



Cornwall Inshore Fisheries and Conservation Authority

Compliance and Enforcement Strategy

Background

On 01 April 2011, the Cornwall Inshore Fisheries and Conservation Authority (IFCA) was fully vested under the Marine and Coastal Access Act 2009.

Cornwall IFCA took over the fisheries and conservation management responsibilities from the Cornwall Sea Fisheries Committee (CSFC), Devon Sea Fisheries Committee (DSFC) and the Environment Agency (EA), where these organisations had fisheries byelaws within the Cornwall IFCA district.

The Cornwall IFCA district¹ covers all the area of Cornwall Council and the adjacent area of sea out to a distance of six nautical miles from the 1983 baselines². This means that, in many cases, Cornwall IFCA byelaws to manage the exploitation of sea fisheries resources are applied well beyond six nautical miles from the Cornish coast. The most extreme example of this is the Eddystone which, as a baseline point about eight nautical miles offshore, means that some byelaws are applied up to about 14 nautical miles offshore from the main coastline of Cornwall.

The northern boundary of the district is a line drawn due west from the Cornwall and Devon county boundary line. The southern boundary line is a complex line which divides Plymouth Sound and the River Tamar between Cornwall IFCA and Devon and Severn IFCA. Byelaws made by Cornwall IFCA do not extend above the tidal limits of any rivers or estuaries. The seaward part of the southern boundary line runs due south from a position close to the western end of the Plymouth Breakwater.

In addition to enforcement of the byelaws made by Cornwall IFCA, suitably warranted officers may also enforce:

- the byelaws of adjacent IFCAs;
- certain statutory instruments made by Defra; and
- certain EU regulations.

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

¹The Cornwall Inshore Fisheries and Conservation Authority Order 2010

²The 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).

A key element to achieving high compliance with legislation is by ensuring that those who are potentially affected by it have a real opportunity to engage with the Authority over the local management approach to be taken. By engaging together in the management process, the Authority and stakeholders can 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, those affected are far more likely to abide by decisions.

Cornwall IFCA encourages stakeholders to engage with it on inshore fisheries management concerns, both formally and informally. Attendance at the four annual statutory meetings of the Cornwall IFCA Committee is welcomed. The minutes of these meetings are publicly available. Wherever possible, officers will provide information, advice and guidance to stakeholders and the public, as required.

Regulatory principles

Where Cornwall IFCA undertakes its regulatory functions, it will do so in accordance with the Regulators' Code³ and the Legislative and Regulatory Reform Act 2006⁴ (as amended), which lists that regulators should:

- carry out their activities in a way that supports those they regulate to comply and grow;
- provide simple and straightforward ways to engage with those they regulate and hear their views;
- base their regulatory activities on risk⁵;
- share information about compliance and risk;
- ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply; and
- ensure that their approach to their regulatory activities is transparent.

Inshore Fisheries and Conservation Officers (IFCOs) appointed by the Authority are highly trained, competent and adhere to local and national inspection codes of practice.

Compliance with the law

Cornwall IFCA will use various compliance measures at its disposal in order to try and ensure, where possible, that no party engaged in regulated fishing activity gains an unfair advantage by breaking the law.

There are various actions which can be applied to those persons suspected or convicted of breaking fisheries related law. Cornwall IFCA can in most cases decide the way by which it takes action for a suspected fisheries offence from:

Verbal warning

A verbal warning is issued when a minor infringement of fisheries legislation is detected. This approach is used to remind a person of relevant legislation

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf

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

⁵ Risk matrix is available on the Authority's website

and is recorded. In many instances, it will be followed up by an advisory letter to emphasise what was said and to provide relevant information relating to the breached law(s). If a person commits another similar offence, the individual involved may face a higher level of enforcement action.

Advisory letter

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

Official written warning

Where there is evidence that an offence has been committed but it is not appropriate to implement formal legal proceedings, an official written warning letter may be sent to a regulated person, outlining the alleged offence, when it occurred and the regulation which was 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.

Caution

A formal caution may be offered by the Authority as the most appropriate means to deal with an offence, particularly where there is no identified financial gain. A caution is only offered when the Authority is prepared to instigate legal proceedings and prosecute should the offer not be accepted.

Financial administrative penalty

The Authority may issue a financial administrative penalty⁷ (FAP), the level of which may be up to £10,000, as an alternative to criminal prosecution in certain circumstances. A FAP is only offered when the Authority is prepared to instigate legal proceedings and prosecute should the offer not be accepted. Further information on FAPs is available on the Authority's website.

Prosecution

The ability to undertake criminal prosecutions is essential for discouraging serious non-compliance. The purpose is to secure conviction and ensure that an offender can be punished by a court at an appropriate level, thus acting as a deterrent to any future wrong doing to both the convicted offender and others who may engage in similar criminal behaviour. A prosecution may be commenced where it is felt that the matter is so serious that it is not suitable for another form of disposal such as a financial administrative penalty, caution or warning. In order to prosecute, the Authority has to be satisfied that there is both sufficient evidence of the alleged offence and 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, given 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.

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

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

If a case passes the sufficiency of evidence test, the Authority will decide whether it is appropriate to prosecute, or to issue one of the other options set out above.

There are numerous factors to consider in respect of whether it is in the public interest to prosecute a suspected offence. Each case must be considered on its own facts and on its own merits. The following is a non-exhaustive list of factors to be considered:

- 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); and
- where offences are prevalent or difficult to detect and the deterrent effect on others by making an example of the offender.

Court conviction and sentencing

For most fisheries offences successfully prosecuted in a court, an unlimited fine can be imposed by the court, including on summary conviction by a Magistrates court.

There are some offences which, on conviction by a court, are subject to a lesser maximum fine, including intentional obstruction of an officer in the performance of any of the officer's functions (£20 000).

Where a person or business is found guilty of an offence, the Authority will ask the court that its prosecution costs are met by the defendant(s). This could amount to many thousands of pounds where a not guilty plea is made and in a defended case, though the Court is at liberty to refuse or limit any costs award.