Summary of responses to the Administrative Penalties consultation

30 responses in total:

- 10 from the Fishing Industry:
  - I. NFFO;
  - II. South Coast Fishermen’s;
  - III. Lowestoft Fish Producer’s Organisation;
  - IV. South Western Fish Producer’s Organisation;
  - V. South Devon and Channel Fishermen;
  - VI. Talbot Trawlers Ltd;
  - VII. Welsh Federation of Fishermen’s Association Ltd;
  - VIII. Sea Anglers’ Conservation Network;
  - IX. LOOE Fishermen’s protection Association;
  - X. Kings Lynn Fishing vessel owners and Skippers’ Association

- 10 from individual Fishermen

- 1 from the ASFC

- 1 from the Environment Agency

- 1 from a Defra official

- 1 from a prosecutor in the Environment Agency

- 1 from a trading style research company

- 1 from a trainee solicitor

- 1 from AST satellite providers

- 3 miscellaneous responses

Out of the above correspondents, 21 respondents commented specifically on the proposal, raised some points and gave us their views on the proposal.

Brief summary of views of respondents

- FAP should affect all vessels in the same way
- FAP should be Europe wide
- FAP should be consistent and applied across UK
- FAP should cover all offences
- FAP should be open and transparent
- FAP should be applicable to SFCs byelaws
- FAP should not include smaller vessels with low income
- Size of vessels should be considered when FAPs are being given
- Different levels of fines should have different lengths of time to pay
- IUU vessels should be covered in the scheme
- In addition to financial Admin Penalties – sanction should include confiscation of the gear and suspension of licence
- Foreign offenders should be dealt with in the same way as UK fishermen
- Implementation of AP scheme should be aligned with simplification agenda

9 out of the 21 respondents openly agreed with the proposal (including the NFFO and the Environment Agency).

2 out of the 21 respondents disagreed with the proposal these were: SWFPO and a fishermen

10 respondents were neutral with the proposal, neither openly agreeing or disagreeing but provided views on the overall scheme. These were from the remaining fishing organisations and individual fishermen. ASFC were classified among the neutral category because they neither agreed nor disagreed but wanted the SFCs to be trained and included in the process.
Fishing Industry

3 agree, 1 disagrees, 5 neutral

Welsh Federation of Fishermen’s Association (WFFA)

- **Neutral**: Wants proposed changes to be entirely open and transparent in the way they are administered and operated.
- EU vessels should be affected in the same way as UK vessels otherwise there would be issues of discrimination between EU vessels being dealt with differently.
- Where discretion is allowed within the system, it should be impartial and equal across board in all cases. *(Did not answer any of the questions)*

Talbot Trawlers Ltd

- **Neutral**: Implies AP should be aligned with Simplification.
- Declares that criminalisation of fishermen stems from Fisheries’ rules in the CFP and the quota system.
- Believes that apart from many Fisheries Regulations disadvantageous to fishermen and not understood by many, other UK policies also disadvantage them as well.

(They gave the following answers to the questions in the consultation paper):

- Q2: Financial sanctions seem the way forward but need to be equal throughout the member states. Suggests foreign vessels will only pay if their vessels are impounded at a British harbour.
- Q4: believes that allowing 28 days for payment may cause hardship to some Skipper owners especially those under the 10m vessels
- Q5: for offences to be covered, suggests Gear regs mesh size; fish size limits; over quota
- Q6: suggests fines should be graded in 1st, 2nd and 3rd offence i.e. warning letter > fine depending on type of offence > fine trebles that of 1st offence

South Devon and Channel Shellfishermen

- Disagrees with AP in principle and sees no justification for its introduction, but agrees with the proposal
- Inherent problems lies with CFP and its multitude of Regulations
- Complexity of the Regulations not understood by fishermen and they now need a lawyer as one of the crew to try and ensure compliance with the myriad of complicated Regulations and directives.
- Fishermen do not set out to deliberately break the Regulations
- For fishermen to comply with Regulations and enforcement, they have to understand the Regulations to be equitable, consistent and transparent.
- There will be no compliance from industry until Regulations are reduced and simplified.
- Believes that FAP will not solve underlining problems.

(They gave the following answers to the questions in the consultation paper):

- Q1: not in a position to give accurate stats on this
- Q2: does not agree with proposal to proceed with financial sanctions
- Q3: would like to see a tariff system in place if we introduce FAP and also which offences FAP will attract.
- Q4: do not want the port officials to offer/impose FAP; doing this will take personalities out of the equation. 28 days too short to pay particularly if fisherman does not agree with decisions taken.
Penalties should be equal to the average fine levied on fisherman convicted for a similar offence in the magistrates court

Wants majority of less serious offences should be downgraded to the equivalent of a parking or minor speeding offence.

**South Western Fish Producer Organisation (SWFPO)**

- **Disagrees** with proposal and believes decriminalisation of offences can only happen if there is the intention to repeal through parliament the offences that would come under the provisions of the proposed scheme.
- Concerned that admitting to an offence and agreeing to a FAP is tantamount to being a criminal *(Did not answer any of the questions)*

**Lowestoft Fish Producers Organisation**

- Wants their response to tie in with the NFFOs
  [Not counted as a specific contribution to the consultation]

**South Coast Fishermen’s Council**

- **Neutral**: Concerned about the large quantities of fish caught by unlicensed, unregistered Sea Anglers
- Wants to know if AP will only apply to the registered and licensed boats *(Did not answer any of the questions)*

**LOOE Fishermen’s Protection Association**

- **Neutral**: Wants us to take the average of the rest of Europe and apply these rules to the UK. *(Did not answer any of the questions)*

**Sea Anglers’ Conservation Network**

- **Neutral**: Organisation’s interest is to see an effective and meaningful penalties in place that back up the legislation, Regulations, rules and byelaws in place designed to protect the marine environment and fish stocks from unsustainable exploitation.
- Concerned that the complexity of fisheries rules leads honest fishermen to breach Regulations and be convicted of a criminal offence.
- Would prefer a ‘holistic’ approach that will redress the balance in favour of honest men, driving out those who refuse to comply with the rules.
- Wants us to look into our earlier proposals of removing advantages gained by the rule breakers, by reducing their fishing effort.
- Believes that reduction in quota, loss of days at sea would not only have imposed a penalty on wrongdoers but also give some relief to resources being exploited.
- Concerned that our concepts appears to have being abandoned for the more administratively simple system of ‘on the spot fines’.
- Proposed FAP would increase fishermen’s expenditure resulting in reduction in profits which would be made up by fishermen by increasing their fishing effort and perhaps even taking more risks to dodge fines that would have been imposed.
- Wants our fundamental aim to be the effective protection of the resources and not punishment of the offenders.
- Wants ‘on the spot fines’ to be accompanied by something similar to the points system that motorists endure. In this way subsequent expenses are
met with a swinging escalation of the amount of the fine for subsequent offences.

- By doing the above, if too many points are accrued, then more severe action should be available as punishment such as suspension or loss of fishing license; elimination of track record and/or quota etc. (Did not answer any of the questions)

**National Federation of Fishermen's Organisation (NFFO)**

- **Agrees** with the proposal and considers that the approach of a mixed system of criminal/administrative penalties for fisheries is the right balance between enforcement and safeguards.
- Wants fishermen to have the opportunity to ask for any decision to be reviewed and any additional information taken into account prior to having to pay a FAP; these requests should be considered independently by officials who were not party to the original decision.
- Would prefer 40 days be given for payments of fines, 28 days seems tight particularly if a fisherman was having cash flow problems.
- Suggests 4 levels of fines - £200, £500, £1000, £2000
- There should be some criterion that would be applicable across UK irrespective of administrations where these would be applied.
- NFFO notes that the arrangements will encompass Community offences detected by SFC offices, final decision should however be made by the MFA.

(Gave detailed answers to questions asked in the consultation which have been summarised above)

**Kings Lynn Fishing vessel owners and Skippers Association**

- **Agrees** with consultation and added that to the FAP imposed there should be confiscation of any undersize fish, any offending by-catch including illegal attachments to the nets.
- Q2: agrees with proposal. Suggests that in addition to the FAP imposed there should also include the confiscation of the offending attachment. The forfeiture should also apply in cases of small quantities of undersize fish and small by-catch offences.
- Q3 and Q4: agrees with suggestions in the consultation paper
- Q5: wants the system to apply to British and foreign vessels and be applied equally to owners, charterers, agents and companies; also agrees with proposed levels of fines.
- Q6: wants system to encompass offences detected by SFC officers other than byelaws.
- Proposed levels of fines should be in the following range:
  - a. Small quantities of under size fish. Fixed FAP £200, £400, £600, £1000, £2000 depending on the quantity of under size fish found plus confiscation of under size fish.
  - d. Minor encroachment into a prohibited area. Fixed FAP £1000, £1500, £2000.
24 May 2006

Fishermen
5 agree, 1 disagrees, 4 neutral

John Finlay

- **Agrees** with consultation and with the proposed process as long as enough days/time is given for payment. *(Did not answer any of the questions)*

(Gave the following answers to the questions asked in the consultation paper:

- Agrees with Q1-4 and in addition to 4 says that decision should not rest with just one person; different levels of fines should have different time periods. For example, small fines should have 28 days, medium fines should have 60 days and fines should be paid within 6 months. Notice for payment of fines should be given at the time penalty notice is given like for a £5000 fine 60 days should be given.
- Q6: said to keep the proposed system simple and have few levels of fines based on the overall seriousness of the offence.

Eddie Clarke

- Wonders if the scheme would be consistent across the board
- Interested to know about the proposed levels of fines to be imposed for offences *(Did not answer any of the questions)*

P Day

- Says the proposal is a **good idea** but concerned about small boats that can only raise a small amount of profit on fishing.
- Believes the fishing industry has almost been destroyed by interferences from the Government. *(Did not answer any of the questions)*

David Rounsevell

- **Disagrees** with the proposed scheme and does not want us to take it forward.
- Suggested that level of penalties between £200-£2000 for minor breaches are draconian
- Wants the Dept to deal with real problems facing the industry *(Did not answer any of the questions)*

SW Mackenzie

- **Agrees** totally with the proposals *(Did not answer any of the questions)*

Steve Barker

- **Agrees** with the proposal
- Thinks representatives for the pre-consultation meeting were handpicked
- Q2: agrees with proposal but believes it will only hit small licensed operators and will be disproportionate
- Q3: reckons proposal will be one sided
- Q4: believes there will be too many traffic wardens in the system; and 28 days for payment should depend on the circumstances
- Q5: wants AP to include all fishery offences including Angling offences.
- Q6: wants FAP to be introduced to be equal, fair and just across the board

5
24 May 2006

Jason Rudd

- Agrees that local Skippers approve of the proposed system
- Wants due care and attention to be paid to the financial and ownership situation of the offender
- Interested to know who would be making the final decision if SFCs were to be involved in the process (Did not answer any of the questions)

Steve Binckes

- Neutral: Concerned that commercial fishermen may use the system to their advantage by weighing up the fine to the crime.
- Interested to know how penalties were to be graded
- Believes that if crimes to be committed were to be dealt with outside of the law courts, the FAP should be a substantial one. It should be a big deterrent and not a coincidental payment. (Did not answer any of the questions)

Al Kingston

- Neutral: Accepts that FAP will be the easiest to apply to offending vessel/skippers, when considering foreign vessels
- Believes that FAP alone will not be sufficient to deter persistent re-offenders
- Skippers will weigh up the risk of being caught (and subsequent financial loss) against the benefit gained by breaking the rules.
- Believes that the threat of a temporary license removal or permanent removal of license would be sufficient deterrent
- Thinks 28 is too short to pay a FAP fine.
- Believes the system could cover any type of fisheries offence, provided evidence against the offending party is indisputable
- Wants to see a number of different levels of fines to make the system acceptable and appropriate to the industry, depending on type of offence, size of boat and number of previous offences. (Gave detailed answers to all the questions which have been summarised above)

Stephen Evans

- Neutral: Believes that a points system, leading to prosecution and/or ban is a much better method of enforcing fisheries regulations
- Wants to see enforcement of all existing, and/or new policies. (Did not answer any of the questions)
The Association of Sea Fisheries Committees of England and Wales

- ASFC understands the need for introducing FAP but would like to see a coherent system that is understood by all; a system that provides effective remedies that are priced at a level which acts as a deterrent and a system that allow the alternative of a court hearing and be cost neutral for the enforcement bodies.
- Wants FAP set at levels that would make fishermen think twice before breaching the Regs - most fishermen see fines imposed by courts as occupational costs and these are factored into their financial calculations.
- Wants the dept to consider confiscation of gear; license suspension – understands that dept is concerned about the Human Right angle of this route but it should be viewed in exactly the same principle as a person who depends on his drivers license for a living.
- Believes that the proposal is fine as far as it goes, but envisages significant problems arising over time.
- Sees offering only one FAP as being unnecessary restricted, believes dept should try awarding HO cautions as well as FAPs and WL.
- Wants common training and understanding given to FOs and SFCs officers - this is paramount and crucial if there is to be one offer of FAP.
- Wants to see 3 levels of fines imposed £200; £1000; £2000 exclusive of costs of the enforcing body.
- £200 should only be applied to the most minor of offences. (Gave detailed answers to the questions asked in the consultation that have been summarised above).

The Environment Agency

- Agrees with the proposal. Recommends that development of other (non-financial) penalty options and application of administrative penalties to a range of offences is kept open for consideration.
- Recommends seizure of gear as an important factor in fisheries enforcement.
- Agency would prefer to see a robust appeals mechanism if permanent confiscation of gear is to be used as a penalty.
- Believes that a threat of removal of days at sea would be a stronger deterrent than the long-term imposition of a FAP.
- Suggests that the proposed system would be accepted more readily if the criteria for making decisions are set out and principles involved understood, the more transparent the system the more likely it would gain the understanding and respect of those regulated.
- Does not agree with the scope of not including the SFCs bylaw offences and advised that it would be unwise to do so.
- Agency proposes the use of Regulator Applied Penalty (RAP), which is explained in their paper.

(Gave the following answers to the questions asked in the consultation paper:

- Gave a sample of prosecutions carried out by the agency between 2003-2002

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<th>2003</th>
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<tr>
<td>Total fisheries prosecutions</td>
<td>35</td>
<td>38</td>
<td>78</td>
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<tr>
<td>Average legal costs per case (£)</td>
<td>242</td>
<td>364</td>
<td>463</td>
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<tr>
<td>Average fine imposed (£)</td>
<td>195</td>
<td>394</td>
<td>310</td>
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Q2: agrees with the proposal to proceed with financial sanctions as an alternative to prosecution in appropriate cases. Recommends that any system of AP should apply at consistent levels with improved court penalties.

Wants greater flexibility in the penalties available beyond purely financial ones would be beneficial.

Q4: Agrees with our principle and advise that time limits need to take into account any limits set for laying potential criminal charges in court. The time allowed for payment of a penalty should not prejudice the opportunity to take criminal action should that prove appropriate.

Q5: agrees with the scope set out for offences to which the system should apply but question if excluding SFC byelaw offence might be unwise. Advise that AP offers a usefully flexible and potentially beneficial approach to marine and inshore fisheries enforcement. Advantage might be gained by ensuring powers are available to apply such a system to the range of offences encountered.

Q6: wants us to clearly define the range of cases that FAP would be available for. In the absence of this definition, EA question that the upper cap of £2000 proposed may not fully reflect the scale of environmental impact or financial return connected with those more serious cases. Suggests that in addition to a range of financial penalty further consideration should be given to other non-financial penalties.
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| Estimation of Administrative burden (in time and money) of being prosecuted in court. | ▪ EA provided some average costs and estimates of cases across a range of environmental crimes falling within their jurisdiction from 2003-2005.  
▪ ASFC provided a sample rate and times of prosecution of some SFC byelaws for 2 different counties.                                                                                          |
| Financial sanction as an alternative to prosecution.                          | ▪ There was a widespread agreement across the spectrum of stakeholders that going down this route would remove uncertainty for fishermen and reduce the stress of having a court case hanging over them.  
▪ Though financial sanctions were thought by many respondents to be easier to apply, some respondents like the EA, ASFC, various Fishermen associations and some individual fishermen said that we should also consider alternative methods of sanctions like confiscation of gear, suspension of licence and removal of fishing quota in addition to FAP. They suggested that these methods would be a better deterrent for persistent re-offenders than the proposed FAP system. |
| Proposed scheme allowing sufficient provisions for representation.            | ▪ The majority of respondents including the EA, ASFC, Kings Lynn Fishing Vessels owners and individual fishermen said the proposed scheme would allow sufficient provisions for representation.  
▪ Others including the NFFO felt this would not be the case because the MFA would be making the final decision. Respondents in this group were of the opinion that an independent review body should be set up to take representations. |
| Views on proposed process e.g. offer of a FAP made at an official level; 28 days the right period to pay. | ▪ There were mixed reactions on this. The general opinion from the industry was that 40-45 days should be the average time to pay any level of fines' imposed.  
▪ Some stakeholders stated that there should be a mechanism that would allow a fisherman to ask for a decision to be reviewed or other representations |
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<th><strong>Offences to be covered</strong></th>
<th><strong>Levels of fines</strong></th>
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<td>▪ There was a general recognition that all community offences should be covered in the proposal.</td>
<td>▪ The consensus by the majority of those who fed back on this was that it would be appropriate to have 4 levels of fines: £200; £400; £1000; £2000.</td>
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<td>▪ Some respondents said that the scheme would be too restrictive if it covered only community breaches and open and shut cases.</td>
<td>▪ Level 1 a £200 fine according to respondents should be restricted to the most minor of offences.</td>
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<td>▪ EA however were of the opinion that SFC byelaws should be covered as well.</td>
<td>▪ Some were of the opinion that for higher breaches of £500 or more, there should be an additional administrative sanction in addition to the financial sanction like confiscation of fishing gear or reduction of fishing quota.</td>
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