

## ANNEX B

### North Western Inshore Fisheries and Conservation Authority

#### Enforcement Framework and Risk Register

*Draft Work in progress June 2011*

#### **Aim**

1. The aim of the framework is to ensure that NWIFCA enforcement activity efficiently supports compliance by delivering targeted, effective interventions based on the assessment of risk involved.
2. The framework should encourage and assist those regulated to understand and meet their regulatory requirements with minimum use of sanctions.

#### **Defra Guidance**

3. The framework is based on guidance to IFCA issued by Defra in February 2011. The guidance promotes a common enforcement framework for adoption by IFCAs and was developed after taking into consideration IFCAs' functions and resources. IFCAs must have regard to this guidance in carrying out their functions.
4. The guidance notes that an enforcement framework is one of several documents that will help guide the work of IFCAs. These documents will be reviewed regularly and, if necessary, reissued in the light of any changes in marine management policy.
5. The guidance is designed to assist IFCA in developing and enforcement framework in line with the Regulators' Compliance Code, which is aimed at promoting efficient and effective approaches to regulatory inspection and enforcement. IFCAs will be expected to meet the standards of this code.
6. The guidance is intended to embed a common approach to enforcement across IFCAs by:
  1. Applying common principles and approaches to risk based enforcement, helping to target resources and achieve best value from enforcement effort.
  2. Adopting a common approach to applying sanctions helping to establish a level playing field for those regulated.
  3. Standardising (where appropriate) advice and guidance.
  4. Standardising (where appropriate) provisions for dealing with complaints
  5. Applying an evidence-based policy cycle, aspects of which deal with enforcement.
  6. Deploying common enforcement approaches to help achieve the high level enforcement objectives agreed across IFCAs
  7. Compliance with the 5 UK Government Principles of Good Regulation<sup>1</sup> set out in the regulators compliance code:

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<sup>1</sup> <http://www.bis.gov.uk/policies/better-regulation>

- a. **Proportionate:** Enforcement action appropriate to the threats/risks posed.
- b. **Accountable:** IFCA's to justify enforcement activities and decisions, and be subject to public scrutiny.
- c. **Consistent:** IFCA's' enforcement rules and standards to be joined-up helping to establish a common playing field for those regulated.
- d. **Transparent:** Enforcement action should be open, and transparent.
- e. **Targeted:** Enforcement activity focused on the threats by applying risk-based approaches.

## Timescale

7. The framework should be in place by 1<sup>st</sup> April 2012, and will be reviewed regularly and, if necessary, amended to reflect any changes in marine management policy.

## Structure of the framework

8. The framework will consist of four parts: two policy statements and two strategy documents:
  1. Advice and guidance policy statement. This will provide the key principles to help those regulated understand regulations and how to comply with them.
  2. Sanctions policy statement - to inform those regulated of the possible sanctions that may be applied for breaches of byelaws and other legislation, and how sanctions decisions will be made. It will set out:
    - the objectives of enforcement
    - how the IFCA will act in accordance with best practice
    - how the IFCA will take decisions on whether to prosecute
    - evaluation of the effectiveness of IFCA sanctions

The aims of the policy will be to:

    - change the behaviour of offenders
    - eliminate any financial gain or benefit from non-compliance
    - deter future non-compliance
    - reassure those who are complying
  3. Risk based enforcement strategy This will show how enforcement policy is based on risk of offences occurring and the available resources which the IFCA can deploy. It will set out
    - why a risk based strategy is used
    - what it looks like
    - How members should consider risk
    - How officers should consider risk
  4. Complaints handling strategy This will set out how the NWIFCA will deal with complaints including the key principles and processes for handling complaints.

## **Enforcement framework Part 1: Advice and Guidance Policy Statement**

### **Introduction**

1. The NW IFCA will provide advice and guidance to help those regulated to comply with inshore fisheries regulation and protect the marine environment within its district. The NW IFCA Committee will strive to work to regulate a wide range of fishing activities covering both commercial and recreational fishing out to six nautical miles and inland to the district boundaries.
2. We will provide a wide range of advice and guidance through Committee meetings, reports and information published on our website. Guidance will be produced using plain language and will build on existing good practice to improve services. The primary aim is to help those regulated understand what they need to do and how to do it.

### **Developing guidance to assist understanding of users**

3. Good guidance requires a detailed understanding of the target audience and different sectors may have different guidance needs. Consultation is therefore essential in order to produce good practical guidance as to be effective, and will require input from affected stakeholders who can offer knowledge and first hand expertise. Therefore, as far as it is practicable, this Authority aims to provide guidance that is structured around the user's processes to help them see how the regulation will fit into their fishing activity and their 'ways of working' so as to make sure that guidance offers them a feasible method for complying with any regulatory framework.

### **Simple, clear and easy to understand**

4. Our aim is to provide guidance that is written in simple, easy to read, clear language without unnecessary jargon or acronyms, and for those affected, to be able to act on it after a single read. We will strive to produce guidance that is easy to understand and assist compliance; however, we will not gloss over technical issues and if necessary will include a comprehensive glossary of explanation.
5. We will work to ensure that guidance contains statements of what users can expect from it and the limitations of such guidance, for example, where circumstances may not be covered by guidance and where it may be necessary to seek further advice.

### **Issued in good time and accessible**

6. We aim to give those regulated sufficient notice (unless it is an emergency) to prepare for any proposed regulation. Therefore we will provide guidance on request and on our web site, before regulation comes into force and ensure that such guidance is easily accessible.

### **Up to date and fit for purpose**

7. Our aim is to review guidance to ensure that it is up-to-date and works for the user, therefore, guidance will cite the date when it was prepared and when it is due for review.

### **Monitoring and evaluation**

8. We will monitor and evaluate any advice and guidance offered to those being regulated, frequently. This will determine the effectiveness of the advice and guidance, making changes were necessary, share evaluations and co-ordinate guidance across IFCA districts in order to attain a level playing field.

### **Face to face sharing of knowledge and experience**

9. We will aim to broaden the skills of our officers so that they can better provide advice and guidance that is based on the experiences and needs of differing sectors. This proactive approach will help to reduce burdens on those regulated of seeking information, and to be able to comply with the regulatory requirements of their activities. Face-to-face advice is one of the most important aspects of enforcement provided by IFCOs to those being regulated, as it imparts years of experience and helps to build up close working relationships with those being regulated.

### **Finding further guidance**

10. We will provide up to date information on the regulatory changes and events affecting our stakeholders and those being regulated, on a regular basis. Access to written guidance and forms can be obtained either from our web site or from either the Carnforth or Whitehaven office.

## Enforcement framework Part 2: Sanctions Policy Statement

### Introduction

1. The Sanctions Policy Statement will set out the general principles the NWIFCA will follow in relation to prosecuting for inshore fisheries offences. The implementation and effectiveness of the policy statement will be monitored by the Authority.
2. The Sanctions Policy Statement is aimed at changing the behaviour of the offender, eliminating any financial gain or benefit from non-compliance, deterring future non-compliance and to reassure those who are complying. It is intended to show that the NW IFCA is responsive and will consider what is appropriate and proportionate for the particular offender. Other underpinning principles that must be considered are as follows:

### The objective of enforcement

3. The aim of the NWIFCA as managers of inshore fisheries resources is to make sure those regulated take appropriate action to comply with relevant IFCA byelaws and other legislation for which we will have a share in enforcing. We will inform those being regulated what preventative or remedial action will be taken to protect fish stocks and the marine environment to secure compliance. This will include an indication of what type of activities may lead to breaches, and also provide a clear message that in such circumstances we will use all enforcement powers available to us. The purpose of prosecution is to penalise and deter, as well as to ensure that any benefits from non-compliance are removed and to reassure those who are complying.
4. Therefore, IFCA sanctions are (where possible) aimed at:
  - changing the behaviour of the offender,
  - deterring those who are not caught or who are minded to offend,
  - eliminating any financial gain or benefit from non-compliance,
  - reassuring those that comply with rules,
  - being proportionate to the nature of the offence and the harm caused,
  - deterring future non-compliance.
5. We believe that prevention is better than cure and will offer a wide range of advice and guidance to those regulated to help with compliance and to cut down on the amount of unnecessary paperwork and cost. We work with other government regulators such as the Environment Agency, Natural England, Marine Management Organisation and Department for Environment Food and Rural Affairs, voluntary groups and non-governmental organisations in order to achieve our goals of effectively managing inshore fisheries.

### Acting in accordance with best practice

6. We will demonstrate that we are acting in accordance with best practice approaches i.e., when making/amending byelaws, that this is done in accordance with Five Principles of Good Regulation, and that evidential tests are applied when deciding to prosecute or not:
  - **Proportionate** - enforcement action appropriate to the risk posed
  - **Consistent** - IFCA's rules and standards (where appropriate) are joined-up and implemented in a consistent way
  - **Transparent** - enforcement action that is open, and transparent
  - **Targeted** - enforcement activity focused on the threats, by applying risk-based approaches
  - **Accountable** - justifying decisions and subject to public scrutiny.

## The decision to prosecute

7. We will set out the determining factors as to whether to prosecute or not by determining the severity of the offence, ensuring that evidential, and public interest tests are applied when deciding whether to prosecute, and will be measured by a number of factors.

When considering the suitability of a case for prosecution the following tests will be applied:

**Evidential Test** - This test considers whether there is enough evidence to provide a realistic prospect of conviction and that the evidence can be used and is reliable i.e., multiple offences, history of previous offences.

**Public Interest Test** - Where the evidential test is satisfied we may go on to consider public interest factors to determine whether to prosecute an offender, or consider whether an alternative course of action may be suitable.

## Other considerations when considering whether or not to prosecute

- whether or not the offence was committed whilst the offender was under an order of the court, and whether, or not previous convictions or cautions are relevant to the present offence
  - evidence that the offence was premeditated
  - whether the offence was foreseeable;
  - the level of intent to commit the offence
  - whether or not a voluntary disclosure of a sea fisheries offence had been made before an IFC authority had any suspicions of it
  - assess and account for the level of damage.
8. We may not follow the general principles when not considered relevant or they are outweighed by other factors such as:
- Where it is necessary to respond immediately to either prevent or respond to a serious breach or incident
  - Where following the provisions of the policy statement would defeat the purpose of the proposed enforcement action

### **Enforcement framework Part 3: Risk based enforcement strategy**

1. Blanket routine inspections of all activities regardless of track record and potential risks involved with a given activity are unacceptable in a modern enforcement system. Such an approach to inspection will run the real risk of not making the best use of resources and not delivering the best possible protection regarding sea fisheries resources and the marine environment.
2. Therefore we will adopt a common approach to identifying and managing risks, and will utilise common (across district) risk-based enforcement principles where applicable. We will adopt an enforcement framework based on the assessment of risk (maximising benefits and not cost cutting); to ensure money invested in sustainable preservation of fish stocks and protection of marine environment is done effectively and efficiently, reducing wastage, concentrating on real risk and maximising benefits to society.

### **Why there is a need for risk-based enforcement principles and methods**

3. Between 2005 and 2007 the Cabinet Office carried out a major review of the way regulators undertake their regulatory enforcement responsibilities – “The Hampton” review. The review recommended that regulatory enforcement activity should be carried out based on a clear, comprehensive risk assessment, this included:
  - Opening the regulatory enforcement process to scrutiny
  - Considering past performance
  - Considering future potential risk
  - Using good quality data, and ensuring it is implemented uniformly
4. Deploying such an approach to enforcement is not intended to impede our officer’s discretion when making enforcement decisions, however it will:
  - Promote proportionality and targeting by confirming the risk-based criteria against which decisions are to be made
  - Ensure that we take action to deal immediately with serious risks and have sound plans in place to deal with medium and low risks to inshore fisheries and the inshore marine environment
  - Assist experienced officers with assessing their decisions in complex cases, and used to guide less experienced and trainee officers in making enforcement decisions.
5. Therefore it is important that as part of this enforcement framework, that we adopt a common comprehensive risk-based enforcement assessment system to concentrate our limited resources on the areas that need them most.

### **What it looks like**

6. As there is no all-encompassing definition of risk, risk is therefore described as:

*“a future event with a probability of occurrence together with the potential of positive or negative impacts on the management objectives of the IFCA”*

## **Consideration of risk at IFCA Committee level**

7. The Authority's broad objectives would be to assess, promote and protect harvested species within viable stock levels and maintain long term yields, keep impacts on the structure, process and functions of inshore marine ecosystem at acceptable levels.
8. It is recommended that IFCA committees should:
  - Identify risks (threats) inherent in annual business plans and the approaches that are already in place to manage such threats, as well as having an explicit understanding of the weaknesses (if any) in existing approaches.
  - Think about the future goals of IFCA districts and manage the risks in order to achieve the goals as part of our role as strategic managers of the inshore environment.
  - Ensure the capture of the existing experience and lessons learned, as many of the risks faced by committees may have already happened and been resolved sometime in the past or in another district.
  - Ask other IFCA committees, key government departments and stakeholders to review major enforcement strategies as external views can bring a valuable and fresh insight to the management of risks;
  - Examine and assess the committees own approach to risk-taking. Each IFCA committee should seek to recognise and use the valuable diversity of experience within the committee structures.

## **IFCA committees and the communication of identified risks**

9. Communicating risk deals with the exchange of complex information and opinion among individuals, groups, and institutions that often involves multiple messages about the nature of a given risk. We should therefore consider how to communicate shared risks in a joined-up way by:
  - Understanding the key messages to be delivered prior to, during and after any inshore fisheries incident
  - Agreeing the obstacles to effective communication and how these obstacles can be minimised or overcome
  - Consider/understand how those affected perceive the risks, for example, there may be those who may amplify or play down the risks for their own particular reasons.

## **Consideration of risks at IFCA officer Level**

10. IFCA officers should consider employing the following approaches:
  - From the outset officers need to be clear about their particular committee's objectives as they will be required to identify risks in their daily work to attain such objectives. Concentrate effort where needed most, to promote proportionality and targeting by confirming risk-based criteria against which decisions are made; ensure the Authority takes action to deal immediately with serious risks and have plans in place to deal with medium and low risks to inshore fisheries and the marine environment; assist experienced officers in assessing their decisions in complex cases and guide less experienced and trainee officers in making enforcement decisions
  - Maintain "active" risk registers (live/active registers should be kept as problems are identified or as risk management plans are assessed for their effectiveness). If officers do not have an up to date view on the status of the risks to achieving IFC

authority goals and IFCA districts will be at risk of not delivering business plans and not carrying out statutory duties. Risk registers are an essential communication tool for officers to provide the Authority with a picture of potential threats and potential solutions. Examples can be seen at annexes A and B which will be developed by the NW IFCA.

- For each risk IFCA officers will need to be clear about the nature of the possible harm that may arise. This will help identify the best ways of managing the risks and the required resources. Officers will need to carry out a risk analysis to determine the likelihood of the risk materialising and the severity upon the district's objectives. Risk ranking tables can be devised with various degrees of complexity. An example can be found at annex C. The NW IFCA will develop such a tool using common methodology
- When considering risk management methods officers should be conscious of the impacts of adopting new regulation to address the threat. The 'regulate first' approach may mean that more effective and efficient methods are overlooked; therefore, all alternative methods to regulation should be considered
- The approach to managing risks must (unless circumstances dictate otherwise) include wide communication and consultation as without such an approach IFCAs may be operating in a high-risk vacuum, leading to the development of risk management approaches that are not fully informed or tested
- IFCA officers will be required to implement operational strategies set by Committees to deploy an operational risk-based approach, with limited resources when carrying out enforcement activities
- Operational detail for Officers – assess/monitor spawning stock are declining to unacceptable level, assess/monitor juvenile fish and if being removed from the fishery by fishing, monitor impacts on specific marine eco-system structures
- Officers; key considerations: past and future institutional knowledge of officers will play a major role in decisions about the deployment of resources, with MCZs IFCOs have to be pro-active in assessing the likelihood of any given fishing activity having an adverse effect on the marine environment/sustainable management – IFCOs need to understand the severity of damage/harm occurring from such activities if it does have an adverse effect

11. The NW IFCA will develop a risk and opportunity management approach when considering risks, and will adopt a common methodology and approach to the consideration of risk management, using the following approaches:

- Work towards understanding the scope of key threats to inshore fisheries and marine environment in the district and across other IFCA districts, and look at things being done to control and manage threats and have an understanding of the weaknesses in existing approaches
- Consider scenario planning (future goals and managing the risks involved)
- Adopt a precautionary approach built from a strong evidence-based approach to identifying, assessing and managing risk attaining good information of all types and from all sources. The IFCA committee should:
- Capture experience & lessons learnt and put in place a mechanism to record this as most risks will have already have happened

- Ask other IFCA's, government departments and stakeholders to review major strategies with a fresh insight into management of risk
- Collaborate with all IFCA's and stakeholders in developing a common knowledge base to be used by all IFCA's – identifying, categorising and managing risks to key IFCA objectives
- Understand weaknesses in information and commission research to fill knowledge gaps
- IFCA's to understand and assess its own approach to risk-taking. Committee members will all have a different outlook and perspective to this – IFCA's to use this valuable diversity of experience from the new committee structure.

## **Next stage**

### **Compiling a Risk register:**

12. A list is required of all the operational risks which the NWIFCA may face and for which the NWIFCA is responsible. Each risk must be described by the events which could occur under that risk and, the following factors should be documented:

The likelihood of the risk occurring

The impact and severity on the marine environment and fisheries resources

Options available to the NWIFCA to address events covered by the risk

Which officer is responsible for responding to a risk event and the chain of command

The resources available to address risk events

Other agencies and external stakeholders with an interest in the risk event.

13. Records and reports of all risk event should be maintained in order to inform the development of the risk register.

## **Enforcement framework Part 4: Complaint handling strategy**

1. How an organisation deals with complaints is indicative of its relationship with its customers and users. An effective complaints handling process will enhance the NWIFC's service delivery and is one of the best ways of gaining valuable feedback on the services the NWIFCA provides. Such feedback is essential for the continuous improvement of operations.
2. A complaint is an expression of dissatisfaction, from a member of the public claiming to have suffered injustice as a result of action taken, or not taken, by or on behalf of the NWIFCA in delivering its services and for which a remedy may or may not be sought.
3. The recording of complaints accurately is an essential part of the procedure. Such recorded information should be analysed to identify themes or trends and presented to the IFCA Committee to ensure that where a complaint is justified action is taken to prevent the same situation recurring. Data collected and analysed can be shared with other IFCA and may be resolved using nationally adopted common approaches to provide a level playing field for those regulated throughout England.
4. The NWIFCA will aim to develop a coordinated process for handling complaints that reflects and enhances perception of the organisation and is driven by the search for improvement.
5. The NWIFCA will aim to develop a system that:
  - sets out an agreed approach to and a defined process for complaint handling
  - defines the benefits for the customer and the organisation
  - is clear about who is responsible for taking, recording, resolving, analysing and reporting on complaints at differing stages of the process
  - is transparent about how complaints will be logged
  - detects and reacts to common themes occurring across the district
6. The NWIFCA will develop and adapt its complaints procedure to develop a fit for purpose complaints system as far as possible joined-up across all IFCA Districts.