

# Marine Management Organisation Compliance and Enforcement Strategy

## 1. Introduction

The Marine Management Organisation (MMO) is a Non-Departmental Public Body of the Department for Environment Food and Rural Affairs (Defra). It is responsible for delivering legal functions concerning the protection of the marine environment and protected species, marine spatial planning, the licensing of marine activities and development (including renewables), sea fisheries monitoring, quota and effort management, as well as enforcement of Common Fisheries Policy controls and some functions relating to harbour authorities.

As a consequence of this broad range of functions, the stakeholders whose activities we regulate are similarly varied. Therefore, our compliance or enforcement decisions apply to corporations, partnerships and individuals.

This document sets out the MMO's overall approach to achieving compliance and provides information about the general principles the MMO will follow for the information of those affected parties and others with an interest in the MMO.

The MMO's compliance and enforcement functions relate predominately to English waters. However, the MMO also has responsibility for the activities of UK registered fishing vessels in the rest of the world and for the control of Illegal, Unreported and Unregulated (IUU) fishing activities that occur within the UK.

In undertaking its regulatory responsibilities, the MMO starts from the position that the vast majority of the community of people, organisations and industries using the marine area are compliant with the regulation and control that affects them. The MMO 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 MMO will assist by providing guidance and/or assistance and will raise awareness, where possible, as a first step to achieving compliance.

The MMO 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, 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.

## 2. Better Regulation Principles and the MMO's Approach to Achieving Compliance

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

## 3. 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 MMO undertaking its regulatory functions.

In carrying out the functions delegated to it, the MMO will ensure that:

- I. any action taken, including compliance related or investigative, is **proportionate** to specific, identified, risk or need for MMO's intervention;
- 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 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
- 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** to a specific identifiable need (therefore, for example, limiting random inspections to specific identified compliance requirements).

## 4. 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 MMO may use in order to achieve compliance are set out below:

### Oral Advice

This will take the form of simply informing the regulated person what needs to be done or changed to be compliant.

### 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

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.

## **Statutory Notices under the Marine and Coastal Access Act 2009**

From April 2011 the MMO has the ability to issue a variety of notices in relation to licensable activities. These are:

- Stop notices
- Emergency safety notices
- Remediation notices
- Variation notices
- Revocation notices
- Suspension notices

The appeal mechanism for the notices are set out in the Marine Licensing (Notices Appeals) Regulations 2011.

### **Financial Administrative Penalties**

The MMO 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 MMO 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 will be available on the MMO internet during autumn 2011.

### **Other Enforcement Powers Available to the MMO**

- Seizure and disposal 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.
- Imposition of conditions on operating –such as a condition applied to a licence.
- Carrying out of remediation in default of action by the recipient and recovering costs.
- Variations of a licence or permit – e.g. in relation to activity licensed e.g. port development.
- Revocation of licence or permit – e.g. for fishing.

### **Prosecution**

Where appropriate and following application of the tests in the Code for Crown Prosecutors, the MMO may institute prosecution proceedings. Further information about prosecutions is set out below.

When instituting criminal proceedings, the MMO will select the most appropriate charges, which may include those under general criminal law.

### **Sanctions under the Illegal Unreported and Unregulated fishing regime**

The UK legislation is The Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009. The MMO will work with the EU Commission and other Member States and Third Countries to identify and address IUU activities, and will use the tools available under both the EU and UK law including blacklisting of vessels which are engaged in IUU activities.

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<sup>1</sup> Note that the Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 (SI No. 984 of 2008) still applies in relation to some aspects of Wales and the Welsh Zone.

## **Proceeds of Crime proceedings**

Where appropriate, in exceptional circumstances, following conviction of persons for significant acquisitive crime, the MMO may consider instigating proceedings under the Proceeds of Crime Act 2002 to deprive offenders of the unlawful benefit of their criminal activity.

The MMO will always seek to use education and guidance, where possible, to encourage compliance. Guidance on all our regulated activities is published on our website [www.marinemanagement.org.uk](http://www.marinemanagement.org.uk) and available from local offices and HQ on request. Local MMO office details are set out below.

## **5. Conduct of investigations**

The MMO has a range of powers available to it in order 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:

- 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.
- The power of forfeiture in respect of fish and fishing gear suspected to be unlawful.
- The power to detain vessels or marine installations.
- The power to monitor licensed activities or development to ensure compliance with licence conditions.

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

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

## **6. Prosecutions**

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.

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.

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.

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.

As a public prosecutor the Marine Management Organisation 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**

As a public prosecutor, the MMO 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 MMO 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 MMO 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 MMO 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 following lists of public interest factors are not exhaustive and each case must be considered on its own facts and on its own merits.

- 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.
- The impact of the offending on the environment including wildlife and having regard to, for example, Marine Conservation Zones and other 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.
- 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 MMO may take into account such aggravating or mitigating features as are relevant in each individual case.

### **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 MMO 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.

## **Annex 1: Contact details for MMO**

### **Headquarters**

Marine Management Organisation  
PO Box 1275  
Newcastle upon Tyne  
NE99 5BN

### **Northern Marine Area**

Neville House  
Central Riverside  
Bell Street  
North Shields  
Tyne and Wear  
NE30 1LJ  
Tel: 0191 257 4520 or 0191 257 0159  
Fax: 0191 257 1595  
Email: [northshields@marinemanagement.org.uk](mailto:northshields@marinemanagement.org.uk)

### **Eastern Marine Area**

Pakefield Road  
Lowestoft  
Suffolk  
NR33 0HT  
Tel: 01502 573 149 or 01502 572 769  
Fax: 01502 514 854  
Email: [lowestoft@marinemanagement.org.uk](mailto:lowestoft@marinemanagement.org.uk)

### **South Eastern Marine Area**

Fish Market  
Rock-A-Nore Road  
Hastings  
East Sussex  
TN34 3DW  
Tel: 01424 424 109 or 01424 438 125  
Fax: 01424 444 642  
Email: [hastings@marinemanagement.org.uk](mailto:hastings@marinemanagement.org.uk)

### **South Western Marine Area**

The Fish Quay  
Sutton Harbour  
Plymouth  
Devon  
PL4 0LH  
Tel: 01752 228 001  
Fax: 01752 221 239  
Email: [plymouth@marinemanagement.org.uk](mailto:plymouth@marinemanagement.org.uk)