

COMPLIANCE AND ENFORCEMENT STRATEGY

Compliance and enforcement are essential parts of fisheries management in order to ensure that the marine environment is not adversely affected by fishing activities.

Where the Isles of Scilly IFCA undertakes compliance activity, it will work in accordance with the Hampton Principles of Better Regulation as set out in the Regulators' Compliance Code and the Legislative and Regulatory Reform Act 2006.

Regulation

in order to carry out its regulatory functions, the IFCA will ensure that:

- 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 organisation, 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 objectives and guidance;
- Its regulatory actions are transparent, by publishing information to its regulated stakeholders indicating what enforcement action it can take in appropriate circumstances;
- All its activities are, 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 approach, ensuring such action is for a specific identifiable need, for example, limiting random inspections to specific identified compliance requirements;
- Inshore Fisheries and Conservation Officers (IFCOs) appointed by the Authority are highly trained, competent and adhere to the national Code of Practice for inspections;
- It works closely with partner organisations to make the best use of available resources and share information.

Enforcement

The Isles of Scilly IFCA 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 IFCA 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 persons of relevant legislation and is recorded. If the persons commit 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 persons of the need to obey the law. This may be sent without prejudice to other purely civil remedies that are procedures and sanctions, used to prevent or reduce criminal activity as an alternative to using formal court proceedings.

- **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 persons outlining the alleged offending, when it occurred and what regulations were breached. It will also set out that it is a matter that 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 may be offered by the IFCA. Issuance of a simple caution may be deemed as the most appropriate means to deal with the offence(s), particularly where there is no identifiable financial gain. A simple caution is only offered when the IFCA is prepared to instigate legal proceedings and prosecute if the persons decide to decline the simple caution.

- **Fixed Administrative Penalties**

The IFCA 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. 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 may 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 started 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 IFCA 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 IFCA will only start 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 IFCA 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. The authority to prosecute is delegated to the Chief Executive and the Maritime Officer. In determining the correct response in any individual case, the IFCA will always take into account the public interest in prosecuting.

The following list of public interest factors in favour and against prosecution is 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 the Marine Conservation Zones;
- 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 of 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 an out-of-court disposal that the person(s) accepts;
- The offence was committed as a result of a genuine marine habitat may be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- The financial gain or disturbance to sensitive marine habitat may 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.