

NWIFCA Technical, Science and Byelaw Sub-Committee

15th August 2014: 10:00am

REPORT
NUMBER

11

ENVIRONMENT AGENCY – IFCO CROSS WARRANTING

Aim: To consider if and how to progress cross warranting of IFCOs with EA Officers

Recommendation: Cross warranting with EA should be implemented subject to the considerations set out in the paper.

Background

1. Head of Enforcement, EA member Bill Darbyshire and Steve Garner (Team Leader Fisheries, Geomorphology and Biodiversity) have held discussions regarding the potential for cross warranting between IFCOs and Environment Agency bailiffs.
2. Under section 153 of MACA, IFCAs have the duty to manage inshore fisheries described as “sea fisheries resources”. Sea Fisheries resources are defined as any animal, plant other than those considered “highly migratory” (sub section 11) which include Salmon and Sea Trout. Therefore IFCA Byelaws and warranted powers do not pertain to Salmon and Sea Trout. EA Officers have responsibility for migratory fish under the Salmon and Freshwater fisheries Act (SAFFA 1975).
3. This division of responsibility means that EA and IFCOs often patrol the same areas, particularly in estuaries, and may detect each other's offences. However at present they can report the offences to the other body but have no powers to investigate or conduct enforcement action. In this situation the agreed procedure is to record evidence and supply supporting statements.

Current Situation

1. There is already a reasonable level of joint patrolling between IFCOs and EA officers, particularly in the northern part of the district. Predominantly ashore but joint enforcement at sea is likely to increase.
2. EA have identified a number of occasions when illegal nets have been identified but action has been limited as such nets cannot be seized or removed
3. When officers from both agencies are present then the situation is relatively simple and the enforcement officer who has jurisdiction takes the lead on the enforcement action. This has not proved problematic in the past.
4. MACAA already provides for assistance in enforcement situations where officers from both outfits are present - by virtue of section 260 which reads:
 - (1) *To assist in carrying out any relevant functions, an enforcement officer may bring –*
 - (a) *any other person;*
 - (b) *any equipment or materials.*
 - (2) *A person who is brought by an enforcement officer to provide assistance may exercise any powers conferred by this Act which the officer may exercise, but only under the supervision or direction of the officer.*

5. This section allows for an EA officer to assist if enforcement action is being led by an IFCO against a possible byelaw offence.

Other IFCA's

1. Officers have consulted with other IFCA's and Cornwall, Southern and NE IFCA's have had successful cross warranting schemes for a number of years. The feeling from other IFCA's consulted is that cross warranting eliminates the "enforcement gap" between the two legislative systems and offers a significant deterrent

Cross Warranting Considerations

Offences

1. Discussion between the IFCA and the EA has so far has focused on the mutual enforcement requirements when not joint working. We have attempted to assess if there is a pressing need for cross warranting.
2. From the IFCA perspective it has not proved possible to identify information which would assist in the quantifying the need for cross warranting such as:
 - The number of times a SAFFA offence has been detected and an IFCO has been unable to deal with it and vice versa with respect to EA officers
 - The number of times a prosecution has failed due to evidencing and supporting statements being the only action
3. The above should not necessarily preclude cross warranting to avoid the situations where IFCOs/EA officers are put in the awkward situation of not being able to take action in regard to an offence they have detected. Cross warranting has obviously proven beneficial in other IFCA areas and there is an expectation from Defra of joint working with other Agencies

Boundaries

1. IFCA boundaries compared with SFC extend IFCO duties landwards to the limit of where sea fisheries resources are found in estuaries. These changes have increased the likelihood of overlapping patrols. However, at present most IFCA byelaws are the legacy byelaws from SFC so do not apply to the full IFCA boundaries. This will be corrected as the byelaw review is completed.
2. The likelihood of IFCOs detecting SAFFA breaches when patrolling further upstream is increased although this has not yet become a significant factor.

PACE Powers

1. An important factor to consider is that although IFCOs and EA officers have similar powers of search, inspection and seizure under their enabling legislation their powers under the Police and Criminal Evidence Act (PACE) 1984 are significantly different:

IFCOs	EA officers
All PACE powers are on a "voluntary attendance" basis	Hold powers of arrest under section 24 of PACE
On cautioning an individual must be informed of certain rights regarding their voluntary attendance	Non-compliant individuals can be arrested for certain reasons such as establishing their identity

2. The impact of these powers on the ground is significant and they reflect the different approaches between IFCOs whose powers relate to regulating a known industry, and those of EA officers who in addition to their regulation of rod licensing for coarse and salmonids are also tasked with detecting criminal activity and take the equivalent of police action. It is not expected that IFCOs would seek the arrest powers of the EA Warrants.
3. IFCOs feel it would be inappropriate for them to hold powers of arrest (if legally feasible) due to a number of factors but mainly due to the fact they were not recruited to conduct enforcement of this nature, it is a matter of agreement between IFCA and EA that this would be inappropriate.

RIPA

1. EA officers have greater powers under Regulation of Investigatory Powers Act than IFCOs do. This could cause operational issues if working cross warrants. It is expected that any operations done under RIPA would be led by the most appropriate authority which would be agreed at the time any joint operation was established as it would be with any other enforcement agency such as the police)

Officers views

1. Feeling amongst the IFCOs is mixed as to whether cross warranting is required/the right way to move forward, especially citing the following:
 - The discrepancy in PACE powers
 - The difference in the enforcement approach taken by EA officers/IFCOs given the different nature of the job and the impact on industry relations
 - Previous local issues which have arisen as a result of cross warranting
2. IFCOs would not be asked to conduct targeted SAFFA patrols. All patrol planning should be directed at IFCA duties and covered by IFCA's risk assessments SAFFA powers would be exercised by IFCOs only when offences are detected.
3. EA Officers and IFCOs recommend that any cross warranting scheme should be based on a formal MoU between the two organisations that outlines the following:
 - The enforcement "line" to be taken in various situations
 - Full reports of incidents detected relating to the other bodies duties and action taken be exchanged
 - No action should be taken relating to the other bodies duties without agreement of the other body being obtained
 - A formal reporting of seizure and notification of what action has been taken
 - A list of which IFCOs are cross warranted in each area
4. EA officers believe that the experience of joint working to date has been very positive and that cross warranting aimed specifically at detecting and pursuing illegal netting would be of significant benefit to both organisations

Guidance from TSB

1. Officers ask that the TSB discuss the issues and establish whether members feel that we should proceed with further investigation of cross warranting with a view to developing the scheme, or not.

Head of Enforcement
7th August 2014