THE SEA FISHING (ENFORCEMENT) REGULATIONS 2018

I am writing to inform you of a forthcoming UK Statutory Instrument, the Sea Fishing (Enforcement) Regulations 2018. The UK Government is proposing to make a statutory Instrument which seeks to extend the existing powers of Inshore Fisheries and Conservation Authorities (IFCA) Officers to include powers to enforce EU measures. The Regulations include provisions that allow IFCA Officers to pursue vessels from their English fisheries district into Scottish waters. To this limited degree it extends and applies to Scotland relying on section 57 (1) of the Scotland Act 1998. It is therefore considered appropriate, subject to Scottish Ministers’ agreement, for the UK government to make the regulations for Scotland in this particular instance.

Background
Marine Fisheries legislation is enforced in England by the Marine Management Organisation (MMO) and the ten IFCA Officers. The MMO manages and monitors the entire English fishing fleet, ensuring compliance with all national and EU fisheries legislation. IFCA Officers enforce legislation in the 0-6 nautical mile sea area of their designated districts. They manage their local fisheries through voluntary actions and district-wide byelaws and enforce national and EU technical conservation measures.

IFCA Officers already have established powers of pursuit into Scotland and the Scottish zone under section 166(4) of the Marine and Coastal Access Act 2009 (MACCA) enabling them to enforce IFCA byelaws. The current proposed draft SI seeks to provide IFCA Officers the same pursuit powers enabling them to enforce a number of EU technical measures which are listed in the Schedule of the SI. Without these powers, there is a potential enforcement
gap, e.g. in circumstances where the IFCA officers pursue a vessel into Scottish waters for breaches of both an IFCA bylaw and a specified EU measure, they can currently only take enforcement action against the bylaw provision.

IFCA officers previously had enforcement functions relating to EU technical measures, such as minimum conservation reference sizes, specified in the Sea Fishing (Enforcement of Community Conservation Measures) Order 2000. However this Order was revoked by the Sea Fishing (Enforcement and Miscellaneous Provisions) Order 2015 as part of the UK Governments Red Tape Challenge, due to a number of specified EU Measures being out of date. At that point, the IFCA officers lost their powers to directly enforce those EU measures.

To allow IFCA officers to continue to enforce relevant EU Fisheries measures directly in their districts, they have been temporarily appointed as Marine Enforcement Officers (MEOs) and cross-warranted by the MMO under section 235 of MACAA. However, this approach is not considered a viable long-term solution because of practical and operational issues with IFCA officers acting as MEOs under the control and authority of the MMO rather than their respective IFCAs.

In March this year the UK Government conducted a four week public consultation seeking stakeholder views on the introduction of the Sea Fishing (Enforcement) Regulations 2018. Responses were received from relevant stakeholders, industry and members of the general public. Approximately 71% of respondents agreed with the introduction of the Regulations, specifically with the reinstatement of IFCA officers as direct enforcers of EU fisheries legislation.

The Regulations are being made under the Secretary of State’s designated powers under section 2(2) of the European Communities Act to implement EU obligations. The reference to section 57(1) of the Scotland Act 1998 appears in a footnote to the preamble. It is there to explain that, although the function of implementing EU obligations in relation to fisheries was transferred to the Scottish Ministers, the Secretary of State still retains power to exercise that function as regards Scotland. This is a standard footnote when powers under section 2(2) are being used by the UK Government in respect of devolved matters in Scotland.

**Effect of regulations**

These Regulations will allow IFCA officers to pursue a vessel into the Scottish zone provided certain conditions are met (not pursuit powers under Section 166(4) of MACAA) and; allow these officers to use their enforcement powers in relation to an offence that has been committed in English waters. The Scottish Government considers that the regulatory powers sought are appropriate, will only be used infrequently and do not affect the enforcement powers of fishery officers in Scotland as per current arrangements.

The provisions within these Regulations will close a potential enforcement gap in the management of the UK inshore fisheries sector and could also indirectly provide an aid to preventing the circumvention of Scottish regulations.
Consequently Scottish Ministers have agreed to the regulatory proposals being taken forward by the UK Government allowing the EU enforcement measures for IFCAs to be transposed on a UK-wide basis.

FERGUS EWING