AQUACULTURE AND FISHERIES (SCOTLAND) BILL
FIXED PENALTY NOTICES (FPNs)
OCTOBER 2012

Purpose

The Aquaculture and Fisheries (Scotland) Bill published on 4 October 2012 includes measures to widen the scope of offences for which FPNs can be used, to include all marine and freshwater fisheries related offences which fall within the responsibility of Marine Scotland.

Subject to approval by the Scottish Parliament, this would mean that Marine Scotland would have access to a common set of options to deal with non-compliance on marine matters, including in relation to aquaculture and marine planning/licensing.

The purpose of this note is to:
- supplement the background provided in the Policy Memorandum which accompanied the Bill,
- outline how FPNs would relate to the existing enforcement provisions,
- set out the process undertaken before the FPN option would be pursued, and
- provide some examples of the types of offences where they might be applicable.

Background

‘Since 2010, instances of non-compliance with aquaculture regulations in Scotland determined as part of the regular inspection programme undertaken by the Fish Health inspectorate have been dealt with through intensive inspections, enforcement letters and, where appropriate, consideration of legal prosecution through the courts. These include trade irregularities and failures of compliances with the Aquaculture and Fisheries (Scotland) Act 2007 and the Fish Farming Business (Record Keeping) (Scotland) Order (2008).

The Bill

The provision in the Bill is about providing Marine Scotland with fair, equitable and proportionate tools to enable them to effectively and efficiently fulfil their responsibilities; and to provide access to a common set of options to deal with instances of regulatory non-compliance, where appropriate and proportionate.

As the Policy Memorandum to the Bill explains, the expansion of the fixed penalty notice system to include other regulatory offences would not only be beneficial to the conservation of the marine environment but also to Marine Scotland, the Crown Office and Procurator Fiscal Service (COPFS), the fishing industry, other industries that work in the marine environment and provide certainty to operators about the consequences of regulatory non-compliance through a transparent and equitable process.
**Process**

Inspectors in the Fish Health Inspectorate ("FHI") are appointed by the Scottish Ministers to act as veterinary inspectors under the fish health legislation and work to a Charter which sets out the standards and quality of service to which they work.

Inspectors are enforcement officers and as such have a common law discretion to deal with regulatory non-compliance with advice or a warning which is generally all that is required to deal with minor issues of non-compliance. Where non-compliance is more serious or earlier advice has gone un-heeded and it becomes repeat offending then they may decide that an improvement notice is necessary, or where appropriate that the matter should be reported to the Procurator Fiscal for prosecution.

Where prosecution is thought appropriate, FHI inspectors will submit their report to Marine Scotland’s Enforcement Unit which is based within Marine Scotland’s Compliance Division, in Edinburgh. The Enforcement Unit screens any prosecution reports that Marine Scotland is considering making to the Crown Office and Procurator Fiscal Service.

The screening process allows what are essentially quality assurance checks to confirm that what is being complained about is actually a criminal offence; that there is sufficient corroborated evidence to support all of the key points in any draft charge to be submitted to the Fiscal, and that guidelines on criminal investigative procedure have been followed. If they are satisfied on these points, and before a report is submitted to the Fiscal, the suspect may be offered a Fixed Penalty Notice. This gives operators an opportunity to accept what has been alleged and deal with their non-compliance outwith the criminal court system by paying a set fine within the deadline given (normally 28 days). If the fixed penalty is not paid within the deadline set, Marine Scotland will then submit their crime report to the Fiscal.

**Where might FPNs be considered appropriate?**

The following is a non-exhaustive list of examples of existing aquaculture related criminal offences which could be potentially liable to Fixed Penalty Notices under the proposal in the Act:-

- Operating an Aquaculture business that is not authorised;
- Making false statements when applying for the authority to operate an aquaculture business;
- Failing to notify changes to the details registered;
- Releasing into the wild or placing an aquaculture animal onto the market in certain circumstances;
- Transporting an aquaculture animal in certain circumstances where certain welfare related conditions are not met;
- Failure to notify a listed disease or suspicion of same in an aquatic animal
- Failing to comply with instructions or obstructing an inspector
- Failure to comply with an enforcement notice