

Guidance to Inshore Fisheries and Conservation Authorities on the establishment of a common enforcement framework

This guidance is given in accordance with section
153 (3) of the Marine and Coastal
Access Act 2009

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1 Introduction

This best practice guidance is addressed to the Inshore Fisheries and Conservation Authorities (IFCAs) and provides the structure of a common enforcement framework that can be adopted by IFCAs. The guidance has been developed after taking into consideration IFCAs' functions and resources and issued after consultation with IFCAs and other interested organisations and individuals. IFCAs must have regard to this guidance in carrying out their functions.

The enforcement framework is one of several documents that offer best practice guidance to help the work of IFCAs. These documents will be reviewed regularly and, if necessary, reissued in the light of any changes in marine management or other Government policy.

The framework is designed in line with the Regulators' Compliance Code¹, which is aimed at promoting efficient and effective approaches to regulatory inspection and enforcement. IFCAs will be expected to meet the standards of set out in the framework.

2 Structure of the framework

The framework consists of:

- An advice and guidance policy statement incorporating the key principles that will help those regulated understand regulations and how to comply with them.
- A sanctions policy statement to inform those regulated of the possible sanctions that may be applied for breaches of byelaws and how sanctioning decisions will be made.
- Principles for embedding risk based enforcement approaches.
- A common structure and approach to handling complaints.

For each of the above points the framework guidance provides examples and key principles for adoption and or adaptation to suite local IFCA district circumstances.

The framework is aimed at embedding a common approach to enforcement activity across IFCAs by:

- Applying common principles and approaches to risk based enforcement, helping to target resources and achieve best value from enforcement effort.
- Adopting a common approach to applying sanctions helping to establish a level playing field for those regulated.

¹ <http://www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/implementing-principles-of-better-regulation/the-regulators-compliance-code>

- Standardising (where appropriate) advice and guidance.
- Standardising (where appropriate) provisions for dealing with complaints
- Applying an evidence-based marine management cycle², aspects of which deal with risk management and enforcement.
- Deploying common enforcement approaches to help achieve the high level enforcement objectives agreed across IFCAs³
- Embedding the Five Principles of Good Regulation⁴:
 - 1. Proportionate:** Enforcement action appropriate to the threats/risks posed.
 - 2. Accountable:** IFCAs to justify enforcement activities and decisions, and be subject to public scrutiny.
 - 3. Consistent:** IFCAs' enforcement rules and standards to be joined-up helping to establish a common playing field for those regulated.
 - 4. Transparent:** Enforcement action should be open, and transparent.
 - 5. Targeted:** Enforcement activity focused on the threats by applying risk-based approaches.

3 Guidance on setting out an IFCA enforcement advice and guidance policy statement

Each IFCA's enforcement policy statement is likely to differ to cater for local requirements and circumstance. However, for all IFCAs, the information must clearly define for the reader how the provisions for providing advice and guidance will be addressed, informing readers about the aims of such advice and guidance.

The statement should at least incorporate the following underpinning principles:

- Articulating the degree of commitment to providing advice and guidance. This is more than an outline of what IFCAs are legally obliged to do. To be effective, the statement should outline the involvement of IFCA members and Chief Fisheries Officers or Chief Executives in its preparation and be consistent with high-level IFCA objectives.
- Developing guidance that is based on a good understanding of those who will require it, so that all users are able to understand how it fits with their regulated activity.
- Guidance that is easy to understand so that those who are affected by the guidance should be able to read, understand and act on it after a single read.
- Guidance should be free of jargon and acronyms.

² Guidance to IFCAs on evidence-based marine management is at:
<http://www2.defra.gov.uk/environment/marine/www/ifca/>

³ Guidance to IFCAs on evaluation and monitoring and measuring performance is at:

<http://www2.defra.gov.uk/environment/marine/www/ifca/>

⁴ <http://www.bis.gov.uk/policies/better-regulation>

- Guidance that is issued in good time and accessible. Those who will have to comply with an IFCA's byelaws must have sufficient notice (unless it is an emergency) of any new byelaws coming into force or of any new processes or procedures.
- Guidance that is reviewed and improved. IFCAs should have monitoring and evaluation plans in place to enable them to determine the effectiveness of their advice and guidance.
- Detailed advice and guidance; the advice policy statement should link to the more tailored guidance that an IFCA aims to produce.

Below is a sample policy statement incorporating the key points that IFCAs must consider addressing when setting out their approach to the provisions of advice and guidance. However, it will be for IFCAs to create their own text suitable for the circumstances of each IFCA district.

Sample guidance policy statement

Introduction

IFCAs provide advice and guidance to help those regulated to comply with inshore fisheries regulation and protect the marine environment. IFCA members and staff strive to work together to regulate a wide range of fishing activities covering both commercial and recreational fishing out to six nautical miles and inland to IFCA district boundaries.

We provide a wide range of advice and guidance on our website, for example: (link to what is in place). We ensure that our guidance is produced using plain language and builds on existing good practice to improve services. Our primary aim is to help those regulated understand what they need to do and how to do it.

Developing guidance based on understanding those who use it

We understand that good guidance requires a detailed understanding of the target audience and that different sectors may have different guidance needs. Consultation is essential to producing good practical guidance. To be effective guidance requires input from stakeholders who can offer insightful and first hand expertise. Therefore, IFCAs aim to provide guidance that is structured around the user's ways of working, helping them see how the regulation fits into their regulated activities.

Simple, clear and easy to understand

Our goal is to provide guidance that is written in simple, clear, language without unnecessary jargon or acronyms. We strive to produce guidance that is easy to understand and assist compliance; however, we do not gloss over technical issues and if necessary include a comprehensive glossary of explanation.

We 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.

Timely and accessible

We aim to give those regulated time to prepare for regulation, therefore we 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

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. IFC district committees work together (whenever practical) to provide a coordinated approach to advice and guidance and the sharing of best practise.

Face to face sharing of knowledge and experience

As professional bodies IFCAs aim to broaden the skills of their officers so that they can better provide advice and guidance that is based on the experiences and needs of differing sectors. This proactive approach helps to reduce burdens on those regulated of seeking information about, and comply with, the regulatory requirements across their activities.

Finding further guidance

We provide up to date information on the regulatory changes and events affecting our stakeholders in the updates section of each guidance page. You can access our written guidance and forms through the following [links](#). If you are looking for background information on the law that underpins our regulatory role please [click here](#).

4 Guidance on setting out a sanctions policy statement for IFCAs

The statement should reflect key principles and aims of IFCA sanctions. For example, that they are aimed at changing the behaviour of the offender, eliminate any financial gain or benefit from non-compliance, deterring future non-compliance and reassuring those who are complying. It should reflect the fact that IFCAs are responsive and consider what is appropriate and proportionate for the particular offender, this can include punishment and the public stigma that should be associated with a criminal conviction. Other underpinning principles that must be considered are:

- **The objective of enforcement**. The statement should inform those regulated that preventative or remedial action would be taken to secure compliance with the IFCAs byelaws. The statement should be informative regarding the types of actions that may lead to breaches of such byelaws and provide clear messages that in such circumstances IFCAs will not hesitate to use enforcement powers.
- **Acting in accordance with best practice**. The statement should set out how IFCAs are acting in accordance with best practice approaches when dealing with enforcement issues, for example, that IFCAs work in

accordance with the Five Principles of Better Regulation⁵ and the Hampton principles of effective and efficient enforcement⁶

- **The decision to prosecute.** The statement should set out the determining factors as to whether to prosecute or not, for example, determining the severity of the offence, ensuring that evidential, and public interest tests are applied when deciding whether to prosecute.

Below is a sample sanctions policy statement incorporating key points that IFCA must consider when setting out their approach to the subject of sanctions. However, it will be for IFCA to create their own text suitable for the circumstances of each IFCA district.

Sample sanction policy statement

Introduction

This policy will serve as a policy statement in which IFCA set out the general principles they intend to follow in relation to prosecuting inshore fisheries offences. However, it is **not** intended to explain legislation or the legal process.

The objective of IFCA enforcement

As managers of inshore fisheries resources, our aim is to make sure those regulated take appropriate action to comply with relevant IFCA byelaws and the legislation which IFCA will have a share in enforcing. The purpose of prosecution is to punish and deter, as well as to ensure that any benefits from non-compliance are removed and to reassure those who are complying.

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; and
- deterring future non-compliance.

IFCA believe that prevention is better than cure and 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 managing inshore fisheries.

⁵ <http://www.bis.gov.uk/policies/better-regulation>

⁶ <http://www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/assessing-our-regulatory-system>

Acting in accordance with best practice

IFCAs bear in mind the Principles of Good Regulation when devising, enforcing and reviewing regulations. These are:

- **Proportionate:** Enforcement action appropriate to the risk posed.
- **Accountable:** Justifying decisions and subject to public scrutiny.
- **Consistent:** IFCAs' 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.

The decision to prosecute - The decision to prosecute is fundamentally determined by the severity of the offence, which is measured by a number of factors. When considering the suitability of a case for prosecution, the following tests are 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.

Public Interest Test - Where the evidential test is satisfied, IFCAs 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, and;
- assess and account for the level of damage.

5 Guidance on applying risk-based enforcement principles and methods

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.

Consideration of risk at IFCA membership level

It is recommended that IFCA members 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 to attaining such goals as part of their 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 IFCAs may have already happened and been resolved sometime in the past or in another district.
- Ask other IFCAs, 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 IFCA membership's own approach to risktaking. Each IFCA should seek to recognise and use the valuable diversity of experience within the IFCA membership structures.
- Consider attending relevant risk management training with a view of embedding such approaches into their culture.

IFCAs and the communication of identified risks

Risk communication 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. IFCAs should 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

IFCA officers should consider employing the following approaches:

- From the outset, officers need to be clear about their particular Authority's objectives and any cross-cutting IFCA district objectives as they will be required to identify risks to attaining such objectives in their daily work.
- Maintain "active" risk registers. If officers do not have an up to date view on the status of the risks to achieving IFCA goals, 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 committees with a picture of potential threats and propose solutions. An example can be seen at annex A.
- 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 B. IFCA's should 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 IFCA's may be operating in a high-risk vacuum, leading to the development of risk management approaches that are not fully informed or tested.

6 Guidance on the key elements that should be considered when developing a common methodology for handling complaints

A core complaints handling process is one of the best ways of gaining valuable feedback on the services IFCA's provide. Such feedback is essential for the continuous improvement of district operations.

IFCA's should develop a coordinated process for handling complaints, one that reflects and enhances the culture of the industry and is driven by the search for improvement. The process should carry the authority of Chief Fisheries Officers or Chief Executives and IFCA members.

IFCA's should consider developing a common system that would incorporate the following key principles:

- A system that sets out the benefits for the customer and the organisation;
- A system that clearly articulates the IFCA approach to complaint handling;
- An IFCA definition of a "complaint", for example, "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 IFCA's in delivering its services and for which a remedy may or may not be sought".
- A system that is clear about who is responsible for taking, recording, resolving, analysing and reporting on complaints at differing stages of the process;
- A system that is transparent about how complaints will be logged as 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 members to ensure that, where a complaint is justified, action is taken to prevent the same situation recurring.
- A system that detects and reacts to common themes occurring across IFCA districts can be shared and resolved (when appropriate) using common approaches to provide a level playing field for those regulated across districts.

- It will be up to IFCA's to develop a fit for purpose complaints system incorporating the above points and to ensure that the systems are joined-up (where applicable) across IFCA districts and share lessons learned.

7 Annex A - Example of risk register template

The following is an example of some of the data that could be recorded in a risk register:

- IFC authority name IFCA X
- Risk number: 123
- Title: Impact from jet-ski
- MCZ area: XXX
- Key contacts: XXX

IFCA Objective/s affected	Outline of the risk/s	Implication and severity of risk/s	Probability of risk/s arising	Existing methods of dealing with the risk/s	Risk strategy/ actions Dates and milestones	Owner/s	Key resources	Key Stakeholders	Risk status/ Red, green amber. Risk ranking 1,2, or 3	Key valuation criteria

8 Annex B – Example Risk Ranking Table

In this example, the appropriate probability of the risk arising (a letter from A to E) and consequence of a risk (a number from 1 to 8) is selected from the list below and placed in a simple table.

Probabilities of risks arising:

- A - common or repeating occurrence
- B - known to occur, or "it has happened in the past"
- C - could occur, or "I've heard of it happening"
- D - not likely to occur if no action is taken
- E - practically impossible (remote risks)

Consequences of a risk:

- 1 - Fatality could be caused by fishing activity
- 2 - Serious impact on the sustainability of fish stocks
- 3 - Major damage to marine environment
- 4 - Moderate impact on the sustainability of fish stocks
- 5 - Moderate damage to marine environment
- 6 - Minor impact on sustainability of fish stocks
- 7 - Minor damage to marine environment
- 8 - No loss or damage to fish stock or marine environment

Risk ranking table for objective x

Probability	A	B	C	D	E

Consequence	3 and 8				

Risk ranking table for objective y

Probability	A	B	C	D	E

Consequence	7 and 8				

The example above indicates that for objective X there is a major risk to the marine environment, but low risk to fish stocks and the probability is that it will keep occurring. This would be recorded as a high risk and action would be necessary. For objective Y there is a remote risk (practically impossible) that there may be damage to the marine environment and no loss of fish stocks, therefore the IFCA Officer may use a wide range of light touch approaches such as education, self regulation or even taking no action and just monitor the situation.