



Enforcement & Compliance Strategy 2018-2019

May 2018

This document has been produced by:

Matthew Mander

Acting Chief Officer

Devon and Severn Inshore Fisheries and Conservation Authority.

Brixham Laboratory

Freshwater Quarry,

Brixham

Devon

TQ5 8BA

Tel: 01803 854648

Email: office@devonandsevernifca.gov.uk

This document can also be viewed online at www.devonandsevernifca.gov.uk

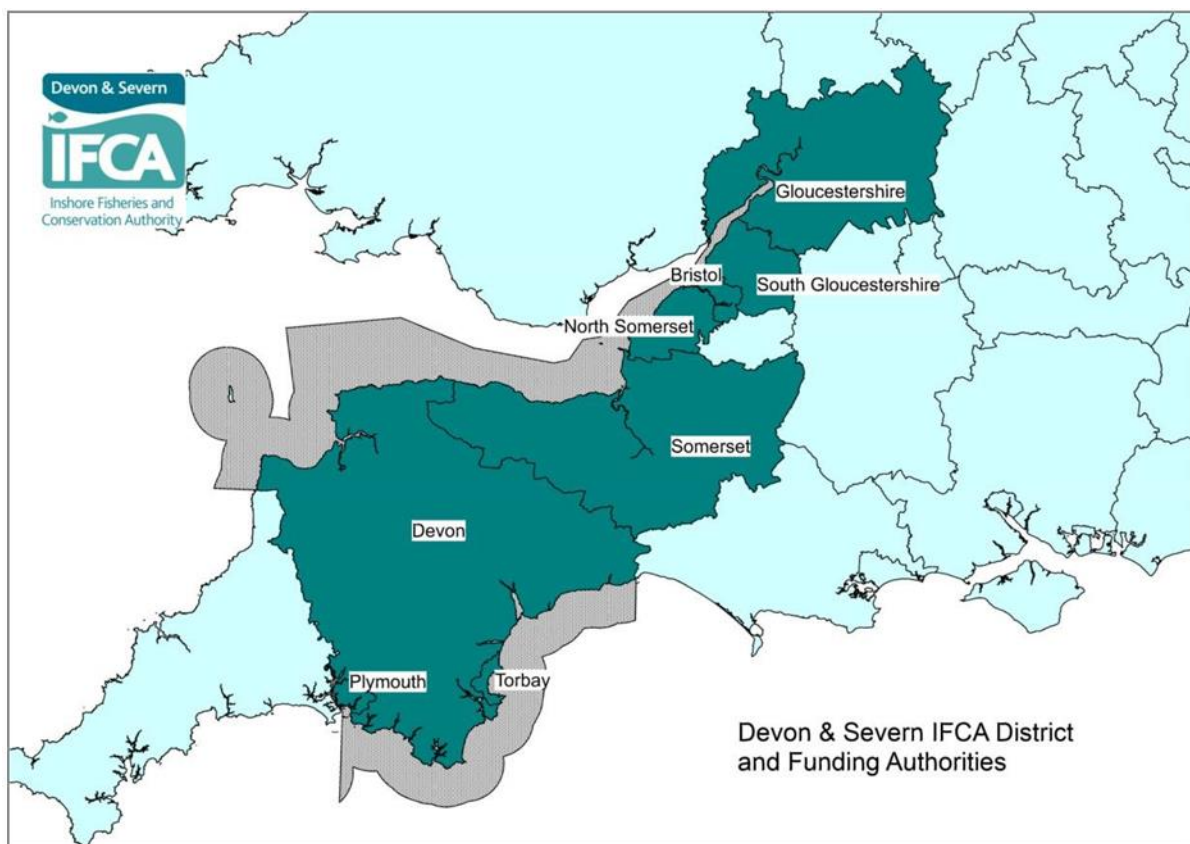
Contents

1. Introduction	4
2. Better Regulation	6
3. IFCA Enforcement Powers	7
4. IFCA Enforcement Training	8
5. Working Together	8
6. Use of Technology.....	8
7. Byelaw Review	9
8. Enforcement Resources	9
9. Enforcement Operations.....	10
Annex 1	12
Annex 2	15
Annex 3	17

1. Introduction

On the 1st April 2011, the Devon and Severn Inshore Fisheries and Conservation Authority (the Authority) was fully vested under the Marine and Coastal Access Act 2009 (MaCAA).

The Authority took over the fisheries and conservation management responsibilities from the Devon Sea Fisheries Committee (DSFC) and the Environment Agency (EA) within the new District. The D&S IFCA is the largest of the ten separate IFCA Districts and has two separate coastlines. The area of the District is 4522km² and is defined in the Statutory Instrument (2010 No. 2212)¹. The D&S IFCA District includes the areas of Devon, Somerset, Gloucestershire County Councils; Bristol City and Plymouth City Councils; North Somerset and South Gloucestershire Councils and all adjacent waters out to six nautical miles offshore or the median line with Wales.



Fisheries management only succeeds with an integrated approach encompassing communication, research and enforcement.

Full compliance with EU, UK and local fisheries and environmental legislation is the overall aim of the Authority. This aim is best achieved through the adoption of an adaptive co-management approach to fisheries management. The key to achieving high compliance is

¹ The Devon and Severn Inshore Fisheries and Conservation Authority Order 2010

ensuring that those users who are potentially affected have a real opportunity to engage with the Authority over the local management approach to be taken.

In support of the aim to achieve full compliance, the Authority has introduced four activity-based permit Byelaws since 2014. These Byelaws represents the Authority's strategy of introducing a new and flexible approach to fisheries and conservation management. The permitting byelaw places all the management measures within the permit conditions. Recreational fishers are also regulated where applicable through the permit byelaws. Under Section 153(d) of MaCAA, the Authority has a duty to seek to balance the different needs of persons engaged in the exploitation of sea fisheries resources in the District.

Effectively communicating change in legislation is a difficult challenge for the Authority. However, the permitting byelaws allow the Authority to communicate directly with permit holders. This is important as the different sectors have varying degrees of co-ordinated representation. Even where representation does exist it is hard to reflect the full range of views held by fishers. By engaging in the management process, the Authority and all the users get a far better understanding of the requirements of the other interested parties. Conflicts of interest will not always be resolved but, having gained an understanding of why actions are taken, affected users are far more likely to accept the approach taken.

In addition to preparing an Impact Assessment for each new byelaw the Authority produce a further report that builds through each development phase of the byelaw until a full and detailed record of all the information, evidence, consultation responses and considerations is produced. At each completed stage of the byelaw development this document is made available to the public and made available to all permit holders

On 1st June 2018 the number of D&S IFCA permits issued were 991. Each permit lasts for a period of up to 24 months

Towed Gear Permits	164 All Commercial	(84 between 7 – 12 metres)
Potting Permits	200 Commercial	331 Recreational
Diving Permits	23 Commercial	199 Recreational
Netting Permits	66 Commercial	8 Recreational

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 and the consequences are serious.

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. Formal regulation is only seen as the final option and voluntary arrangement are the starting point for any management considerations.

In recognition of the need to have an effective deterrent, fines applicable to byelaw offences were increased from a maximum of £5,000 to £50,000. (Section 163 of MaCAA). The subsequent introduction of The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 made all such fines unlimited.

A further strength of the permitting byelaw approach is that in a case where the offence involved the breach of a condition of a permit issued under one of the Authority's byelaws, under Section 164(5) of MaCAA the Courts may suspend a permit or disqualify the person from holding or obtaining a permit for such a period the court thinks fit. This is seen by the Authority as a very important addition to the formal action that can be taken against persistent offenders where fines are shown not to have persuaded the fisherman to change his attitude to fishing.

2. 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:

- abide by the Code for Crown Prosecutors
- any action taken, including compliance related or investigative, is proportionate to specific, identified, risk or need for intervention;
- it is accountable for its regulatory activity – to its stakeholders, its partner organisations, Ministers, local taxpayers, the general public and the Courts;
- 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;
- 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;⁴
- 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 approach⁵, ensuring such action is for a specific identifiable need, for example, limiting random inspections to specific identified compliance requirements;

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 Summary of enforcement actions attached in Annex 1

⁵ Fisheries risk matrix is attached in Annex 2

- Inshore Fisheries and Conservation Officers (IFCOs) appointed by the Authority are highly trained, competent and adhere to the inspection code of practice⁶; and
- it works closely with partner organisations to make best use of available resources and share information.⁷

3. IFCA Enforcement Powers

It was recognised through the drafting of MaCAA that the enforcement powers available to the Sea Fisheries Committees (SFCs) needed updating to provide IFCA with a greater ability to effectively enforce the legislation available to them. Inshore Fisheries and Conservation Officers' (IFCOs) common enforcement powers are conferred by sections 245 to 261 and fisheries enforcement powers conferred by sections 264, 268, 269 and 284 of MaCAA. IFCOs also have powers under Article 9(1)(c) of the Sea Fishing (Enforcement of Conservation Measures) Order 2000 as amended.

IFCOs have these powers for the purpose of enforcing:

- Any byelaws made under section 155 or 157 of MaCAA for the district (or having effect as if so made);
- Sections 1 to 3, 5 and 6 of the Sea Fish (Conservation) Act 1967 (c.84) and any Orders made under any of those sections;
- Any provision made by or under an Order under section 1 of the Sea Fisheries (Shellfish) Act 1967 (c.83);
- Any provisions of, or any rights conferred by, section 7 of that Act;
- Any byelaws made under section 129 or 132 of MaCAA;
- Section 140 of MaCAA;
- Sea Fishing (Enforcement) Regulations 2018 (SI 849/18) (as amended)

Investigation process

The code of good conduct sets out how officers should conduct inspections. The code should be read with other Statutory requirements set out in the Police and Criminal Evidence Act 1984 and MaCAA that set out how investigations should be conducted.

The Authority will undertake a thorough investigation of all alleged breaches of legislation. Once the investigation has been completed the case file is forwarded to the Authority's solicitors (prosecuting agents). The solicitors' role is to consider whether the evidential and public interest tests have been satisfied and advise on what action they think is appropriate to take. The solicitors are bound by The Code for Crown Prosecutors and must be fair,

⁶ National IFCA code of practice for inspections

⁷ DSIFCA Privacy Policy

independent and objective. Once the solicitors' opinion is received the Chief Officer has the delegated responsibility from the Authority to make the final decision on how to dispose⁸ of an investigation.

4. IFCA Enforcement Training

The Authority's IFCOs go through mandatory safety training and enforcement training before being issued with an enforcement warrant. All officers are expected to continue to develop professionally during their careers and will join MMO training courses and further national training opportunities when and where appropriate to their learning needs. It is expected that each IFCO's enforcement competencies will be assessed to nationally determined standards. The proposed Marine Enforcement Accreditation Scheme is now in place. The scheme will provide all officers with the opportunity to work through set modules and gain accreditations for each module successfully completed. In time this will mean that officers will gain recognisable qualifications and will provide opportunities for officers' skills and knowledge to be judged against common standards.

5. Working Together

Partnership working with other enforcement agencies is a requirement under the Authority's Success Criterion 2. This approach is already well established within the Authority with joint enforcement meetings and inspections (at sea and ashore) being regularly undertaken by IFCOs and Marine Enforcement Officers from the MMO.

The Authority also issues a full warrant to one Environment Agency (EA) to undertake fisheries enforcement work on behalf of the Authority. In addition, a further three EA enforcement officers that work within the Authority's District have been provided with limited IFCO powers under section 165 of MaCAA. Training in the use of these powers has been provided to the EA officers by the Authority's fulltime IFCOs.

The Authority liaises with other enforcement agencies including the Police (Civil and Military), Gangmasters Licencing Authority, Department of Works and Pensions, and other IFCA's.

6. Use of Technology

The Authority recognises the potential benefits of remote monitoring technologies. The Authority continues to be directly involved in the national MMO and IFCA project to develop a national standard for the introduction of low cost, frequent reporting, inshore vessel monitoring systems (IVMS). The Authority intend to introduce the requirement for all vessels operating

⁸ Annex 1 disposal options that are available to the Authority to following each investigation.

under the Mobile Gear permit Byelaw to have on board a fully functioning IVMS unit onboard by August 2018. Each vessel will transmit positional data at least every 10 minutes whilst operating in the Authority's District and will increase to three minute reporting in any access restricted areas. The positional data will be used to improve the Authority's intelligence led approach to enforcement.

IFCAs already have access to the Monitoring Control and Surveillance System (MCSS). This system collects fisheries effort data nationally to inform management and enforcement actions. Using such a system allows for greater intelligence sharing and better co-ordinated enforcement actions. IVMS will provide much more detailed activity information and will potentially cover all vessels. Currently only over 12m vessels are required to transmit positional data and the report interval is two hours.

7. Byelaw Review

IFCAs were required to undertake a review of all of the inherited byelaws by April 2015. This provided the Authority with an excellent opportunity to develop legislation that supported better management of sea fisheries resources and enable it to deliver the duties under sections 153 and 154 of MaCAA. The aim of the byelaw review is to create a legislative structure that supports the delivery of MPA management, sustainable development of fisheries and development of recreational sea angling.

The review of the byelaws has also allowed the drafting of legislation to support effective enforcement. One of the new permit conditions means that whilst vessels are fishing⁹ in the District the catch on board will be deemed to have been caught in the District. The new byelaws will also assist the Authority's management of the illegal, unlicensed fishing activity that is a key pressure on both the commercial catching and recreational fishing sectors. The Potting Permit Byelaw, Diving Permit Byelaw and Netting Permit Byelaw have all introduced catch and gear restrictions on non-commercial fishers.

The flexibility provided by using permit conditions means that unintended management or enforcement consequences can be rectified more quickly using the review mechanism set out in the main activity based Byelaw.

8. Enforcement Resources

The Authority currently employs six members of staff that hold IFCO warrants. Undertaking day to day enforcement duties is the primary role for four of these officers¹⁰. It also drives

⁹ Fishing defined in D&SIFCA Permit Byelaws

¹⁰ The Authority's full staff structure is set out in the Annual Plan

better joint working in order to provide sufficient enforcement cover and encourages greater innovation in how to approach enforcement work in the District.

In 2013, the Authority took the decision to sell the main enforcement vessel, 21.9m 'Drumbeat of Devon'. The decision to sell the vessel reflected the Authority's new approach to enforcement and helped ease budgetary pressures. The enforcement approach requires the use of small vessels operating with less crew, more frequently from various ports on both the north and south coasts. The Authority believes that the use of small vessels in conjunction with IVMS will lead to better monitoring of fishing activity at a reduced cost to the public purse. The reduction in crewing resource allows for more options to deal with emerging issues that occur at the same time.

The Authority operates a 6.4 metre RIB for patrol work on both coasts. D&SIFCA have commissioned local boat builder RIBCRAFT to build and supply a bespoke 7.8m wheelhoused RIB. This has been funded with the assistance of an EMFF grant and is expected to be in service by the end of 2018. The specification of this build has been centered around the requirements of the Authority's IFCO's to ensure that this new patrol vessel will vastly improve the Authority's ability to achieve the targets set out in the enforcement plan.

The Authority also charters other coded vessels that range in size to carry out surveillance operations.

9. Enforcement Operations

The Authority operates an intelligence led and risk based approach to enforcement¹¹. This is in line with the National Intelligence Model followed by other enforcement agencies. This improves the sharing of intelligence throughout the organisations giving a better overview of potential illegal activities. This intelligence is monitored by an appointed Intel Officer and fed in to regular Tasking and Control Group meetings from which Officers are expected to develop enforcement plans that reflect the predicted risk but also reports of suspicious activity. The plans set out the activities the shore and sea patrols are intended to monitor and then officers fill in the patrol log to record what actions were taken.

Intelligence and information is shared between IFCAs, MMO and EA and other Government Agencies. The sharing of this information is crucial to ensure a co-ordinated; cross agency approach to enforcement is achieved. All inspections carried out by officers will be recorded on MCSS.

To support the reporting of suspicious or suspected illegal activity the Authority has an out of hours contact number – **07740 175479**. The Authority felt that it was important that callers wishing to report suspicious activity had a realistic opportunity to speak to a Duty Officer that could as a minimum record the information to inform future patrols. The Duty Officer may

¹¹ Annex 2

have the opportunity to call officers whilst they are conducting operations and provide them with the information. Very often callers are reporting activity as it is happening and too often by the time the information is received the opportunity to react has been lost. The Authority has limited resources and cannot respond to all reports and managing expectations is important.

Annex 1

Summary of enforcement actions

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 is recorded. If the person(s) 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 remedies.

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.

Simple cautions

A simple caution (known previously as a Home Office Caution) may be offered by the Authority. Issuance of a simple caution may be deemed to be the most appropriate means to deal with the offence(s), particularly where there is no identified financial gain. A simple caution is only offered when the Authority is prepared to instigate legal proceedings and prosecute if the person(s) decides to decline the simple caution.

Financial administrative penalties

The Authority may issue a Financial Administrative Penalty (FAP), the level of which may be up to £10,000, as an alternative to criminal prosecution in certain circumstances. There are four basic levels of administrative penalty depending on the nature of the offence committed and where it is deemed appropriate for a financial administrative penalty (FAP) to be offered. These range from £250 to £2,000 as set out in the first column of the table below.

Penalty levels	First offence	Second offence	Further offences
Level 1	£250	£500	Referred for prosecution
Level 2	£500	£1,000	Referred for prosecution
Level 3	£1,000	£2,000	Referred for prosecution
Level 4	£2,000	£4,000	Referred for prosecution

All penalty offences have been categorised. Each category of offence has been rated according to its seriousness to determine the basic penalty level. These levels also consider historical analysis of court penalties while offering an incentive for the accused to choose against referral for prosecution.

Category	Penalty level	First offence	Second offence	Further offences
Marketing offences	1	£250	£500	Referred for prosecution
Miscellaneous	2	£500	£1,000	Referred for prosecution
Technical conservation (Gear)	3	£1,000	£2,000	Referred for prosecution
Technical conservation (Catch)	3	£1,000	£2,000	Referred for prosecution
Recovery offences	3	£1,000	£2,000	Referred for prosecution
Control offences (including Registered Buyers and Sellers and UK licence offences)	3	£1,000	£2,000	Referred for prosecution
Access	4	£2,000	£4,000	Referred for prosecution
Illegal, unregulated and unreported fishing offences	4	£2,000	£4,000	Referred for prosecution
Undersize fish offences (UK, EU, byelaw)	2	£500	£1,000	Referred for prosecution
IFCA access offences	3	£1,000	£2,000	Referred for prosecution
IFCA technical conservation (catch)	2	£500	£1,000	Referred for prosecution
IFCA technical conservation (gear)	2	£500	£1,000	Referred for prosecution
IFCA permit	1	£250	£500	Referred for prosecution

Further information on FAPs is available in the Authority's FAP guidance posted on its website

Prosecutions

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 FAP, warning or caution.

In order to prosecute, the Authority has to be satisfied both that there is sufficient evidence of the alleged offending and that there is a clear public interest in taking criminal proceedings.

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.

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 fish and fish stocks, 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.

Annex 2

Risk based approach to enforcement

The Authority operates a risk based approach to enforcement. The approach meets recommendations set out in the Hampton Review and makes best use of the limited resources available. The approach is delivered through identifying the fisheries that occur in the district that the Authority currently manages or enforces legislation against.

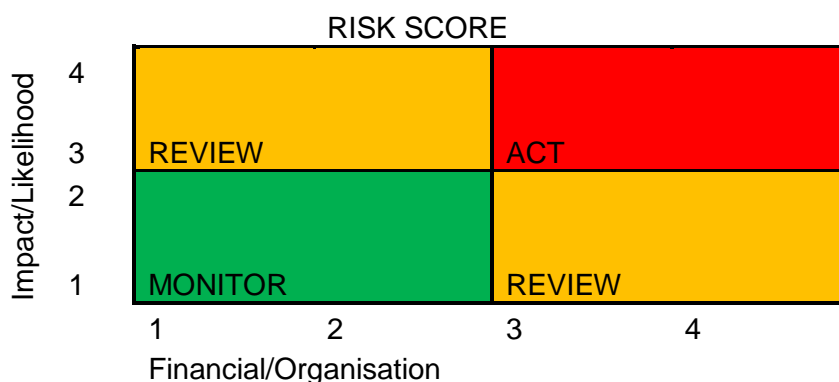
Once the fisheries are identified (below) the level of risk associated with each fishing activity is assessed against four criteria, Impact, Likelihood, Financial and Organisation (below). A score of 1-4 is recorded against each criterion. An average score from the criteria (Impact and Likelihood) and (Financial and Organisation) are taken and plotted against the matrix below.

Impact stock sustainability and effect on the wider ecosystem.

Likelihood level of activity predicted

Financial the socio-economic impact of the activity.

Organisation impact on the reputation of the authority and financial cost to enforce and manage due to non-compliance.



The risk matrix can be demonstrated by using the removal of undersize whelk as an example.

Impact (score 4) Whelk is an important part of the ecosystem. Research has shown that the EU MCRS is below the point when at least 50% of the population has reached sexual maturity, the minimum size is set to increase by 10mm in November 2018 and by 10mm in November 2020.

Likelihood (score 4) the risk of whelk under MCRS being removed is likely to increase due to the size increase

Combined score 4

Financial (score 4) Undersize whelk (assuming new MCRS restrictions applied) whelk commands a high price and is readily saleable to outlets. The availability of whelk undermines the economic value of the legal, licensed commercial fishery. Whelk represents one of the most important fisheries in the District.

Organisation (score 3) Expectations of the public and catching sector are that this legislation is enforced by the Authority.

Combine score 3.5 - making the subsequent action 'Act' (apply an enforcement plan)

Once the level of action is determined, site specific enforcement plans are drafted for the activity. This may include the use of resources available from partner organisations. The specific enforcement plans are updated with any new information that is received through the TCG process.

Each time a site specific plan is carried out a review of its effectiveness is undertaken during a monthly debrief with the officers involved. Identified and reported breaches of legislation update the fisheries risk matrix.

Annex 3 Fishery Risk Matrix

Fishery	Activity	Impact	Likelihood	Financial	Organisation	Score	Action	Partner
								Organisations
Bass								
	Undersize	3	3	3	3	3/3	Act	
	Nursery areas	4	3	3	3	3.5/3	Act	
	Use of nets	4	3	3	3	3.5/3	Act	EA
	Transshipment	4	4	4	3	4/3.5	Act	MMO
Scallop								
	Undersize	2	3	3	3	2.5/3	Review	
	Cut outs	3	2	3	2	2.5/2.5	Review	
	Closed Area	4	4	4	4	4/4	Act	
	7-7.	3	4	3	3	3.5/3	Act	
	Close Season	3	2	3	4	2.5/3.5	Review	
	Salcombe	4	2	2	3	3/2.5	Review	
Lobster								
	Undersize	4	4	4	3	4/3.5	Act	
	Berried	4	4	4	3	4/3.5	Act	
	Escape Gaps	3	4	2	4	3.5/3	Act	
	NTZ	4	1	4	3	2.5/3.5	Review	NE
B Crab								
	Undersize	3	3	3	4	3/3.5	Act	MMO
	Escape Gaps	3	4	2	4	3.5/3	Act	
	Parts	3	2	3	3	2.5/3	Review	
Whelk								
	Undersize	4	4	4	3	4/3.5	Act	
Spiny lobster								
	Undersize & MCZs	4	3	3	3	3.5/3	Act	
Mussel								
	Undersize (T&T)	3	2	3	3	2.5/3	Review	
	Closed Beds	4	2	2	3	3/2.5	Review	
	Dredging Closed areas	3	2	3	4	2.5/3.5	Review	NE
Mullet								
	Use of nets	3	4	2	4	3.5/3	Act	EA
	(Estuaries)							
Plaice								
	Sole	4	3	3	3	3.5/3	Act	MMO
	Cuttle	(closed area & net geometry)						
	Plaice	3	3	3	2	3/2.5	Review	MMO
	Sole							
Spider								
	Undersize	3	1	1	2	2/1.5	Monitor	MMO
Shore Crab								
	Removal	3	2	3	3	2.5/3	Review	GLA/NE
	(Tiling)							
Mackerel								
	Undersize	3	1	1	1	2/1	Monitor	
Velvet Crab								
	Undersize	3	3	3	2	3/2.5	Review	
Winkles								
	Undersize	3	3	2	2	3/2	Review	GLA
Surf Clam								
	Undersize	3	1	2	2	2/2	Monitor	