

Department for Environment, Food and Rural Affairs

Consultation on introducing a points system for fishing vessel masters convicted of serious offences

Summary of responses

December 2014

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Introduction

The Common Fisheries Policy (CFP) is the EU's instrument for the management of fisheries and aquaculture. The EU Control Regulation sets out a control and enforcement system for ensuring compliance with the rules of the CFP, whose credibility depends on effective application of the control measures adopted.

The EU Control Regulation requires Member States to assign points to the licence of any fishing vessel which commits one of 12 serious infringements of fisheries management rules¹. When a certain number of points have been accumulated, the vessel licence is suspended for a given period of time. The objective of this policy is to discourage repeat offending by fishermen.

The EU Control Regulation also requires Member States to establish a similar system of points for masters of fishing vessels who commit serious infringements. This is complementary to the existing points system for vessel licences and was the subject of this consultation. It is intended to ensure that masters who habitually offend will face consequences and those who have committed infringements on one vessel cannot evade those consequences by switching to another vessel.

Under our proposal, every time a serious infringement is committed by a master the appropriate number of points will be registered against his name in the national register of fishery offences maintained by the Marine Management Organisation (MMO).

The allocation of points to the master may ultimately lead to temporary or permanent suspension from being able to act as master of a fishing vessel. However, this is not considered to be a cost to business as this is a sanction for illegal activity².

The Government consulted on these proposals. This document summarises the consultation responses received and sets out the Government response.

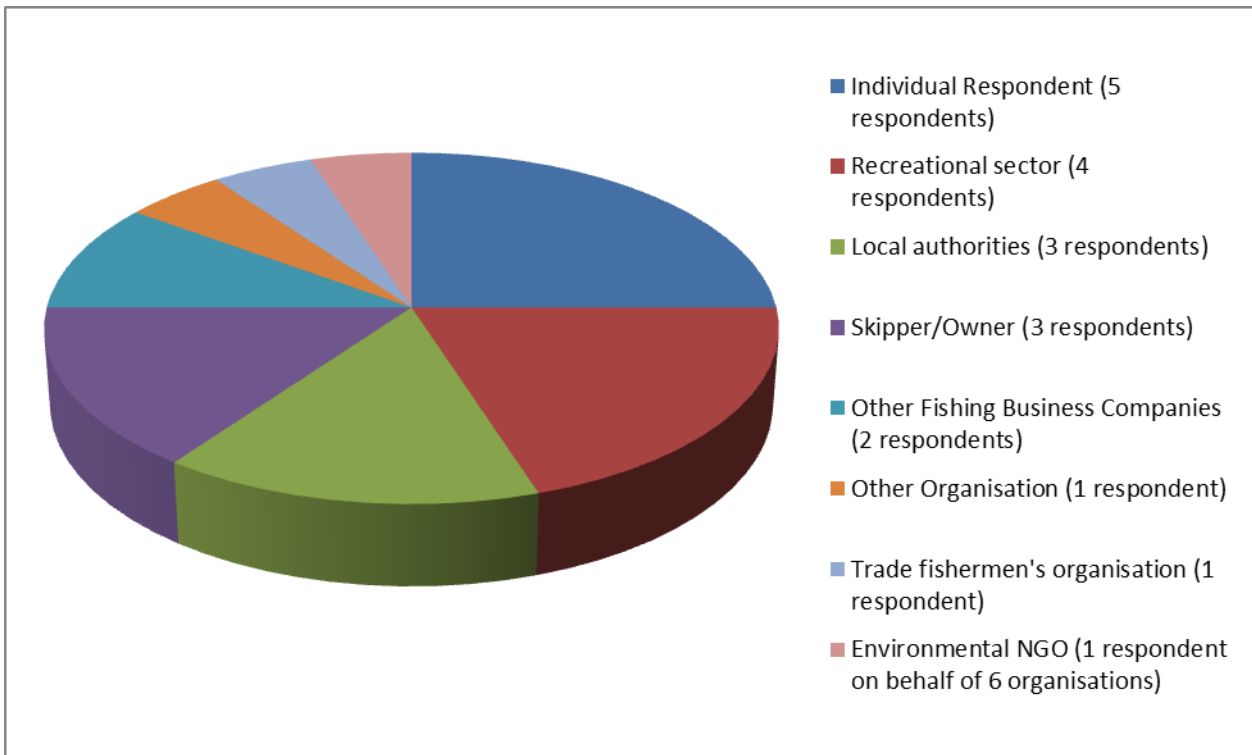
Overview of responses

A total of 20 responses were received from a range of sectors including the fishing industry, the recreational sector and local authorities. Figure 1 provides an outline of respondents by sector.

¹ Serious Infringement in accordance with Article 3(2) of Council Regulation 1005/2008: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:286:0001:0032:EN:PDF>

² For information analysis of prosecutions for fisheries offences in English courts between 2008 and 2010 shows that for masters who were not also owners the following points would have been allocated: 1 master would have accumulated 63 points and been disqualified for 8 months, 2 masters would have reached 36 points and been disqualified for 4 months, 3 masters would have accumulated 18 points and been disqualified 2 months

Figure 1: Analysis of respondents to the consultation by stakeholder segment

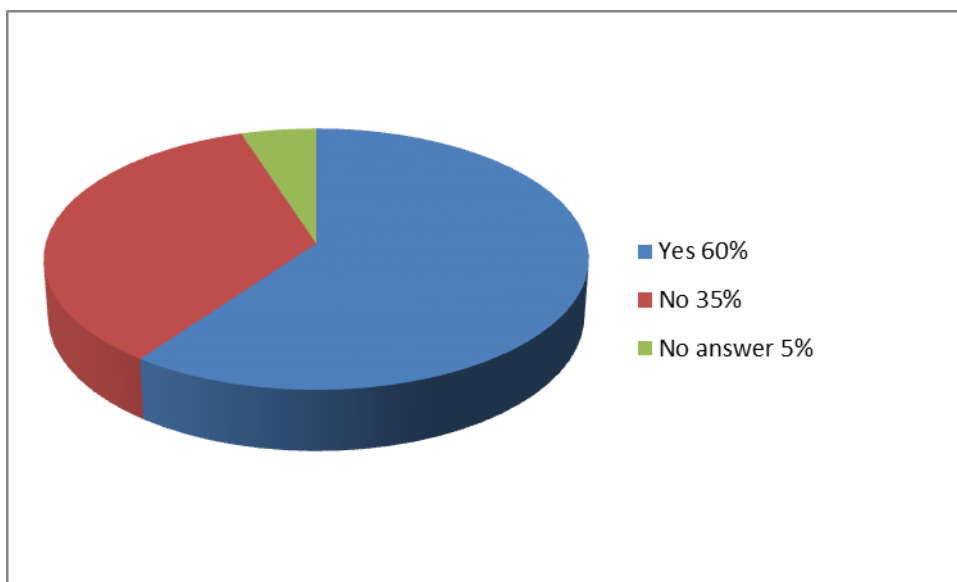


The majority of respondents broadly agreed with the proposed measures to implement the scheme as required under the Control Regulation. Some took the opportunity to comment on the details of the allocations of points pointing out that fish stocks are a public resource. One commented that the points system provides a means to manage and ultimately ban repeated rule breakers in a transparent manner and thus allow regulatory authorities to track those who have been convicted of breaking the rules. Others suggested that the points be doubled, whilst a few others did not agree with this management tool.

There was no clear identifiable main area of concern although some options were suggested on the way the points could be allocated. Some respondents debated the period of suspension. Whilst the environmental NGOs advocated fewer steps before permanent suspension is reached, saying that the use of three rather than five thresholds would be more appropriate, the fishermen's organisation did not agree that a master should be permanently banned but suggested that a more lengthy suspension could represent a possible alternative. A range of options was suggested by respondents on the allocation of points to masters but no one option was favoured. Finally the recreational sector respondents suggested that the suspended person should not be permitted onto any commercial fishing vessel whilst suspended.

Summary of responses to consultation questions

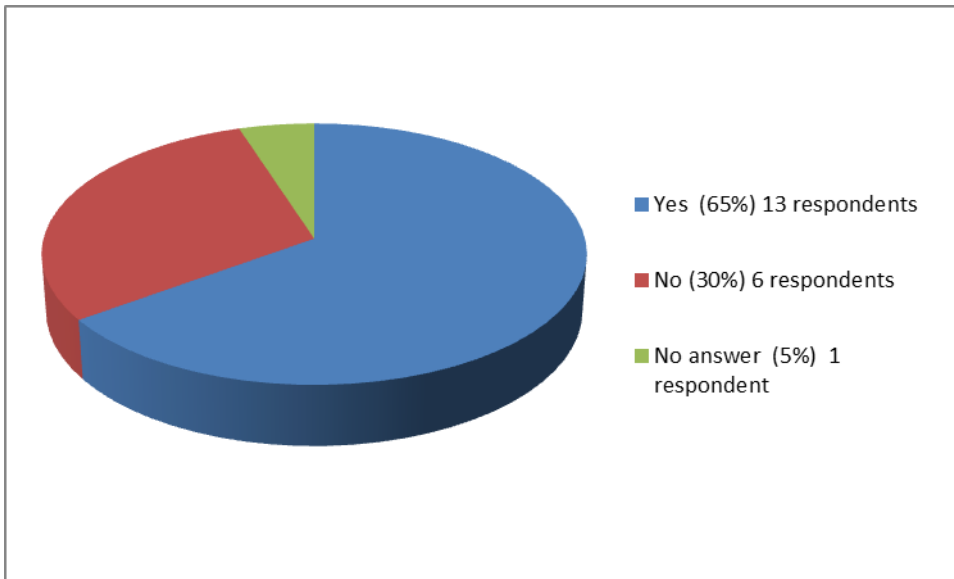
Q1. Do you agree with our proposal to base the number of points on the system already used for vessel licences? If not, what alternative system do you wish to see?



1. The majority of respondents (60%) from across the sectors agreed that the points system for masters should operate on the same basis as the existing system that operates for vessel licences. One thought the rules should be simplified, but did not say how. One recreational sector respondent suggested that the points should be higher so the threshold for suspension is reached sooner, another individual respondent suggested that people should take the consequences of their actions. On the other hand the fishermen's organisation expressed concern that this system of sanction could lead to a form of double jeopardy. Another respondent suggested that the points system should be applied to vessels of any size. This is in fact what is already proposed.

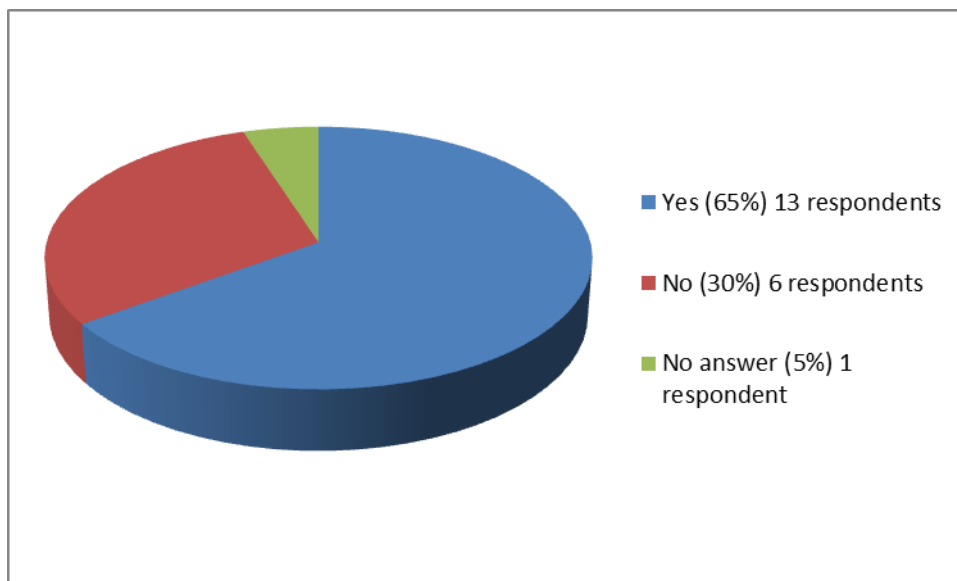
2. No clear alternative system was proposed.

Q2. Do you agree that the appropriate sanction when thresholds are reached is for a master to be unable to act as master of a fishing vessel? If not, what sanctions do you believe would be appropriate?



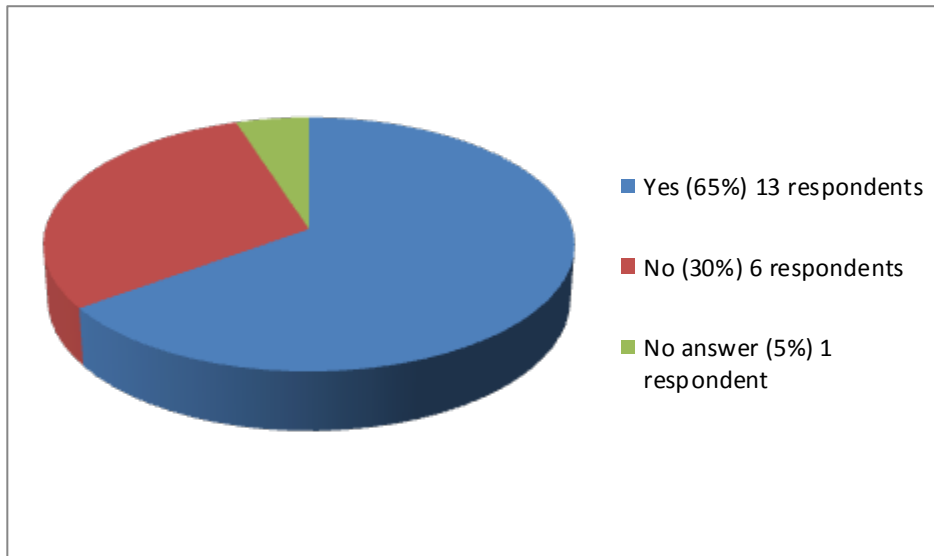
3. The majority of respondents (65%) from across the sectors agreed that the sanctions proposed were either suitable or not tough enough. Two suggested that the suspended person should not be permitted on to any commercial fishing vessel while it was engaged in fishing activity, saying that a banned person going aboard a fishing vessel could still act as that vessel's master, with another person put aboard to act as skipper on paper. Another commented in a similar way saying that banning a fisherman from acting as master would not work on family owned vessels. They also asked how these suspensions would be regulated at sea. The environmental NGO commented that fishermen following the rules should not be disadvantaged by those who consistently break these rules. The fishermen's organisation did not agree with the sanction and commented that a more lengthy suspension could represent a possible alternative to permanent suspension. Another organisation thought the system should be controlled by a panel of independent people not connected to government.

Q3. Do you agree with the periods of suspension that we have put forward? If not, what period would you propose?



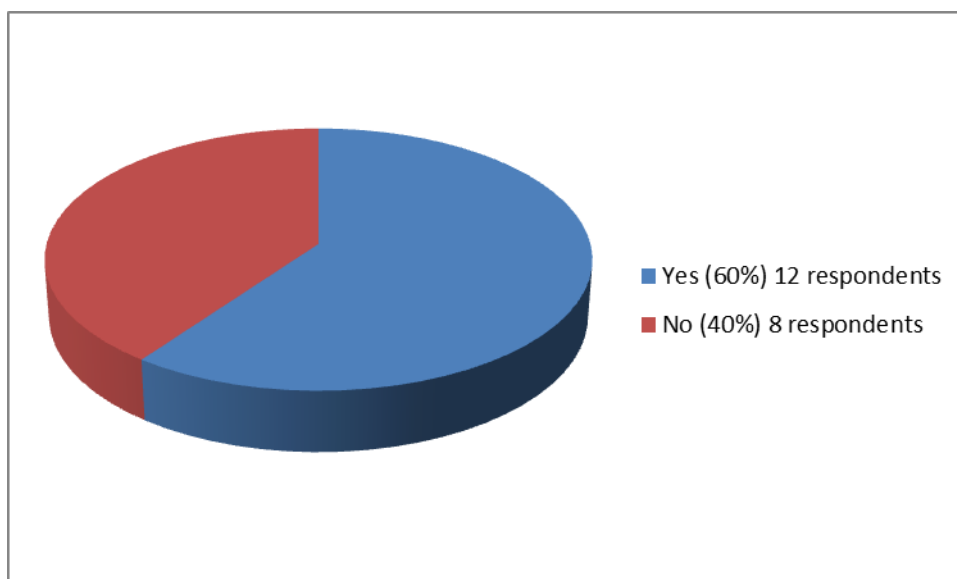
4. Some respondents were concerned that the sanctions did not go far enough. One wanted the master banned from the industry at the first or second offence. A second felt that the thresholds for suspension should be lower, stating by way of example that a master would need to be convicted of *“tampering with or concealing or disposing of evidence relating to an investigation”* three times within a three year period before a two month suspension. They also thought that fewer steps should be required before permanent disqualification is reached and that the use of three rather than five thresholds would be more appropriate. The same respondent made the point that it is also important that the master does not use the periods when the vessel is tied up to expend any periods of suspension. On the other hand the fishermen’s organisation pointed out that the evidence concerning the impact of the points system only relates to two years during which six masters would have been potentially disqualified. Since points go on accumulating and can only be deleted after three years free of offending it felt that the number of banned masters would over time become considerably more and that this would imply that the proposed system of points for infringements is inappropriate regardless of the suspension periods. Two of the three skippers/vessel owners agreed with the proposed periods of suspension.

Q4. Do you agree that vessel owners should be required to ensure that a master they put in charge of their vessel is not currently suspended?



5. The fishermen's organisation felt that until the MMO's wider computer systems were capable of functioning "reliably in real time", they would be against making such a requirement punishable. On the other hand the environmental NGO felt this was a vital component of the system and that vessel owners must be responsible for checking that a master has not been suspended as this is similar to what happens in other sectors.

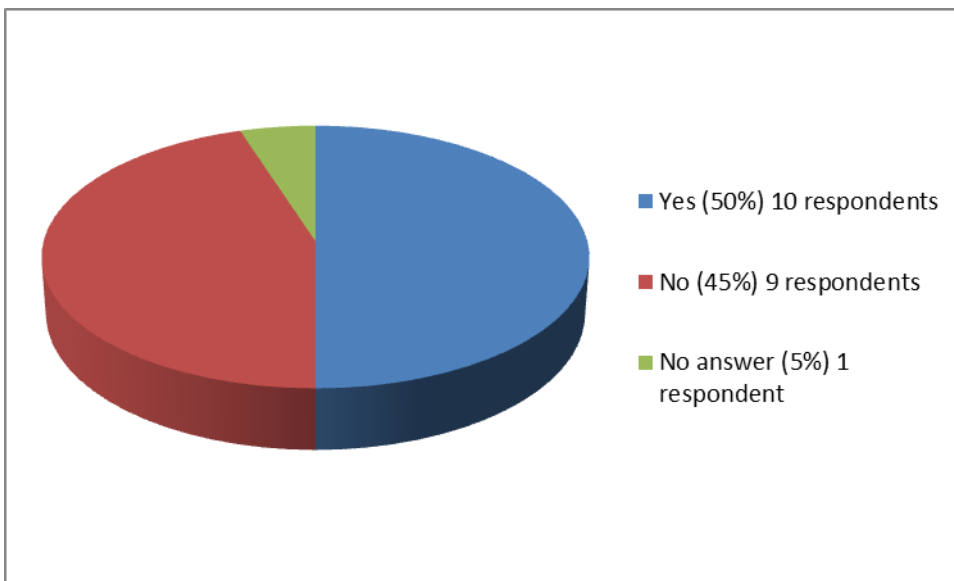
Q5. Do you think that the estimate that we have made about the number of vessels whose masters are not owners and of the familiarisation costs they are likely to incur, is reasonable? If not what do you think it should be?



6. The majority of responses received were positive. One owner suggested that the system should be simplified and require only a phone call to the MMO to check a master's status. No comment was received on the estimate on the number of vessels whose masters were not owners although the fishermen's organisation thought that as a general rule smaller vessels are more likely to be owner operated whereas larger vessels are more likely to employ masters (particularly where several vessels are under single ownership). It also noted that where there is an owner who is not acting as the master of the vessel, both the owner and skipper will need to be aware of the points system in force.

7. With regards to the familiarisation costs the fishermen's organisation suggested that there was an underestimate of both the time, saying that it would take several readings of the document and the estimated wages used in the calculation of this costs, as they believed that the 'median crew costs' were used in the calculation. The environmental NGO commented that these changes are straightforward and the costs seemed proportionate to the task of reading the letter.

Q6. Do you agree with our estimate of the familiarisation costs of the proposal?



8. This question produced mixed response as depicted in the pie chart. The fishermen's organisation again questioned the assumptions underlying the costs in the Impact assessment. All others responses were just a yes or a no answer.

Response

9. The Government welcomes the views of respondents on the details of introducing the points system for masters of fishing vessels . We would like to thank all respondents for taking the time to respond to this consultation.

10. Some general comments were raised in relation to the fishing industry in general and not the proposal.

Basis for the number of points

11. We note that 60% of respondents broadly agreed with the proposal to base the number of points on the system already used for vessel licences and that of those who did not agree no clear consensus for an alternative approach emerged. One proposed amending the list of serious infringements because of the introduction of the landing obligation. However this list is set out in EU legislation and will not change as a result of the landing obligation other than to add discarding to the list of serious infringements. The same respondent questioned how the proposed point system will fit within the existing sanction regime and expressed concern that this could lead to a form of double jeopardy. However points will only be assigned and applied after conviction. It should also be noted that current legislation allows both the master and owner of a fishing vessel to be prosecuted for the same offence.

12. In view of these comments we intend to proceed with our proposal to base the number of points on the system already used for vessel licences, with points only being applied after conviction.

Prohibiting a master from acting as master of a fishing vessel.

13. The starting point for implementing this sanction is to act as a deterrent and encourage masters to comply with the rules of the CFP. We note the suggestions made to increase the sanction to make it tougher as they foresee that a banned person could quite easily undertake the duties of a master while at sea. However we believe that it would be disproportionate to prevent a banned master from earning a living altogether. Another respondent said that he wanted the same arrangements as in Scotland. We can confirm that the same points system for masters will be implemented simultaneously throughout the UK.

14. In the light of these comments we will proceed as proposed with the master being suspended/banned (depending on the number of points he has accrued) from undertaking the duties of a master while at sea. He will still be able to earn a living as a member of the crew on-board a fishing vessel.

Periods of suspension

15. We have noted that our proposed periods of suspension were broadly acceptable to most respondents (65%). Of those who did not agree no clear alternative was put forward. One respondent agreed in principle but was not clear whether a period of suspension would set the points accrued by an individual back to zero.

16. In the light of these comments we intend to proceed with our original proposal, so that any master of a fishing vessel who accumulates 18, 36, 54 and 72 points will be barred from acting as the master of a fishing vessel for periods of 2, 4, 8 and 12 months respectively. If he continues to offend and accumulates 90 points he will be banned permanently. Points will remain against a master's name when a period of suspension is imposed. If however the master does not commit any serious infringements for three years after he has last been awarded points, all points will be deleted.

Requiring vessel owners to ensure that a master they put in charge of their vessel is not currently suspended

17. The majority of respondents agreed that vessel owners should be required to ensure that a master they put in charge of their vessel is not currently suspended.(65%). One commented that is it a vital component of the system. Another said that the computer systems needs to be capable of functioning reliably and suggested that until they do they were against making such a requirement punishable.

18. In the light of these comments we intend to adopt our proposal to make it an offence for a vessel owner to employ a suspended master. The MMO will provide the necessary information on suspended masters on its website. All vessel owners are familiar with the website already and will be able to access it as they do at present.

Estimate of the number of vessels whose masters are not owners and the familiarisation costs.

19. The majority of respondents agreed with our estimate and with the familiarisation costs that industry will incur. None were able to give us alternative estimates of the number of vessels that they think are not master owned. One respondent thought the MMO should have access to these statistics and suggested it might take longer than 10 minutes for people to familiarise themselves with the new procedures.

20. We have noted this but the MMO does not keep records of the masters of fishing vessels. We have however reconsidered the familiarisation costs in the light of the comment on this. We still believe that 10 minutes is not an unreasonable average time for owners to familiarise themselves with the website but increasing this time to 1 hour would only increase familiarisation costs from £14,634 for 3973 vessels to £87,803. This would

still be a low marginal cost. We note that one respondent believed that we had used the wrong wage rate when carrying out the calculation. The figure in the impact assessment was calculated using the ONS ASHE 2013 hourly rate figure for managers and proprietors in forestry, fishing and related services (£17.00) with 30% additional costs added to cover overheads (£22.10 per hour) which we believe to be an appropriate rate to use.

Estimate of familiarisation costs

21. We note that opinion on the question of general familiarisation cost was more evenly divided, with 50% agreeing and 45% disagreeing. One organisation was again concerned about the underestimation of both the time required and the relevant cost of that time. As mentioned above, we revisited the cost of familiarisation and the cost of checking new masters in the light of this concern and found that the relevant cost used was the correct official rate for managers and proprietors for this industry and on taking the cost to the maximum likely time of 1 hour, the total net present cost would still be low and reasonable of £87803 for the total number of 3973 English vessels.

Way forward

22. In view of the information received from the consultation responses, we will now proceed with the proposal to introduce secondary legislation implementing a points system for masters that mirrors as far as possible the provisions of the points system for licences set out in the Control Regulation. As part of this system we propose to make it an offence for vessels owners to employ a suspended or permanently disqualified master. We have noted the comments raised and have validated the costs taking into account all relevant comments that were raised. There are no major changes to the Impact Assessment after the consultation.

23. The introduction of points system for masters is a mandatory measure and required by EU law. We will therefore proceed to lay draft Regulations before each House of Parliament. The MMO will update the existing guidance on their website and will inform all English fishing vessel owners advising them of this new measure.

Annex A: List of respondents

Angling School CIC – 2 responses

Angling Trust

Cornwall IFCA

Eastern IFCA

Individual respondents - Oliver Witt, Richard Cole and Les Harrington

Individual respondents x 2

NFFO

Other Fishing Business respondent

Skippers/owners of fishing vessel x 2 Julian Brown and Thomas Russell

Stephen Postles, Others

Talbot trawlers Ltd

Vessel owner/master

Welsh Federation of Sea Anglers

Wildlife and Countryside Link (including Institute of Fisheries Management, Marine Conservation Society, Royal Society for the Protection of birds, Whale and Dolphin Conservation, The Wildlife Trusts, WWF – UK.

Wirral Council



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