

Department of Environment, Food and Agriculture

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Fisheries Enforcement Policy

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| Policy Document History | | |
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| Version | Date Approved | Description |
| 1.0 | 01 Oct 2015 | Original Enforcement Policy document |
| 2.0 (present) | 02 Feb 2022 | Amends (Licence Suspension; Wildlife Act 1990; note of EU-UK TCA) |

Purpose:

This policy document outlines the Fisheries Enforcement Policy that shall be adopted by the Department for Environment, Food and Agriculture ('the Department'). This document builds upon the pre-existing Fisheries Enforcement Policy (2015), and includes amendments following an informal review in 2021.

Background:

Under the Fisheries Act 2012, the Department of Environment, Food and Agriculture (DEFA) within the Isle of Man Government has a statutory duty for the Supervision and protection of inland and sea fisheries" and for "fostering the establishment and development of such fisheries".

This document sets out the approach that the Fisheries department within DEFA will take in order to achieve compliance with the Act and related secondary legislation.

The territorial sea and inland waters of the Isle of Man provide a valuable natural resource for the Isle of Man's economy. Many hundreds of jobs are sustained not only within the catching sector at sea, but also within many ancillary trades that support commercial vessels at sea and in businesses catering for the leisure market.

Sea Fisheries:

Although the Island has a degree of autonomy within its territorial sea, there are a number of reciprocal agreements that permit vessels from other jurisdictions to fish within Manx waters. These agreements likewise allow Manx vessels free access within British Fishery limits. Following the United

Kingdom exiting the European Union (EU) agreement has been reached allowing licenced EU vessels to fish within Manx waters. Enforcement of legislation at sea has to be non-discriminatory by way of nationality.

Inland Fisheries:

Within inland waters, legislation regulates the ways in which recreational angling may be pursued, and provides safeguards to fish stocks and their habitats against potentially detrimental impacts of other activities, such as flood management and building development.

Regulations:

Regulations arising from the Fisheries Act 2012 can be broadly separated into two main types:

Input controls, which reduce or contain effective fishing effort e.g.

- Restricting the number of fishing licences issued.
- Imposing area/temporal closures e.g. closed areas/curfews
- Limiting the number and types of fishing gear allowed.
- Setting minimum legal mesh sizes and escape gaps.

Output controls which are used to restrict total catch in line with predetermined limits e.g.

- Imposing catch quotas and bag limits.
- Setting legal landing sizes.
- Outlawing the taking of certain species or categories of fish such as spawning females and diadromous fish at sea.

Fisheries Officers are also warranted officers under the Wildlife Act 1990, and certain secondary regulation that is enacted by that Act.

Aim:

Through the effective enforcement of the Fisheries Act 2012 and related secondary legislation, the Fisheries Division of the Environment Directorate, DEFA will conserve the marine and freshwater fish and shellfish populations of the Isle of Man. This document outlines the general principles and processes that the Department shall follow with respect to enforcement of the Fisheries Act and secondary legislation, including conditions of licence granted under those statutory powers.

General Principles

Regulations must take account of the cost and resource implications of enforcement activities, which can be substantial. Control of these costs is best achieved when the regulating body and stakeholders can agree on the need for regulations and acknowledge the benefits, thus minimising the risk of non-compliance. This is not always achievable due to a lack of consensus on the efficacy of different conservation and management techniques.

For enforcement to be effective and affordable, it is essential that where possible the regulatory process engage with all stakeholders' legitimate interests to maximise support for the legislation.

Popular support for legislation helps to deter would-be transgressors both via peer pressure and increasing the likelihood of offending behaviour being reported.

Through the process of stakeholder engagement and the Department's subsequent activities, the process shall be based on the principles of:

- Proportionality
- Accountability

- Consistency
- Transparency

Enforcement options

The aim of the Department is to achieve the highest degree of legislation compliance possible through the provision of education, advice and guidance, including:

- Production of advisory literature and dissemination of information, advice and guidance via conventional sources, including the government website, and social media.
- Distribution of information specifically targeted to the relevant user group, e.g. handing out *code of conduct* leaflets to anglers during licence checks, FISHTXT (SMS) alerts to commercial vessel owners
- Ongoing direct and interactive stakeholder engagement e.g. meetings of the Manx Recreational Anglers Forum, the Manx Fish Producers Organisation (MFPO) and the Isle of Man Scallop Management Board.
- Prompt and comprehensive responses to individual enquiries.

Where this is not successful, appropriate and proportionate action will be taken by utilising one of the following enforcement and administrative tools:-

Oral advice/warning

Where it is considered that a minor infringement may have been inadvertently been committed, oral advice may be given to the transgressor, and a written record of the incident and action taken will be made by the officer and used as a reference should a further offence be committed. Whenever possible, this record will be produced in the presence of, and endorsed by, the transgressor.

Advisory letter

Where it is believed that breaches of the law may have been committed and it is deemed appropriate to do so, an advisory letter may be sent as a reminder of the law and the need for compliance.

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 may be issued outlining the date, time and nature of the alleged offence, and stating that a prosecution may be perused should a repeat of the behaviour occur.

Official caution

This is similar to an official written warning except that the person concerned is formally interviewed under caution. An official caution should only be issued when there is sufficient evidence to bring a prosecution but it is considered appropriate to caution rather than prosecute. The offender must admit their guilt and formally acknowledge that they will accept the caution as an alternative to being prosecuted.

Official cautions are kept on record for five years and would be brought to the courts attention should future transgressions lead to a prosecution.

Prosecution

The powers afforded to the department to pursue a criminal prosecution are essential to discourage non-compliance, particularly where it is considered that the above options would not deliver the desired outcomes and/or that a conviction would provide a strong deterrent for other would-be offenders.

Prosecution cases will be referred to the Isle of Man Government's Attorney General's Chambers ('AGCs') when the Department is satisfied that there is sufficient evidence to support a prosecution taking into consideration factors including, but not limited to:-

- The impact, or potential impact, of the offence on people, the environment, or animals having regard, in particular to the strategic priorities of DEFA;
- The impact of the offences upon the regulatory regime e.g. a failure to obtain a required licence for a regulated activity undermines the integrity of the regime and may deprive DEFA of revenue;
- The financial aspects of an offence such as the benefit accrued and or profit made as a result of breaking any regulation;
- Whether the offence was committed deliberately;
- Whether officials were obstructed;
- The previous enforcement record of the offender;
- The attitude of the offender, including behaviour towards officials, and whether corrective measures to remedy the offence or prevent reoccurrence have been put in place;
- Where offences are prevalent or difficult to detect and a prosecution would constitute a general deterrent for others; and,
- If the offence arose from unusual circumstances where the situation could not have been foreseen or reasonable precautions would not have avoided the situation, or reasonable steps were taken to mitigate the matter and the appropriate authorities were notified.

Licence suspension

In addition to the above measures the Department may under section 38 of the Fisheries Act 2012 cancel or suspend a licence if necessary or expedient for the regulation of sea fishing.

If the holder of a licence is convicted of an offence under the Fisheries Act, the Court may cancel or suspend a licence (including fishing licence, sea fishing licence, or a recreational sea fishing licence) in addition to any financial penalties imposed by the Court.

Conduct of Investigations

DEFA Fisheries Officers have a range of powers available to them under the Fisheries Act 2012 and the Wildlife Act 1990 in order to assist in the prevention and investigation of offences. Some of the more common powers are:-

- The power to board and inspect fishing vessels
- The power to detain vessels
- The power to seize items, including fish, fishing gear and computers., where necessary
- The power of forfeiture of fish in respect of fish and fishing gear suspected to be unlawful
- The power to search any vehicle in which any fish is suspected of being conveyed
- The power to stop and search any person conveying or suspected of conveying, fish of any kind
- The power to enter any premises where fish is stored

DEFA Fisheries Officers will exercise their powers appropriately and exercise due restraint to ensure use is proportionate. Investigations will be carried out by Fisheries Officers in accordance with the Codes of Conduct under the Police Powers and Procedures Act 1998

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