

## **Appendix 3: NWIFCA Sanction Policy Statement**

### **Introduction**

1. The NWIFCA works 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 (as amended). The NWIFCA will also adhere to the principles as set out in the Investigators' Convention (2009) and the Prosecutors' Convention (2009).

### **Objectives of NWIFCA Enforcement**

2. As a manager of fisheries resources the NWIFCA aims to make sure those regulated take appropriate action to comply with relevant legislation and NWIFCA byelaws. The purpose of prosecution is to punish and deter offenders, as well as to reassure those who are complying by ensuring that any benefits from non-compliance are removed.
3. Therefore, NWIFCA sanctions are (where possible) aimed at:
  - i. changing the behaviour of the offender;
  - ii. deterring those who are not caught or who are minded to offend;
  - iii. eliminating any financial gain or benefit from non-compliance;
  - iv. reassuring those that comply with rules;
  - v. being proportionate to the nature of the offence and the harm caused; and
  - vi. deterring future non-compliance.
4. As the NWIFCA believes that prevention is better than enforcement we offer a range of guidance and advice to those regulated to enable them to comply as easily and efficiently as possible. The NWIFCA will work with other government regulators such as the Environment Agency, Natural England, Marine Management Organisation and the Department for Environment, Food and Rural Affairs, as well as voluntary groups and NGOs in order to achieve our goals of managing inshore fisheries.

### **Principles of Regulation**

5. These principles set out below are drawn from the Legislative and Regulatory Reform Act 2006 and the Regulators' Compliance Code and are laid out here together with explanation as to their relevance to the NWIFCA undertaking its regulatory functions. In carrying out the functions delegated to it, the NWIFCA will seek to ensure that:
6. any action taken, including compliance related or investigative, is **proportionate** to specific, identified, risk or need for NWIFCA's intervention;
7. it is **accountable** for its regulatory activity – to its stakeholders, its parent department, Ministers, the public at large and the courts;
8. 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;
9. its regulatory actions are **transparent**, by publishing information to its regulated stakeholders indicating how it will, for example, process applications for licences and what

enforcement action it can take and may take in appropriate circumstances (for example by publication of this document); and

10. 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** to a specific identifiable need (therefore, for example, limiting random inspections to specific identified compliance requirements).

### **Enforcement Options**

11. We will endeavour to achieve compliance through education, advice and guidance wherever possible. We will use appropriate and proportionate action (including enforcement if necessary) where this has not been successful. The range of enforcement tools which the NWIFCA may use in order to achieve compliance are set out below:
12. **Inspection:** Officers of the NWIFCA will routinely inspect fishing equipment and fishing vessels to ensure compliance with the obligations imposed by the law. When doing so the Officers should at all times behave in a manner in accordance with the **Code of Good Conduct for IFCA Officers Conducting Inspections at Appendix 4.**
13. **Oral Advice or Verbal Warning:** This will take the form of simply informing the regulated person what needs to be done or changed to be compliant.
14. **Advisory Letter:** Where it is believed that breaches of the law may have been committed, an advisory letter may be sent reminding the regulated person(s) of the need to obey the law. This may be sent without prejudice to other sanctions.
15. **Official Written Warning:** Where there is evidence that an offence has been committed, 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 sanctions.
16. **Statutory Notices under the Marine and Coastal Access Act 2009** From April 2011 the NWIFCA has the ability to issue a variety of notices in relation to licensable activities. These are:
  - i. Stop notices
  - ii. Emergency safety notices
  - iii. Remediation notices
  - iv. Variation notices
  - v. Revocation notices
  - vi. Suspension notices
17. The appeal mechanism for the notices is set out in the Marine Licensing (Notices Appeals) Regulations 2011.
18. **Financial Administrative Penalties.** The NWIFCA may issue a financial administrative penalty ("FAP"), the level of which may be up to £10,000 (see The Sea Fishing (Penalty Notices) (England) Order 2011)<sup>1</sup> as an alternative to criminal prosecution in certain circumstances. A FAP may only be issued where there is evidence of offences committed, and may be issued to the owner, skipper and/or charterer of an English or Welsh vessel

wherever it operates, or of a foreign fishing vessel operating within the English and Welsh part of British Fishery Limits. Payment of the penalty will discharge the possibility of the NWIFCA prosecuting the offence. However if a FAP is not paid within the required timescale (28 days), the matter will proceed to court (note that non-payment of the FAP is not an offence). Further information on FAPs is available in the document **NWIFCA Financial Administrative Penalties for Fisheries Offences** available on the website or from the NWIFCA office.

19. **Seizure and Disposal:** The NWIFCA may seize and dispose of offending goods and fish – certain provisions provide for seizure and disposal of goods and fish e.g. of illegal fishing net attachments or undersized fish. In addition the NWIFCA may order fish which have been caught illegally or which are undersized to be returned to the water.
20. **Prosecution:** Where appropriate and following application of the tests in the Code for Crown Prosecutors, the NWIFCA may institute prosecution proceedings. Further information about prosecutions is set out below. When instituting criminal proceedings, the NWIFCA will select the most appropriate charges, which may include those under general criminal law.
21. **Proceeds of Crime Proceedings:** Where appropriate, in exceptional circumstances, following conviction of persons for significant acquisitive crime, the NWIFCA may consider instigating proceedings under the Proceeds of Crime Act 2002 to deprive offenders of the unlawful benefit of their criminal activity.

### **Conduct of investigations**

22. The NWIFCA has a range of powers available to assist in the prevention and investigation of offending; many of these powers are common to the investigation of suspected offences relating to wildlife and environmental matters as well as fisheries. Some of the more common powers are:
  - i. The power to enter and search business premises and, in exceptional circumstances, dwellings.
  - ii. The power to require production of and to inspect documentation.
  - iii. The power to seize items, including computers, where necessary
  - iv. The power to board and inspect fishing vessels.
  - v. The power of forfeiture in respect of fish and fishing gear suspected to be unlawful.
  - vi. The power to detain vessels or marine installations.
  - vii. The power to monitor licensed activities or development to ensure compliance with licence conditions.
23. This is not an exhaustive list of powers available, but it shows some of the more commonly-used powers. The NWIFCA will exercise its powers carefully and exercise due restraint to ensure use is proportionate to the particular circumstances.
24. The majority of the NWIFCA's powers derive from the Marine and Coastal Access Act 2009 and the Sea Fisheries (Conservation) Act 1967. Investigations will be carried out by NWIFCA Officers in accordance with the Criminal Procedure and Investigations Act 1996 and the Codes of Conduct issued under the Police and Criminal Evidence Act 1984.

25. Information and evidence gained by a Marine Officer may be used in furtherance of one of the Enforcement Options set out above. In some circumstances, information or evidence obtained by our officers in the exercise of their duties may be shared with other Government bodies or agencies.

### **Prosecutions**

26. Criminal prosecutions are an infrequently used but important tool in discouraging non-compliance; the purpose is to secure conviction and ensure that the wrongdoing can be punished by a Court at an appropriate level, thus acting as a deterrent to any future wrongdoing to both the offender and others who may engage in similar criminal behaviour.
27. It will be used where the offending is considered to be particularly serious, is repetitive, may cause significant harm to the environment, has resulted in significant unlawful profit, has caused a disruption of the market concerned – and therefore disadvantage to other legitimate operators – or where it is otherwise necessary in all the circumstances relating to the alleged offending and the offender.
28. 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.
29. In order to prosecute, the prosecutor 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.
30. As a public prosecutor the NWIFCA acts under the supervision of the Attorney General and abides by the principles set out in the Code for Crown Prosecutors (<http://cps.gov.uk/publications/docs/code2010english.pdf>, published February 2010), the two main principles of which are set out below.

### **Sufficiency of Evidence Test**

31. As a public prosecutor, the NWIFCA 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.
32. If a case passes the sufficiency of evidence test, the NWIFCA 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 NWIFCA will always take into account the public interest in prosecuting.

### **Public Interest Test**

33. Where there is sufficient evidence to justify a prosecution, or offer any form of out-of-court disposal, the NWIFCA must go on to consider whether a prosecution is required in the public interest. Assessing the public interest is not simply a matter of adding up the number of factors on each side and seeing which side has the greater number. Each case must be considered on its own facts and on its own merits.
34. In addition to the public interest factors set out in the Code for Crown Prosecutors, some common public interest factors which should be considered when deciding on the most appropriate course of action to take are listed below. The following lists of public interest factors are not exhaustive and each case must be considered on its own facts and on its own merits.

- i. The implications of the offending on the enforcement of the regulatory regime, e.g. a failure to comply with conditions of a fishing licence undermines the integrity of the licensing scheme and may adversely affect legitimate operators.
  - ii. The impact of the offending on the environment including wildlife and having regard to, for example, Marine Conservation Zones and other protected areas.
  - iii. With regard to offences affecting fish and fish stocks, whether recovery species are involved, and any issues as to quota status.
  - iv. Any implications the offending had or may have had on public health.
  - v. The degree of harm the offending may cause to any aspect of the marine environment or any protected species.
  - vi. The financial benefit of the offending or other financial aspects of the offence including the impact on other legitimate operators.
  - vii. Whether the offence was committed deliberately or officials were obstructed during the course of the offending / investigation.
  - viii. The previous enforcement record of the offender.
  - ix. The attitude of the offender including any action that has been taken to rectify or prevent recurrence of the matter(s).
  - x. Where offences are prevalent or difficult to detect, the deterrent effect on others by making an example of the offender.
35. This is not an exhaustive list and in any given circumstance the NWIFCA may take into account such aggravating or mitigating features as are relevant in each individual case.

### **Companies and Company Office Holders**

36. Criminal proceedings may be commenced against all those persons suspected of the offence(s). Where there is sufficient evidence and it is in the public interest, proportionate and appropriate to do so, the NWIFCA may commence proceedings against companies or other bodies liable for offending and company directors or other statutory office holders, where we believe there is evidence of personal liability.