

**EXPLANATORY MEMORANDUM TO
THE SEA FISHING (ENFORCEMENT OF COMMUNITY MEASURES)
(PENALTY NOTICES) ORDER 2008**

2008 No. 984

1. This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

The Memorandum contains information for the Select Committee on Statutory Instruments.

2. **Description**

This instrument introduces a scheme of financial penalty notices as an alternative to prosecution for sea fishing offences relating to Community obligations and restrictions. Payments of the penalty notice means that criminal proceedings for the offence can no longer be brought; non-payment will result in the original offence being referred for prosecution. The aim of the scheme is to improve enforcement by providing a fast and effective means of sanctioning offending in a way which reduces costs and uncertainty for fishermen which reduces costs and uncertainty for fishermen, and which offers them an alternative to prosecution.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Background**

4.1 Effective monitoring and control is critical to the operation of the Common Fisheries Policy and measures to conserve fish. The Fisheries Act 1981 provides the main legislative means for the enforcement of Community restrictions and obligations relating to sea fishing. Section 30(1) provides for the making of orders for the enforcement of any enforceable Community restrictions relating to sea fishing. A large number of orders have been made under this provision (including this instrument). Some Community-related fisheries offences have also been made under section 2(2) of the European Communities Act 1972.

4.2 Towards the end of 2003, the European Commission wrote to the United Kingdom drawing attention to the shortcomings in her control arrangements and compliance with the Common Fisheries Policy. Similar concerns were expressed by various Government

committees in various reports on fisheries enforcement in the UK, which recommended the introduction of a simple administrative system which was transparent and predictable to the industry.

4.3 In February 2004, the Government informed the Commission that ‘Fisheries Departments are aware that responsive systems of administrative sanctions operate in other Member States and they will be looking to see whether such systems might be appropriate to the UK. Such arrangements would need to be the subject of extensive consultation with the fishing industry and other interests’.

5. Territorial Extent and Application

5.1 This Order applies in England, in Wales and to all fishing vessels wherever they may be within British Fishery Limits (other than in certain areas specified in the instrument).

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7 Policy Background

Policy

7.1 Fisheries offences in the EU are punishable through the courts. Most of the serious offences attract a fine of up to £50,000 although the courts rarely impose penalties anywhere near the maximum. Courts may also suspend or revoke fishing vessel licences but have only done so on four occasions. Over the last 10 years, there have been considerable doubts about the deterrent effect of our criminal sanctions. Not only are fines generally low, but it often takes a long time to bring offenders before the courts.

7.2 Steps to strengthen deterrence were first taken in 1992 when, as part of the aborted days at sea initiative, the Sea Fisheries (Conservation) Act 1967 was amended to allow Ministers to suspend licences for any breach of a licence condition. This action proved to be of limited utility because (a) the majority of offences occurring since 1992 have not involved licence conditions, (b) the lack of powers to suspend licences for offences occurring during the life of a previous licence and (c) the absence of a formal appeals mechanism, now increasingly important for human rights reasons.

7.3 With increasing emphasis on the sustainable use of naturally occurring resources, a culture of high compliance becomes ever more important. To encourage such a culture and to respond to the concerns raised by the European Commission and others, Defra endeavoured to

find a method of combining and accommodating the needs of all interested parties.

7.4 This instrument implements a policy of providing an alternative means of enforcing fisheries offences. A penalty notice of up to £4000 may be issued for an offence to which the scheme applies (article 4(1)). The scheme applies to offences relating to the enforcement of Community-related obligations and restrictions (other than those for assault on, or obstruction of, enforcement officers) (article 2(1)).

7.5 Detailed guidance setting out the criteria and process for which a penalty would be appropriate will be issued to enforcement officers. A person issued with a penalty notice is not required to pay it, although payments prevent criminal proceedings being brought for the offence (article 5(1) (b)). A person has 28 days in which to decide whether or not to pay the penalty (during which time proceedings for the offence cannot be brought). If the alleged offender prefers to have the matter dealt with in the courts, he may simply choose not to pay the within the 28 day period, after which the original offence will be referred for prosecution.

7.6 Many fisheries offences provide the owner, master and charterer of a fishing vessel are each liable for the offence. In such cases, it is usual for the court to impose one fine jointly and severally against all defendants. In the penalty notice scheme, a penalty notice will be issued to each person, but in order to avoid the cumulative amount of each penalty exceeding what is the usual for joint and several fines for such offences, payment of the notice by one person counts as payment for all others (article 7). However, in order to ensure that this provision does not prevent a person having his case heard in court instead if he so wishes, this 'deemed payment' provision only operates for a person in the absence of that person's objection. If he serves a notice of objection his penalty notice will not be deemed to be paid, and if it remains unpaid at the end of the 28 day period, the offence against him will be referred for prosecution.

7.7 The policy of having 28 days in which to decide whether to pay a penalty notice needs to be modified in its application to alleged offenders who are not based in the United Kingdom, and who might therefore sail out of British Fishery Limits within the 28-day period after having been given a penalty notice. In such a case it would be practically impossible to bring criminal proceedings for the original offence in the event that the penalty notice was not paid, and this would render the scheme ineffective. Therefore, such a person is allowed to pay the penalty notice within the 28-day limit (in practice, on board the vessel at the time the penalty notice is issued), but also allowed to change his mind at anytime within the remainder of that period and give notice that he wishes to be tried for the offence instead. Proceedings will then be brought, on the conclusion of which the penalty notice will be treated as never having been issued and the

penalty will be repaid (or applied towards the payment of any court fine) (article 10).

Consultation

7.5 A full consultation on these proposals was carried out between 9 February and 5 May 2006. The consultation was posted on the Department's website and over five thousand organisations, businesses and interested stakeholders were directly consulted. Copies were placed in the Department's website and in the Department's library. Responses to this consultation, together with a further meeting on 2 March 2007 helped to develop the proposals, which underwent a further round of consultation between 12 November 2007 and 15 February 2008.

7.6 It is our conclusion that because the scheme does not propose any new obligations or burdens on the industry and because Fisheries Departments had been proposing to introduce the scheme for some time now, there was only a light response to the first and second round of consultation. The quiet response we have taken to mean that there is a general contentment/not vehement objection, may have been aided by the involvement of stakeholders from the start. A list of the organisations consulted and a copy of the summary of response can be found at the following Department web link:

<http://defraweb/corporate/consult/penalty-fish-offence/index.htm>

8. Impact

8.1 A final Regulatory Impact Assessment has been carried out and is attached to this memorandum.

8.2 The penalty notice system would not add any administrative burdens on those fishermen who comply with fisheries regulations. The proposal would allow enforcers to offer a penalty notice to deal with some fisheries offences quickly and effectively without prosecution.

9. Contact

Keith Porter at the Department for Environment, Food and Rural Affairs Tel: 0207 238 4434 or email keith.porter@defra.gsi.gov.uk can answer any queries regarding the instrument.

FINAL REGULATORY IMPACT ASSESSMENT

1. Title of proposed measure

The Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008.

2. Purpose and Intended effect of the proposal

(i) Objective

The main objective for introducing a system of administrative sanctions is to improve enforcement by providing a means of sanctioning which, in comparison with the existing system could:

- be applied more rapidly and effectively;
- increase transparency;
- reduce costs and uncertainty for fishermen;
- offer fishermen non court disposal for minor offending;

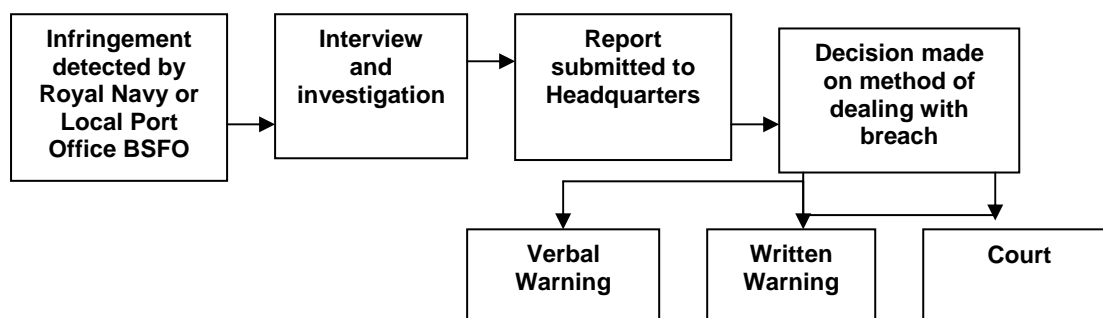
(ii) Background

In the UK fisheries offences are currently dealt with under the criminal law system. Significant penalties are available to the courts, although these have not always been applied in all cases.

Enforcement of fisheries regulations in England and Wales is carried out by Marine and Fisheries Agency staff, Royal Navy personnel and sometimes by Sea Fisheries Committee Officers in their capacity as British Sea Fishery Officers (BSFOs).

Currently when the Royal Navy or BSFOs detect an infringement at a local level, it is reported to MFA Headquarters or the local District Inspector (DI) as appropriate. After investigation, the local DI and Deputy Chief Inspector at HQ make a joint decision as to whether to give a verbal or written warning, or make a court referral.

The current system:



(iii) Rationale for Government Intervention

Over the last 12 years there have been considerable doubts about the deterrent effect of criminal sanctions. Not only are fines often low, but it often takes a long time to bring offenders before the courts. The degree to which our arrangements can be shown to be robust and effective in practice as well as in theory is particularly important given the fragile state of the fish stocks.

Under the Common Fisheries Policy, there is a requirement for Member States to have an effective system of sanctions in place for dealing with breaches of Community law, including administrative and criminal sanctions. In addition various reports from government committees have recommended that Fisheries Departments should introduce a simple administrative penalty system which is transparent and predictable to industry.

Following these recommendations, Defra has endeavoured to find a method of combining and accommodating the needs of all interested parties. The intention is to find a balance between the aspirations of the reporting committees and the interests of the fishing community, whilst working within the constraints and balances inherent in our criminal justice systems.

Scientific evidence also shows that many of the main fish stocks found in the waters of the European Community are near or at historically low levels caused mainly by overfishing. Over exploitation of fish stocks results in detrimental impacts on marine ecology. In addition, in some fishing activities, controls may be required to limit the environmental impact of overfishing on the marine environment, such as restricting or improving the type of fishing gear permitted in some areas.

Without improved fisheries enforcement and control measures designed to safeguard fish stocks and to ensure their long-term sustainability, certain fish stocks risk collapse and this would have a significant impact on the fishing industry.

Non-implementation of the EU requirement to have an effective sanctioning regime in place could leave the UK open to infraction procedures by the Commission. The likelihood of this risk being realised is high, since the Commission is taking a close interest in the implementation of fisheries enforcement requirements by Member States. Effective fisheries management is a key requirement in meeting the goals of sustainable development.

3. Consultation

Within Government

There have been various discussions between Defra and other Fisheries Administrations on this proposal. Other Government Departments including the Department for Constitutional Affairs, Cabinet Office, Treasury and the Better Regulation Executive have been consulted in preparation of this RIA.

Public Consultation

A full consultation on this proposal was carried out between 9 February and 5 May 2006. Thirty responses were received in total. Out of these 30 responses, 21 respondents commented specifically on the proposal. 9 out of the 21 respondents openly agreed with the proposal. 2 out of the 21 disagreed with the proposal. 10 respondents neither agreed nor disagreed but provided views on the overall scheme. A list of the organisations consulted and a copy of the summary of response can be found at <http://defraweb/fish/sea/manage/index.htm>

Some of those who were in favour of the proposal expressed concerns on the practical implementation of the scheme in terms of Defra/MFA IT capabilities and manpower. Other respondents asked for additional or stricter controls to be included in the scheme e.g. in addition to the Financial Administrative Penalty (FAP) imposed, any under size fish or any offending by-catch and illegal attachments to the fishing gears should be confiscated.

Further discussions took place with industry, including a meeting on 2 March 2007. Their views have been taken into account in the development of the final scheme.

4. Options

Three options have been considered.

Option 1: Do nothing

The first option is to do nothing and continue with existing regimes of criminal sanctions for fisheries offences.

Option 2: Introduce a system of Financial Administrative Penalties (FAPs)

The second option is to introduce a system of Financial Administrative Penalties (FAPs) which would be offered as an alternative to criminal prosecution in certain circumstances. The 'FAP' system would complement the existing criminal system rather than replace it. This would mean retaining the option of a hearing in court whether at the fisherman's or Fisheries Departments' request. Further details of how the scheme would work is set out in the appendix.

Option 3: Decriminalising all fisheries offences and providing for an entirely new civil justice system with its own appeal mechanism

The third option would fundamentally change the way fisheries offences are handled by replacing existing criminal procedures with a comprehensive system of administrative penalties.

Regulations would be enforced administratively and this might make enforcement easier. There would be no need to follow the strict requirements of police investigations to interview offenders under caution. It would also be in line with the recommendations of the Macrory Report which called for the introduction of a system

of civil penalties as an alternative to criminal prosecution. On the other hand, this option does not take into consideration the special nature of fisheries offences, not all of which are considered suitable for fixed monetary penalties.

5. Estimation of Costs and Benefits

Sectors and groups affected

All UK fishing vessels and foreign vessels fishing in English and Welsh waters and/or landing in English and Welsh ports could potentially be affected by the new measure.

Costs and Benefits

The costs and benefits for each option have been assessed separately.

(i) Economic

Option 1 – Do nothing

Doing nothing will neither increase or decrease current costs of enforcement and prosecution. This option would not add any financial or administrative burdens to the fishing industry. It would not provide any benefits in terms of improving compliance.

The example illustrated in Table 1 shows the number of infringements detected since 2000 that have resulted in either written warnings or prosecution. The number of prosecutions has reduced considerably over this period; in 2005, the number of cases was nearly 50% lower than in 2000. This could indicate a trend towards more targeted enforcement leading to significant prosecutions with higher fines and costs and associated publicity.

Year	Written warnings	Prosecutions
2000	106	116
2001	150	102
2002	128	80
2003	69	84
2004	103	62
2005	145	62
2006 (up to June)	60	45

Note: the data relate to numbers of offences, rather than numbers of vessels. More than one offence per vessel may be identified and acted upon following a single inspection.

Impact on costs to fishermen

Loss of earnings due to interruption of fishing activity may arise during inspection, evidence gathering and the court case itself. Costs are likely to be greater for foreign

vessels than for UK vessels, if they are detained for prosecution. It is difficult to estimate with accuracy the level of earnings lost due to interruption of activity. This is because the size, and the value of catch depends on a number of factors, such as length of tow, time of the year, weather conditions, type of fish and abundance.

Fishermen may also incur costs in terms of legal fees at the interview stage, in preparation of the court case and for the court appearance. The extent of preparation required will depend on the nature of the offence.

Table 2 below illustrates the range of potential costs to UK fishermen from the current system, which is based on Marine and Fisheries Agency (MFA) and Sea Fisheries Committees (SFCs) prosecutions.

Table 2: Range of potential costs to UK fishermen from current system (£) MFA and SFCs prosecutions				
Costs of solicitors fees	2002	2003	2004	2005
Low band	103,000	111,000	83,000	86,000
Mid band	128,750	138,750	103,750	107,500
Upper band	154,500	166,500	124,500	129,000
Costs of Fines	2,794,400	528,900	179,200	455,800
Prosecution costs				
Low band	87,900	190,400	25,300	53,200
Mid band	115,900	218,400	53,300	81,200
Upper band	205,600	308,100	143,000	170,900
Other penalties (incl. catch confiscated)	1,139,900	131,000	1,400	1,316,400
Total				
Low band	4,125,200	961,300	288,900	1,911,400
Mid band	4,178,950	1,017,050	337,650	1,960,900
Upper band	4,294,400	1,134,500	448,100	2,072,100
Notes:				
1) This table is a projected assumption on 51 prosecutions carried out by the SFCs in 2004 and 2005, based on Defra (2004) average fines and other costs as for the MFA related data.				
2) Year on year costs of fines can vary considerably due to the imposition of high individual fines.				

Impact on Government Expenditure

Individual fishermen may be eligible for legal aid to cover legal costs. In this case, the costs of solicitors' fees would fall to the government, rather than to individual fishermen. No legal aid is available for companies or partnerships.

In addition to inspections, MFA BSFOs also carry out investigations into infringements. The time required for investigations can vary considerably. Some examples are:

- foreign vessels: investigations should be completed in time for a court case the following day, however, 50% take 2 or 3 days due to problems getting courts and interpreters;
- undersize fish cases: this could take 1-2 days
- documentation irregularities can range from very simple errors to very complex cases. There have been 7-8 such cases in the last 5 years and some are still ongoing. A good example is a case which took around 1000 hours of one staff member's time.

MFA officers also attend all court cases; attending time can vary from half a day to a much longer period. In addition to staff time, investigations also take a considerable amount of legal time and costs.

Option 2: Introduce a system of Financial Administrative Penalty

This option would not add any administrative burdens on those fishermen who comply with fisheries regulations. The proposal would allow enforcers to offer a FAP to deal with some fisheries offences quickly and effectively without prosecution.

Risk-based enforcement activity may result in an increase in the number of checks carried out at fishing ports and in the distribution chain. Checks would be targeted at the stock and areas considered to constitute the highest risk. This may increase the number of infringements detected and the number of cases could be higher than previously dealt with through the criminal system.

It is impossible to predict the exact number of cases that will be processed through the FAP system; however, the number of FAP cases is not expected to exceed 100 a year.

In order to examine the potential cost of savings that the Government will make by introducing a system of FAP, we have considered 2 possible scenarios illustrated below, using the information in table 1:

1. where we estimated the number of FAPs to be equivalent to the combined total of one third of current prosecutions plus a quarter of warning letters; and
2. an alternative example, that FAPs would replace 25% of current prosecutions and 33% of written warnings.

On this basis, the table below shows an estimate of the number of FAPs that would have been awarded in the past five years.

Year	No. written warnings	Potential no. FAPs		No. prosecutions	Potential no. FAPs	
		Example 1	Example 2		Example 1	Example 2
2000	106	27	35	116	39	29
2001	150	38	50	102	34	26
2002	128	32	42	80	27	20

2003	69	17	23	84	28	21
2004	103	26	34	62	21	16
2005	145	36	48	62	21	16
2006 (up to June)	60	15	20	45	15	11

Impact on costs to fishermen

FAPs would speed up procedures for dealing with infringements and therefore reduce the administrative burden and costs of legal representation for non-compliant fishermen. Examples of savings include;

- reduction in the amount of fishing time lost during court appearances;
- reduction in the costs of solicitors' fees through avoiding court appearances;
- reduction in fines and costs payable if found guilty by the courts

Table 4 sets out the potential savings in court time to fishermen when a FAP system is introduced. Table 5 illustrates the potential net savings to fishermen from the introduction of a FAP system, taking into account savings from reduced prosecutions, the sums payable in FAPs and the additional legal fees for fishermen when FAP is offered in place of written warnings.

	2002	2003	2005	2005
Costs of interruption to activity	-	-	-	-
Costs of solicitors fees	34,000	36,600	27,400	28,400
Costs of fines	922,200	174,500	59,100	150,400
Prosecution costs	29,000	62,800	8,300	17,600
Other costs (inc. catch confiscated)	376,200	43,200	500	434,400
Total	1,361,400	317,100	95,300	630,800

Notes:
1) Figures rounded to the nearest hundred; totals may not add up due to rounding;
2) Assumes 33% reduction in the number of court cases.

	2002 (£)	2003 (£)	2004 (£)	2005 (£)
Reduced costs to fishermen				
Total savings from reduced prosecution costs				
UK fishermen	1,361,400	317,100	95,300	630,800
Non-UK fishermen	140,900	125,800	99,800	85,800
All fishermen	1,502,300	442,900	195,100	716,600
Total savings from reduced written warnings				
	1,600	1,100	1,000	1,400
Total costs of administrative penalties to fishermen				
Cost of penalties				
Lower band	17,500	14,000	14,500	17,000

Upper band	140,000	112,000	116,000	136,000
Additional legal costs	4,900	2,800	4,060	5,460
Total costs of administrative penalties				
Lower band	22,400	16,800	18,600	22,500
Upper band	144,900	114,800	120,100	141,500
Net savings to fishermen				
Lower band	1,359,000	329,200	76,040	576,540
Upper band	1,481,500	427,200	177,540	695,540
Notes:				
(1) Figures rounded to the nearest hundred: total may not round up due to rounding;				
(2) Assumes 33% of court cases and 25% of written warnings replaced by FAP, i.e. Option 1				

Other potential benefits for the fishermen which would be less readily quantified will include:

- faster conclusion of cases that would previously have been referred to court. Fishermen can experience delays of up to several months in waiting to hear where they will be prosecuted, which can impose considerable strain upon them. However, the benefits that would be gained from the FAP system will be those related to delays in obtaining a court hearing.
- avoidance of a criminal record, with the associated stigma, by accepting a FAP in place of court hearings;
- providing greater uniformity in penalties for similar offences across the UK – removing the uncertainty caused by wide variations in penalties imposed by different magistrate’s courts and giving a more level playing field.

Impact on Government Expenditure

A system of FAPs for fisheries offences will give rise to potential cost savings for government, and a reduction in the number of cases going to court. The extent of savings will depend on:

- the number of administrative penalties offered;
- the number of such offers taken up by fishermen (who will have the option of refusing, with the alternative being prosecution);
- the relative costs to government of a FAP compared to alternatives.

The figures below show a forecast of the number of FAPs that would have been awarded and savings the Government will make, based on examples 1 & 2 in Table 3

Table 6: Total cost savings to Government from reduction in number of court hearings			
Year	No. Court cases	Potential no. FAPs (number of court cases avoided)	Savings to Department £

2000	116	39	20,400
2001	102	34	17,900
2002	80	27	14,100
2003	84	28	14,800
2004	62	21	10,900
2005	62	21	10,900
2006 (up to June)	45	15	7,900

If FAPs result in a lower administrative burden for government, these resources can be directed to other enforcement activities, which may result in higher levels of detection and compliance.

However, there may be some cases whereby the cost savings are not realised, these include the following;

- additional court cases where FAPs are offered in place of written warnings, but are refused by fishermen;
- non-payment of FAPs by fishermen, in which case prosecution would follow; and
- awards of costs by courts foregone i.e. if FAPs are offered investigation costs cannot be recovered;
- the nature of the offence being too serious for a FAP to be offered.

Other potential benefits for the government, which would be less readily quantified will include:

- faster conclusion of cases that would previously have been referred to court. The benefit that would be gained from the FAP system will be those related to delays in obtaining a court hearing.
- a reduction in patrol time lost by the Royal Navy in escorting vessels to port for detention. Once a FAP has been accepted and payment has been made foreign vessels could continue fishing without having to be detained

There will be a supporting IT system that will record FAPs accepted by fishermen and track whether or not they have been paid. This will be rapidly accessible to enforcement officers, including those operating at sea in Royal Navy patrol vessels. This will ensure that the level of penalty reflects whether there has been a previous offence or not. Penalties levied by other UK Fisheries' Administrations will also count towards a FAP. The IT system will also be able to show if a written warning had been issued for an offence. For example, there will be a link to data on written warnings, as FAPs will be offered in place of a second written warning for the same offence. Such a system could be set up and operated either through modification of the existing MCSS system or through development of a dedicated system.

Other initial set up costs may include staff training and publicity costs. The total cost of training will depend on the number of staff identified for training and the length of the training.

Option 3: Decriminalising all fisheries offences and providing for an entirely new civil justice system with its own appeal mechanism

The third option would fundamentally change the way fisheries offences are handled by replacing existing criminal procedures with a comprehensive system of financial administrative penalties, which could include licence suspension/withdrawal for major offences.

Such a system of financial administrative penalties is being proposed for regulatory authorities through the Regulatory Enforcement and Sanctions (RES) Bill. Under these proposals, the criminal courts would play no part in the sanctioning process; instead, there would be a system of civil tribunal to deal with appeals. The nature of fisheries offences, ranging from minor transgressions to large scale criminal behaviour, is such that not all are considered suitable for fixed monetary penalties.

(ii) Social

Option 1 – Do nothing

This would provide no real benefits in terms of improving enforcement and control measures and the conservation of fish stocks. It will have no effect on increasing compliance with fisheries regulations or reduce re-offending.

Some fishing activities adversely and directly affect the livelihoods of fishing communities by undermining the stocks on which they depend. It results in reduced economic security in communities heavily dependent on fishing as a source of employment.

Option 2 – introduce a system of Financial Administrative Penalty

Implementing this proposal would enhance enforcement and greatly increase Fisheries Departments' ability to tackle minor offending. For an individual offender, dealing with an infringement through the FAP system would mean that no criminal record would be made, on the condition that the FAP was paid within the specified time.

Administrative systems are quicker and simpler than court proceedings, and could reduce the burden of time and worry placed on businesses under threat of prosecution.

Option 3 – Decriminalising all fisheries offences and providing for an entirely new justice system with its own appeal mechanism

Under such a system, investigations would be seen to be fair and transparent. Dealing with an infringement through a civil system with its own appeal mechanism would also mean that no criminal record would be made.

Unless sanctions were to include licence suspension, there would be no real cost associated with this option.

(iii) Environmental

Option 1- Do nothing

Some fishing practices can cause long-term environmental damage on an international scale. However, this problem is hard to quantify and statistics do not provide sufficient information about the ecological impacts of certain fishing activities and its effect on biodiversity. These fishing practices can also destroy important habitat of target species and their prey, by undermining productivity and biological diversity.

Option 2 – introduce a system of Financial Administrative Penalties

A simpler procedure for dealing with infringements would hopefully increase compliance with fisheries regulations. It will become apparent to potential offenders that in place of a warning letter or a court case in a number of months' time, any infringement will be dealt with swiftly. The published list of FAPs will provide details of the potential penalty.

The benefit is the unquantifiable deterrent effect to offending. Offering FAPs in cases where currently warning letters are issued will show industry that minor infringements will not be tolerated and will in turn increase compliance with the Common Fisheries Policy rules and provide healthier fish stocks. No environmental costs have been anticipated.

Option 3 – Decriminalising all fisheries offences and providing for an entirely new justice system with its own appeal mechanism

The ability to control fishing practices has a significant impact on the marine environment. Such a system might help encourage increased compliance by offering a more effective means of dealing with fisheries offences. No environmental costs of this option have been identified.

6. Small Firms Impact Assessment

As explained in section 3, previous consultation carried out on this proposal already included small businesses in the fishing catching sector. The proposal will not have an adverse impact on small firms involved in legitimate fishing activity. Fisheries regulations apply to both small and larger firms in the same way. The types of small business in the fishing sector are individual vessel owners and small fishing companies employing a small number of staff.

In 2005 there were 670 vessels over 10m in length in the fish catching sector in England and Wales. Of these around 430 (64%) were businesses with only one vessel. The remaining vessels are part of businesses with more than one vessel; the majority of these businesses have two or three vessels and there is only one business with more than seven vessels. This organisation is the only fish-catching business that may not be defined as a SME.

There have been no additional costs highlighted for small businesses.

7. Competition Assessment

This proposal would impact directly on the fish catching sector. Overall, there will be no negative impact arising from this proposal.

The proposal will affect all businesses in the fish-catching sector in the same way and is unlikely to directly affect the market structure or change the number or the size of firms. It will not lead to higher set-up costs for new or potential firms that existing firms do not have to meet. The catching sector is not characterised by rapid technological changes and the proposal will not stop firms providing products or services that they would otherwise provide

The competition filter has been applied to this proposal and only three of the answers were potentially positive for a limited number of markets. In view of this, it is unlikely that there will be an impact on competition and therefore no requirement to undertake a detailed competition assessment is necessary.

The costs of the proposal, as with the current system, will only fall on businesses that do not comply with fisheries regulations. The competitive position for legitimate operators may improve as they are more likely to be able to operate on a level playing field.

8. Enforcement, Sanctions and Monitoring

This proposal relates to enforcement activity which would be undertaken predominantly by British Sea Fisheries Officers operating under and behalf of the Marine Fisheries Agency.

9. Summary and Recommendations

On the basis of the analysis presented in option 2 and considering the general support by the industry for this proposal, it is recommended that the FAP proposal should be introduced.

10. Implementation

The proposed implementation date is 1 January 2008. Further discussion with other fisheries administrations, legal colleagues and industry is required to ensure smooth implementation of the scheme.

We propose to use existing powers under section 30 (2) of the Fisheries Act 1981 to introduce a scheme of FAPs for Common Fisheries Policy (CFP) offences from 1 January 2008. In England and Wales we are also seeking to use the Marine Bill to enable the FAP regime to cover domestic offences.

Guidelines will be produced for inspectors and any required training will be provided. Guidance notes will be produced for the fishing industry setting out the new penalties for infringements. These will be made available 12 weeks prior to implementation.

11. Post Implementation Review

Defra will carry out a review of the scheme within three years of its introduction to ensure it is operating in a reasonable and proportionate manner.

12. Declaration and Publication

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed Jonathan Shaw

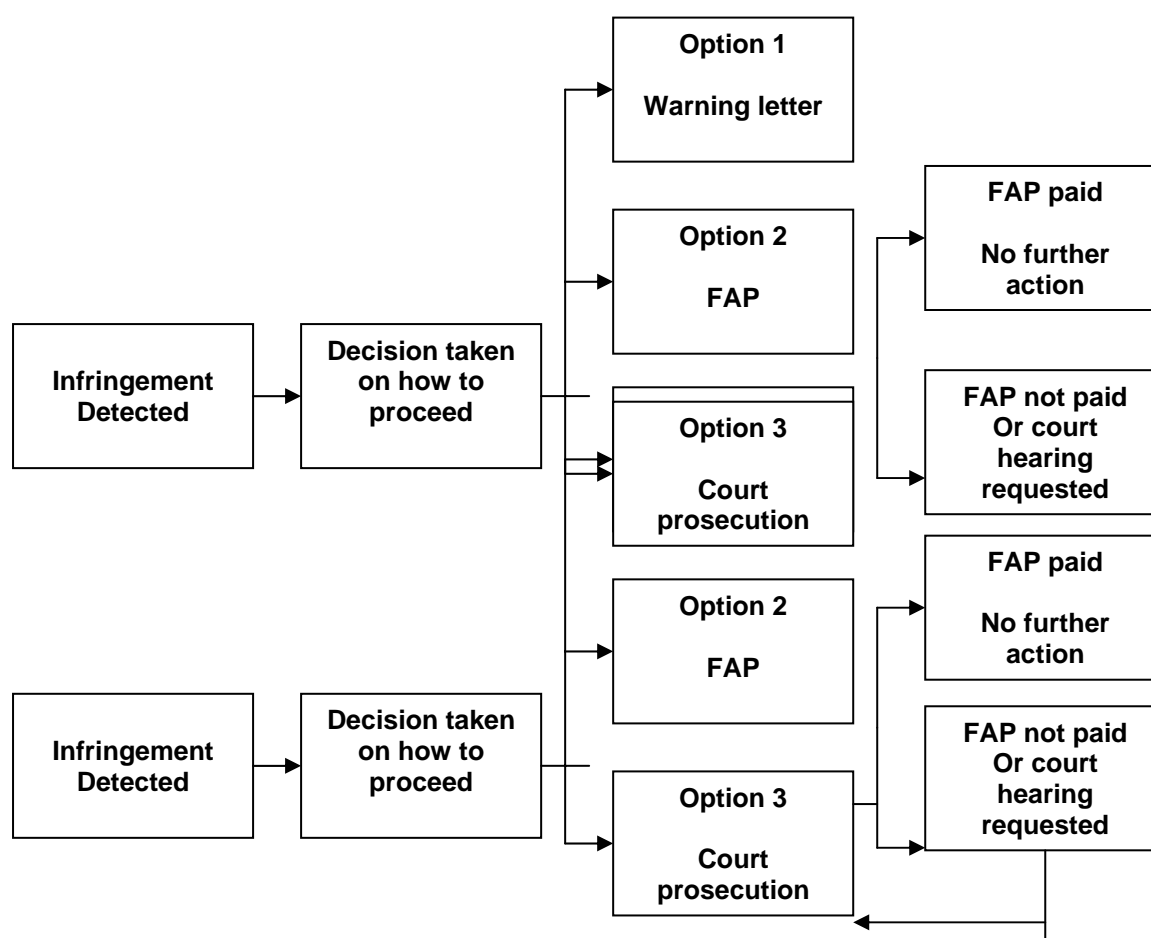
Jonathan Shaw
Parliamentary Under Secretary of State, (Marine, Landscape and Rural Affairs)

Date
27th March 2008

Contact point for enquiries and comments

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Appendix



It is proposed that FAPs would apply to all fisheries offences, with the exception of:

- obstruction offences, which would automatically be referred for prosecution; and
- any offence that is accompanied by a threat or assault on a British Sea Fishery Officer or those assisting him or her and
- offences under an EU recovery plan which attract automatic licence suspension when no further penalty would apply.

British Sea Fishery Officers (BSFOs) at sea and ashore would continue to carry out their enforcement activities as they currently do. If a breach is detected, they may in appropriate circumstances determine at a local level whether a warning letter should be given, following discussions with their line manager. However, if they determine that the breach is serious enough, full details of the investigation would then be passed to the respective HQ for decision-making.

The decision making process would involve assessment of the facts of an individual case against certain criteria. These criteria would include:

- the offence committed
- level of infringement i.e. serious or minor
- previous offences committed

- other offences detected at the same time as the offence in question and the nature of these
- value of catch
- volume of catch
- whether the catch comprise any at risk stocks.

FAPs would be offered as an alternative to criminal prosecution in certain circumstances. The administrative penalty system would thus complement the existing system rather than replace it, retaining the option of a hearing in court. The offending fisherman would be under no obligation to pay the FAP if he wishes to exercise his right to put the case to the court in the usual way.

Once a decision has been made that a FAP should be offered, a penalty notice would be issued to the offender as appropriate. The offender would be given 28 working days to make his decision and pay the fine.

If the FAP is paid within the specified time, no criminal proceedings would be taken and no criminal conviction would be recorded in respect of the offence.

Warning letters would remain an option for BSFOs to use as part of their enforcement activity. A warning letter would only be given where there is sufficient evidence to support a prosecution. To deter persistent offending we propose to introduce a limit of 1 warning letter per person, partnership, or company to be given for the same category of offence in a 2 year period. However, warning letters may not always be issued for a first offence. More serious offences may result in the offer of a FAP or referral for prosecution. Decisions would take account of warning letters issued in the 2 years before the implementation of the scheme.

To reduce re-offending and encourage increased compliance we are proposing that no more than 2 FAPs would be given for a similar category of offence within a 2 year period. A further offence within the same category would lead to automatic referral for prosecution.

We propose to introduce a series of fixed levels of FAPs ranging from £250 to £4000. The decision as to which level to apply in an individual case would be made by the senior official using the criteria set out at above. The intention in establishing any scheme would be to provide consistency and transparency through a published regime, with penalties linked explicitly to the nature of the offence and limited discretion available to Fisheries Officers.