



Compliance and Enforcement Strategy

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1. Purpose of Plan

This document sets out the Kent and Essex Inshore Fisheries and Conservation KEIFCA's (the KEIFCA) approach to achieving compliance and provides information about the general principles the KEIFCA will follow.

2. The duty of KEIFCA

On the 1st April 2011, the KEIFCA was fully vested under the Marine and Coastal Access Act 2009 (MaCAA). Under sections 153 and 154 of the MaCAA the KEIFCA's main duties are described relating to the sustainable management of inshore fisheries and the protection of Marine Conservation Zones (MCZs).

The KEIFCA district closely matches the county boundaries of both Kent and Essex, this has meant that as well as including the area previously regulated by Kent and Essex Sea Fisheries Committee, the KEIFCA district also includes areas which were previously regulated by other agencies. Section 6 and 7 of The Marine and Coastal Access Act 2009 (Transitional and Saving Provisions) Order 2011, transfers the byelaws made by Sussex Sea Fisheries Committee and Eastern Sea Fisheries Joint Committee and the Environment Agency sea fisheries byelaws to KEIFCA for those parts of its district that were previously regulated by these bodies.

3. Role of Compliance and Enforcement

In undertaking its regulatory responsibilities, the KEIFCA starts from the position that the vast majority of the community of people, organisations and industries using the marine area are compliant with the regulations and controls that affects them. The KEIFCA works to try to ensure that all parties understand both what rules apply to their particular industry (or part of it), and the rationale for the regulation being necessary. Where people, organisations and industry are not aware of the rules that apply to them, or require further guidance to ensure they are compliant, the KEIFCA will assist by providing guidance and/or assistance and will raise awareness, where possible, as a first step to achieving compliance.

Full compliance with EU, UK and in particular local fisheries and environmental legislation is the overall aim of the KEIFCA. This aim is best achieved through the adoption of an adaptive co-management approach to fisheries management. The key to achieving high compliance is ensuring that those users who are potentially affected have a real opportunity to engage with the KEIFCA over the local management approach to be taken. By engaging in the management process, the KEIFCA and all users get a far better understanding of the requirements of the other interested parties. Conflicts of interest will not always be resolved but, having gained an understanding of why actions are taken, affected users are far more likely to accept the approach taken.

Where consensus with the management approach is not achieved or where the potential gain is significant, the risk of illegal activity increases. The risk is even

greater where an effective enforcement deterrent is not in place. The deterrent is only effective where the risk of enforcement action is high (whether perceived or in reality) and the consequences are serious. In recognition of the need to have an effective deterrent, fines applicable to byelaw offences have risen from a maximum of £5,000 to £50,000.

The KEIFCA uses the various compliance measures at its disposal to endeavour to ensure, where possible, that no party engaged in regulated activity gains an unfair market advantage by breaking the rules and that honest and law abiding people, organisations and industry are not disadvantaged by being compliant. It will also seek to use appropriate compliance and enforcement measures (in partnership where appropriate with other regulatory bodies), where it considers it to be necessary, to ensure that the marine environment generally, as well as the habitats and species within it, do not suffer unnecessary detriment in the short or long term, by the activities of any individuals or other legal personalities who act unlawfully.

Where we undertake compliance activity, we will seek to place the minimum burden on our regulated stakeholders, except to the extent that it is believed necessary to achieve compliance and, in doing so, pay particular attention to the particular burden on the many small businesses we are responsible for regulating.

4. Better Regulation Principles and the KEIFCA Approach to Achieving Compliance

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

5. Principles of Regulation

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 KEIFCA undertaking its regulatory functions. In carrying out the functions delegated to it, the KEIFCA will ensure that:

- I. any action taken, including compliance related or investigative, is **proportionate** to specific, identified risk or need for intervention;

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

† <http://www.legislation.gov.uk/ukpga/2006/51/contents>

II. it is **accountable** for its regulatory activity – to its stakeholders, its parent department, Ministers, the public at large and the courts;

III. 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;

IV. its regulatory actions are **transparent**, by publishing information to its regulated stakeholders indicating what enforcement action it can take and may take in appropriate circumstances (for example by publication of this document); and

V. 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** using a risk based approach[‡] to a specific identifiable need (therefore, for example, limiting random inspections to specific identified compliance requirements). The Risk Based Approach and the use of a Compliance Risk Register is delivered in accordance with IFCA best practice guidelines[§].

6. Enforcement Options

We will endeavour to achieve compliance through education, advice and guidance wherever this is 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 KEIFCA may use in order to achieve compliance are set out below:

Verbal Warning

A verbal warning is issued when a minor infringement in legislation is detected. This approach is used to remind person(s) of relevant legislation and what needs to be done or changed to be compliant. The details of the verbal warning are recorded on relevant inspection forms and compliance systems.

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 regulated person(s) of the need to obey the law. This may be sent without prejudice to other purely civil remedies^{**}.

Official Written Warning

[‡] Risk Based Approach is available on the Authority's website

[§] Guidance to Inshore Fisheries and Conservation Authorities on the establishment of a common enforcement framework <http://archive.defra.gov.uk/environment/marine/documents/interim2/2011-ifca-guide-cef.pdf>

^{**} Civil remedies are procedures and sanctions, used to prevent or reduce criminal activity as an alternative to using formal court proceedings

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 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 purely civil remedies.

Financial Administrative Penalties

The KEIFCA 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. 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. Payment of the penalty will discharge the possibility of the KEIFCA 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). The guidance details information on the categories of penalty according to the regulation breached and the severity of the offence. FAPs are not issued for offences concerning the obstruction of officers in the course of conducting their work.

Prosecution

Where appropriate, and following application of the tests specified in the Code for Crown Prosecutors, the KEIFCA may institute prosecution proceedings. When instituting criminal proceedings, the KEIFCA will select the most appropriate charges, which may include those under general criminal law.

Criminal prosecutions are regarded as the strongest sanction and so are infrequently used compared with alternative options. They are an 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 by both the offender and others who may engage in similar criminal behaviour.

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. Criminal proceedings will be applied in circumstances where an officer has been obstructed or assaulted in the course of carrying out their duties.

^{††} Industry guidance on the process and application of Financial Administrative Penalties by KEIFCA is available from the IFCA and is on the website www.kentandessex-ifca.gov.uk

^{††} The Sea Fishing (Penalty Notices) (England) Order 2011

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 financial administrative penalty, official written warning, advisory letter or verbal warning.

Where appropriate, in exceptional circumstances, following conviction of persons for significant acquisitive crime, the KEIFCA may consider instigating proceedings under the Proceeds of Crime Act 2002 to deprive offenders of the unlawful benefit of their criminal activity. The KEIFCA will always seek to use education and guidance, where possible, to encourage compliance. Guidance on all of our regulated activities is published on our website www.kentandessex-ifca.gov.uk and is also available from our offices in Ramsgate and Brightlingsea.

7. Conduct of investigations

The KEIFCA has a range of powers available to it in order to assist in the prevention and investigation of offending. Some of the more common powers are:

- The power to enter and search business premises and, in exceptional circumstances, dwellings;
- The power to require production of and to inspect documentation;
- The power to seize items, including computers, where necessary;
- The power to board and inspect fishing vessels or marine installations;
- The power to enter and inspect vehicles;
- The power of forfeiture in respect of fish and fishing gear suspected to be unlawful;
- The power to detain vessels or marine installations.

This is not an exhaustive list of powers available to the KEIFCA, but an example of some of the more commonly-used powers. The KEIFCA will exercise its powers appropriately and exercise due restraint to ensure use is proportionate to the particular circumstances.

The majority of the KEIFCA's powers derive from the Marine and Coastal Access Act 2009 and the Sea Fisheries (Conservation) Act 1967. Investigations will be carried out by IFC 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.

Information and evidence gained by an IFC Officer may be used in furtherance of any 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.

8. Prosecuting an offence

In order to prosecute an offence, 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.

As a public prosecutor the KEIFCA acts under the supervision of the Attorney General and abides by the principles set out in the Code for Crown Prosecutors^{§§}, the two main principles of which are set out below.

Sufficiency of Evidence Test

As a public prosecutor, the KEIFCA 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.

If a case passes the sufficiency of evidence test, the KEIFCA 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 KEIFCA will always take into account the public interest in prosecuting.

Public Interest Test

Where there is sufficient evidence to justify a prosecution, or offer any form of out-of-court disposal, the KEIFCA 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. 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 implications of the offending for the enforcement of the regulatory regime undermine management approach taken;
- The impact of the offending on the environment, including wildlife, and also, where applicable, having regard to Marine Conservation Zones and other Marine Protected Areas;
- With regard to offences affecting fish and fish stocks, whether recovery species are involved, and any issues as to quota status;
- Any implications the offending had or may have had on public health;
- The degree of harm the offending may cause to any aspect of the marine environment or any protected species;
- The financial benefit of the offending or other financial aspects of the offence including the impact on other legitimate operators;

^{§§} <http://cps.gov.uk/publications/docs/code2010english.pdf>

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- 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, the deterrent effect on others by making an example of the offender.

This is not an exhaustive list and in any given circumstance the KEIFCA may take into account such aggravating or mitigating factors as are relevant in each individual case. This decision will be made after a case file has been built, reviewed by the Authority's legal advisor, and discussed with the Chair and Vice-chair. In extraordinary circumstances it may be necessary to present a case file to Members with additional advice from the Authority's legal advisor for a decision to be made.

Companies and Company Office Holders

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 KEIFCA 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

9. Summary

The KEIFCA understands that fisheries management only succeeds with an integrated approach encompassing communication, research and enforcement. It sees that it is important to secure the right balance between social, environmental and economic benefits to ensure healthy seas, sustainable fisheries and a viable industry and that enforcement of legislation is a key part of achieving these goals.