned	Cases of suspension of fishing licence
Not fulfilling its obligations to record and report catch or catch-related data	3,750	2,402	2,355	Fines, points, confiscation of captures, suspension and loss of authorizations and of right to receive public subsidies	6 months	120	1
Use of prohibited or non-compliant gear according to EU legislation	847	616	610	Fines, points and confiscation of captures and fishing gears	6 months	18	0
Falsification or concealing its markings, identity [...]	31	19	19	Fines	6 months	1	0
Concealing, tampering with or disposal of evidence relating to an investigation	109	41	41	Fines and points	6 months	5	0
Taking on board, transshipping or landing undersized fish in contravention of legislation	381	253	248	Fines and confiscation of captures	6 months	10	0
Carrying out fishing activities in a manner inconsistent with or in contravention of [...]	1	1	1	Fines	6 months	0	0
Fishing without a valid licence, authorisation or permit	984	646	644	Fines and points	6 months	14	0
Fishing in a closed area or during a closed season, without /after attainment of quota [...]	1,166	831	825	Fines, points and confiscation of captures	6 months	42	4
Directed fishing for a stock which is subject to a moratorium or [...]	180	106	105	Fines, points and confiscation of captures	6 months	4	1
Obstruction of work of officials	540	276	274	Fines and points	6 months	23	0
Transshipping to or participating in joint fishing operations with [...]	0	0	0			0	
Use of a fishing vessel with no nationality	0	0	0			0	
<b>Total</b>	<b>7,989</b>	<b>5,191</b>	<b>5,122</b>			<b>237</b>	<b>6</b>

Source: Ministry of Agriculture, Fisheries and Food survey responses

The competent authorities take account of a series of criteria for imposing sanctions. Article 13 of the Royal Decree 182/2015 establishes the following criteria:

- a) The economic benefit obtained as a consequence of the infringement.
- b) The size and engine power of the fishing vessel.
- c) The nature of the prejudice caused.
- d) The possibility for restitution of the damaged caused.

The legislation foresees several circumstances aggravating and attenuating the case, *inter alia* the degree of intentionality; danger for public health or human lives as a consequence of the infringement; over-exploitation of fisheries resources; recidivism and previous records. The previous records are taken into consideration for increasing the sanctions, or for reducing them in the absence of criminal record. If there is recidivism within one year, the sanction is scaled up. Besides, it blocks the possibility of applying for a reduction of the sanction.

The above criteria support the authorities to decide the amount of the economic sanction to be applied. For serious infringements, the sanctions can be segmented in three sections/levels:<sup>367</sup>

- 1. Minimum level: from EUR 601 to EUR 15,000.
- 2. Medium level: from EUR 15,001 to EUR 40,000.
- 3. Maximum level: from EUR 40,001 to EUR 60,001.

#### *c. Number of infringements related to the number of controls*

Data provided by the Ministry of Agriculture, Fisheries and Food indicates that the total number of inspections is 60,658 for the period 2014-2019. The total number of infringements found for the same period is 7,989. It is worth noting that all the inspections are registered, but not all of them lead to indicate that an infringement has been committed. After investigating the case, the authority in charge might consider that there was no infringement. Similarly, not all the infringements lead to a sanctioning procedure.

The following table shows the inspections and infringements per type of control implemented: earth, sea, air and controls that take place at the Centres of Fisheries Monitoring (CSP).

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<sup>367</sup> Law 3/2001, art. 106.2.b



**Table 80: Inspections and infringements (2014 – 2019) (Spain)**

<b>Inspections and infringements</b>						
	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>Earth</b>						
No. Inspections	4,474	4,994	5,210	5,423	5,788	5,577
No. Infringements	899	635	559	644	706	865
<b>Sea</b>						
No. Inspections	2,028	2,198	1,758	1,394	1,338	1,126
No. Infringements	551	443	320	237	209	186
<b>Air</b>						
No. Inspections	4,492	4,488	2,781	2,884	1,963	1,914
No. Infringements	89	126	52	44	27	104
<b>Centres of Fisheries Monitoring</b>						
No. Inspections	73	X	127	52	28	18
No. Infringements	73	X	127	52	28	18
<b>Total</b>						
No. Inspections	10,994	11,680	10,238	9,753	9,376	8,617
No. Infringements	1,539	1,204	1,058	977	942	1,155

Source: Ministry of Agriculture, Fisheries and Food<sup>368</sup>

An overall indicator can be calculated on the basis of the data presented in the table above. The number of infringements account for about 11% of total number of inspections. Follow up and actual sanctioning accounted for 9% (5,191 sanctions from Table 79).

<sup>368</sup> Data provided by e-mail on the 20 May 2020.



## 7. RECOMMENDATIONS

### KEY FINDINGS

- It is recommended to clarify the criteria for the definition of serious infringements, for the calculation of fines and points.
- To simplify the current complexity of the point system.
- It is recommended that Member States clearly indicate aggravating and attenuating circumstances when assigning points.
- It is recommended to increase cooperation between control agencies/EFCA and research institutes for more efficient data collection.
- An EU register of infringements may be desirable to introduce more transparency and to contribute to a level playing field.

### 7.1. Point System

- To **simplify** the current complexity of the point system in the proposed regulation.
- To **increase transparency** in access to information related to the point system would contribute to increase accountability and to reach a higher harmonisation of rules and sanctions. There is a clear need for more transparency at national and EU level to address the perception of uneven implementation of fisheries control across Member States, including the application of the penalty point system.
- Regarding the penalty point system there appears to be a need for more careful consideration of what should be the **definition** of serious infringements and the criteria to be used.
- The point system should not result in **disproportionate and severe sanctions** and the permanent suspension of fishing licenses (90 points), in particular, is seen by some in the industry as an extreme measure and a double-sanctioning on top of the national sanctioning system. Due to consideration should be given to the **effectiveness of the sanctioning system in place**.
- The differences and **specificities according to regions/areas/fishery** should be considered and this should form the basis on which to define serious infringements and identifying aggravating/attenuating circumstances.
- To clearly specify how to apply the penalty point system and to indicate both **aggravating and attenuating circumstances** when assigning penalty points. It is important to consider circumstances on a **case-by-case basis** and allow for **flexibility**, leaving room for expert judgement and taking into account the specificities of the fishery.

### 7.2. Controls

- To consider **cooperation** between control agencies / EFCA and research institutes for more efficient data collection and high-qualitative data.

- To increase the **number of controls** at sea, which is particularly relevant in the context of the Last Haul programme and the control of the landing obligation.
- To introduce **camera monitoring** on vessels to allow a more effective control, but this should be carried out on a voluntary basis and with associated incentives
- The current framework where the infringements register is a national register (not publicly available) creates a lack of transparency regarding the application of the regulations across the Union. In this context, an **EU register of infringements** may be desirable. Article 93 of the Control Regulation provides little guidance regarding the recording obligations of a Member State in a 'national register of infringements'. A more structured approach with detailed rules would be desirable.
- To harmonise the level of detail included in the national registers of infringements.
- Finally, the following **Table 81** shows the recommendations made by Member States and CSOs in the context of the data collection (Annex II Member States Questionnaire, interviews).

**Table 81: Recommendations**

<b>Recommendation</b>	<b>BG</b>	<b>DK</b>	<b>DE</b>	<b>EE</b>	<b>EL</b>	<b>ES</b>	<b>FR</b>	<b>HR</b>	<b>IE</b>	<b>IT</b>	<b>CY</b>	<b>LV</b>	<b>LT</b>	<b>PL</b>	<b>SI</b>	<b>FI</b>	<b>CSOs</b>
Shorten the implementation deadlines for the sanctioning system	✓																
Amend the number of points attributed for certain serious infringements (i.e. 70 point for withdrawing of fishing); to attribute points immediately for certain serious infringements								✓									
Clarify the criteria for the definition of serious infringements, for the calculation of fines and points		✓			✓	✓			✓	✓		✓	✓				✓
Consider the national legal systems (and/or the national incomes) for the implementation of the sanctioning systems			✓	✓							✓		✓	✓			
Harmonise the criteria for attribution of points and/or for imposing sanctions		✓				✓	✓		✓								
Simplify the rules concerning admissibility with regards to EMFF support		✓				✓											
Introduce proportionality criteria for admissibility to EMFF support when the applicant has committed 'minor' serious infringements						✓											
Increase fishermen's awareness of the point system				✓			✓										
Simplify the criteria for the attribution of points (the current approach tends to consider most of the infringements as serious – this no longer serves its purpose), and to simplify the sanctioning procedure				✓						✓							
Introduce regionalisation criteria for defining the infringement procedures and sanctions											✓					✓	
The accumulation of 90 points by the master of a fishing vessel shall not trigger automatically the permanent withdrawal of the right to command a vessel as a master, but for a determined period					✓												
Make the points applicable for a period of 3 years from the date of detection and/or conviction									✓								

Recommendation	BG	DK	DE	EE	EL	ES	FR	HR	IE	IT	CY	LV	LT	PL	SI	FI	CSOs
Introduce incentives for the early acceptance of points									✓								
Harmonise the level of detail and rigour of national registers of sanctions						✓											
Replace the paper-based catch certificate scheme with an electronic scheme																	✓
Introduce transparency requirements by making information on the implementation of the Control Regulation, such as audit reports, infringements and sanctions, publicly available																	✓
Strengthen EFCA's mandate			✓														✓

Source: Author based on desk research and responses from the Member States (see Annex II)

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## **ANNEX I – STAKEHOLDER INTERVIEWS**

### Denmark

- Danish Fisheries Agency (Fiskeristyrelsen)
- Danish Fishermen PO (Dansk Fiskeriforening PO)

### France

- Medium-large industry stakeholder from the Brittany region (name confidential), France
- International environmental protection organisation, IUU fishing officer (name confidential), France
- Fisheries Control Unit, Directorate for Sea Fisheries and Aquaculture, Ministry of Agriculture and Food of France

### Germany

- WWF Germany
- Fishermen association - Dt. Fischerei-Verband. Union der Berufs- und Angelfischer, Germany
- Environmental Action Germany (DUH)
- State Office for Agriculture, Food Safety and Fisheries Mecklenburg-Western Pomerania
- Federal Ministry of Food and Agriculture (Bundesministerium für Ernährung und Landwirtschaft, Germany)
- Thünen Institute, Germany

### Ireland

- Sea-Fisheries Protection Authority (SFPA), Ireland
- Irish Fish Producers' Organisation (IFPO)

### Italy

- International environmental organisation, expert on Mediterranean fisheries policies (name confidential), Italy
- National environmental protection NGO specialised in Mediterranean Sea issues (name confidential), Italy

### Lithuania

- Fisheries Monitoring and Control Division, Fisheries Service, Lithuanian Ministry of Agriculture
- Baltic Sea Fisheries Control Division, Fisheries Service, Lithuanian Ministry of Agriculture
- Fisheries Service, Lithuanian Ministry of Agriculture
- Small and medium fishing companies' association leader and small industry stakeholder (name confidential), Lithuania

## Spain

- Ministry of Agriculture, Fisheries and Food. Vice Directorate General of Control and Inspection, Spain
- Ministry of Agriculture, Fisheries and Food. Vice Directorate of Legal Affairs and International Fisheries Governance, Spain.
- ClientEarth, Spain
- Consejería de Agricultura y Pesca de Andalucía (Regional Ministry of Agriculture and Fisheries, Andalusia), Spain
- OCEANA

## **ANNEX II – QUESTIONNAIRE TO THE MEMBER STATE**

The following questions were addressed to fisheries authorities in 22 Member States, out of which 17 Member States submitted their replies:

- When was the point system for serious infringements as foreseen in Council Regulation (EC) No. 1224/2009 (Article 92) implemented in your country?
- Please refer to a specific national legislation/regulation.
- What are the maximum and minimum penalties laid down in the national legislation?
- Does your country have in place a system to record the infringements, the imposed sanctions and assigned points?
- Please provide the relevant legislation on the sanctioning system in place in your country, indicating the minimum and maximum sanctions (or penalties) specified for the various types of infringements (in terms of fines, restrictions, criminal sanctions, etc.).
- Please provide also in English, if this is available.
- Does your country have in place a system for rewarding of good behaviour, resulting in a subtraction of penalty points? Is this specified in the relevant regulation?





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This study assesses the implementation of the current EU fisheries control system by Member States. It focuses on the application of national infringement procedures, sanctions and the point system for serious infringements from 2014 to 2019. The research shows results based on interviews and survey replies by 17 out of 22 coastal Member States and it presents case studies for the following seven countries: Denmark, France, Germany, Ireland, Italy, Lithuania and Spain.

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