



Enforcement Policy

Introduction

On the 1st April 2011 Eastern Inshore Fisheries and Conservation Authority (the Authority) was fully vested under the Marine and Coastal Access Act 2009 (MaCAA). Sections 153 and 154 of MaCCA set out the Authority's fisheries and conservation management responsibilities throughout its district, which covers all tidal waters (out to six nautical miles from the 1983 baselines¹) in Lincolnshire, Norfolk and Suffolk from Haille Sand fort in the north to Felixstowe in the south.

This document sets out the Authority's approach to achieving compliance and it provides the general principles that will be followed.

Compliance and Enforcement

In undertaking its regulatory responsibilities the Authority starts from the position that the majority of the people, organisations and industries engaged in the inshore fisheries, whether recreationally or commercially, are compliant with the regulations and controls that affect them. The Authority will work with all parties to ensure that they understand what rules apply to their particular activity and the rationale that makes regulation necessary. Where people are not aware of the rules that apply to them or they require further guidance to ensure that they are compliant, the Authority will assist by providing guidance and/or assistance and will raise awareness, where possible, as a first step to achieving compliance.

Where consensus with the management approach is not achieved or where the potential gain is significant, the risk of illegal activity increases. The risk is even greater where an effective enforcement deterrent is not in place. The deterrent is only effective where the risk of enforcement action is high (whether perceived or in reality) and the consequences are serious. In recognition of the need to have an effective deterrent, fines applicable to byelaw offences increased under MaCCA from a maximum of £5,000 to £50,000.

The Authority uses various compliance measures to ensure, where possible, that no person(s) illegally engaged in fishing related activity removes fishing opportunities for others or gains an unfair market advantage by breaking the rules and that law abiding person(s) are not disadvantaged by being compliant. It will also seek to use appropriate compliance and enforcement measures, where it considers it to be necessary, to ensure that the marine environment is not adversely affected by fishing activities.

¹ The baselines as they existed at 25th January 1983 in accordance with the Territorial Waters Order in Council 1964 (1965 III p.6452A, as amended by the Territorial Waters (Amendment) Order in Council (1979 II p.2866).

Better Regulation

Where the Authority undertakes compliance activity, it will work in accordance with the Hampton Principles of Better Regulation as set out in the Regulators' Compliance Code² and the Legislative and Regulatory Reform Act 2006 (as amended³). In carrying out its functions, the Authority will ensure that:

- I. Any action taken, including compliance related or investigative, is **proportionate** to specific, identified, risk or need for intervention;
- II. It is **accountable** for its regulatory activity – to its stakeholders, its partner organisations, Ministers, local taxpayers, the general public and the Courts;
- III. Its actions are **consistent**, in that it should make similar (but not necessarily the same) decisions about activity in similar circumstances, in accordance with its delegated responsibilities, statutory objective and guidance;
- IV. Its regulatory actions are **transparent**, by publishing information to its regulated stakeholders indicating what enforcement action it can take and may take in appropriate circumstances;
- V. All its activities and, in particular those that would place a "burden" on a regulated person (such as monitoring, inspection, investigation and compliance actions), are targeted using a **risk based** approach⁴, ensuring such action is for a specific identifiable need, for example, limiting random inspections to specific identified compliance requirements;
- VI. Inshore Fisheries and Conservation Officers (IFCOs) appointed by the Authority are highly trained, competent and adhere to the inspection code of practice⁵; and
- VII. It works closely with partner organisations to make best use of available resources and share information.

Enforcement Action

The Authority will endeavour to use an adaptive co-management approach, where compliance is achieved through engagement, understanding and advice. Where compliance is not achieved by this approach, the Authority has a range of enforcement actions available to it:

Verbal Warning

A verbal warning is issued when a minor infringement in legislation is detected. This approach is used to remind person(s) of relevant legislation and it is recorded. If the person(s) subsequently commits a similar offence, the individual involved may face a higher level of enforcement action.

Advisory Letter

Where it is believed that breaches of the law may have been committed and it is appropriate to do so, an advisory letter may be sent reminding the person(s) of the need to obey the law. This may be sent without prejudice to other purely civil remedies⁶.

² <http://webarchive.nationalarchives.gov.uk/+/http://www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/implementing-principles-of-better-regulation/the-regulators-compliance-code>

³ <http://www.legislation.gov.uk/ukpga/2006/51/contents>

⁴ The Compliance Risk Register and Tactical Co-ordinating Group are the means by which this is achieved, in accordance with the Regulation and Compliance Strategy

⁵ Eastern IFCA Code of Practice for Inspections

Official Written Warning

Where there is evidence that an offence has been committed but it is not appropriate to implement formal prosecution proceedings, an official written warning letter may be sent to the regulated person(s), outlining the alleged offending, when it occurred and what regulation(s) were breached. It will also set out that it is a matter which could be subject to prosecution should the same behaviour occur in the future. This may be sent without prejudice to other purely civil remedies.

Financial Administrative Penalty

The Authority may issue a Financial Administrative Penalty (FAP), the level of which may be up to £10,000⁷, as an alternative to criminal prosecution in certain circumstances. A FAP may only be issued where there is evidence of offences committed and may be issued to the owner, skipper and/or charterer of an English or Welsh vessel wherever it operates. Payment of the penalty will discharge the possibility of the Authority prosecuting the offence. However, if a FAP is not paid within the required timescale (28 days), the matter will proceed to court (note that non-payment of the FAP is not an offence). Guidance⁸ details information on the categories of penalty according to the regulation breached and the severity of the offence. In some circumstances the Authority may decide a FAP is an inappropriate sanction and instigate a prosecution. FAPs are not issued for offences concerning the obstruction of officers in the course of conducting their work.

Prosecution

The ability to take criminal prosecutions is essential in discouraging serious non-compliance; the purpose is to secure conviction and ensure that the offender can be punished by a Court at an appropriate level, thus acting as a deterrent to any future wrong doing to both the offender and others who may engage in similar criminal behaviour.

A prosecution may be commenced where it is felt that the matter is too serious or not suitable for another form of disposal such as a warning or financial administrative penalty.

In order to prosecute, the Authority⁹ has to be satisfied that there is:

- 1) Sufficient evidence of the alleged offending and;
- 2) That there is a clear public interest in taking criminal proceedings.

Sufficiency of Evidence Test

The Authority will only commence a prosecution if it is satisfied that there is a realistic prospect of conviction against each suspect on each charge on the available evidence. If a case does not pass this test, it will not go ahead regardless of how important or serious it may be.

If a case passes the sufficiency of evidence test, the Authority will consider whether it is appropriate to prosecute, or whether it is appropriate to exercise one of the enforcement options available to it as set out above. In determining the correct response in any individual case, the Authority will always take into account the public interest in prosecuting.

⁶ Civil remedies are procedures and sanctions, used to prevent or reduce criminal activity as an alternative to using formal court proceedings

⁷ The Sea Fishing (Penalty Notices) (England) Order 2011

⁸ Guidance on the application of Financial Administrative Penalties is available from Eastern IFCA

⁹ Consideration to prosecute is undertaken by the Chief Executive Officer, Chair or Vice Chair of the Authority under its Standing Orders

Public Interest Test

Where there is sufficient evidence to justify a prosecution, or offer any form of out-of-court disposal, the Authority must go on to consider whether a prosecution is required in the public interest.

The following lists of public interest factors in favour and against prosecution are not exhaustive and each case must be considered on its own facts and on its own merits:

- Whether the implications of the offending for the enforcement of the regulatory regime undermines the management approach taken;
- The impact of the offending on the environment, including wildlife, and also, where applicable, having regard to the objectives of Marine Protected Areas;
- With regard to offences affecting sea fisheries resources, whether recovery species are involved and any issues as to quota status;
- The financial benefit of the offending or other financial aspects of the offence, including the impact on other legitimate operators;
- Whether the offence was committed deliberately or officials were obstructed during the course of the offending / investigation;
- The previous enforcement record of the offender;
- The attitude of the offender including any action that has been taken to rectify or prevent recurrence of the matter(s);
- Where offences are prevalent or difficult to detect and the deterrent effect on others by making an example of the offender.

A prosecution is less likely to be required if:

- The court is likely to impose a nominal penalty;
- The seriousness and the consequences of the offending can be appropriately dealt with by an out-of-court disposal which the person(s) accepts;
- The offence was committed as a result of a genuine mistake or misunderstanding;
- The financial gain or disturbance to sensitive marine habitat can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- There has been a long delay between the offence taking place and the date of the trial, unless there are key mitigating circumstances that caused the delay;
- The person(s) played a minor role in the commission of the offence; the suspect is, or was at the time of the offence, suffering from significant mental or physical ill health.

Companies and Company Office Holders

Criminal proceedings may be commenced against all those persons suspected of the offence(s). Where there is sufficient evidence and it is in the public interest, proportionate and appropriate to do so, the Authority may commence proceedings against companies or other bodies liable for offending and company directors or other statutory office holders, where we believe there is evidence of personal liability

Conduct of Investigations

The Authority has a range of powers available to it in order to assist in the prevention and investigation of offending. Some of the more common powers are:

- The power to enter and search business premises and, in exceptional circumstances, dwellings;

- The power to require production of and to inspect documentation;
- The power to seize items, including computers, where necessary;
- The power to board and inspect fishing vessels or marine installations;
- The power to enter and inspect vehicles;
- The power of forfeiture in respect of fish and fishing gear suspected to be unlawful;
- The power to detain vessels or marine installations.

This is not an exhaustive list of powers available to the Authority, but an example of some of the more commonly-used powers. The Authority will exercise its powers appropriately and exercise due restraint to ensure use is proportionate to the particular circumstances. The majority of the Authority's powers derive from the Marine and Coastal Access Act 2009, the Sea Fishing (Enforcement of Community Conservation Measures) Order 2000 and the Sea Fisheries (Conservation) Act 1967. Investigations will be carried out by IFC Officers in accordance with the Criminal Procedure and Investigations Act 1996 and the Codes of Conduct issued under the Police and Criminal Evidence Act 1984.

Information and evidence gained by an IFC Officer may be used in furtherance of one of the Enforcement Options set out above. In some circumstances, information or evidence obtained by our officers in the exercise of their duties may be shared with other Government bodies or agencies.