

EXPLANATORY MEMORANDUM TO
THE SEA FISHING (PENALTY NOTICES) (ENGLAND) ORDER 2011

2011 No 758

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

2. Purpose of the Instrument

2.1 This instrument creates a scheme of financial penalty notices as an alternative to criminal prosecution for sea fisheries offences. It replaces an earlier instrument (The Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 (S.I 2008/984) that created a scheme in relation to Common Fisheries Policy (CFP) offences and extends that scheme to domestic offences, including inshore fisheries conservation byelaw offences, in England. The introduction of financial administrative penalties (FAPs) for domestic offences brings the treatment of such offences into line with the treatment of (CFP) offences leading to a consistent and transparent system of sanctions for all fisheries offences in England.

2.2 Payment of the penalty stated in a penalty notice will mean that criminal proceedings for the offence can no longer be brought. Non-payment will result in the original offence being referred to the courts for prosecution.

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

3.1 This Order revokes ‘The Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2008 No 984 as this instrument will cease to have effect on 6 April 2011 except in relation to Wales and Welsh fishing boats.

4. Legislative Context

4.1 When the administrative penalties scheme for certain EU offences was introduced in 2008, there were no powers in place to apply the scheme to domestic offences. Powers are now available in section 294 of the Marine and Coastal Access Act and enable the scheme to be extended to all domestic sea fisheries offences.

4.2 In England, Sea Fisheries Committee (SFCs) make and enforce byelaws for the protection of fisheries resources out to 6 nautical miles. From 1 April SFCs will be replaced by Inshore Fisheries Conservation Authorities (IFCAs). IFCAs have a wider remit to protect the marine environment including the enforcement of Marine Management Organisation (MMO) byelaws. To carry out these functions effectively, they will need the full range of enforcement tools including the use of administrative penalties, in addition to criminal sanctions.

5. Territorial Extent and Application

5.1 This instrument applies in England and to all English fishing vessels wherever they may be except in the Welsh zone. It also applies to foreign boats within British Fishery Limits except when they are in the Northern Ireland zone, the Scottish zone, and the Welsh zone.

5.2 Legislation is already in place in Scotland allowing the application of FAPs to all fisheries offences. In Northern Ireland, the powers in the 1966 (NI) Fisheries Act are currently being reviewed and decisions to proceed with amendments are expected to be taken in late 2011. This review will also look at the provisions to enable the application of financial administrative penalties for national offences.

5.3 Welsh Ministers recently obtained new powers under the Marine and Coastal Access Act that enable FAPs to be applied to national fisheries offences. The Assembly Government will shortly commence a review of its fisheries legislation and the consideration of FAPs will be an integral part of that review.

6. European Convention of Human Rights

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

7. Policy Background

7.1 Domestic sea fisheries offences are punishable through the courts. Most serious offences attract a fine of up to £50,000 although the courts rarely impose penalties near this maximum. Courts also have the power to suspend or revoke fishing licences but rarely do so. Over the years, there have been considerable doubts about the deterrent effects of using criminal sanctions for minor fisheries offences. Not only are fines generally low, it often takes a long time to bring offenders before the courts because of the process involved.

7.2 Under the new system, both minor breaches of domestic sea fisheries legislation and breaches of EU fisheries legislation are treated the same. Someone issued with a penalty notice will be under no obligation to pay the penalty if they wish to have the matter dealt with in court in the usual way and non-payment of the penalty will not constitute an offence. However, accepting the penalty would enable the fisherman to avoid prosecution for the offence, as payment of the penalty will discharge the person's liability to be convicted for the offence.

7.3 The instrument increases the maximum penalty which may be the subject of a penalty notice at any one time from £4,000 to £10,000. This will reduce the number of instances in which referral to Court is the only possible means of dealing with offences. Notices may be issued for all fisheries offences other than those for assault on, obstruction of and failure to comply with the requirements of, enforcement officers.

8. Consultation outcome

8.1 A full consultation of the proposals was carried out between 11 November 2010 and 3 February 2011. The consultation was posted on the Department's website

and over five thousand organisations, businesses, and interested stakeholders were consulted. Copies of the consultation were placed on the Department's website and in the Department's library. Other Fisheries Administrations in the UK including the SFCs were also consulted.

8.2 No significant objections were received in the 20 responses to the consultation and there was general support for increasing the maximum level of penalty.

8.3 A list of the organisations consulted and a copy of the summary of responses can be found at the following Department web link:

<http://www.defra.gsi.gov.uk/corporate/consult/fisheires-admin-penalties/index.htm>

9. Guidance

9.1 Information relating to the new scheme will be published on the Marine Management Organisation (MMO) and each IFCA district websites. All organisations will publish policies that will detail how administrative penalties will be applied and monitored for effectiveness.

10. Impact

10.1 This instrument has no impact on charities and voluntary bodies.

10.2 Details of the estimated cost and benefits are set out in the Impact Assessment attached to this memorandum. The costs of the proposal, as with the current system, will only fall on businesses that do not comply with fisheries regulations.

11. Regulating Small Businesses

11.1 Fisheries regulations apply to both small and larger firms in the same way.

11.2 Most businesses in the fishing sector consist of individual vessel owners and small fishing companies employing a small number of staff (less than 10 employees). The introduction of a comprehensive system of FAPs will fundamentally change the way fisheries offences are handled. It will enhance the existing system of criminal sanctions by giving offenders the option of accepting a FAP as an alternative to court proceedings and avoiding the stigma of a criminal record.

12. Monitoring and Review

12.1 Enforcement of the scheme will be undertaken by Marine Enforcement Officers who are appointed by the MMO and Inshore Fisheries Conservation Officers appointed by IFCAs.

12.2 The Department would expect to see a gradual reduction in the number of cases dealt with through criminal sanction. The scheme will be closely monitored to ensure that it fully meets the objectives for which it was set up for. Policy intention is to carry out a full review of the scheme three years after implementation.

13. Contact

13.1 Eileen Ashamu at the Department for Environment Food and Rural Affairs.
Tel: 0207 238 4437 or email Eileen.Ashamu@defra.gsi.gov.uk

Title: Introducing a system of Fixed Administrative Penalties for Domestic Fisheries Offences in England. Lead department or agency: Department for Environment Food and Rural Affairs Other departments or agencies: Marine Management Organisation Inshore Fisheries Conservation Authorities	Impact Assessment (IA)
	IA No: DEFRA 1138
	Date: 22/09/10
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Secondary legislation
Contact for enquiries: Eileen Ashamu 0207 238 4437 Les Price 0207 238 6378	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Government intervention in fisheries management is required due to the open access nature of the seas, which results in a 'race to fish'; enforcement of fisheries regulations is therefore required.

The Government is conducting a review of the existing scheme of fixed administrative penalties (FAPs) for breaches of EU fisheries offences introduced in 2008. At the same time, it is considering using the powers now available in the Marine and Coastal Access Act 2009 to extend the scheme to breaches of national fishery legislation, including Inshore Fisheries Conservation Authority (IFCA) byelaws. This will enable all fisheries offences to be addressed in a consistent, flexible manner whilst providing an effective deterrent.

What are the policy objectives and the intended effects?

The objective is to create an improved, coherent, and effective enforcement regime and to provide an effective deterrent for breaches of domestic and inshore fisheries offences. The intended effect is that administrative penalties will aid enforcement by providing more rapidly applicable and effective sanctions and deterring possible offenders. This would increase transparency and reduce costs and uncertainty for fishermen by, offering non-court disposal for minor offending and provide a consistent approach for dealing with all fisheries offences.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Two policy options have been considered:

Option 1) Do nothing - continue with the existing inconsistent approach across all fisheries offences, ie: applying criminal sanctions for minor national fisheries offences and inshore fisheries byelaw offences, and only offering FAPs for minor Common Fisheries Policy (CFP) offences.

Option 2) Our preferred option is to introduce a system of FAPs for national fisheries offences, including inshore fisheries byelaw offences, using powers obtained in the Marine and Coastal Act 2009. The justification for this is that it would mirror and complement the existing FAP scheme for CFP offences and would be in line with the McCory principle of using administrative sanctions as an enforcement tool in all regulatory regimes.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed 01/04/2014
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Date:

Summary: Analysis and Evidence

Policy Option 2

Description:

Price Base Year 2010	PV Base Year 2010	Time Period Years 5	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0.185	0.0012	0.19

Description and scale of key monetised costs by 'main affected groups'

There would be no costs to those who are complying with the law. Government would incur a one-off cost of £150k to fund the updating of the MCSS IT system to allow IFCAs to operate the Fixed Administrative Penalties scheme. There would also be ongoing system maintenance costs which have been estimated to be around £1200 per year. Other initial set up cost to be incurred by the Government include training of IFCA staff and publicity cost which will be a one-off cost of around £35k. Training will be provided by the Marine Management Organisation (MMO).

Other key non-monetised costs by 'main affected groups'

None since enforcement activities will be carried out as normal.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0.07	0.33

Description and scale of key monetised benefits by 'main affected groups'

FAPs would speed up procedures for dealing with infringements and therefore reduce the administrative burden and costs of legal representation for non-compliant fishermen. For Government, there would be potential cost savings as there is an anticipated reduction in the number of court cases. Based upon information provided by the SFCs to date, the anticipated savings to IFCAs when FAPs replace current prosecutions may be in excess of £70K p.a. and in excess of £100K p.a. for court costs.

Other key non-monetised benefits by 'main affected groups'

The main non-monetised benefit is an expected improvement in compliance through the use of a system of stepped penalties to discourage repeat offending. FAPs would speed up procedures for dealing with infringements and therefore reduce the administrative burden and costs of legal representation for non-compliant fishermen. In addition, there would be potential reduction in the amount of fishing time lost through court attendance. Offenders can avoid the stigma of a criminal record by accepting a FAP as an alternative to court proceedings. FAPs would also provide greater uniformity in penalties for similar offences. There would also be a potential reduction in the burdens on the courts and therefore also legal aid system.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5

It is assumed that the MMO will update its IT systems to incorporate IFCA byelaw offences since Government have already negotiated a contract with the MMO detailing the provisions necessary to provide the appropriate update of the MCSS system. If the work is delayed for any reason the existing FAP system can be used in the interim and any gaps will be dealt with by each IFCA district manually.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net: 0	Policy cost savings:	No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England				
From what date will the policy be implemented?	01/04/2011				
Which organisation(s) will enforce the policy?	MMO and IFCA's				
What is the annual change in enforcement cost (£m)?	None anticipated				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	Yes				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:		Benefits:		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ¹ Statutory Equality Duties Impact Test guidance	No	9
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	8
Small firms Small Firms Impact Test guidance	No	8
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	8
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	8
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	9
Human rights Human Rights Impact Test guidance	No	9
Justice system Justice Impact Test guidance	Yes	8
Rural proofing Rural Proofing Impact Test guidance	Yes	9
Sustainable development Sustainable Development Impact Test guidance	No	8

¹ Race, disability, and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill applies to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, and Enactment).

No.	Legislation or publication
1	http://www.opsi.gov.uk/si/si2008/pdf/uksi_20080984_en.pdf
2	http://www.opsi.gov.uk/si/si2008/em/uksiem_20080984_en.pdf
3	Section 294 of the Marine and Coastal Access Act 2009
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0.185									
Annual recurring cost	0.0012	0.0012	0.0012	0.0012	0.0012					
Total annual costs	0.1862	0.0012	0.0012	0.0012	0.0012					
Transition benefits	NIL									
Annual recurring benefits	0.07	0.07	0.07	0.07	0.07					
Total annual benefits	0.07	0.07	0.07	0.07	0.07					

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

1. Introduction

1.1 This IA relates to the Sea Fisheries England: Amendment of the Sea Fishing (Enforcement of Community Measures) (Penalty Notices) Order 2011. This Order repeals the existing Order for a FAP scheme for EU offences and replaces it with one that includes FAPs for breaches of domestic fisheries legislation and Inshore Fisheries Conservation Authorities byelaw offences as well as EU offences.

2. Purpose and Intended Effect of the Proposal

2.1 Fisheries management is required due to the open access nature of fisheries. Without regulation of some sort, open access can result in overfishing. Fishermen acting on an individual basis fail to take account of the effect of their activity on the ability of others to catch fish. The resultant 'race to fish' therefore has a detrimental effect on fish stock.

2.2 With the need to manage fisheries comes the need to enforce any resultant regulation. The success of any enforcement scheme depends on how well it deters potential offenders and this is dependent on two factors: firstly the probability of being caught and secondly the consequences of being caught (i.e. the scale of the fine etc).

2.3 Currently domestic and inshore byelaw offences are treated differently to offences under the CFP. CFP offences can be addressed through the use of FAPs, which provides a relatively quick and flexible mechanism for dealing with minor offences. FAPs cannot currently be used for domestic and inshore offences. These ultimately have to go through the criminal courts. For relatively minor offences, this is likely to reduce the effectiveness of the enforcement system because it is often difficult to justify and not in the public interest to undertake a court proceeding for a minor infringement and therefore there is little consequence of being caught. Therefore, the deterrent effect for minor offences may be relatively low.

2.4 The intention is therefore to review the existing scheme for CFP offences and amend the existing Order using the powers now available in the Marine and Coastal Access Act 2009 to be able to apply it with the effect of providing a system of administrative penalties for inshore and domestic fisheries offences. This will provide a streamlined system with a consistent methodology at the disposal of enforcement officers for dealing with all fisheries offences and provide an effective deterrent.

2.5 Government intervention is needed to provide a revised FAP scheme which would enable all fisheries offences to be addressed in a flexible, proportionate, and consistent manner and provide an effective deterrent to those who consider breaching domestic fisheries regulations.

3. Background

3.1 Currently in England, domestic fisheries offences are dealt by means of criminal sanctions. However there have been doubts about the deterrent effect of criminal sanctions. Although significant penalties are available to the courts, these have not always been applied consistently and have thus created a good deal of inconsistency in the penalties incurred for similar offences.

3.2 Fisheries regulations are enforced by Marine Enforcement Officers (MEOs) of the MMO and Officers of Sea Fisheries Committees (SFCs). Sea Fisheries Committees make and enforce byelaws for the protection of fisheries resources out to 6 nautical miles. Under the provisions of part 6 of the Marine and Coastal Access Act 2009, SFCs will become Inshore Fisheries and Conservation Authorities (IFCAs) on April 2011 with a wider remit to protect the marine environment and enforce MMO Marine Conservation Zone byelaws. It is envisaged that IFCAs will apply administrative penalties for breaches of MCZ byelaws when they are in place.

3.3 Various Government reports such as 'The Net Benefits² reports' published by the then Prime Minister's Strategy Unit on 25 March 2004 recommended that Fisheries Departments should introduce a simple administrative penalty system which is transparent and predictable to the industry. Following these recommendations, Defra developed the existing CFP administrative penalties scheme through effective co-operative discussions between UK Fisheries Departments and the UK Fishing Industry.

3.4 In 2008 UK Fisheries Departments introduced a scheme for offering financial administrative penalties for minor fisheries offences for EU offences only. The existing FAP scheme for EU offences was designed to:

- be applied more rapidly and effectively;
- increase transparency;
- reduce costs and uncertainty for fishermen;
- offer fishermen non court disposal for minor offending, and;
- provide an effective deterrent.

For consistency of approach powers have been provided by the Marine and Coastal Access Act to apply financial administrative penalties to national offences.

4. Rationale for Government Intervention

4.1 Effective fisheries management is a key requirement in meeting the goals of sustainable development. Currently in England there is no consistent approach in place to manage and enforce all minor fisheries offences. When the administrative penalties scheme for minor EU offences was introduced, there were no powers in place to enable the scheme for domestic offences. The new powers obtained in the Marine and Coastal Access Act 2009 will enable the scheme to be extended to all domestic fisheries offences.

Under part 6 of the Marine and Coastal Access Act 2009 SFCs will become IFCAs on April 2011 with a wider fisheries and environmental remit, for example to protect and further the objectives of MCZs. IFCAs will need to be able to apply administrative penalties for breaches of such MMO byelaws as well as for breaches of their own byelaws; - without government intervention IFCAs will not have the power to apply such administrative sanctions.

5. Consultation

Within Government

5.1 There have been various discussions between Defra and other Fisheries Administrations in the UK and with other Government Departments on extending the existing FAP scheme to national fisheries legislation. The outcome of these discussions is that there will be no negative impact arising from this proposal as it would be consistent with the principles of better regulation

Public Consultation

5.2 In July 2010, the Department carried out an informal consultation with the 11 Sea Fisheries Committees (who will become IFCAs on 1 April 2011) on the proposed system of FAPs for their byelaw offences. SFCs were in favour of the introduction of a FAPs system.

5.3 This IA accompanies a fuller consultation of the proposed scheme for domestic fisheries offences including the review of the existing scheme for CFP.

² The Prime Minister's Strategy Unit Report, Net Benefits – A Sustainable and Profitable Future for the Fishing Industry, March 2004

6. Options

Option 1: Do Nothing

6.1 Keeping the existing system would be more costly and time consuming due to the administrative and legal costs of preparing for court cases. Fishermen would also incur costs in terms of legal fees and loss of earnings due to interruption of fishing activities caused by having to attend court. The extent of the preparation required for court cases will depend on the nature of the offence. In terms of Government expenditure, some fishermen would be eligible for legal aid to cover legal costs. In this instance, solicitor costs would fall to the Government.

The example illustrated in Table 1 shows the number of infringements detected by the MFA (now MMO since 1 April 2010) since 2004 that have resulted in either written warnings or prosecutions. The number of prosecutions has reduced considerably over this period; in 2010 the number of cases was nearly 90% lower than in 2004. The reduction in written warnings and prosecutions reflects a trend towards increased compliance as a result of more targeted inspections and risk based enforcement.

Table 1

Year	Written Warnings	Prosecutions
2010	50	10
2009	87	28
2008	158	74
2007	145	200
2006	162	191
2005	149	127
2004	115	90

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

Option 2: Introduce a system of Financial Administrative Penalties for all minor fisheries offences

6.2 This option would fundamentally change the way fisheries offences are handled once the existing system of criminal sanctions is enhanced with a comprehensive system of administrative penalties. The proposal would allow enforcers to offer FAPs to deal with some fisheries offences quickly and effectively without prosecution. In certain inshore fisheries using administrative sanctions in the first instance will make enforcement more consistent with other fisheries offences in England.

6.3 Costs and Benefits by main affected groups

There are no costs and benefits associated with Option 1 'do nothing'

Option 2

Costs to Government

6.3.1 There is a supporting IT system already in place that records FAPs accepted by fishermen for CFP offences that will be amended to accommodate domestic fisheries offences. This system will need to be adapted to include new IFCA byelaw offences on or after 1 April 2011. This system will be rapidly accessible to all enforcement officers and will provide a matrix of all fisheries offences in England as well as showing where a written or verbal warning has been issued for an offence.

6.3.2 There will be costs £150k incurred by Government to fund the updating of the MCSS IT system to allow IFCA's to operate administrative penalties. Other initial set up costs to the new IFCA's include staff training at an estimated cost of £35K and publicity costs. The total cost of training IFCA's will depend on the number of officers identified for training and the length of training required.

6.3.4 There will also be ongoing MCSS maintenance/helpdesk/access fees of £1,200 per year; however this cost has already been accounted for under provisions for new burdens money. This was dealt with in the Marine Bill impact assessment.

7. Benefits

Benefits to fishing industry

7.1 FAPs would speed up procedures for dealing with domestic infringements and reduce the administrative burdens and costs of legal representation for non-compliant fishermen. This includes:

- reduction in time lost during court appearance
- reduction in solicitor fees through avoiding court appearance
- reduction in costs of fines payable to the courts if found guilty
- faster conclusion of cases that would have previously been referred to the courts
- avoidance of a criminal record

Table 2 below shows examples of prosecution costs currently incurred by fishermen for breaches of national fisheries Regulations. These estimates are for illustrative purposes only; it has not been possible at this stage to include accurate savings estimates to fishermen due to this policy option.

Table 2

Year	Costs of Prosecution (£)
2005	1,160
2006	933
2007	500
2009	12,750
2010	455.16p

Note: figures relates to prosecution costs incurred by both master and owner for offences per vessels

7.2 In addition to potential savings to the industry there are potential non-monetary benefits: offenders can avoid the stigma of a criminal record by accepting a FAP as an alternative to court proceedings. The system would provide greater uniformity in penalties for similar offences across all fisheries offences thereby removing the uncertainty caused by wide variations of penalties imposed by different magistrates' courts.

Benefits to Government

7.3 The ability to control fishing practices has a significant impact on the marine environment. The FAP system is expected to increase compliance with fisheries regulations. It will become apparent to potential offenders that in place of warnings and cautions, and criminal prosecutions, fisheries infringements will be dealt with swiftly by the imposition of immediate penalties for infringements. This should increase compliance with all fisheries regulations.

7.4 Section 154 of Marine and Coastal Access Act 2009 (MCAA) places a duty on IFCAs (which are created under the MCAA) to ensure that the conservation objectives of Marine and Conservation Zones (MCZs) are furthered by IFCAs. The MMO will make byelaws for the protection of MCZs and these will be enforced by IFCAs applying administrative sanctions for breaches. IFCAs will also make their own byelaws, if necessary, to further the conservation objectives of MCZs and again apply administrative penalties for breaches. The adoption of this policy will allow them to carry out this statutory function in a consistent way and in accordance with policy intentions.

7.5 For the MMO, the domestic scheme will be cost effective, simpler, and easier to enforce as there are existing mechanisms in place to ensure compliance. The extent of savings will depend on reduction in time lost during court appearance and the number of FAPs accepted by fishermen. This means that resources can be directed to other enforcement activities that may result in higher levels of compliance. It would also ensure uniformity and give a more level playing field for all fisheries offences.

7.6 The Table below is based upon available information provided by the existing SFCs. It looks at the possible savings to Government due to the reduction in the number of cases going through the criminal court system when the financial administration penalties scheme is introduced for inshore fisheries conservation byelaw offences.

Table 3

Table 3 - Total cost savings to Government from reduction in number of court hearings for offences detected by SFCs/IFCAs						
SFC/IFCA	Year	No. Court cases	Warnings	Potential no of FAPs (number of court cases avoided)	Savings to IFCAs £	Court costs savings
Cornwall	2007-09	1	10	1	NIL	£450
North Eastern	2007-09	38	35	38	£11,000	£20,491
Northumberland	2007-09	10	21	10	£3,440	£7,474
Sussex	2007-09	3	30	7	£5,000	£10,000
TOTAL					£19,400	£29,415

7.7 Table 3 shows data from 4 SFCs out of a total of 11 SFCs. The average annual savings to IFCAs for these 4 areas is £ 9.7k and the average annual court cost savings is £14.7k. On the basis of this information, for the purposes of this IA it is assumed that the annual savings across all IFCAs would be £30k for direct savings to IFCAs and £40k for court cost savings. It is hoped that as part of this consultation more detailed and accurate evidence is received which can be used to update these figures.

8. Small Firms Impact Assessment

8.1 The majority of vessels that would be affected by the FAP system are small firms. The effect of the proposal on small firms is the same as large firms i.e. there is an increase in the incentive to fish legitimately. Those vessels undertaking legitimate fishing will not face any increase in financial burden. However, in cases where small firms are found to be in breach of byelaws there is an increased likelihood of a financial penalty for minor offences.

9. Competition Assessment

9.1 The proposal would impact directly on the fish catching sector.

The proposal will affect all businesses in the fish catching sector in the same way and is unlikely to directly affect the market structure or change the number or the size of firms. The fish catching sector is not characterized by rapid technology changes. The competition filter was applied to the existing CFP Regulation which once amended to encompass domestic fisheries legislation will apply to all businesses and no concerns were identified. In view of this it is unlikely that there will be an impact on competition and therefore no requirement to undertake a detailed competition assessment is necessary.

9.2 The costs of the proposal as with the existing system will only fall on those businesses that do not comply with fisheries regulations.

10. Enforcement, Sanctions and Monitoring

10.1 Enforcement of these measures will be predominantly undertaken by Marine Enforcement Officers and Inshore Fisheries Conservation Officers. Both organisations will have policies that will detail how administrative penalties will be applied and monitored for their effectiveness.

11. Implementation and Delivery Plan

11.1 The proposed date for implementation of the scheme is 06/04/2011. Guidelines will be produced for IFCA officers and required training for offering penalties for infringements will be provided. Plain English guidance notes will be provided by the MMO in conjunction with IFCA officers.

12. Post Implementation Review

12.1 Defra will carry out a review of the scheme within three years of the scheme being implemented to ensure that it is operating in a consistent and proportionate manner.

13. Specific Impact Assessment Tests

Legal Aid – this proposal creates no new criminal sanctions or civil penalties

Justice System – This proposal will have an impact on the criminal justice system in that fewer cases would come to HM Courts Service since first and second minor fisheries offences would be dealt with through administrative penalties.

Sustainable Development – The proposal to introduce administrative penalties for minor fisheries offences conforms to the five principles of sustainable development to which the Government is committed.

Carbon and wider environmental – The options will have no significant effect on carbon emissions and no wider environmental impact.

Health Impact – The proposal has no significant impact on human health by virtue of its effects on the wider determinants of human health; lifestyle related variables; or demand on health and social care services.

Race/Disability/Gender Equality – The implementation of administrative penalties for minor fisheries offences will be available to all fishermen including foreign fishing vessels. There are no limitations on the grounds of race, disability, or gender.

Human Rights – The Proposal is consistent with the Human Rights Act 1998.

Rural Proofing – Rural proofing is a commitment by Government to ensure domestic policies take account of rural circumstances and needs. The majority of those employed in the fishing and support services are based in coastal communities in rural areas. FAPs would save time in court cases including travel to court and provide economic benefits in the form of greater fishing opportunities for fishing communities.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits, and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below?

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p> <p>There will be a formal monitoring and evaluating plan in place by 1 April 2011 to evaluate the work of Inshore Fisheries & Conservation Authorities. Part of this work will be to assess their enforcement activities including the use of administrative penalties. There will be a statutory duty for IFCAs to report to the SoS every 4 years.</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>The objective of the review is to monitoring and evaluating performance of how IFCAs administer administrative penalties. The review will outline how IFCAs are meeting their objectives and enforcement success criteria. Defra will then measure IFCAs' performance against their objectives.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>Defra will coordinate the collection of annual plans and reports and will summarise the overall performance for the Secretary of State to comment on, based on how well IFCAs have met their high-level objectives. One of the high level objectives is to have an efficient and effective enforcement regime one aspect of that is the use and evaluation of administrative penalties.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>At the moment IFCAs do not have the powers to apply administrative penalties therefore this is the base line and Defra will look to assess improvement in compliance rates when IFCAs are able to use such penalties over a 4 year period.</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <ol style="list-style-type: none">1. By April 2012, demonstrate the use of a transparent, enforcement framework that meets the minimum standard set out in government guidance and is continuously reviewed and improved.2. By April 2012, develop and apply a code of conduct for inspections that aligns IFCA activity and procedures with national standards.
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p> <p>Existing IT system in place to collect data on the application of administrative penalties (MCSS) this will be used by IFCAs.</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]</p>

Add annexes here.