

**Enforcement of fisheries law in Scotland:
an analysis of current law and practice
with recommendations for reform**

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1. Introduction

It is widely accepted that fisheries management requires both the adoption of appropriate conservation and management measures and their effective enforcement in practice. Visible and targeted enforcement provides a clear incentive for those involved in the fishing industry to comply with the applicable regulations, as well as offering a means for enforcement authorities to demonstrate stewardship over fish stocks and associated ecosystems as public goods.

Enforcement is a multi-stage process. In the first instance, it entails the monitoring and control of fisheries in order to identify potential breaches of regulations. If evidence of unlawful activity can be found, action may follow to impose penalties on suspected offenders. This paper focuses on this second step of the enforcement process, namely the imposition of sanctions and other measures in order to address breaches of fisheries regulations.

Whilst the analysis is focussed on the available measures under Scots law, it also draws upon broader practice in order to provide a benchmark against which to evaluate current practice in Scotland. In this respect, it will explain the relevant rules and principles of international law and it will also highlight comparative examples of good practice from other jurisdictions in order to identify possible future trends in fisheries enforcement, with a view to formulating particular recommendations for reform in Scotland.

The overall aim of the paper is to evaluate the various legal tools and mechanisms that are available in Scots law in order to sanction violations of fisheries regulations. Section 2 of the paper will begin by describing the international context of fisheries law enforcement in order to identify key principles which can provide a framework for the evaluation of Scottish practice. Section 3 will then explain the main actors involved in fisheries enforcement in Scotland and the broader theoretical framework against which the exercise of enforcement powers can be understood. Section 4 will consider the penalties that are available following a successful criminal prosecution. Section 5 will turn to the scheme of administrative penalties that was introduced in Scotland in 2008. Section 6 will consider the possibility of further administrative measures being taken against owners or masters found to be in breach of fisheries regulations. Section 7 will then draw together the recommendations made throughout the paper and offer some overarching conclusions on the future development of fisheries enforcement in Scotland.

2. The International Context for Fisheries Law Enforcement

The international commitments of states provide an important frame of reference for understanding the application of national legal measures relating to fisheries enforcement. Developments in international fisheries law and policy have placed an increasing emphasis on the need for effective enforcement of fisheries law as a key requirement for states in upholding their international responsibilities relating to the conservation and management of shared marine resources, as well as the protection and preservation of the marine environment. Whilst international rules leave a large degree of discretion to states to determine what enforcement action to take, this discretion is not unlimited.

It is widely accepted that fisheries regulation must be undertaken within the broader framework of international legal rules relating to the protection of the marine environment.¹ These rules generally impose so-called due diligence obligations², meaning that states are not obliged to achieve a specific outcome, but rather they are required to undertake their 'best possible efforts'³ in order to achieve the overarching objective of protecting and preserving the marine environment. In the context of fisheries, it has been held that a due diligence obligation requires both 'the adoption of appropriate rules and measures [and] also a certain level of vigilance in their enforcement...'⁴, but it does not require a state to achieve compliance by every single fishing vessel operating under its jurisdiction or control.⁵ Indeed, achievement of complete compliance by all fishing vessels is not a feasible objective, as it would demand a scale of resources and commitment that even the most advanced states could not muster. Rather than promoting complete compliance, the aim of fisheries enforcement is, like most areas of law enforcement, 'to keep deviance within acceptable levels.'⁶

In addition to the overarching requirement for due diligence, there are more specific obligations that apply to particular aspects of the enforcement process. Thus, it has been stressed that 'sanctions applicable to involvement in [illegal, unreported and unregulated] fishing activities must be sufficient to deter violations and to deprive offenders of the benefits accruing from their ... activities.'⁷ Whilst still leaving some discretion to states to set a particular type and/or level of sanction, this obligation nevertheless introduces a more concrete constraint on states. The requirement for an appropriate scheme of sanctions for fisheries offences is reinforced by the Food

¹ International Tribunal for the Law of the Sea, *Southern Bluefin Tuna Cases (Provisional Measures)*, Order of 27 August 1999, para. 70: 'considering that the conservation of the living resources of the sea is an element in the protection and preservation of the marine environment.'

² See J Harrison, *Saving the Oceans through Law* (Oxford University Press 2017) 28-29.

³ Seabed Disputes Chamber of the International Tribunal for the Law of the Sea, *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, Advisory Opinion of 1 February 2011, para. 117.

⁴ International Court of Justice, *Case concerning Pulp Mills on the River Uruguay*, Judgment of 20 April 2010, para 110, cited by International Tribunal for the Law of the Sea, *Request for an Advisory Opinion by the Sub-Regional Fisheries Commission Advisory Opinion*, Advisory Opinion of 2 April 2015, para. 131.

⁵ *Ibid*, para. 129.

⁶ A Chayes and A Chayes, *The New Sovereignty* (Harvard University Press 1998) 17.

⁷ International Tribunal for the Law of the Sea, *Request for an Advisory Opinion by the Sub-Regional Fisheries Commission Advisory Opinion*, Advisory Opinion of 2 April 2015, para. 138.

and Agriculture Organisation's Code of Conduct on Responsible Fisheries which provides that 'States should ensure that laws and regulations provide for sanctions applicable in respect of violations which are adequate in severity to be effective, including sanctions which allow for the refusal, withdrawal or suspension of authorizations to fish in the event of non-compliance with conservation and management measures in force'⁸ and also the International Plan of Action on Illegal, Unreported and Unregulated Fishing, which adds that 'states should ensure the consistent and transparent application of sanctions.'⁹

The international context therefore provides a number of principles against which the current arrangements for fisheries enforcement in Scots law can be evaluated, namely:

- Sufficiency of sanctions to deter offences;
- Range of sanctions, including administrative measures, to ensure prevention of future offences;
- Consistent application of sanctions;
- Transparency of sanctions.

⁸ Food and Agriculture Organisation, *Code of Conduct on Responsible Fisheries* (1995), para. 7.7.2.

⁹ Food and Agriculture Organisation, *International Plan of Action on Illegal, Unreported and Unregulated Fishing* (2001), para. 21.

3. Enforcement Actors and Policy

3.1 Enforcement actors

Whilst Police Scotland may in principle be able to exercise their enforcement powers in relation to fisheries offences, this is a task that is principally undertaken by Marine Scotland Compliance, a department of the Scottish Government, whose main function is to effectively monitor and enforce marine and fisheries laws in Scotland.¹⁰ Marine Scotland Compliance took over the functions of the Scottish Fisheries Protection Agency from 1 April 2009. Formally speaking, the activities of Marine Scotland Compliance are carried out in the name of the Scottish Ministers.

Marine Scotland Compliance operates 18 local fisheries offices around the country and it also has three marine protection vessels and two aircraft at its disposal to facilitate the detection of fisheries offences at sea. Two small rigid inflatable boats (RIBs) have recently been added to the fleet in order to carry out inshore patrols and to free up the larger craft for offshore duties. In addition, Marine Scotland hosts the UK Fishing Monitoring Centre in Edinburgh and it has a dedicated Fully Documented Fisheries Unit in Peterhead which monitors compliance of the UK fishing fleet using camera and sensor technology. In the future, enforcement is likely to increasingly utilise modern technologies, such as remote electronic monitoring and drones in order to detect potential offences.¹¹ Operational staff at Marine Scotland Compliance are warranted British Sea-Fishery Officers (BSFOs) conferred with the range of enforcement powers under Part 3 of the Aquaculture and Fisheries (Scotland) Act 2013, which includes the power to board, inspect and ultimately detain vessels, as well as the power to inspect and seize objects used in connection with commercial sea fishing. Operational staff at Marine Scotland are also generally warranted as Marine Enforcement Officers (MEOs) who are able to enforce applicable marine licensing and nature conservation legislation.¹²

Whilst Marine Scotland Compliance carries out investigations into alleged breaches of the law, it is not able to bring criminal proceedings in its own right. Rather, as discussed in section 4, it must report the matter to the Crown Office and Procurator Fiscal Service (COPFS), which ultimately makes the decision whether to initiate criminal prosecution. At the same time, a broader suite of enforcement measures may be implemented directly by Marine Scotland Compliance, in the name of the Scottish Ministers, as discussed in later sections of the paper.

3.2 A conceptual framework for fisheries enforcement

Whilst much of this paper focuses on the penalties that may be applied where breaches of fisheries law are discovered by Marine Scotland Compliance, it is important to acknowledge that ‘enforcement’ is increasingly understood as a broader process which is concerned as much with encouraging compliance as penalising non-compliance. This flexible approach to enforcement has been reflected for a long

¹⁰ <https://www.gov.scot/policies/marine-and-fisheries-compliance/>

¹¹ See Scottish Ministers, *National Marine Plan Review 2021: Three year report on the effectiveness of Scotland’s National Marine Plan* (March 2021) 44.

¹² See Marine (Scotland) Act 2010, Part 7.

time in the informal strategies employed by enforcement agencies¹³ and it is an approach that has gained a predominance as a result of the work carried out by Philip Hampton in the early 2000s aiming at improving regulation by UK public authorities, which inter alia called for a risk-based approach to enforcement and the use of 'proportionate and meaningful sanctions.'¹⁴ This approach is underpinned by the belief that most individuals and companies aim to comply with applicable regulations and the majority of breaches are due to problems with implementation or a lack of proper understanding of what is required by regulations.¹⁵ The overall objective is to secure compliance, rather than to punish offences. From this perspective, enforcement work even extends to education and training to help individuals and companies to understand the law and to assist them in complying. On this basis, regulators should employ more cost-effective measures to address minor breaches of the rules, whereas expensive and time-consuming criminal prosecution should be restricted to 'the most serious cases where the stigma of a criminal prosecution is required.'¹⁶ On the back of the Hampton Review, a study of regulatory sanctions carried out Professor Richard Macrory of University College London developed six principles for effective sanctions.

Macrory Principles for Effective Sanctions¹⁷

1. A sanction should aim to change the behaviour of the offender
2. A sanction should aim to eliminate any financial gain or benefit from non-compliance
3. A sanction should be responsive and take into account what is appropriate for the particular offender and the particular regulatory issue
4. A sanction should be proportionate to the nature of the offence and the harm caused
5. A sanction should include an element of restoration
6. A sanction should aim to deter future non-compliance

Whilst Macrory encouraged regulatory agencies to employ a broader range of sanctions, it is important to understand that he did not advocate a complete abandonment of criminal proceedings as an enforcement tool, but rather called for sanctions to fit the circumstances of the offence.

Even though the Hampton Review and the Macrory Report were carried out on behalf of the UK government with a focus on regulation in England and Wales, the ideas underpinning these initiatives have clearly had an influence on the Scottish regulatory landscape as well. Indeed, the very name of Marine Scotland Compliance suggests that this philosophy underpins the work of the organisation and its approach to compliance has recently been described as 'promote, prevent and respond.'¹⁸

¹³ See e.g. K Hawkins, *Environment and Enforcement: Regulation and the Social Definition of Pollution* (Oxford University Press 1984).

¹⁴ Philip Hampton, *Reducing Administrative Burdens: Effective inspection and enforcement* (March 2005) 7.

¹⁵ See discussion in Chayes and Chayes (n6) and sources discussed therein.

¹⁶ Hampton (n14) para. 2.82.

¹⁷ R Macrory, *Regulatory Justice: Making Sanctions Effective* (Final Report November 2006) chapter two.

¹⁸ Scottish Ministers (n11) 44.

Against this backdrop, it is important to recognise that enforcement can take a number of different forms and the ‘toolkit’ available to enforcement agencies such as Marine Scotland Compliance includes not only a range of sanctions – e.g. criminal prosecution, administrative fines, licence suspension – but also measures that do not involve a sanction at all, such as verbal advice, advisory letters or warning letters.

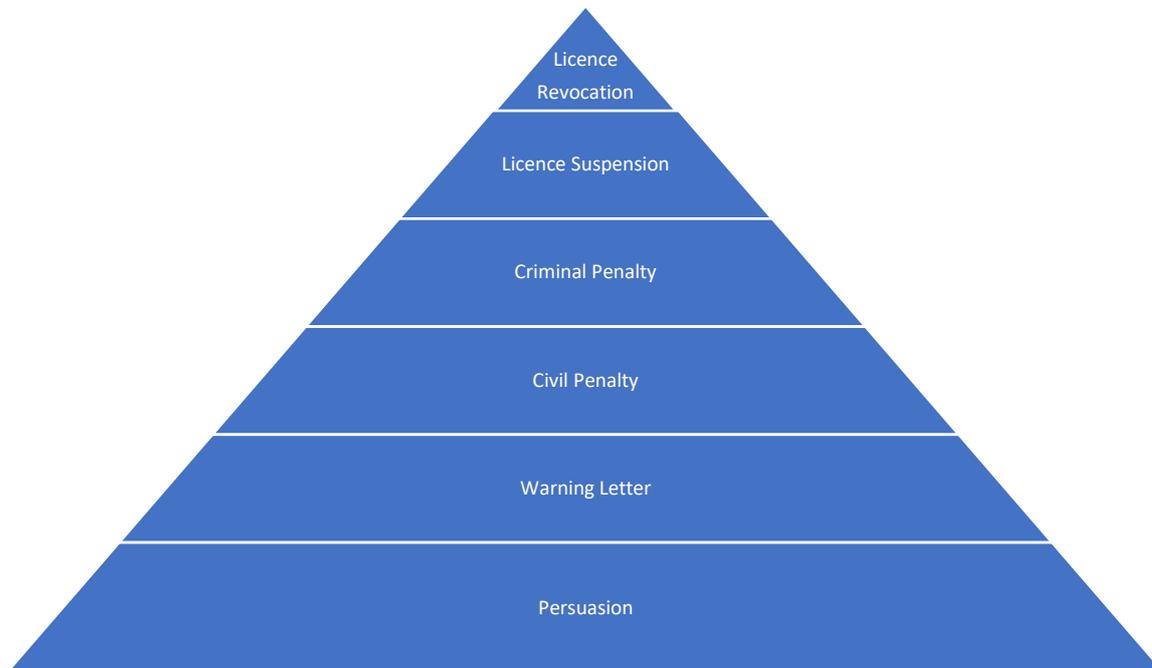


Figure 1: Enforcement period (reproduced from Macrory (2006) Annex A)

The enforcement pyramid set out in Figure 1 captures a hierarchy of enforcement options based upon the impact on the measure but it also seeks to underline the need for ‘balance ... wherein softer approaches (at the base of the pyramid) are employed more frequently (represented by the greater area) and the toughest sanctions (at the apex) are applied but applied least often.’¹⁹ Whilst each of these enforcement styles has its own distinct advantages²⁰, how to strike this balance involves strategic choices, which principally rest with the enforcement authority. Indeed, officials have significant discretion in determining which enforcement powers to exercise in any particular situation.²¹ Important factors that will influence the response of enforcement officials include the perceived seriousness of the offence, the degree of damage that might have been caused, the blameworthiness to be attached to the perpetrator, and whether the perpetrator chooses to cooperate with any investigation.²² Any track record of a perpetrator may also influence the choices of enforcement officials²³, as well as broader institutional priorities, such as the need to be seen to act against particular types of breaches.²⁴ A major challenge for enforcement authorities is to determine how to weigh and balance these factors in a consistent and appropriate manner, without losing the ability to adapt their approach to the particular circumstances of a case.

¹⁹ MK Sparrow, *The Regulatory Craft* (Brookings Institute 2000) 39.

²⁰ *Ibid*, 37.

²¹ *Ibid*, 4.

²² Hawkins (n13) 108; see also 126.

²³ *Ibid*, 107.

²⁴ *Ibid*, 185.

One way in which an enforcement authority can promote a consistent approach to the exercise of its enforcement powers is by publishing a clear and focussed compliance and enforcement strategy. The purpose of such a strategy is not to dictate a precise response of the enforcement agency to any individual situation, but rather to provide a strategic framework in which discretionary powers can be exercised. In other words, a strategy is not designed to remove discretion, but rather to structure its exercise. Thus, a strategy is likely to set out the general approach to enforcement and compliance by the organisation, as well as the key principles and factors that will guide decision-making, whilst recognising the discretion that exists on a case-by-case basis. Such a policy may also need to explain how it takes into account other legal requirements and governmental policies, such as the duty on regulators to contribute to achieving sustainable economic growth under the Regulatory Reform (Scotland) Act 2014 or the National Outcomes under the Community Empowerment (Scotland) Act 2015.

To understand what a fisheries compliance and enforcement strategy may look like, it is appropriate to look to examples elsewhere in the sector. The Marine Management Organisation (MMO) adopted an updated Compliance and Enforcement Strategy in June 2020.²⁵ On its own terms, the strategy 'sets out the MMO's overall approach to facilitating and achieving compliance across all areas that the MMO regulates but in particular marine licensing and fisheries management [and] it 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 strategy then goes on to explain its key approach to compliance according to the principles of 'inform, educate and enforce.' Significant aspects of this approach are:

- When new or complex legislation or rules are introduced, the MMO will endeavour to ensure that there is an appropriate education period where regulatory effort will be focused on guiding industry and providing clarity to enable compliance;
- The MMO will undertake monitoring through desk-based review of information submitted by the licence holder or site-based inspection to measure the level of compliance; more targeted inspections will also be required where the MMO's risk and intelligence processes indicate that there are compliance issues which need to be addressed;
- Where monitoring identifies minor infringements, the MMO will normally issue oral advice and advisory letters;
- 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 outlining the details of the alleged offence or an administrative fine may be issued;
- Criminal prosecution 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 – thereby disadvantaging other legitimate operators – or where it is otherwise necessary in all the circumstances relating to the alleged offence;

²⁵ <https://www.gov.uk/government/publications/compliance-and-enforcement-strategy/compliance-and-enforcement-strategy>

- When instituting criminal proceedings, the MMO will select the most appropriate charges, which may also include those under general criminal law, for example fraud in relation to the provision of false or misleading information;
- Where it is permitted by the applicable law, criminal proceedings may be commenced against all those persons suspected of committing offences, including not only the master, but also the vessel owner and/or charterer;
- 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, company directors or other statutory office holders;
- Following conviction of persons for relevant offences, the MMO may consider instigating proceedings under the Proceeds of Crime Act 2002 to deprive offenders of the unlawful benefit of their criminal activity.

This general strategy is supplemented by more specific policies relating to financial administrative penalties (discussed below), licence freezing²⁶, and the risk-based enforcement process.²⁷

Other aspects that could be dealt with by a compliance and enforcement strategy include how an enforcement agency deals with complaints or other information provided by third parties.

Not only does a compliance and enforcement strategy assist individual officials to exercise their powers in a coherent manner, it also serves as a form of accountability by setting out the general framework in which decisions are made in a manner that is accessible to both the industry and the general public. This point is emphasised by Macrory who says that '[t]o increase confidence in the way that regulatory non-compliance is dealt with, the public and private sector should be able to understand why regulators use the sanctions they do'²⁸ and therefore his recommendations insisted that a compliance and enforcement strategy should be 'readily and publicly available.'²⁹

Recommendation #1: Marine Scotland Compliance should develop, consult upon, and publish a compliance and enforcement strategy and keep it under review in order to ensure that it is fit for purpose. Such a strategy should provide overarching guidance on how the range of enforcement/compliance powers at the disposal of Marine Scotland Compliance will be exercised, whilst underlining that individual enforcement decisions will be made based upon all of the relevant circumstances.

²⁶ <https://www.gov.uk/government/publications/compliance-and-enforcement-strategy/mmo-licence-freeze-policy-may-2020>

²⁷

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/317546/risk-based-enforcement.pdf

²⁸ Macrory (n17) 21.

²⁹ Ibid.

Alongside the need for a strategy to guide decision-making, the principle of transparency also calls for the publication of information about the actions that are actually taken under a policy. In this respect, Macrory argued that ‘it is important for regulators to disclose when and against whom enforcement action has been taken’ and this information ‘should not be isolated to criminal prosecutions, but should also be used for other enforcement action such as administrative penalties, enforcement or improvement notices or any other formal sanction.’³⁰ This recommendation is also supported by the broader literature on transparency in fisheries conservation and management, where it has been suggested ‘the provision of information concerning how and when regulatory and enforcement powers are used, particularly where national authorities enjoy broad discretion, can be an important step in holding decision-makers to account.’³¹

Until its demise in 2009, the Scottish Fisheries Protection Agency produced an annual report which provided information both on the operational aspects of fisheries monitoring and control, but also statistics concerning the number of cases sent to the COPFS, the number of cases in which court proceedings were instigated by the COPFS, and the number of successful prosecutions. One shortcoming of this report is that it did not provide any detail about the penalties in successful prosecutions. Perhaps a better model for presenting data on enforcement is therefore the annual wildlife crime report produced under section 20 of the Wildlife and Natural Environment (Scotland) Act 2011, which provides more detail about outcomes in individual cases as well as broader analysis of trends in offences and enforcement. Such a report would also provide a basis on which Scottish Ministers can be held to account by the Scottish Parliament for the exercise of enforcement powers.³² The need for such transparency is reinforced in the discussion of individual sanctioning tools in the sections below.

Recommendation #2: Marine Scotland Compliance should produce an annual report on its compliance and enforcement activities relating to both fisheries and broader marine licensing and nature conservation legislation, including detailed information on the range of sanctions applied in these areas.

³⁰ Ibid, 22.

³¹ J Harrison, ‘International Transparency Obligations in Fisheries Conservation and Management: Inter-State and Intra-State Dimensions’ (2021) *Marine Policy*, forthcoming: <https://www.sciencedirect.com/science/article/abs/pii/S0308597X19306153>

³² See recommendation in J Harrison, *The Enforcement of Fishing Restrictions in Marine Protected Areas* (Saving our Seas through Law Policy Brief Series No 2, 2019) 5.

4. Criminal prosecution and sanctions

4.1 Introduction

For many years, criminal prosecution was the principal enforcement tool available to the authorities responsible for overseeing compliance with fisheries law. Whilst the range of enforcement tools is today notably broader, as discussed in the following sections, fisheries enforcement is still ultimately underpinned by criminal law and so it is a natural starting point for the present discussion. Even though prosecution may be an option of last resort³³, the threat of prosecution will only be a credible one if the sanctions associated with criminal law are proportionate and effective.

At the outset, it is important to remember that whilst Marine Scotland Compliance is responsible for investigating violations of fisheries laws, it is not able to bring criminal prosecutions in its own right.³⁴ Rather, Marine Scotland Compliance must report any alleged offences to the COPFS, which ultimately has the final say on whether or not to bring criminal proceedings. This decision is made entirely independently from the reporting service.³⁵ Key factors taken into account by the Procurator Fiscal in deciding whether to bring a prosecution in a particular case are whether or not there is sufficient evidence to prove beyond reasonable doubt that an offence was committed³⁶ and whether it is in the public interest to prosecute, taking into account the availability of other alternatives to prosecution.³⁷ It follows that the relationship between Marine Scotland Compliance and the COPFS is vitally important. As a result, some of the recommendations below will require cooperation between these agencies in order to achieve effective change.

4.2 Who to prosecute?

Generally speaking, fisheries offences are strict in nature, meaning that it is not necessary to prove fault for a successful prosecution. Furthermore, it is common in fisheries law to impose liability not only on the Master of a vessel, but also concurrently on the vessel owner and/or charterer.³⁸ For example, section 4(1) of the Inshore Fishing (Scotland) Act 1984 provides that ‘where a fishing boat is used in the commission of ... an offence, the master, the owner and the charterer (if any) shall each be guilty of an offence under this section.’ Similar provisions are found across other sea fisheries enactments. In some circumstances where vehicles other than boats are used to commit an offence, liability may also rest with the person in charge of and/or the owners of those vehicles.³⁹ In this respect, a contrast must be drawn with the relevant nature conservation legislation which usually refers to an offence being committed by the person carrying out the unlawful act.⁴⁰ This limits liability to those on the fishing vessel at the time, unless it can be shown that an offence was committed through the ‘consent or connivance of, or was attributable to

³³ Hawkins (n13) 191.

³⁴ Contrast the position of the Marine Management Organisation; Marine and Coastal Access Act 2009, s. 29(1).

³⁵ *Reports to the Procurator Fiscal: A Guide for Specialist Reporting Agencies* (7th edition 2006) para. 6.1.

³⁶ For a discussion of the challenges and proposals for reform, see Harrison (n32) 2-3.

³⁷ *Ibid*, para. 6.2.

³⁸ In some situations, the Master will also be the owner of the vessel, but this is not always the case.

³⁹ See Inshore Fishing (Scotland) Act 1984, s. 4(1A).

⁴⁰ E.g. Marine (Scotland) Act 2010, ss. 94-95.

the neglect on the part of ... a director, manager, secretary, or other similar officer' of a corporate body.⁴¹ This sets a higher standard of culpability compared to the strict liability imposed on owners and charterers in fisheries legislation.

The imposition of an additional layer of liability on the owner/charterer in fisheries legislation is in part justified by the fact that the owner/charterer receives significant economic gain from the activity being carried out by the vessel. The imposition of concurrent liability also provides a clear incentive to the owner/charterer to exercise appropriate oversight of the operations of their vessel in order to ensure that the master complies with the law. Yet, such incentives only operate where the risk of liability is real. In practice, prosecutions for fisheries offences in Scotland tend to be brought exclusively against the master of the vessel. This approach contrasts with the practice in England and Wales where owners/charterers are regularly prosecuted alongside masters for fisheries offences. Indeed, it is clear from sentencing practice in English courts that owners are regularly required to pay significant fines, often in excess of those imposed on the master.

Examples:

In October 2014, Exeter Magistrates Court found that the vessel Marina (BM190) had breached restrictions under the Lyme Bay Designated (Fishing Restrictions) Order 2008. The Master of the vessel was ordered to pay £6620, including a fine of £4000, costs of £2500 and a £120 victim surcharge. The owner was ordered to pay a total of £5620, including a fine of £3000, costs of £2500 and a £120 victim surcharge.⁴²

In May 2019, the owner and Master of the vessel Ansgar pleaded guilty to charges relating to gear violations, as well as failure to provide a boarding ladder. The owner was fined £66,455 and the Master was fined £8,147.⁴³

In January 2020, the owner and Master of the Scottish based vessel Tranquility (BF7) pleaded guilty to charges relating to gear violations and log-book violations. The owner was fined a total of £12,000 and the Master was fined £6,800.⁴⁴

In March 2021, the owner and Master of the scallop dredger Kingfisher pleaded guilty to four charges connected with the towing of scallop gear without a permit in the North-West Inshore Fishery District and Liverpool Bay Special Protection Area. Sentencing took place at Liverpool Magistrates Court and the owner was fined a total of £42,000 for the four offences, whereas the Master was fined £6,500 for the same four offences. In addition, the owner was required to pay £15,000 costs towards the prosecution and both the owner and the Master incurred a £170 victim surcharge.⁴⁵

In April 2021, the North Eastern Inshore Fishery and Conservation Authority successfully prosecuted the owner and Master of the Star of Annan (OB50) for breaches of applicable scallop dredging regulations off the Yorkshire coast. Scarborough Magistrates Court ordered the master to pay £3,633 and the vessel owner was ordered to pay £187,170 in fines and associated costs.⁴⁶

⁴¹ Marine (Scotland) Act 2010, s. 163.

⁴² See <https://www.gov.uk/government/news/vessel-owner-and-master-guilty-of-illegal-fishing-in-lyme-bay>

⁴³ <https://www.gov.uk/government/news/fishing-vessel-owner-and-skipper-ordered-to-pay-7677250-for-fisheries-offences>

⁴⁴ <https://www.gov.uk/government/news/fishing-vessel-owner-and-skipper-ordered-to-pay-21240-for-fisheries-offences>

⁴⁵ <https://www.nw-ifca.gov.uk/news/owner-and-master-fined-48500-for-dredging-offences/>

⁴⁶ <http://www.association-ifca.org.uk/news/record-fines-imposed-for-inshore-scallop-dredging-offences-off-the-yorkshire-coast>

Recommendation #3: It should be routine practice for prosecutions for fishing offences in Scotland to be brought against the Master and the Owner/Charterer in accordance with fisheries legislation in recognition of their significant interest in the activities of the vessel.

4.3 Levels of criminal fines and sentencing

In terms of criminal sanctions applicable to fisheries offences, the law has almost exclusive recourse to fines, rather than imprisonment.⁴⁷ The precise level of available fines varies depending on the applicable legislation, the precise offence, and the nature of the proceedings.

Offences which are tried by indictment are generally punishable by an unlimited fine. However, in practice, the vast majority⁴⁸ of fisheries offences come before a sheriff and there are limits on the fines that can result from such summary proceedings. A survey of the principal fisheries legislation reveals that most fisheries offences are today punishable with a maximum fine of £50,000, whereas some more technical offences are subject to a maximum fine of £10,000. The main outlier is the Inshore (Fishing) Scotland Act 1984, which prescribes a maximum fine of £5,000 for violating an order under the Act.⁴⁹ This level has not been increased since the initial adoption of the legislation in 1984, despite the fact that the severity of maximum penalties does tend to decrease over time due to the effects of inflation - £5000 in 1984 is the equivalent to more than £16,400 in 2020.⁵⁰ It would be reasonable for Scottish Ministers to conduct regular reviews of sanctions in order to ensure that they do provide a sufficient deterrent, as called for by the international framework discussed in section 2. However, any review would have to address adequacy of sanctions in the broader context of other measures that may be applied by a court, as discussed in section 4.4 below.

Recommendation #4: The Scottish Ministers should undertake a review of maximum penalties under fisheries enactments in order to ensure that they continue to exercise a sufficient deterrent, taking particular account of the effect of inflation

⁴⁷ This has not always been the case; see the original version of section 11 of the Sea Fish (Conservation) Act 1967, which provided for a fine not exceeding £200 or a term of imprisonment not exceeding three months or both for second and subsequent offences under certain provisions of the Act.

⁴⁸ One high-profile prosecution on indictment in the past few decades is the so-called Black Fish scandal which led to fines of up to £80,000 on individuals involved; see R Smith, 'Documenting the UK "Black Fish Scandal" as a case study of criminal entrepreneurship' (2015) 35 *International Journal of Sociology and Social Policy* 199.

⁴⁹ It is worth noting that fishing licences also contain conditions prohibiting fishing within closed areas under the Inshore Fishing (Scotland) Act 1984 and the maximum penalty for such offences is £50,000.

⁵⁰ Calculation using the Bank of England inflation calculator; see <https://www.bankofengland.co.uk/monetary-policy/inflation/inflation-calculator>

Table: maximum fines under significant fisheries enactments

Legislation	Maximum fine on summary conviction
Inshore Fishing (Scotland) Act 1984, section 4 (contravention of inshore fishing order)	Fine not exceeding £5,000
Sea Fish (Conservation) Act 1967, sections 1 (size restrictions for landing/carriage/sale), 2 (size restrictions for processing), 3 (regulation of nets/gear), 4A(3) (transhipment), 4A(6) (transhipment), 5(1) (restrictions on fishing), 5(6) (restrictions on fishing), 6(5) (restrictions on landings), 6(5A) (restrictions on landings)	Fine not exceeding £50,000 ⁵¹
Sea Fish (Conservation) Act 1967, sections 4A(7) (failure to provide information), 4A(8) (false information), 7(3) (false declarations)	Fine not exceeding the statutory maximum (£10,000)
Sea Fisheries Act 1968, Section 5 (contravention of order regulating the conduct of fishing operation)	Fine not exceeding the prescribed sum (£10,000)
Marine (Scotland) Act 2010, offences under sections 94-95 (restriction on activities within marine protected areas)	Fine not exceeding £50,000
Sea Fishing (EU Recording and Reporting Requirements) (Scotland) Order 2010/334, all articles	Fine not exceeding £50,000
The Sea Fishing (Illegal, Unreported and Unregulated Fishing) (Scotland) Order 2013, all articles except 9(15)	Fine not exceeding £50,000
The Sea Fishing (Illegal, Unreported and Unregulated Fishing) (Scotland) Order 2013, article 9(15) (unlawful disclosure of information)	Fine not exceeding the statutory maximum (£10,000) or imprisonment for a term not exceeding 12 months or both
The Sea Fishing (EU Control Measures) (Scotland) Order 2015, all articles except article 21(2))	Fine not exceeding the statutory maximum (£10,000)
The Sea Fishing (EU Control Measures) (Scotland) Order 2015, article 21(2) (landing of controlled catch in specified ports)	Fine not exceeding £50,000
Fisheries Act 2020, Offences under sections 12(3) (unauthorized entry into EEZ), 14(6) (fishing without a licence), 16(6) (foreign fishing without licence), para 1(4) of Schedule 3 (fishing in contravention of a licence)	Fine not exceeding £50,000
Fisheries Act 2020, Offences under paras 3(2) (failure to provide information) or 3(3) of Schedule 3 (false information)	Fine not exceeding the statutory maximum (£10,000)

⁵¹ This was adjusted by an amendment introduced under section 24 of the Fisheries Act 1981; the original legislation only provided for a fine of £100 for a first time offence.

Even if maximum fines levels were increased, this action is not in itself sufficient to ensure proportionate sanctions, as it is also necessary to look at sentencing practice. Legislation lays down a maximum penalty and the reality of sentencing means that much lower penalties are imposed in practice. Sentencing is a matter for the court and sheriffs have significant discretion in determining what levels of fines to impose; the Procurator Fiscal may not suggest a sentence but must simply draw the court's attention to all of the evidence that might be relevant to sentencing.⁵² A range of factors will be taken into account, including the past record of the accused, the severity and impact of the offence, and any mitigating factors. General guidance produced by the Scottish Sentencing Council require that 'all relevant factors of a case must be considered' and they also dictate that 'sentences should be no more severe than is necessary to achieve the appropriate purposes of sentencing in each case.'⁵³ At the same time, the guidance recognises the variety of purposes that sentencing may serve, including punishment and expressing disapproval of the offending behaviour⁵⁴, which leaves significant leeway for a sheriff to arrive at an appropriate sentence.

A survey of sentencing practice⁵⁵ reveals fines are often at the lower end of the spectrum and it is clear that the full range of possible sanctions is not used; the vast majority of fines are under £10,000, even when the maximum fine would be £50,000. Indeed, of the ten criminal prosecutions that were initiated on behalf of Marine Scotland Compliance between 1 January 2017 and the time of writing, the highest fine imposed was £5,000 for having an automatic grader on board a pelagic vessel. Such low levels are particularly surprising if one takes into account the fact that these are the more serious cases that have been referred to prosecution instead of dealing with them by way of administrative fines which can be imposed up to £10,000, as discussed in section 5.

Another observation that can be made based upon the data is the variability of fines for similar offences. Some variability is not necessarily problematic, given the range of factors that can be taken into account by a sheriff, but a simple comparison based upon data available in the public domain⁵⁶ reveals some significant discrepancies.

⁵² COPFS Book of Regulations, Chapter 9. The Crown may however appeal against an unduly lenient sentence under section 175(4) of the Criminal Justice (Scotland) Act 1995.

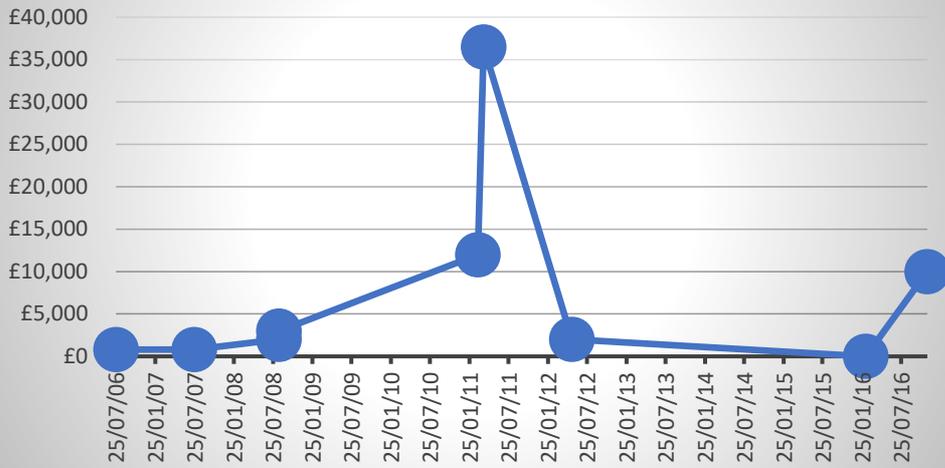
⁵³ Scottish Sentencing Council, Principles and Purpose of Sentencing: Sentencing Guidelines (effective 26 November 2018) 3.

⁵⁴ *Ibid*, 4.

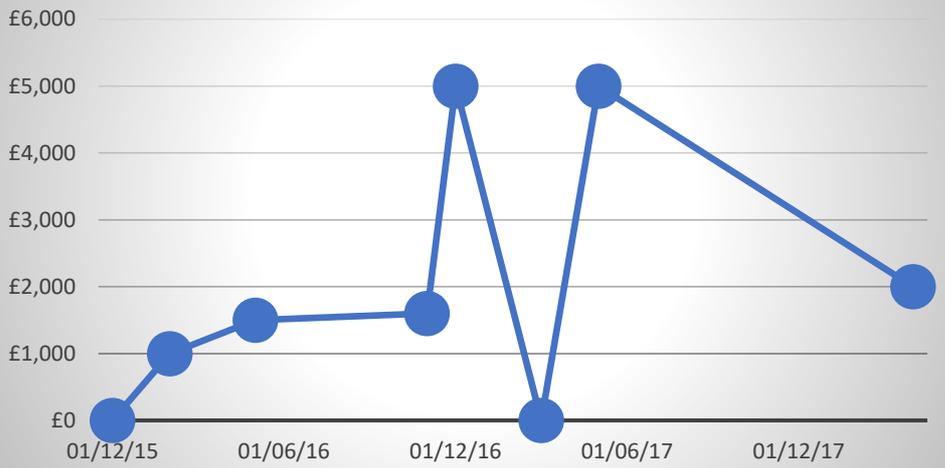
⁵⁵ See the information produced by Marine Scotland: <https://www.gov.scot/publications/marine-and-fisheries-compliance-enforcement-activity/>

⁵⁶ The following tables are based upon information provided on the Marine Scotland website (n55) and the extracted data is replicated in the Annex to this paper.

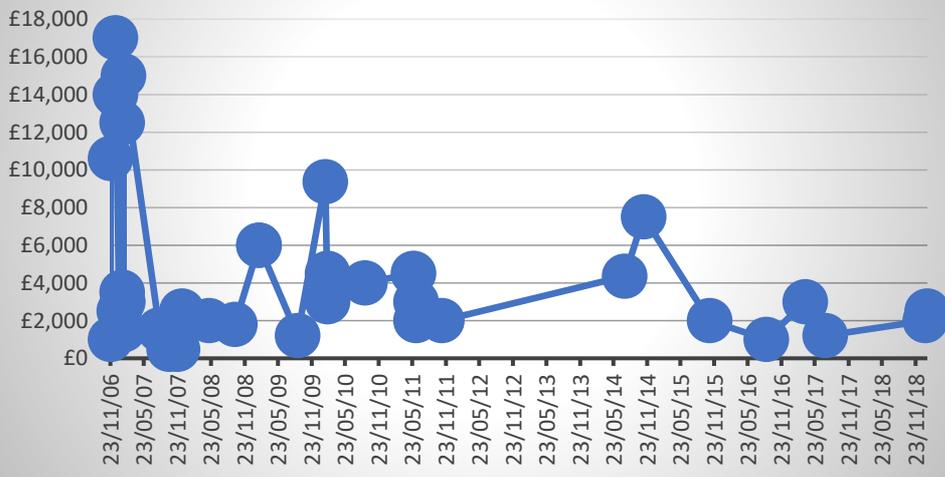
Access offences - fines



Gear offences - fines



Logbook & reporting offences - fines



One way in which to both encourage appropriate use of the range of sanctions available and to promote greater consistency across sentencing is to adopt specific sentencing guidelines that apply to fisheries offences. Such guidelines can be adopted under section 3 of the Criminal Justice and Licensing (Scotland) Act 2010. Once approved by the High Court of Justiciary, courts must have regard to relevant sentencing guidelines when sentencing an offender.⁵⁷ Sentencing guidelines can address a number of issues, including sentencing levels, the particular types of sentences that are appropriate to particular offences, and the circumstances in which the guidelines may be departed from.⁵⁸

Environmental Offences Sentencing Guidelines are already in place in England and Wales, which provide details about the specific factors that must be taken into account when sentencing offenders, including the categorisation of offences based upon specific culpability and harm factors.⁵⁹ These guidelines then include tables which indicate the range of penalties that should be applied to individuals or different sizes of organisations, as well as a list of mitigating and aggravating factors. The guidelines also require courts to consider a number of other possible sanctions (referred to as ancillary orders) such as forfeiture of vehicle, deprivation of property and remediation.

The Scottish Sentencing Council has already begun initial consideration of whether to develop environmental and wildlife crime sentencing guidelines, which could potentially address certain aspects of fisheries offences.⁶⁰ However, given the broader range of issues raised by fisheries offences and the technical nature of many offences, it may also be appropriate to develop specific sentencing guidelines relating to fisheries offences. Even though a relatively small number of criminal prosecutions for fisheries offences come before the courts each year, the specific factors that are relevant to fisheries cases and the need to comply with the broader international legal framework to ensure effective sanctions are good reasons why sentencing guidelines for fisheries would be a useful tool.

Recommendation #5: Scottish Ministers should request the preparation of sentencing guidelines relating to fisheries offences in order to ensure greater consistency in the use of sentencing powers and greater use of the range of penalties that are available

Another option to strengthen fisheries penalties in practice is to introduce minimum fines that apply in certain circumstances. Minimum penalties are permitted in Scots law, although the courts do retain inherent powers to reduce the amount of a fine under the Criminal Justice (Scotland) Act 1995.⁶¹ Nevertheless, minimum fines send a powerful signal to the courts as to the level of penalty that the legislature considers appropriate and it represents a clear starting point from which the court can determine an appropriate penalty.

⁵⁷ Criminal Justice and Licensing (Scotland) Act 2010, s. 6. The legislation is clear that a court may depart from the guidelines but 'it must state the reasons for its decision.'

⁵⁸ Criminal Justice and Licensing (Scotland) Act 2010, s. 3(3).

⁵⁹ See <https://www.sentencingcouncil.org.uk/wp-content/uploads/Environmental-offences-definitive-guideline-Web.pdf>

⁶⁰ <https://www.scottishsentencingcouncil.org.uk/sentencing-guidelines/guidelines-in-development/>

⁶¹ Criminal Justice (Scotland) Act 1995, s. 199.

In this context, it is revealing that, as a result of its latest review of the EU Control Regulation, the EU Commission has proposed amendments which would require Member States to impose a fine of at least three times and up to five times the value of fishery products obtained by committing a serious infringement, with minimum levels increasing for repeated serious infringements.⁶² It is important to recognise that this proposed regulation would only apply to serious infringements, but this category of offences is broadly defined in the Control Regulation to cover many sorts of fisheries offences, including ‘fishing in a restricted or closed area, or a fish stock recovery area, or during a closed season, or without or after attainment of a quota or beyond a closed depth’, ‘engaging in directed fishing, retaining on board, transshipping, transferring or landing species which are subject to a moratorium, a closed season or for which fishing is prohibited’, and ‘using prohibited fishing gear.’⁶³ It remains to be seen whether the Scottish Ministers commitment to keep pace with EU law includes bringing Scots fisheries laws into line with future amendments to the EU Control Regulation, but there are strong grounds for considering the introduction of minimum sentences for certain fisheries offences in line with the approach suggested by the Commission.

Recommendation #6: Scottish Ministers should use its powers under Part 1 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 to align its fisheries penalties with any future changes to the EU Control Regulation.

4.4 Other sanctions available in the course of criminal proceedings

Alongside fines, fisheries legislation often makes provision for other penalties that can be applied by a court if an accused is found guilty.

a) Forfeiture of fish or an equivalent fine

Section 4(4) of the Inshore Fishing (Scotland) Act 1984 provides that a court may in addition to imposing any fine order the forfeiture of ‘any fish in respect of which the offence was committed’ or, alternatively, ‘impose a fine not exceeding the value of such fish.’ Similar provisions are found in the Sea Fish (Conservation) Act 1967⁶⁴, the Sea Fisheries (Shell Fish) Act 1967⁶⁵, and the Fisheries Act 2020, albeit in relation to specific offences.⁶⁶ The purpose of such provisions is to remove any economic benefit from the commission of an offence. However, it is important to note two limitations on this power. Firstly, it is discretionary and courts may choose not to exercise the power. Secondly, and more importantly, these provisions only apply to ‘fish in respect of which the offence was committed.’ In practice, it is often difficult to prove which fish were caught during the commission of an offence, the only major exceptions being fish caught in excess of quota or fish landed in

⁶² The EU Parliament has proposed reducing this to at least two times the value of fishery products.

⁶³ Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) NO 1224/2009, Document COM(2018) 368 final, Article 90(2). These offences always constitute a serious infringement, regardless of the circumstances in which they were carried out.

⁶⁴ Sea Fish (Conservation) Act 1967 Act, s. 11(3).

⁶⁵ Sea Fisheries (Shell Fish) Act 1967, s. 3(3)-(4) and 16(1) and 17(4).

⁶⁶ Fisheries Act 2020, s. 19(3)-(4).

contravention of an express prohibition. In contrast, even if a vessel is caught red-handed fishing in a prohibited area, unless there are fish still in its net at the time, it is difficult to determine which fish on board that vessel were caught in the prohibited area and which fish may have been caught earlier in the fishing trip. Therefore, if forfeiture of fish is to work as a disincentive, the law on this issue requires reform. These provisions can be strengthened by introducing a rebuttable presumption that any fish on board the vessel were caught during the commission of the offence. It would therefore be for the defendant to demonstrate to the court which fish were caught lawfully. Such presumptions are employed in a range of other jurisdictions. For example, section 51 of the Bangladeshi Marine Fisheries Ordinance provides that 'all fish found on board any fishing vessel which has been used in the commission of an offence against any provision of this Ordinance or any rules made thereunder shall, unless the contrary is proved, be presumed to have been caught illegally in the Bangladesh fisheries waters.' Similarly, the Fisheries Act 1982 of Vanuatu provides that 'until the contrary is proved, all fish found on board any fishing vessel which has been used in commission of an offence against this Act shall be presumed to have been caught in the commission of that offence.' Similar provisions are found in section 37 of the Irish Sea-Fisheries and Maritime Jurisdiction Act 2006, which also make forfeiture of fish automatic in certain circumstances.

Recommendation #7: A rebuttable presumption should be introduced into the relevant fisheries legislation in order to make the operation of powers of forfeiture in relation to fish work in practice. Furthermore, any future sentencing guidelines developed in line with Recommendation #5 should provide guidance on when these powers should be utilised by courts.

b) Forfeiture of gear

Section 11(2)(b) of the Sea Fish (Conservation) Act 1967 also provides that 'in the case of an offence under section 3, [a court may] order the forfeiture of the net or other fishing gear in respect of which the contravention constituting the offence occurred.' Given that section 3 of the Act regulates the use of nets and gear, the purpose of this provision is to remove the possession of any net or gear that is illegal under the legislation.

Other UK fisheries legislation contains a broader power permitting the forfeiture of nets and other fishing gear in other circumstances. Thus, Section 4(4) of the Inshore Fishing (Scotland) Act 1984 also provides that a court may order the forfeiture of any net or other fishing gear used in the commission of the offence and any ... gear forfeited under this subsection shall be disposed of as the court may direct.' This power is not necessarily connected to the commission of an offence involving illegal gear, but to any offence under the 1984 Act. A similar broad power is contained in section 19 of the Fisheries Act 2020, which provides in the case of offences under section 12(3), 14(6) or 16(6) or paragraph 1(4) of Schedule 3 (licensing offences) for forfeiture of 'any net or other fishing gear, in respect of which the offence was committed and of any net or other fishing gear used in committing the offence.' In these broader provisions, there is a challenge of knowing which net or gear was used in the commission of the offence, which makes these provisions difficult to apply in practice. In this respect, a presumption that gear on board a

vessel was used in the commission of an offence could be usefully introduced into the relevant legal provisions. By way of example, section 37 of the Irish Sea-Fisheries and Maritime Jurisdiction Act 2006 provides that ‘in a prosecution of an offence in relation to the catching, retention, storage on board, trans-shipment or landing of the fish concerned in contravention of *Chapter 2* or section 25 of the Act of 2003, it shall be presumed, unless the contrary is shown, that the sea-fishing boat concerned was, at the time of the alleged offence, used for the catching, retention, storage on board, trans-shipment or landing of the fish concerned in contravention of the provision concerned, from ... any nets or other equipment or articles on board such sea-fishing boat indicating use of the boat for fishing, the retention, storage on board, trans-shipment or landing of fish relevant to the offence.’

These powers of forfeiture are, however, also discretionary and practice illustrates that these powers are not regularly used by the courts. For example, in the seven reported instances of convictions for carrying equipment to be used for electro-fishing since 1 January 2015, the gear was confiscated in only one case. Some jurisdictions do go as far as making forfeiture of unlawful fishing gear an automatic consequence of conviction. A good example is section 28 of the Irish Sea-Fisheries and Maritime Jurisdiction Act 2006, which provides for compulsory forfeiture of any fishing gear used in the commission of an offence in cases brought on indictment, as well as compulsory forfeiture in summary proceedings in the case of a second or subsequent conviction. When discussing the legality of compulsory forfeiture under the Irish statute, the Court of Justice of the European Union recently noted that ‘if [the maximum fines under Irish law (up to 35,000 EUR depending on the size of the vessel)] were imposed as the sole sanction for that type of offence, they might not effectively deprive those responsible of the economic benefit derived from their infringement – thus such a sanction would be neither effective nor dissuasive’⁶⁷ and it went on to uphold the lawfulness of compulsory forfeiture. This reasoning underpins the need for courts to carefully consider whether sanctions provide a real disincentive for illegal fishing.

Recommendation #8: A presumption should be introduced into the relevant fisheries legislation in order to make the operation of powers of forfeiture in relation to nets or gear work in practice. Furthermore, any future sentencing guidelines developed in line with Recommendation #5 should provide guidance on when these powers should be utilised by courts.

c) Disqualification

Another power available to courts when sentencing convicted offenders is to disqualify the individual from being permitted to carry out a particular activity which must be licensed or otherwise authorised by statute. It is important to remember that the withdrawal or suspension of a licence or other authorisation sits at the top of the enforcement hierarchy discussed in section 3. Given the economic consequences arising from its application, such sanctions should therefore only be used as a last resort. Nevertheless, there may be circumstances in which disqualification, either

⁶⁷ Case C-77/20, Criminal Proceedings against K.M. (Request for a preliminary ruling from the Court of Appeal (Ireland)), Judgment of the Court (Sixth Chamber), 11 February 2021, para. 48.

temporary or permanent, might be a proportionate sanction, particularly in cases of repeat serious offences.

In the context of sea fishing, the main example is now found in section 19(2)(a) of the Fisheries Act 2020, which provides that ‘the court by or before which a person is convicted of an offence under section 12(3), 14(6) or 16(6) or paragraph 1(4) of Schedule 3 [licensing offences] may order that the owner or charterer (if any) of the fishing boat used to commit the offence or, as the case may be, of the fishing boat named in the licence of which a condition is broken, be disqualified for a specified period from holding a sea fishing licence in respect of that fishing boat.’ Yet, there are no reports of a similar sanction found in previous legislation being used in recent practice. Moreover, this power must be understood in light of the introduction of a points system for fishing vessel licences, discussed in section 6 below.

Another pertinent power in this respect is Article 22 of the Sea Fishing (EU Control Measures) (Scotland) Order 2015, which inter alia introduces a system for the first sale of fish products requiring sellers of fish products to be registered under the legislation. Where a person is found guilty of an offence under the Order, Article 22(8) provides that ‘a court may ... order that the registration of the person convicted is revoked, and that person be disqualified from applying for registration ... for a specified or unlimited period.’ There is little public information about how often such sanctions are applied in practice.

Recommendation #9: Any sentencing guidelines which are adopted in accordance with the Recommendation #5 should describe the circumstances in which powers of disqualification should be exercised by the courts.

d) Other mechanisms

For the sake of completeness, it is worth recognising other mechanisms available under general criminal law which may be applied to fisheries offences. One example is the availability of a confiscation order under Part 3 of the Proceeds of Crime Act 2002.

4.5 Publicity

One final aspect of criminal enforcement that should be addressed is the publicity attached to a successful prosecution. In this respect, ‘naming and shaming’ can itself be a form of reputational sanction against an individual or company found guilty of committing a particular offence and research suggests that ‘pressure from the social environment of business is a major explanatory factor for corporate compliance.’⁶⁸ At the end of the day, fishing is a commercial activity and in a sector that is increasingly concerned with sustainability, reputation is an important factor. Moreover, transparency concerning the results of enforcement action may have a function of encouraging compliance amongst the wider community, as ‘the willingness of fishing vessel owners or masters to comply with regulations may be improved if they are assured that their competitors are operating on a level playing field.’⁶⁹ Guidance produced by the UK Government notes that ‘there should be a

⁶⁸ J van Erp, ‘Naming and shaming of corporate offenders’, in G Bruinsma and D Weisburd (eds), *Encyclopedia of Criminology and Criminal Justice* (Springer 2014) 3209.

⁶⁹ Harrison (n31).

presumption in favour of publicising outcomes of criminal cases' in part to improve the effectiveness of criminal justice and to discourage potential offenders⁷⁰, although it notes that limitations may apply in individual cases.

Marine Scotland Compliance does currently list the results of criminal enforcement action on its website, although the level of detail that is provided is minimal. In particular, information is anonymised, which removes any reputational sanction.

Example

On 25 January 2019 at Kilmarnock Sheriff Court, a 44 year old man pled guilty to failing to submit electronic logbook data and was fined £2,500.

This minimalist approach contrasts starkly with the approach of the MMO, which usually releases a detailed press release following successful prosecution, indicating the details of the case, the nature of the violation, the names of the offenders, and the sanctions imposed. Such an approach is likely to have a much greater deterrent effect and it also provides more information to the public as to the enforcement action that is being taken on its behalf.

Recommendation #10: Marine Scotland Compliance should develop a more effective communications strategy in relation to how it publicises successful criminal prosecutions, such as press releases containing detailed information about the nature of the offence and the penalties imposed. This information should also be collated in an annual report on compliance and enforcement action, as recommended above.

⁷⁰ UK Government, *Publishing Sentencing Outcomes: Guidance for public authorities on publicising information about individual sentencing outcomes* (2011).

5. Administrative fines

5.1 Administrative sanctions in the context of fisheries enforcement in Scotland

Fixed penalty notices (FPNs) were first introduced as an enforcement tool in the fisheries context by the Aquaculture and Fisheries (Scotland) Act 2007⁷¹, which has since been amended by the Aquaculture and Fisheries (Scotland) Act 2013.

In their first iteration of the FPN scheme under the 2007 Act, FPNs could only be issued in relation to those sea fisheries offences that had been listed in an order by the Scottish Ministers. In other words, the FPN scheme was not intended to apply to all aspects of fisheries law enforcement, but only ‘relatively minor offences’ ... ‘as opposed to more serious offences that involve large quantities of species and large amounts of money.’⁷² Indeed, it was suggested by officials during the passage of the legislation that the number of cases that would fall within the scope of the FPN scheme was ‘unlikely to exceed 30% of the total number of cases.’⁷³ However, in 2013, the design of the scheme was changed so that it applied to almost all offences under sea fisheries enactments⁷⁴ as well as other offences under marine protection and nature conservation legislation. As a result of this change, most fisheries offences are now dealt with by way of FPNs, albeit with the possibility to refer a matter of prosecution when it is judged that a FPN does not provide a sufficient sanction, as discussed below, or when a fine is not paid.

One of the main motivations for introducing the FPN scheme to fisheries enforcement in Scotland was ‘to provide an alternative approach to prosecution in the courts for minor offences; to increase consistency and transparency; and to protect those who observe the rules and, hence, the communities for which fishing is an important part of the economic fabric.’⁷⁵ In proposing the reform, the Scottish Government explained that ‘the criminal system has proved to be a very expensive method of policing the fishing industry for all parties involved[; c]ases can take a long time to come to court[; t]here are issues with consistency of treatment of offenders and offences by different Sheriffs.’⁷⁶ The purported advantage of the new system was that it would ‘allow [Marine Scotland Compliance] to offer a [FPN] to deal with some fisheries offences quickly and effectively without prosecution.’⁷⁷ Another key benefit of the FPN scheme is to give greater control to Marine Scotland Compliance in initially proposing an appropriate level of penalty, albeit within the constraints imposed by the legislation, thereby removing the process of determining the level of

⁷¹ Aquaculture and Fisheries (Scotland) Act 2007, s. 27; The Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notice) Order 2008.

⁷² Subordinate Legislation Committee, Official Report, 20 February 2007, col 2308.

⁷³ Executive Note, *The Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notice) Order 2008*, para. 5.7.

⁷⁴ FPNs cannot be issued for offences that involve assault of an enforcement officer, obstruction of an enforcement officer or failure to comply with the instructions of an enforcement officer; Aquaculture and Fisheries (Scotland) Act 2007, s. 25(2D).

⁷⁵ See Environment and Rural Development Committee, Official Report, Wednesday 31 January 2007, col 3966. It is also worth noting that the UK was also under pressure from the EU to adopt a system of administrative sanctions for fisheries; see Executive Note, *The Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notice) Order 2008*.

⁷⁶ Executive Note (n73), para. 5.1.

⁷⁷ *Ibid*, para. 5.6.

fisheries penalties from the vagaries of the criminal justice system. Of course, it is always open to the recipient of a FPN to challenge the issuance of an FPN if they so wish, in which case the matter will be referred to the Procurator Fiscal.⁷⁸ This aspect of the scheme was seen as an important safeguard, but it must also be recognised that an implication of linking the FPN scheme to the criminal courts is that ‘for an FPN to be offered, officers must be of the view that there would be a sufficiency of evidence to secure a criminal conviction in the event of non-payment of the FPN.’⁷⁹ In other words, there must be corroborated evidence beyond reasonable doubt that an offence has been committed. This is one significant difference from other approaches to administrative sanctions that will be discussed below.

5.2 Transparency and FPNs

From the perspective of the alleged offender, a major advantage of receiving an FPN is that they will not get a criminal record and the imposition of the FPN will remain confidential. Yet, this feature of the scheme potentially has implications for the power of FPNs to provide an equivalent disincentive to fines imposed by the criminal courts and it also means that the level of transparency applicable to FPNs is reduced, as Marine Scotland Compliance are not able to identify individuals in receipt of FPNs due to data protection legislation. The reduced level of transparency in individual cases is an inevitable part of a system of administrative penalties, but an unintended consequence may be a loss of faith in the enforcement process, because FPNs are seen as a form of ‘secret justice.’⁸⁰ This disadvantage can be partially addressed through better transparency of the use of FPNs in general, however.

Currently, Marine Scotland Compliance does not routinely provide information about the use of FPNs, even if some information has emerged into the public domain as a result of freedom of information requests.

Fixed Penalty Notices (FPN) issued⁸¹			
Issued from SEB	2016	2017	2018
Number of FPNs issued	42	39	36
Number of FPNs Paid	29	30	31
Number of FPNs unpaid	13	9	5
FPNs referred to PF unpaid	11	6	5

⁷⁸ Aquaculture and Fisheries (Scotland) Act 2007, s. 30. Non-payment may also result in referral to the Procurator Fiscal.

⁷⁹ Marine Scotland, *Fixed Penalty Notices – Guidance for Industry* (August 2015) 5. But ‘the fact that an FPN has been issued and accepted will remain on Marine Scotland records following the offence. This is necessary to ensure that where a person is then suspected of the same category of offence at a subsequent date (and perhaps more than once), then this can be given appropriate consideration. However, no criminal record attaches to acceptance of an FPN and nor is it an admission of guilt.’

⁸⁰ See D Leask, ‘Anger over secret justice for skippers who break fishing laws’, *The Herald*, 12 August 2019: <https://www.heraldsotland.com/news/17830449.anger-secret-justice-skipper-break-fishing-laws/>

⁸¹ <https://www.gov.scot/publications/foi-19-01985/>

It would be far more desirable if Marine Scotland Compliance proactively published this information on a regular basis. Indeed, it is worth noting that in 2013, the Rural Affairs, Climate Change and Environment Committee of the Scottish Parliament recommended publication of statistics on the number of FPNs issued in the initial years of the amended scheme 'in order to better assess its effectiveness'⁸², but no action appears to have been taken in response. Yet, to permit effective scrutiny, it is not sufficient to simply publish information about the number of FPNs issued, as it is also necessary to know at least the level of FPNs that have been issued and it would also be useful to know the category of offences for which FPNs were issued.

Recommendation #11: Marine Scotland Compliance should publish regular statistics concerning the use of FPNs, including the number of FPNs that have been issued, the category of offence for which they were issued and the level of the FPN. Such information could be included in an annual enforcement report, recommended above.

5.3 To whom can penalties be granted?

A FPN can be issued to any person who a fixed penalty officer reasonably suspects of having committed a relevant offence.⁸³ Who is liable for such an offence will depend on the primary legislation establishing the relevant offence and a broad distinction can be drawn between the sea fisheries legislation and nature conservation legislation.

As discussed above in relation to criminal prosecution, where a fishing boat is used to commit an offence, sea fisheries legislation generally makes express reference to an offence being committed separately by the master, owner and charterer.⁸⁴ In other words, the master, owner and charterer are all individually subject to strict liability and there is no need to demonstrate their direct involvement in the commission of the unlawful act. Given that these actors all commit an offence in their own right, there is nothing in principle to prevent a FPN being issued to the owner, the charterer, and the master, unless the master and owner are the same individual.

In contrast, nature conservation legislation usually refers to an offence being committed by the person carrying out the unlawful act.⁸⁵ This limits liability to those on the fishing vessel at the time, unless it can be shown that an offence was committed through the 'consent or connivance of, or was attributable to the neglect on the part of ... a director, manager, secretary, or other similar officer' of a corporate body.⁸⁶

FPN guidance issued by Marine Scotland Compliance does not currently specify a policy on whether FPNs will be issued to the owner and/or charterer of a fishing vessel, as well as the master. This contrasts with the position of the MMO who routinely issue FPNs to all concerned actors. However, it is also important to note

⁸² Rural Affairs, Climate Change and Environment Committee, *Stage One Report on the Aquaculture and Fisheries (Scotland) Bill* (SP Paper 260, 2013) para. 421.

⁸³ Aquaculture and Fisheries (Scotland) Act 2007, s. 25(1).

⁸⁴ E.g. Inshore Fishing (Scotland) Act 1984, section 4(1).

⁸⁵ Marine (Scotland) Act 2010, ss. 94-95.

⁸⁶ Marine (Scotland) Act 2010, s. 163.

that as a matter of English law⁸⁷, the relevant actors are jointly and severally liable for an administrative penalty and the MMO ‘will [therefore] accept payment of the penalty by any one person as counting as payment for all others who are liable.’⁸⁸ There is no equivalent constraint in the Scottish legislation, which suggests that Marine Scotland Compliance could have more leeway in deciding when to issue FPNs to the owner/charterer and whether such FPNs should be considered as independent from an FPN issued to the master. Indeed, given that owners/charterers are subject to concurrent criminal liability for the reasons discussed in section 4.2 above, it would make sense if an FPN was issued independently to these actors.

Recommendation #12: Marine Scotland Compliance should develop a policy on when it issues FPNs to owners or charterers of vessels as well as to the master, as well as how it will treat payment of related FPNs for a single offence.

5.4 Level of penalties

By definition, FPNs must be issued according to a pre-arranged scheme of penalty levels. Originally, the maximum level of FPNs was set relatively low, in part to reflect the fact that it was intended to deal with ‘minor’ offences. Moreover, it was explained in the discussion of the Bill that the level was set to be ‘a little lower than what the courts might impose [in order to] free up the court system and give people an incentive to discharge their responsibility.’⁸⁹ At the same time, it was suggested that ‘administrative penalties will track the penalties that are imposed in the courts’⁹⁰ and it was envisaged that penalty levels would be progressively raised over time. Indeed, in 2013, the maximum level of FPNs was increased from £2,000 to £10,000, but this development was premised upon ‘observations [of Marine Scotland] that some of those who commit fisheries offences do so in the knowledge of what an FPN might cost, and therefore treat the FPNs as a “business expense”.’⁹¹ The maximum level of FPNs has not been changed since 2013.

The scale of fixed penalties is currently contained in a Schedule to the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalties) Order 2015:

Penalty Level	Amount
1	£500
2	£1,000
3	£2,000
4	£4,000
5	£5,000
6	£8,000
7	£10,000

⁸⁷ The Sea Fishing (Penalty Notices) (England) Order 2011, article 7(1).

⁸⁸ Marine Management Organisation, *Financial Administrative Penalties for Fisheries Offences* (2020) para. 31.

⁸⁹ Subordinate Legislation Committee, Official Report, 20 February 2007, col 2312.

⁹⁰ *Ibid*, col 2313.

⁹¹ Marine Scotland (n79) 7.

In practice, there is some discretion for a Fixed Penalty Officer to determine the level of penalty according to this scheme. This discretion is exercised in accordance with the guidance issued by Marine Scotland, which sets out four steps in determining the level of a FPN in a particular case.

Steps in determining FPN level

1. Categorisation of the offence
2. Application of the doubling-up principle
3. Calculation of economic benefits
4. Identification of aggravating factors

First and foremost, the FPN guidance distinguishes between the seriousness of the offence based upon seven different categories of fisheries offences. This categorisation provides the starting point for the FPN in a particular case.

Penalty Level	Category	
1 (£500)	Marketing	Least serious
2 (£1,000)	Miscellaneous	↑ □
3 (£2,000)	Tech Con Gear Offences	↑ □
3 (£2,000)	Tech Con Catch Offences	
3 (£2,000)	Recovery and Special Permit Stock offences	↓ □
3 (£2,000)	Control Order Offences – Logbook, Licence, Satellite	↓ □
4 (£4,000)	Access offences	Most serious

Table (Source: Marine Scotland⁹²)

However, the penalty level does not solely depend upon the categorisation of the offence. Another factor taken into account is the compliance record of the person concerned. Thus ‘if the person committed the same category of offence a second time within two years then the level of penalty would be double that of the first offence, provided that it remains within the overall maximum allowed for in the legislation.’⁹³ It is important to note that doubling up only occurs for repeat offences in the same category. Otherwise, past record is not taken into account when setting a fine level, which would appear to be a shortcoming of the scheme as it artificially limits when the past record of an individual would influence the level of penalty and so only partly addresses repeat offending.

At the next step, the level of the FPN can be increased in order to take into account ‘any gain that was made in committing the alleged offence.’⁹⁴ Such gains would include profit from the sale of fish caught during an alleged offence. This is an

⁹² <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2019/08/marine-compliance-fixed-penalty-notices/documents/guidance-on-the-introduction-of-an-administrative-penalties-system-for-minor-fisheries-offences/guidance-on-the-introduction-of-an-administrative-penalties-system-for-minor-fisheries-offences/govscot%3Adocument/marine-compliance-fixed-penalty-notices.pdf>

⁹³ Marine Scotland (n79).

⁹⁴ Ibid.

important consideration given that during criminal proceedings, such fish would potentially be subject to forfeiture, as discussed above. Marine Scotland guidance makes clear that 'should the gain be in excess of the legal maximum of £10,000, then the case would automatically be referred to COPFS should there be judged to be sufficient evidence.'⁹⁵

Finally, when determining the level of fixed penalty offered, it will also be taken into account 'whether the stock in question is identified by the Commission as a Recovery Stock (i.e. is subject to a recovery plan).'⁹⁶ This is the only aggravating factor that is identified at present, which would seem to be a major shortcoming of the guidance. For example, there are a number of other potential factors, which could be taken into account, for example the alleged offence taking place in an area which has a specific nature conservation designation or the alleged offence causing actual damage to the marine environment.

It is also worth noting that a FPN may be issued for each offence committed. Thus, 'multiple offences committed at the same time, each of which qualify for an FPN, may be categorised and given individual fixed penalties.'⁹⁷ It follows that the maximum liability imposed on an individual can exceed £10,000 where multiple offences have been committed.

Recommendation #13: The Guidance for FPNs should be reviewed and revised to allow the broader previous infringement history to be taken into account, as well as indicating further aggravating factors, such as actual damage to the marine environment.

The lack of detailed information about the levels of FPNs issued in practice makes it very difficult to assess how the scheme really operates in practice. It therefore remains open to debate as to whether the current maximum level of FPNs is sufficient to provide an effective deterrent against the commission of fishing offences. At a minimum, Marine Scotland should regularly review this situation in order to determine whether an increase would be necessary. Even taking into account inflation, the amount should arguably be increased every few years.⁹⁸ Unfortunately, any increase in the maximum level of fines would require an amendment to the 2007 Act itself, which is a cumbersome process and demands legislative time. Given that levels may need adjusting periodically to reflect changes in circumstances, it would be appropriate to amend the 2007 Act in order to permit the maximum level of FPNs to be increased by way of order, subject to appropriate scrutiny by the Scottish Parliament. Such procedures exist in comparable situations, such as increases to the standard scale in summary proceedings.⁹⁹

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ According to the Bank of England inflation calculator, £10,000 at 2013 levels would today amount to £11,719.

⁹⁹ Criminal Procedure (Scotland) Act 1995, s. 225(4).

Recommendation #14: The Aquaculture and Fisheries (Scotland) 2007 Act should be amended to allow the maximum level of FPNs to be increased by way of order, subject to appropriate scrutiny by the Scottish Parliament. At the same time, the maximum level of FPNs should be reviewed in order to ensure that it still reflects an appropriate level in order to deter offending.

5.5 More radical options for reform of administrative fines for fisheries offences in Scotland

When the FPN scheme was proposed, the alternative options were described as ‘do nothing’ or ‘decriminalising all fisheries offences and providing an entirely new civil justice system with its own appeal mechanism.’¹⁰⁰ This alternative would appear to have referred to the development of a form of Monetary Administrative Penalties that had been presented in the Macrory report in 2006 as an alternative to criminal prosecution, in which the standard of proof should be the balance of probabilities, rather than the higher criminal standard of proof¹⁰¹ and ‘criminal courts do not play a part in the process and are generally not involved in their application.’¹⁰²

This latter approach was not favoured by the Scottish Executive of the day, in part because ‘[t]here would ... be a risk that the new system proved to be less of a deterrent than the criminal system and the level of compliance in the industry may drop off [which] may potentially de-stabilise the longer term sustainability of the industry which could impact on future Government expenditure.’¹⁰³ Some of this scepticism is misplaced, as a penalty scheme based upon civil law does not necessarily replace criminal enforcement, but rather it offers an alternative. In other words, it would still be an option under this model to refer more serious cases to criminal prosecution, but this choice should be based upon consideration of the ‘ability to change behaviour, ability to eliminate financial gain, and proportionality.’¹⁰⁴ At the same time, costs of a new system and the impact on industry were also cited as factors against radical reform and there is no doubt that a new system would involve set-up costs.

It is worth noting that there is more experience of alternative administrative penalty schemes today compared to 2007. For example, under the Regulatory Reform (Scotland) Act 2014, the Scottish Environment Protection Agency (SEPA) was granted powers to issue fixed penalty notices for certain offences and the legislation makes very clear that ‘a fixed monetary penalty may be imposed on a person only where SEPA is satisfied on the balance of probabilities that the person has committed the offence to which the penalty relates.’¹⁰⁵ The maximum penalty that can be imposed by SEPA using a fixed penalty notice is £2500 (level 4 on the standard scale). However, the legislation also establishes a power to impose variable penalty notices (VPN), again on the balance of probabilities, up to the

¹⁰⁰ *Executive Note, The Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notice) Order 2008*, para. 4.4.

¹⁰¹ Macrory (n17) para. 3.34.

¹⁰² *Ibid*, para. 3.7.

¹⁰³ *Executive Note* (n100) para. 5.17.

¹⁰⁴ Macrory (n17), para. 3.36.

¹⁰⁵ *Regulatory Reform (Scotland) Act 2014*, s. 20(2).

maximum amount that may be imposed on summary conviction or £40,000. An appeal can be made to the Scottish Land Court on specified grounds.¹⁰⁶ As it is a civil penalty, it may be recovered by SEPA as a civil debt if the recipient fails to pay.¹⁰⁷ SEPA must exercise its powers in accordance with guidance produced by the Lord Advocate.¹⁰⁸ This guidance in particular indicates the considerations that must be taken into account by SEPA when deciding whether to issue a FPN or VPN instead of reporting the matter to the COPFS, including the level of criminality (such as compliance history), the level of financial benefit, the extent and significance of any environmental harm, and any other economic impact. This guidance therefore underlines the mutual supportiveness of a civil penalty scheme and criminal prosecution.

Undertaking such reform would not be appropriate without some proper evaluation of the current FPN scheme, which in turn requires more detailed information about the scheme to be made publicly available. However, there may be benefits of an independent civil penalty scheme as described above, which would allow Marine Scotland Compliance to more effectively address minor fisheries offences, without having to meet the high thresholds required for demonstrating evidence of an offence subject to the criminal burden of proof. At the same time, anyone issued with such a fine would have to have access to appeal procedures to challenge any decision against them. If a decision was upheld, it would still not create a criminal record. Yet, it is important that such system sits alongside prosecution, offering Marine Scotland Compliance an option to deal with more serious offences through the criminal courts.

Recommendation #15: An overall review of the FPN scheme should be carried out in order to determine whether it is fit for purpose. Such a review should also analyse the option of establishing a civil penalty scheme embedded within the civil court system.

¹⁰⁶ See Environmental Regulation (Enforcement Measures) (Scotland) Order 2015/383, article 7.

¹⁰⁷ Regulatory Reform (Scotland) Act 2014, s. 29(2).

¹⁰⁸ Ibid, s. 31(2).

6. Licensing and other administrative sanctions

6.1 Revocation and suspension of fishing licences

The commission of fisheries offences may also have repercussions on the right to fish. Commercial sea fishing may only be carried out by a vessel that is licensed by the appropriate authority.¹⁰⁹ Licensing authorities usually have powers to vary, suspend or revoke a licence where they see fit. Thus, under the Sea Fish (Conservation) Act 1967, Ministers were expressly permitted to revoke or suspend a licence 'if this appears to the Minister who granted the licence to be necessary or expedient for the regulation of sea fishing.'¹¹⁰ These powers are now contained in the Fisheries Act 2020, which is even more explicit in providing that a licensing authority may suspend or revoke a licence 'if this appears to be appropriate in a case where there is a contravention of the prohibition in section 14(1) or 16(1), or a contravention of a condition attached to the licence.'¹¹¹ On first blush, this power would appear to provide a broad degree of discretion to the licensing authority to determine when it is 'appropriate' to suspend or terminate a licence. Yet, these powers must also be exercised in light of the scheme for penalty points which was introduced following reforms in EU law in 2009.

According to EU Council Regulation (EC) No. 1224/2009, 'the establishment of sanctions should be complemented by a point system for serious infringements on the basis of which a fishing licence should be suspended if a certain number of points have been attributed to the holder of a fishing licence following the imposition of sanctions for serious infringements.' In this respect, Article 92 of the Regulation provides that 'when a natural person has committed or a legal person is held liable for a serious infringement of the rules of the common fisheries policy, the appropriate number of points shall be assigned to the holder of the fishing licence as a result of the infringement.' Points are only incurred for serious infringements, which are defined in the table reproduced on page 33 below.

It is worth noting that these categories are themselves subject to interpretation and enforcement authorities currently have some discretion in terms of deciding when to impose points on a licence. Thus, whilst fishing within a closed area is in principle a serious infringement, whether or not points are imposed in an individual case will depend upon the 'gravity of the infringement [as] determined by the competent authority.'¹¹² This aspect of the regime has proven to be problematic in practice, leading to the uneven application of the Regulation across EU Member States and proposals from the European Commission to classify some offences as serious infringements, regardless of the circumstances. Indeed, amendments to the Control Regulation proposed by the European Commission foresee a much broader list of serious infringements, as well as removing the discretion of Member States to decide whether an activity constitutes a serious infringement in some cases.¹¹³

¹⁰⁹ Fisheries Act 2020, s. 14.

¹¹⁰ Sea Fish (Conservation) Act 1967, s. 4(9)(b).

¹¹¹ Fisheries Act 2020, Schedule 3, para. 2(2).

¹¹² See Council Regulation (EC) No 1005/2008, Article 3(2).

¹¹³ Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1224/2009, COM/2018/368 final (May 2018) Article 90.

Table: Serious infringements under EU law

No	Serious infringement	Points
1	Not fulfilling of obligations to record and report catch or catch related data, including data to be transmitted by satellite vessel monitoring system (Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(b) of Regulation (EC) No 1005/2008)	3
2	Use of prohibited or non-compliant gear according to Union legislation (Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(e) of Regulation (EC) No 1005/2008)	4
3	Falsification or concealing of markings, identity or registration (Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(f) of Regulation (EC) No 1005/2008)	5
4	Concealing, tampering or disposal of evidence relating to an investigation (Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(g) of Regulation (EC) No 1005/2008)	5
5	Taking on board, transshipping or landing of undersized fish in contravention of the legislation in force or not fulfilling of obligations to land undersized fish (Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(i) of Regulation (EC) No 1005/2008)	5
6	Carrying out of fishing activities in the area of a regional fisheries management organisation in a manner inconsistent with or in contravention of the conservation and management measures of that organisation (Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(k) of Regulation (EC) No 1005/2008)	5
7	Fishing without a valid licence, authorisation or permit issued by the flag State or the relevant coastal State (Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(a) of Regulation (EC) No 1005/2008)	7
8	Fishing in a closed area or during a closed season, without or after attainment of a quota or beyond a closed depth (Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(c) of Regulation (EC) No 1005/2008)	6
9	Directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited (Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(d) of Regulation (EC) No 1005/2008)	7
10	Obstruction of work of officials in the exercise of their duties in inspecting for compliance with the applicable conservation and management measures or the work of observers in the exercise of their duties of observing compliance with the applicable Union rules (Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(h) of Regulation (EC) No 1005/2008)	7
11	Transshipping to or participating in joint fishing operations with, support or re-supply of fishing vessels identified as having engaged in IUU fishing under Regulation (EC) No 1005/2008, in particular those included in the Union IUU vessel list or in the IUU vessel list of a regional fisheries management organisation (Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(j) of Regulation (EC) No 1005/2008)	7
12	Use of a fishing vessel with not nationality and that is therefore a stateless vessel in accordance with international law (Article 90 paragraph 1 of the Control Regulation in conjunction with Article 42 paragraph 1(a) and Article 3 paragraph 1(l) of Regulation (EC) No 1005/2008)	7

Recommendation #16: The Scottish Ministers should review the list of serious infringements in its guidance, in light of developments in EU law, in order to ensure a clearer and more robust points system.

Points may accumulate on the licence and ‘when the total number of points equals or exceeds a specified number of points, the fishing licence shall be automatically suspended for a period of at least two months.’¹¹⁴ 18 points are required to trigger an initial suspension. The Regulation then goes on to specify increased periods for subsequent suspensions and the possibility for the licence to be permanently withdrawn if the specified number of points is exceeded for a fifth time. Industry actors have suggested that ‘the permanent suspension of one’s licence [is] disproportionate’¹¹⁵, although it must be recognised that such a result would only occur if a vessel was allocated the maximum possible points across eight inspections.

Accumulated Points	Length of suspension
18	Two months
36	Four months
54	Eight months
72	One year
90	Permanent withdrawal

There are three further important elements to this scheme. Firstly, the Regulation makes clear that the points attach to the licence, rather than the individual, and so ‘[t]he points assigned shall be transferred to any future holder of the fishing licence for the fishing vessel concerned where the vessel is sold, transferred or otherwise changes ownership after the date of the infringement.’¹¹⁶ The precise details of how this operates in practice are set out in Marine Scotland Guidance.¹¹⁷ In theory, this means that the economic value of a licence may be affected by the imposition of points and recent research has indicated that ‘points ... decrease the value of ... vessels.’¹¹⁸ Secondly, the scheme imposes a number of limitations on how and when points may accumulate. Thus, whilst it is possible that multiple infringements may be detected in a single inspection, the Regulation limits the maximum number of points that can be imposed to 12.¹¹⁹ This means that a licence cannot be suspended based upon the results of a single inspection. Furthermore, the Regulation provides a grace period so that ‘if the holder of a fishing licence does not commit, within three years from the date of the last serious infringement, another serious infringement, all points on the fishing licence shall be deleted.’ Thirdly, there are several ways in which a vessel can have

¹¹⁴ Council Regulation (EC) No 1224/2009, Article 92.

¹¹⁵ *Research for PECH Committee – Social and Economic Impact of the Penalty Point System* (2016) 33.

¹¹⁶ Council Regulation (EC) No 1224/2009, Article 92(2).

¹¹⁷ Marine Scotland, *Guidance Note on EU Points System for Serious Infringements* (May 2013).

¹¹⁸ *Research for PECH Committee – Social and Economic Impact of the Penalty Point System* (2016) 31.

¹¹⁹ Commission Implementing Regulation (EU) No 404/2011 (as amended), Article 126(2)

points deleted, including volunteering to use a vessel monitoring system or an electronic logbook when it is not required to do so by law, agreeing to participate in a scientific campaign for the improvement of selectivity of gear, giving up 10% of the fishing opportunities attributed to the licence, or joining an eco-labelling scheme.¹²⁰

This scheme is clearly a positive development in principle. In particular, it provides a structured framework for understanding how the Scottish Ministers should exercise their powers to suspend or revoke licences under Schedule 3 of the 2020 Act. Nevertheless, there are significant shortcomings of the points scheme in its present form. First and foremost, there is no up-to-date public information concerning which licences have had points imposed on them, thereby undermining the transparency of the scheme. Another major drawback of its implementation in Scotland is the fact that the scheme is only applied following a successful criminal conviction.¹²¹ Yet, as noted above, very few cases are currently reported to the COPFS, which means that the scheme is likely to have very limited application in practice. Data produced by the European Court of Auditors suggests that points were only applied seven times in Scotland between 2013 and 2015.¹²² As a result, the scheme clearly provides a very weak disincentive against offending.

Given that the scheme by definition only applies to serious infringements, there is little reason why it should not apply to such an offence which is subjected to a FPN, as well as offences subject to criminal prosecution. Indeed, this is how the scheme operates in other EU Member States. An interesting model is in place in Ireland whose recently revised licence penalty points scheme operates completely independently from any other sanctioning regime. Under the 2020 Irish Regulations, where an enforcement official detects an alleged serious infringement, a report shall be prepared which is sent to a Determination Panel, consisting of three independent legal professionals charged with deciding, on the balance of probabilities whether a serious infringement has occurred.¹²³ The Regulations are clear that 'points assigned to a holder of an Irish licence remain assigned regardless of any criminal proceedings pending, or the outcome of any such proceedings, in respect of the serious infringement concerned.'¹²⁴

Recommendation #17: The penalty points scheme for fishing vessel licences should be reformed to allow points to be imposed for serious infringements which are addressed through either a criminal prosecution or a FPN.

6.2 Points Scheme for Masters

Based upon the fishing vessel points scheme, a similar scheme was also introduced to apply points for masters of fishing vessels, in accordance with Article 92(6) of the EU Control Regulation. To this end, the Sea Fishing (Points for Masters of Fishing

¹²⁰ Ibid, Article 133.

¹²¹ Marine Scotland, *Guidance Note on EU Points System for Serious Infringements* (May 2013) 2.

¹²² European Court of Auditors, *Special Report on EU Fisheries Control: More efforts needed* (2017) Box 10.

¹²³ European Union (Common Fisheries Policy) (Point System) Regulations 2020, SI No 318 of 2020, reg. 6. There is a subsequent right of appeal to an appeals officer.

¹²⁴ Ibid, reg. 8(1).

Boats) (Scotland) Regulations 2014 provide that persons convicted of committing a serious offence by a court will be allocated points and if the person accumulates at least 18 points, they are suspended from mastering a Scottish fishing vessel for a certain period of time. Furthermore, if a person accumulates 90 or more points, they are disqualified from mastering a Scottish fishing boat. As there is no requirement for a licence or permit to be a master of a vessel, the suspension or disqualification both rely upon an offence of mastering a fishing vessel whilst being suspended or disqualified to do so.¹²⁵ It has been pointed out that there is a potential loophole in the regulations as they do not prevent a suspended or disqualified master from being on-board a fishing vessel and acting as an 'off-the-record' master.¹²⁶ The deterrent effect of the scheme is further undermined by the fact that, at the time of writing, the MMO has failed to produce a register of masters who have been allocated points under the scheme, despite the requirement to do so in the Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014.¹²⁷ Certainly the implementation of the scheme is challenging and it has been controversial in practice. Indeed, it is questionable whether such a scheme is necessary if a rigorous and effective scheme of alternative sanctions were put in place, taking into account the other recommendations in this report.

Recommendation #18: The value of the penalty points scheme for Masters is questionable and subject to appropriate reform of other enforcement measures which lead to more effective sanctions, this scheme should be withdrawn.

6.3 Administrative forfeiture

As noted above, it is possible under certain circumstances for the courts to declare that certain items are forfeited as a penalty in criminal proceedings. Part 3 of the Aquaculture and Fisheries (Scotland) Act 2013 also introduces powers for the Scottish Ministers to demand forfeiture of certain items even if no court order is made. Under section 46 of the 2013 Act, an item seized by enforcement authorities in the exercise of their powers is 'liable to forfeiture ... if the use of the item for sea fishing would in any circumstances constitute an offence under the law of Scotland.' Similarly, section 47 of the Act provides that fish which have been seized by enforcement officials 'are liable to forfeiture under this section if, by virtue of the fish failing to meet requirements as to size, an offence under the law of Scotland has been committed in respect of the fish.' The rationale for these powers was explained in the policy memorandum accompanying the Bill, as follows:¹²⁸

'If items are not forfeited by the courts, or if no proceedings are instigated, then any seized items fall to be returned to their owner. The return of property in certain circumstances, however, may run contrary to the public interest. This might include situations where enforcement officers find persons with live immature shellfish in their possession for the purposes of offering them for

¹²⁵ Sea Fishing (Points for Masters of Fishing Boats) (Scotland) Regulations 2014, reg. 10(5).

¹²⁶ *Research for PECH Committee – Social and Economic Impact of the Penalty Point System Study* (2016) 60.

¹²⁷ Sea Fishing (Points for Masters of Fishing Boats) Regulations 2014, reg. 4.

¹²⁸ Aquaculture and Fisheries (Scotland) Bill Policy Memorandum (2013) para. 157.

sale where the ‘common sense’ approach would be to take the live shellfish and return it to the sea where it can continue to grow. There may also be occasions where the use of seized items in connection with sea fisheries would be illegal. It would, therefore, seem counterintuitive that enforcement action would be taken by the authorities because they had detected illegal activity, only to facilitate the continuation of that same activity through the return of the means to carry out the relevant offence. The Bill, therefore, seeks to provide the Scottish Ministers with powers to dispose of property and the power to forfeit prohibited items which have been seized by enforcement officers.’

These powers explicitly apply either where criminal proceedings have been brought but forfeiture has not been ordered by the court, where a FPN has been issued and paid, or even where no enforcement action has been taken.¹²⁹ However, it would appear that the powers of forfeiture in this situation are significantly narrower than those powers available to a court. For example, the powers only apply to gear that is itself unlawful, not any gear that has been used in the commission of an offence. Similarly, the forfeiture of fish only applies to undersized fish, not to any fish caught in violation of relevant rules.

Where forfeiture is sought under these provisions, the decision on forfeiture is ultimately made by a sheriff¹³⁰, unless no one claims the property in which case the property is automatically forfeit.

6.4 Additional administrative measures as a response to identified violations

a) Variation of licence conditions

As well as having powers to suspend or terminate licences, the Scottish Ministers are also able to vary licence conditions in a range of situations.¹³¹ In theory, this power could be used to impose additional conditions on a fishing vessel that was found to have violated important fisheries regulations.

For example, it has been proposed by the European Parliament that ‘[f]ishing vessels shall be equipped with CCTV technology on a mandatory basis if they have committed two or more serious infringements of the rules laid down in Article 15 of Regulation (EU) No 1380/2013 [relating to the landing obligation] when decided by the competent authority as an accompanying sanction.’¹³²

Similarly, the European Parliament has proposed that ‘Member States shall ensure that vessels having committed an infringement related to the manipulation of an engine in order to increase the power of the vessel above the maximum continuous

¹²⁹ Aquaculture and Fisheries (Scotland) Act 2013, Schedule 2, para. 1(c).

¹³⁰ Ibid, Schedule 2, para. 7. There is a subsequent appeal to the sheriff principal.

¹³¹ Fisheries Act 2020, schedule 3, para. 2(1).

¹³² https://www.europarl.europa.eu/doceo/document/TA-9-2021-0076_EN.html

engine power indicated on the engine certificate are equipped with permanently installed devices that measure and record engine power.¹³³

Both of these measures could be achieved through the imposition of new licence conditions on the vessels concerned. Of course, it is important that any such measures are implemented on a non-discriminatory basis and in accordance with a clear policy relating to the duration of any such conditions and other related matters.

b) Access to funding

Another lever available to the Scottish Ministers to encourage compliance with fisheries regulations is to make access to funding conditional upon not committing any breaches of the applicable law. This was the case under the European Maritime and Fisheries Fund (EMFF), which expressly recognised that ‘the achievement of the objectives of the Common Fisheries Policy would be undermined if Union financial support under the EMFF were disbursed to operators who, *ex ante*, did not comply with requirements related to the public interest of conservation of marine biological resources’ so that ‘applications submitted by operators should only be admissible for funding under the EMFF on the condition that, within a particular period of time before submitting an application for support, the operators concerned have not committed a serious infringement, offence or fraud and have not been involved in the operation, management or ownership of fishing vessels included in the Union list of vessels engaged in illegal, unreported and unregulated (IUU) fishing or of vessels flagged to countries identified as non-cooperating third countries as set out in this Regulation.’¹³⁴ The threshold set for disqualification under this provision was subject to the determination of the competent authority and it is not clear how it was applied in practice in Scotland.¹³⁵ Clearly, the UK and Scottish Governments have a large degree of discretion as to how to design a replacement for the EMFF, but the compliance record of an applicant is a factor that should be taken into account.

Recommendation #19: Any new fisheries funding that is available in Scotland should include effective conditions requiring substantial compliance with fisheries regulations in order to prevent anyone who has committed a serious infringement of fisheries regulations from applying for funding for a prescribed period following the offence.

¹³³ Ibid.

¹³⁴ Regulation (EU) No 508/2014 of 15 May 2014 on the European Maritime and Fisheries Fund, preambular paragraph 15. See also Article 10.

¹³⁵ The implementation regulations make no mention of qualification criteria, simply referring back to the Regulation; see the European Maritime and Fisheries Fund (Grants) (Scotland) Regulations 2015.

7. Conclusion

The paper has identified a number of weaknesses with the existing legal framework relating to fisheries enforcement and penalties. These weaknesses are not simply theoretical, but they result in what has been identified by the European Court of Auditors in a 2017 report as the application of ‘less dissuasive’ sanctions and greater levels of reoffending in Scotland compared to other European countries.¹³⁶ To address these weaknesses, this paper has suggested several concrete ways in which the law could be reformed. The ultimate purpose of strengthening fisheries enforcement in the ways proposed by this paper is to ensure a level playing field between all operators, meaning that the majority of fishers who abide by the rules are not disadvantaged as a result of a smaller number of rogue members of the industry who circumvent the regulations to achieve greater profit. At the same time, effective law enforcement is also about upholding other public interests, recognising that marine ecosystems, of which fish form one part, provide a number of vital ecosystems goods and services.

The individual recommendations in this paper must be considered as a broad package aimed at producing a workable system of sanctions that is fair but effective. Moreover, the exercise of enforcement powers must be consistent and transparent, in line with international policy on this subject. As a result, any legal reform must be accompanied by the development of an overarching compliance and enforcement strategy which explains the key factors which are taken into account when exercising the enforcement powers that are conferred by the legal framework.

Finally, if the potential levels of sanctions are increased, there must be appropriate safeguards in order to protect the fishing industry against disproportionate or discriminatory application of the law. In particular, if there is an extension in the use of administrative powers, such as a reformed fixed penalty scheme or an amended points for licences scheme, procedural safeguards would have to be put in place. One option would be the creation of a Sea Fisheries Chamber of the First-Tier Tribunal established under the Tribunals (Scotland) Act 2014 in order to hear appeals against administrative decisions of the Scottish Government. Such a Chamber could be composed a mixture of legal members and ordinary members with relevant experience of fisheries regulation and practices. Like the Sea Fish Licence Tribunal proposed under the Sea Fish (Conservation) Act 1992¹³⁷ but never operationalised, a Chamber could ‘be peripatetic, travelling to the major fishing ports’¹³⁸, thereby bringing decision-making processes closer the communities directly affected by them.

¹³⁶ European Court of Auditors, *Special Report on EU Fisheries Control: More efforts needed* (2017) para. 87.

¹³⁷ Sea Fisheries (Conservation) Act 1992, s. 2.

¹³⁸ Hansard, HC Deb 9 December 1992, vol. 215, col. 970.

8. Summary of Recommendations

Recommendation #1: Marine Scotland Compliance should develop, consult upon and publish a compliance and enforcement strategy and keep it under review in order to ensure that it is fit for purpose. Such a policy should provide overarching strategic guidance on how the range of enforcement powers at the disposal of Marine Scotland Compliance will be exercised, whilst noting that individual enforcement decisions will be made based upon all of the relevant circumstances.

Recommendation #2: Marine Scotland Compliance should produce an annual report on its compliance and enforcement activities relating to both fisheries and broader marine licensing and nature conservation legislation, including detailed information on the range of sanctions applied in these areas.

Recommendation #3: It should be routine practice for prosecutions for fishing offences to be brought against the Master and the Owner/Charterer in accordance with fisheries legislation in recognition of their significant interest in the activities of the vessel.

Recommendation #4: The Scottish Ministers should undertake a review of maximum penalties under fisheries enactments in order to ensure that they continue to exercise a sufficient deterrent, taking into account the effect of inflation

Recommendation #5: Scottish Ministers should request the preparation of sentencing guidelines relating to fisheries offences in order to ensure greater consistency in the use of sentencing powers and greater use of the penalties that are available

Recommendation #6: Scottish Ministers should use its powers under Part 1 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 to align its fisheries penalties with any future changes to the EU Control Regulation.

Recommendation #7: A rebuttable presumption should be introduced into the relevant fisheries legislation in order to make the operation of powers of forfeiture in relation to fish work in practice. Furthermore, any future sentencing guidelines developed in line with Recommendation #5 should provide guidance on when these powers should be utilised by courts.

Recommendation #8: A presumption should be introduced into the relevant fisheries legislation in order to make the operation of powers of forfeiture in relation to nets or gear work in practice. Furthermore, any future sentencing guidelines developed in line with Recommendation #5 should provide guidance on when these powers should be utilised by courts.

Recommendation #9: Any sentencing guidelines which are adopted in accordance with Recommendation #5 should describe the circumstances in which powers of disqualification should be exercised by the courts.

Recommendation #10: Marine Scotland should develop a more effective communications strategy in relation to how it publicises successful criminal prosecutions, such as press releases containing detailed information about the nature of the offence and the penalties imposed. This information should also be collated in an annual report on compliance and enforcement action, as recommended above.

Recommendation #11: Marine Scotland Compliance should publish regular statistics concerning the use of FPNs, including the number of FPNs that have been issued, the category of offence for which they were issued and the level of the FPN. Such information could be included in an annual enforcement report, recommended above.

Recommendation #12: The Guidance for FPNs should be reviewed and revised to allow the broader previous infringement history to be taken into account, as well as indicating further aggravating factors, such as actual damage to the marine environment.

Recommendation #13: Marine Scotland Compliance should develop a policy on when it issues FPNs to owners or charterers of vessels as well as to the Master, as well as how it will treat payment of related FPNs for a single offence.

Recommendation #14: The Aquaculture and Fisheries (Scotland) Act 2007 should be amended to allow the maximum level of FPNs to be increased by way of order, subject to appropriate scrutiny by the Scottish Parliament. At the same time, the maximum level of FPNs should be reviewed in order to ensure that it still reflects an appropriate level in order to deter offending.

Recommendation #15: An overall review of the FPN scheme should be carried out in order to determine whether it is fit for purpose. Such a review should also analyse the option of establishing a civil penalty scheme embedded within the civil court system.

Recommendation #16: The Scottish Ministers should review the list of serious infringements, in light of developments in EU law, in order to ensure a clearer and more robust points system.

Recommendation #17: The penalty points scheme for fishing vessel licences should be reformed to allow points to be imposed for serious infringements which are addressed through either a criminal prosecution or a FPN.

Recommendation #18: The value of the penalty points scheme for Masters is questionable and subject to appropriate reform of other enforcement measures which lead to more effective sanctions, this scheme should be withdrawn.

Recommendation #19: Any new fisheries funding that is available in Scotland should include effective conditions requiring to substantial compliance with fisheries regulations in order to prevent anyone who has committed a serious infringement of fisheries regulations from applying for funding for a prescribed period following the offence.

Annex

Log book and related reporting offences

- On 23 November 2006 at Dingwall Sheriff Court, a 43-year old man was convicted of a contravention and failure to comply with a Community provision relating to his fishing logbook, and was fined £1,000.
- On 24 November 2006 at Banff Sheriff Court, a 48-year old man was convicted of providing false information on his fishing logbook, and was fined £10,600.
- On 20 December 2006 at Lerwick Sheriff Court, a 41-year old man was convicted of a contravention and failure to comply with a Community provision relating to his fishing logbook, and was fined £14,000.
- On 20 December 2006 at Lerwick Sheriff Court, a 34-year old man was convicted of a contravention and failure to comply with a Community provision relating to his fishing logbook, and was fined £17,000.
- On 09 January 2007 at Banff Sheriff Court, a 40-year old man was convicted of providing false information on his fishing logbook, and was fined £2,500.
- On 25 January 2007 at Dingwall Sheriff Court, a 45-year old man was convicted of three charges of providing false information on his fishing logbook, and was fined a total of £12,500.
- On 25 January 2007 at Dingwall Sheriff Court, a 38-year old man was convicted of providing false information on his fishing logbook, and was fined £3,500.
- On 29 January 2007 at Banff Sheriff Court, a 47-year old man was convicted of providing false information on his fishing logbook, and was fined £3,000.
- On 01 February 2007 at Lerwick Sheriff Court, a 34-year old man was convicted of a contravention and failure to comply with a Community provision relating to his fishing logbook and failing to carry necessary documents on board his vessel, and was fined a total of £1,500.
- On 01 February 2007 at Lerwick Sheriff Court, a 51-year old man was convicted of a contravention and failure to comply with a Community provision relating to his fishing logbook, and was fined £15,000.
- On 16 August 2007 at Dingwall Sheriff Court, a 47-year old man was convicted of failing to complete his fishing logbook and landing declarations, and was fined £1,500.
- On 09 October 2007 at Oban Sheriff Court, a 32-year old man was convicted of failing to complete his fishing logbook and landing declarations, and was fined £475.

- On 23 November 2007 at Dingwall Sheriff Court, a 22-year old man was convicted of failing to complete his fishing logbook and landing declarations, and was fined £480.
- On 18 December 2007 at Banff Sheriff Court, a 53-year old man was convicted of providing false information on his fishing logbook, and was fined £2,500.
- On 13 May 2008 at Banff Sheriff Court, a 36-year old man was convicted of providing false information on his fishing logbook, and was fined £2,000.
- On 29 September 2008 at Banff Sheriff Court, a 33-year old man was convicted of misreporting the area of capture on an EC logsheet, and was fined £1,800.
- On 09 February 2009 at Banff Sheriff Court, a 44-year old man was convicted of misreporting the area of capture on an EC logsheet, and was fined £6,000.
- On 09 February 2009 at Banff Sheriff Court, a 31-year old man was convicted of misreporting the area of capture on an EC logsheet, and was fined £6,000.
- On 07 September 2009 at Banff Sheriff Court, a 38-year old man was convicted of misreporting the area of capture on an EC logsheet, and was fined £1,200.
- On 04 February 2010 at Dingwall Sheriff Court, a 43-year old man was convicted of misrecording the weight of cod on an EC logsheet, and was fined £9,367.
- On 16 February 2010 at Banff Sheriff Court, a 59-year old man was convicted of misrecording the weight of herring on an EC logsheet, and was fined £3,000.
- On 16 February 2010 at Banff Sheriff Court, a 43-year old man was convicted of misrecording the weight of herring on an EC logsheet, and was fined £4,500.
- On 07 September 2010 at Banff Sheriff Court, a 48-year old man was fined £4,000 for misreporting the area of capture of Anglerfish.
- On 31 May 2011 at Banff Sheriff Court, a 47-year old man was fined £4,500 for misrecording the quantity of saithe retained on board his vessel.
- On 14 June 2011 at Banff Sheriff Court, a 37-year old man pleaded guilty to two separate charges of misreporting the area of capture of monkfish and ling. Fines of £2,000 and £3,000 were imposed.
- On 01 November 2011 at Banff Sheriff Court, a 55-year old man pleaded guilty to the offence of misrecording the amount of saithe held on board his vessel and was fined £2,000.
- On 23 July 2014 at Tain Sheriff, Court a 44-year old man was convicted of misrecording of species and was fined £4,355.

- On 03 November 2014 at Banff Sheriff Court, a 55-year old man was convicted of recklessly furnishing false information on an electronic logbook and fined £7,500.
- On 29 October 2015 at Stornoway Sherrif Court, a 31 year old man was found guilty of failing to submit electronic log book data and fined £2,000.
- In September 2016 at Peterhead Sheriff Court, a 43 year old man was found guilty of misreporting his area of catch and was fined £1,000.
- In April 2017 at Stranraer Sheriff Court, a 26 year old man was found guilty of failing to submit FISH1 forms and was fined £3,000.
- On 19 July 2017 at Lerwick Sheriff Court, a 36 year old man was found guilty of failing to submit FISH1 forms and was fined £1,200.
- On 14 January 2019 at Portree Sheriff Court, a 45 year old man was found guilty of failing to submit logsheets within 48 hours of landing and was fined £2,000.
- On 25 January 2019 at Kilmarnock Sheriff Court, a 44 year old man pled guilty to failing to submit electronic logbook data and was fined £2,500.

Gear offences

- On 13 August 2007 at Oban Sheriff Court, a 33-year old man was convicted of a breach of net regulations, and forfeiture of his net was ordered.
- On 17 December 2015 at Campbeltown Sheriff Court, a 56 year old man was found guilty of carrying on board his vessel gear capable of electrofishing and was admonished.
- On 03 February 2016 at Oban Sheriff Court, a 412 year old man was found guilty of carrying on board his vessel gear capable of electrofishing and fined £1,000.
- On 06 May 2016 at Tain Sheriff Court, a man was found guilty of carrying on board his vessel gear capable of electrofishing and fined £1,500
- In November 2016 at Stranraer Sheriff Court, a 30 year old man pled guilty to carrying on board his vessel gear capable of electrofishing and was fined £1,600.
- On 07 December 2016 at Ayr Sheriff Court, a 60 year old man was found guilty of carrying on board gear capable of electrofishing and was fined £5,000.
- In March 2017 at Stranraer Sheriff Court, a 24 year old man pled guilty to carrying on board his vessel gear capable of electrofishing and had gear confiscated. At the same time a not guilty plea for failing to submit FISH 1 forms was accepted.

- On 25 May 2017 at Lerwick Sheriff Court, a 59 year old man was found guilty of having an automatic grader on board his pelagic vessel and was fined £5,000
- In April 2018 at Stranraer Sheriff Court, a 36 year old man was found guilty of carrying on board his vessel, gear capable of electrofishing and was fined £2,000.
- On 27 November 2018 at Peterhead Sheriff Court, a 38 year old man pled guilty to a net offence and was fined £3,200.

Access offences

- On 25 July 2006 at Oban Sheriff Court, a 50-year old man was convicted of fishing in a closed area, and was fined £800.
- On 24 July 2007 at Oban Sheriff Court, a 40-year old man was convicted of fishing in a closed area, and was fined £800.
- On 21 August 2008 at Dingwall Sheriff Court, a 31-year old man was convicted of fishing in a closed area, and was fined £2,000.
- On 21 August 2008 at Dingwall Sheriff Court, a 44-year old man was convicted of fishing in a closed area, and was fined £3,000.
- On 04 March 2011 at Dingwall Sheriff Court, a 40-year old man pleaded guilty to fishing within the Rockall Haddock Box and was fined £12,000.
- On 01 April 2011 at Stornoway Sheriff Court, a 34-year old Master of a Norwegian fishing vessel was fined a total of £36,500 for fishing within the North West of Rockall closed area.
- On 15 May 2012 at Banff Sheriff Court, a 26-year old man was convicted of fishing within the Rockall Haddock Box and was fined £2,000.
- On 11 February 2016 at Campbeltown Sheriff Court, a 35 year old man was found guilty of fishing in a closed area and was admonished.
- On 23 November 2016 at Inverness Sheriff Court, a 40 year old man was found guilty of Fishing in a closed area and was fined £10,000