

Devon and Severn Inshore Fisheries and Conservation Authority

Compliance and Enforcement Strategy

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 (MaCCA).

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 Authority's district¹ covers all tidal waters (out to six nautical miles from the 1983 baselines²) within Devon County Council borders in the south and from the Devon and Cornwall County Council boundary up to the Gloucestershire County Council border and up to Welsh waters to the north.

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

Full compliance with EU, UK and in particular 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 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. By engaging in the management process, the Authority and all 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.

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 have risen 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 Devon and Severn Inshore Fisheries and Conservation Authority Order 2010

² means 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 Code³ and the Legislative and Regulatory Reform Act 2006 (as amended⁴). 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 approach⁵, 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 practice⁶; 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 is recorded. If the person(s) commits a similar offence, the individual involved may face a higher level of enforcement action.

³ <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>

⁴ <http://www.legislation.gov.uk/ukpga/2006/51/contents>

⁵ Fisheries risk matrix is available on the Authority's website

⁶ National IFCA code of practice for inspections

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 remedies⁷.

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.

Fixed Administrative Penalties

The Authority may issue a financial administrative penalty ("FAP"), the level of which may be up to £10,000⁸, as an alternative to criminal prosecution in certain circumstances. Further information on FAPs is available in the IFCA National Guidance

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 fixed administrative penalty, 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.

⁷ Civil remedies are procedures and sanctions, used to prevent or reduce criminal activity as an alternative to using formal court proceedings

⁸ The Sea Fishing (Penalty Notices) (England) Order 2011

If a case passes the sufficiency of evidence test, the Authority⁹ 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.

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