

# Summary of responses: Draft MMO Compliance and Enforcement Strategy

## Introduction

The Marine Management Organisation (MMO) recently invited comments on the clarity and accessibility of its Draft Compliance and Enforcement Strategy. This exercise was not intended to be a formal consultation on the draft strategy and did not ask specific consultation questions. Instead, the aim was to find out whether stakeholders found the draft strategy easy to understand and clear in its structure and wording.

The exercise was opened to all MMO stakeholders on 20 June 2011. Emails were sent to members of the MMO Stakeholder Focus Group as well as other key representative organisations. In addition to this an article was added to the MMO website explaining the purpose of the exercise and inviting readers to submit comments should they wish. The article was widely picked up by media contacts and appeared online at [www.thefishsite.com](http://www.thefishsite.com), [www.fishnewseu.com](http://www.fishnewseu.com), [www.seafish.org](http://www.seafish.org), [www.endsreport.com](http://www.endsreport.com), [www.sea-world.com](http://www.sea-world.com), [www.theshrimpsite.com](http://www.theshrimpsite.com) and [www.corporate.practicallaw.com](http://www.corporate.practicallaw.com).

The closing date for comments was Monday 18 July 2011. We received eight responses to the draft strategy and would like thank all those who contributed. This document summarises the responses received and the MMO replies to them.

## Analysis of responses

The MMO received eight responses to the invitation to comment exercise. These included four from statutory bodies, one from a representative group, and three from interested individuals. A list the statutory bodies and representative group who responded can be found in Appendix A.

The details of the eight responses received are outlined below.

### Response 1 – Interested individual

It was suggested that the cost of apprehension should be included as part of the Public Interest Test when examining the case for prosecution. The respondent used the example that vessels not transmitting their position (when carrying out illegal activities) will take additional resources to locate and apprehend, which should be taken into account.

### Response 2 – Interested individual

A request was made that that the Compliance and Enforcement Strategy include mention of the assets available to help implement it, in particular vessels. It was also mentioned that during the consultation on the Marine Bill there was a suggestion that all maritime enforcement agencies would have equal powers in all enforcement regimes. It was requested that a statement on whether this will be the case would provide useful clarification.

### **Response 3 – UK Hydrographic Office**

The UK Hydrographic Office requested that a reference be made in the strategy to the problem of developers not complying with the condition of notifying necessary bodies about the progress and completion of works. An opportunity was identified for further joint working within relevant bodies on this.

### **Response 4 – Royal Society for the Protection of Birds (RSPB)**

The RSPB suggested the overarching message from the strategy implies that compliance and enforcement will be weak, which could lead to low compliance and enforcement not acting as a deterrent. There is also the suggestion that it is not entirely clear in the strategy when a compliance and/or enforcement action is generic (covers all activities) or restricted to one or some activities (fisheries only or all activities apart from fisheries).

### **Response 5 – Interested individual**

A question was raised as to whether the MMO has a role in applying the Environmental Damage and Liability Regulations 2009 insofar as these relate to serious damage to surface water, serious damage to EU protected natural habitats and species, or damage to sites of special scientific interest (SSSIs). The respondent had expected a reference to be made to these Regulations in the Compliance and Enforcement Strategy document (for example when remediation and cost recovery are discussed) but this had not been the case. The respondent suggested that if the MMO does have a role in applying these regulations, it would be useful to discuss this in the document. However, if the MMO does not have such a role, it would be useful if the strategy could explain the inter-relationship between the MMO and the responsible regulator.

### **Response 6 – SeaFish**

SeaFish welcomed the approach of the Compliance and Enforcement Strategy. SeaFish felt that the commitment to making new marine licensing system more streamlined and reducing the burden of the licensing procedure, particularly on small businesses was encouraging. Overall SeaFish believed that the strategy is the right approach and hoped that it will be followed in practice.

### **Response 7 – Cornwall Inshore Fisheries and Conservation Authority (IFCA)**

The Cornwall IFCA thanked the MMO for the opportunity to contribute and expressed their opinion that the strategy is 'very good'. They also suggested they might follow the format for developing similar documents of their own.

### **Response 8 – National Federation of Fishermen's Organisations (NFFO)**

The NFFO welcomed 'the generally positive tone of the strategy document' and noted that it draws on the Hampton Principles of Better Regulation which they felt was important as it is not just a matter of what the strategy says but also how it is implemented. The NFFO raised some specific concerns in relation to the strategy including:

- Concern about the use that may be made of the Proceeds of Crime Act 2002 noting that it might be more helpful to learn what offences the MMO considers would trigger the use of the Proceeds of Crime Act.
- In relation to the conduct of investigations, the responder would like to see some time limits added to detention of vessels to avoid such proceedings lasting for long periods of time without resolution.
- Reservations were expressed about the way in which the Public Interest Test is outlined. In particular the responder was unhappy about the provision relating to the previous record of the offender and the attitude of the offender. They felt that the provision towards the previous record of the offender could lead to a presumption of guilt which is against the principles of UK

Common Law. In addition to this they felt the provision relating to the attitude of the offender is an open question as attitude is subjective.

- In conclusion the NFFO remarked that whilst they had a number of reservations concerning the draft strategy, it was essentially a document capable of working satisfactorily provided there is goodwill on all sides.

All comments were passed to the project team for their review and to be taken into account when drafting the final document.

The MMO replied by individual letter to each respondent. Given the wide-ranging content of these responses we have included them in full in Appendix B. Some details have been removed where necessary to preserve the anonymity of interested individuals who have responded.

The letters provided the MMO with the opportunity to address individual questions or areas in need of clarity raised by stakeholders. Some of these points were also to be taken into consideration in the drafting of the final strategy. In particular the MMO has identified an opportunity for further clarification in relation to its power to seize goods following a question raised by the RSPB. This will be included in the final Compliance and Enforcement Strategy.

## **Appendix A: Organisations and individuals that responded to MMO regarding draft Compliance and Enforcement Strategy**

UK Hydrographic Office

Royal Society for Protection of Birds

Sea Fish

Cornwall Inshore Fisheries and Conservation Authority

Three interested individuals

## Appendix B: MMO replies to stakeholders

### MMO reply to response 1

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

By email only

Dear [REDACTED]

#### Re: MMO Compliance and Enforcement Strategy

I would like to thank you for the comments you made on the MMO's draft Compliance and Enforcement Strategy.

Your response suggests that the overall cost of apprehension be taken into account. In particular you identify that any vessel not transmitting their position (whilst carrying out illegal activities) would take additional resources to locate and apprehend.

The MMO always submits applications for costs to the court for cases where prosecution is undertaken. These include legal and investigative costs and can include extra costs such as harbour dues incurred by detailing a vessel in port. The Royal Navy patrol vessel which detains the fishing vessel rarely stays in port but returns to sea once the evidence has been submitted to the MMO. It is for the court to decide on the level of costs to be paid along with the level of the fines.

Larger vessels which operate VMS equipment can be easily tracked by the MMO but we would not agree that these vessels are any more compliant than smaller vessels which are not required to have VMS systems installed. However, the MMO will be rolling out VMS to all vessels over 12m in length during next year and this should help us to direct our resources more quickly to intercept and inspect higher risk vessels.

The finalised Compliance and Enforcement Strategy, together with a summary of all responses received to the draft will be published on the MMO website shortly.

Yours sincerely,



Angus Radford  
Head of Marine Compliance and Fisheries Management

## MMO reply to response 2

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

By email only

Dear [REDACTED]

### Re: MMO Compliance and Enforcement Strategy

I would like to thank you for the comments you made on the MMO's draft Compliance and Enforcement Strategy.

Your response suggested we include mention of the assets available (particularly afloat) and referred to suggestions made during work on the Marine Bill regarding possibility of maritime enforcement agencies having equal powers in all enforcement regimes.

The MMO does not own assets for surface or aerial surveillance but contracts operators to undertake this work under the MMO supervision and direction. The assets are therefore subject to change when new contracts are agreed. The Compliance and Enforcement Strategy is intended to be an overarching document and therefore details regarding the surface and aerial surveillance assets would not be suitable for inclusion. Instead we will consider how we might include details of these assets on the MMO web pages.

Unfortunately powers for enforcement agencies are not relevant to sit within our Compliance and Enforcement Strategy. However, we do intend on covering it in information we will be putting on our internet site soon, regarding working with other agencies.

The MMO works very closely with a number of other agencies including the Environment Agency and IFCA's. The Marine and Coastal Access Act 2009 provides us with the ability to ensure that these organisations are suitably warranted to undertake a wide range of fisheries and marine environmental legislation.

The finalised Compliance and Enforcement Strategy, together with a summary of all responses received to the draft will be published on the MMO website shortly.

Yours sincerely,



Angus Radford  
Head of Marine Compliance and Fisheries Management

### MMO reply to response 3

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

By email only

Dear Mr Packer,

#### **Re: MMO Compliance and Enforcement Strategy**

I would like to thank you for the comments you made on the MMO's draft Compliance and Enforcement Strategy.

Your response requests that the statement within consents granted by the MMO requesting applicants notify the UKHO about progress and completion of works be updated. You also highlight your concern that developers do not always comply with this condition and ask whether reference to this problem can be included in the strategy document. Alternatively, you have also suggested the MMO may be able to monitor compliance with this condition more effectively. Finally, you also suggest a meeting between the MMO and UKHO would be valuable to discuss collaboration between our organisations.

Thank you for raising these matters and the failure of some developers to meet the requirement of updating UKHO on progress and completion. The MMO Marine Licensing team will amend the statement included in licensing consents as advised.

I too feel that a meeting to between UKHO and the MMO Marine Licensing team to discuss these matters would be highly beneficial. Please can you contact my colleague Angela Atkinson ([angela.atkinson@marinemanagement.org.uk](mailto:angela.atkinson@marinemanagement.org.uk)) with some suggested dates of when you would be available to visit our offices in Newcastle. Please also let Angela know of any other MMO teams or colleagues you would like to meet during your visit and she will make the necessary arrangement.

The finalised Compliance and Enforcement Strategy, together with a summary of all responses received to the draft will be published on the MMO website shortly.

Yours sincerely,



Angus Radford  
Head of Marine Compliance and Fisheries Management

## MMO reply to response 4

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

By email only

Dear Dr Thompson,

### Re: MMO Compliance and Enforcement Strategy

I would like to thank you for the comments you made on the MMO's draft Compliance and Enforcement Strategy.

In your response you raised concern that the overarching message from the strategy implied that compliance and enforcement will be weak. The purpose of the document is to outline the tools available to the MMO as a regulator. Decisions as to appropriate enforcement action will be taken in accordance with the Strategy and the Code for Crown Prosecutors. One of the aims of the document is to encourage compliance and set out the tools available where infringements are detected. In taking enforcement decisions, an element which will be taken into account is the potential deterrent effect of such action.

Your response also explained that you felt it was not sufficiently clear in the Strategy when a compliance and/or enforcement action is generic (covers all activities) or restricted to one or some activities. This point will be taken into consideration prior to publication of the final Strategy document. In reference to the specific examples you raised we can provide the following clarification:

- Do Financial Administrative Penalties apply only to fishing activities or is fishing just used as the example?
  - Financial Administrative Penalties (FAPs) are currently only applicable to sea fishing offences. Provisions for fixed and variable monetary penalties are established in the Marine and Coastal Access Act 2009 for marine licensing but these have not yet come into force.
- Is the power to seize and dispose of offending goods only applicable to fisheries activities or to all offending goods?
  - The common enforcement powers under part 8 of the Marine and Coastal Access Act relate to fisheries offences, marine licensing offences and nature conservation offences. There are broad powers in the Act to seize items which are believed to be evidence of or have been involved in the commission of an offence. In order to ensure clarity this point will be taken into consideration prior to publication of the Strategy document.
- Do 'other enforcement powers' apply to fisheries as well as other activities?
  - Yes. The function that the MMO is undertaking at the time determines the powers available to it. The examples given are not specific to sea fisheries; however the list is not exhaustive and is not intended to list all the powers available in the exercise of all functions.
- Is the power to revoke a licence or permit universal or just related to fisheries?
  - The MMO has the power to vary, revoke and suspend licensing with respect to both fishing and licensed marine activities. As mentioned above, it is not practical to define these powers specifically for each scenario, especially as these are already laid out in the legislation. There is guidance available on subject-specific areas, for example

marine licensing. It would not be appropriate or practical to cover every scenario in the Strategy document, which is intended to be a high-level document giving an overview of the tools and powers available to the MMO as a regulator.

I hope that this provides you with some further clarity on the areas you raised. The finalised Compliance and Enforcement Strategy, together with a summary of all responses received to the draft will be published on the MMO website shortly.

Yours sincerely,

A handwritten signature in blue ink that reads "A. Radford". The signature is written in a cursive style and is underlined with a single blue stroke.

Angus Radford  
Head of Marine Compliance and Fisheries Management

## **MMO reply to response 5**

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

By email only

Dear [REDACTED]

### **Re: MMO Compliance and Enforcement Strategy**

I would like to thank you for the comments you made on the MMO's draft Compliance and Enforcement Strategy.

Your response asks whether the MMO has a role in applying the 2009 Environmental Damage and Liability Regulations in relation to serious damage to surface water and serious damage to EU protected natural habitats and species. Under the Environmental Damage Regulations 2009, the MMO is the enforcing authority for cases of environmental damage in the sea to protected species or natural habitats, or sites of special scientific interest (SSSIs). The exception to this is when the activity causing damage is authorised by the Environment Agency, in which case the Environment Agency is the enforcing authority. The Environment Agency is also the enforcing authority for damage to surface water.

The MMO's role is to investigate potential cases of environmental damage and to enforce the provisions of the regulations. This can include the issuing of stop notices to those carrying damaging or potentially damaging activities, determining on the appropriateness of remediation plans, and recovering costs. To carry out these functions the MMO has an agreement in place with statutory nature conservation bodies, other enforcing authorities under these regulations, and Defra on working together and providing relevant information. For example, when determining whether an activity is causing environmental damage to a particular SSSI, the MMO will need to draw on the expertise of the statutory nature conservation body to assess any impact on the conservation objectives of the site. Similarly, the MMO will seek advice scientific and conservation input when assessing the appropriateness of remediation plans.

Your response also suggests that it would be useful to include discussion/clarification about the role of the MMO in applying these regulations within the Compliance and Enforcement Strategy. The Strategy is intended to be an overarching document without too much regulatory detail. However, I agree that it would be useful to provide clarification on the role of the MMO in applying the regulations in questions and we are considering where we might outline the background to the Environment Liability regulations within the MMO web pages.

The finalised Compliance and Enforcement Strategy, together with a summary of all responses received to the draft will be published on the MMO website shortly.

Yours sincerely,

A handwritten signature in blue ink that reads "A. Radford". The signature is written in a cursive style with a long horizontal stroke underneath the name.

Angus Radford  
Head of Marine Compliance and Fisheries Management

## **MMO reply to response 6**

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

Dear Ms Horsfall

### **Re: MMO Compliance and Enforcement Strategy**

I would like to thank you your kind words of support on the MMO's draft Compliance and Enforcement Strategy.

The finalised Compliance and Enforcement Strategy, together with a summary of all responses received to the draft will be published on the MMO website shortly.

Yours sincerely,

A handwritten signature in blue ink that reads "A. Radford". The signature is written in a cursive style and is underlined with a single blue stroke.

Angus Radford  
Head of Marine Compliance and Fisheries Management

## **MMO reply to response 7**

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

By email only

Dear Mr Derriman,

### **Re: MMO Compliance and Enforcement Strategy**

I would like to thank you for the kind comments you made on the MMO's draft Compliance and Enforcement Strategy.

Should you feel that it is useful to use our document whilst developing your own, we are more than happy for you to do so and we hope that you find it useful.

The finalised Compliance and Enforcement Strategy, together with a summary of all responses received to the draft will be published on the MMO website shortly.

Yours sincerely,

A handwritten signature in blue ink that reads "A. Radford". The signature is written in a cursive style and is underlined with a single blue stroke.

Angus Radford  
Head of Marine Compliance and Fisheries Management

## **MMO reply to response 8**

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

By email only

Dear Ms Bourke,

### **Re: MMO Compliance and Enforcement Strategy**

Thank you for the comments you made on the MMO's Compliance and Enforcement Strategy document. We are pleased that the NFFO generally welcomes the tone of the strategy and we consider it is important to set out how we intend to undertake our regulatory responsibilities.

In response to your specific comments, we note your concern about the MMO use of the Proceeds of Crime Act 2002. The MMO, as stated in the strategy, will only consider use of the Act in exceptional circumstances and only following conviction. It is not necessarily the nature of an offence but more the gravity and consistent pattern of offending which will impact on our decision making.

We are pleased that you accept the principle that fishing vessels may sometimes need to be detained during investigations. We agree that we do not wish to see vessels detained longer than is absolutely essential. The Marine and Coastal Access Act 2009 places responsibilities on the MMO about the procedures that must be taken when detaining vessels and the owners always have recourse to the courts to apply to have a detention notice lifted and in such circumstances the court will consider whether the detention notice is necessary.

The Public Interest Test is an essential element of the tests under the Code for Crown Prosecutors which all regulators must consider when taking enforcement decisions, and the public interest part of the test includes taking into account previous enforcement records. An offender's previous enforcement record will not determine their guilt since this will be for the court to decide (and you will be aware there are rules concerning this) but it is a factor which we as a regulator must take into consideration in deciding the correct course of action.

Finally, as you are aware this strategy covers the broad range of functions that the MMO regulates including marine licensing and marine nature conservation and some of the enforcement options, particularly in relation to Statutory Notices are not relevant to the fishing industry but intended to protect the marine environment for the benefit of everyone.

I hope that this provides you with some further clarity on the areas you raised. The finalised Compliance and Enforcement Strategy, together with a summary of all responses received to the draft will be published on the MMO website shortly.

Yours sincerely,

A handwritten signature in blue ink that reads "A. Radford". The signature is written in a cursive style with a long horizontal stroke underneath.

Angus Radford  
Head of Marine Compliance and Fisheries Management