

STATUTORY MEETING

26th April 2006

Clerk's Report on the Defra consultation on a System of Administrative Penalties for Fisheries Offences

Defra are currently consulting on the proposal to introduce a system of administrative penalties for fisheries offences. The main objective for introducing a system of financial sanctions is to provide more flexibility to the fisheries managers when dealing with minor breaches of fisheries legislation. The administrative penalty system will potentially provide a useful alternative to the current options.

There are many advantages to be gained from introducing an administrative penalty system to both the enforcement bodies and fishermen. The Net Benefits report stated that 'Criminal penalties should be reserved for persistent and extreme 'criminal' behaviour. For the rest the imposition of administrative penalties....would be a sufficient deterrent.'

Currently the only financial means to punitively deal with a fisheries offence is to seek court proceedings against the transgressor. If found guilty of the offence the individual receives a fine but also, potentially more significantly, a criminal record. It is felt that the current proposal could only deal with minor offences and many fisheries cases would still be dealt with by the courts.

The main objective of the Defra consultation is to develop an administrative penalty system based on a sliding scale (matrix) of financial administrative penalties (FAPs). Significantly the consultation does not attempt to progress the points system for licences, recommended in the Net Benefits system. The reason for this is that the administrative penalty system is being designed to apply equally to both UK and foreign vessels. Whilst the ideal, is to look to be fair and equitable to all, it is believed that by not pursuing this option the opportunity to use what is likely to be the most effective deterrent is lost.

ESFJC have the option to suspend a fishing licence, issued under the Wash Fishery Order. Officers and fishermen believe that this is the real deterrent to those intent on acting illegally. Generally the maximum level of fine that can be applied to Wash related offences is £5000. It can be seen from this, that in highly profitable fisheries, the financial rewards to be gained by illegal fishing are far in excess of the potential penalty, if caught. The cost to an individual who is excluded from the fisheries for a period of time is potentially much greater and consequently there is a much higher level of compliance.

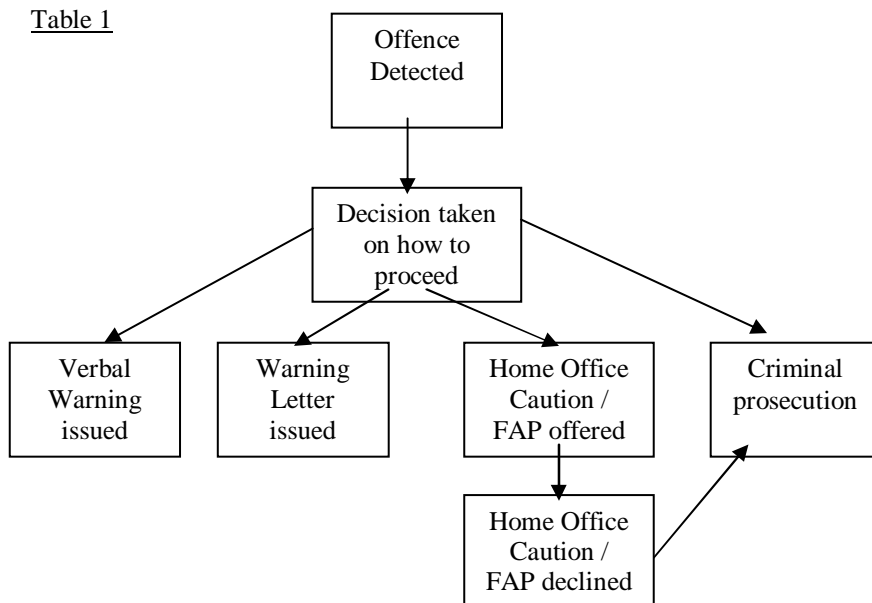
Despite the exclusion of the licence element, the proposed system could still provide an effective tool to fishery managers / enforcement bodies. The FAP could be integrated into the current procedure for dealing with fisheries offences. (*As illustrated in Table 1*)

A Home Office Caution may be offered when there is sufficient evidence to support a likely successful prosecution but due to mitigating circumstances it would not necessarily be in the public interest to pursue the case further in court. If the defendant accepts the Home Office Caution it is a formal acceptance of guilt regarding the offence and is kept on record and the investigation is concluded. If the defendant declines the offer then the enforcement body should pursue the case through the courts. The FAP would be useful in these types of cases as an additional measure or as an alternative. It would introduce a means by which any financial gain made by committing minor offences could be addressed.

The system would allow a means by which persistent minor offences, such as regular landings of one or two undersize lobsters could be dealt with more effectively. If through FAPs an undersize lobster represented a potential fine sufficiently in excess of its market value it may act as a deterrent. However if the fine through a FAP is too high the defendant may choose to go through the courts chancing that he may receive a lower fine.

The consultation makes it clear that the individual's rights should be upheld. By applying FAPs on the same basis as a Home Office Caution these safeguards are maintained. If the FAP is not paid then, similar to declining a Home Office Caution, the courts would deal with the matter.

Table 1



The expected 'speeding up' of the procedures may not be as significant as first thought. The same amount of time would be spent on collating the evidence and preparing a prosecution file as now. There would be potential savings in the time and money spent taking cases to court but this might be negated by the additional requirements when dealing with FAPs.

Presently if the defendant is found guilty he is liable to a fine that may include part of or all of the prosecution costs. Those costs are payable to the Committee and offset the cost of taking the prosecution. It is unclear at present whether the FAP monies would also come back to the Committee.

There are many more issues to be dealt with during the development of this system. The Committee has been asked to form an opinion on the merits of the system as proposed and to forward these views for inclusion in the joint response being drafted by the Chief Executive of the Association of Sea Fisheries Committees.

The Clerk and other officers of the Joint Committee support the principle of administrative penalties for some fisheries offences and would like to see the current proposal developed into an effective system.

The Committee is asked to receive the report and agree to support the development of a system of administrative penalties for fisheries offences.

Matthew Mander
Clerk & Chief Fishery Officer

18th April 2006

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

List of Background Papers

- 1) Defra Consultation on introducing a system of Administrative Penalties for Fisheries Offences, 8th February 2006.