

Marine Scotland

Fixed Penalty Notices - Guidance for Industry

August 2015



marinescotland

TABLE OF CONTENTS	PAGE
Glossary of Terms used in this document	2
Introduction	3
Approach	4
Fixed Penalty Notices (FPN)	5
History of the Scheme	6
Offences:-	
➤ Sea Fisheries	7
➤ Marine Protection / Nature Conservation	9
➤ Aquatic Animal Health	13
➤ Marine Licensing	15
Levels of Penalty	17
Paying	18
“Doubling Up”	19
Financial Gain	19

GLOSSARY OF TERMS

Here is a list of common abbreviations used throughout this document and their meanings:-

ABBREVIATION	MEANING
COPFS ¹	Crown Office and Procurator Fiscal Service
FPN	Fixed Penalty Notice
MEO	Marine Enforcement Officer
BSFO	British Sea Fishery Officer
MS	Marine Scotland ²
The 2007 Act	The Aquaculture and Fisheries (Scotland) Act 2007 ³
The 2010 Act	The Marine (Scotland) Act 2010 ⁴
The 2013 Act	The Aquaculture and Fisheries (Scotland) Act 2013 ⁵
FEPA	Food and Environment Protection Act 1985 ⁶
CPA	Coast Protection Act 1949 ⁷

¹ <http://www.crownoffice.gov.uk/>

² <http://www.scotland.gov.uk/About/People/Directorates/marinescotland>

³ <http://www.legislation.gov.uk/asp/2007/12/contents>

⁴ <http://www.legislation.gov.uk/asp/2010/5/contents>

⁵ <http://www.legislation.gov.uk/asp/2013/7/contents>

⁶ <http://www.legislation.gov.uk/ukpga/1985/48/contents>

⁷ <http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/74/contents>

INTRODUCTION

The original Fixed Penalty Notice (FPN) scheme came into effect on 1 April 2008 and its scope was expanded, by way of the Aquaculture and Fisheries (Scotland) Act 2013, with effect from 16 September 2013. In a sea fisheries context, it applies to owners of vessels; masters of vessels; charterers of vessels; and / or their representatives. It applies to any licensed fishing vessel within the Scottish fishery limits, and also to any Scottish registered licensed fishing vessel wherever it may be.

Fixed Penalty Notices are – under the 2007 Act – a financial penalty offered to a person alleged to have committed an offence, as an alternative to the case being referred to the Crown Office and Procurator Fiscal Service (COPFS) for consideration of criminal prosecution under relevant fishery legislation. The Act provides that an FPN **may** be issued; there is no compulsion to issue an FPN in respect of any of the offences that qualify for an FPN.

The original FPN scheme provided for an FPN that could be offered to a person (ranging from £250 to £2,000) across a variety of sea fishery offences. Again, with effect from 16 September 2013, FPNs can also now be offered in relation to offences committed under marine protection and nature conservation; aquatic animal health; and marine licensing provisions. FPNs potentially offer reduced uncertainty for fishermen and possibly offer reduced costs for fishermen and industry through not requiring to pay legal costs as a result of court proceedings. There is also potential for timescales involved to be reduced and simplified.

Under the legislation relevant to these FPNs, if an FPN remains unpaid it must then be referred to COPFS – this is a requirement of the law. It therefore follows 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.

This document details the revised FPN scheme, following changes made to the parameters of the FPN legislation, through the Aquaculture and Fisheries (Scotland) Act 2013. This amended the 2007 Act, which is where the legislative basis for this FPN regime can be found.

The new expanded FPN regime covers a number of different areas. Any references in this document relate solely to the FPN regime provided for in the 2007 Act, as amended by the 2013 Act.

This document is not a definitive statement of the legislation currently in force. Furthermore, it replaces the current “Guidance for Industry on Administrative Penalties” [sic] that was published on 20 May 2008 and which can be found here: <http://www.scotland.gov.uk/Topics/marine/Sea-Fisheries/Regulation/guidance>.

The legislative requirements are now set out in sections 25 to 31 of the 2007 Act and in the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2015 (SSI 2015/113⁸).

⁸ <http://www.legislation.gov.uk/ssi/2015/113/contents/made>

APPROACH

The FPN scheme has been extended in a number of ways. Firstly, its remit has been broadened in order that offences other than sea fisheries offences can be considered for an FPN. Secondly, the overall level of fine available has also been changed. These changes were agreed by the Scottish Parliament in 2013.

The FPN scheme now covers four broad policy areas, with each area being detailed in its own section of this guidance. The areas now covered by the fixed penalty scheme are:

- sea fisheries;
- marine protection and nature conservation;
- aquatic animal health; and
- marine licensing.

Furthermore, as well as the new offences under the scheme, the document considers the levels of penalty and details the extent to which these have been revised given the new maximum level of penalty set by the 2013 Act. The previous maximum level for an FPN was 80% of level four on the standard scale⁹ of fines in Scotland (which equated to £2,000). The new maximum level under the FPN regime, as provided for in the 2013 Act, is £10,000, which is equivalent to the statutory maximum in Scotland.

⁹ <http://www.scotland.gov.uk/Topics/archive/law-order/17305/8036/8043>

FIXED PENALTY NOTICES

A person can choose to accept the offer of a fixed penalty notice, should they be offered one, in place of criminal court proceedings. The fixed penalty notice system complements existing justice enforcement systems rather than replacing them. It inserts a new method of enforcement into an existing portfolio of enforcement measures and provides an additional option that benefits the person. The person knows with certainty the outcome of the alleged offence and the FPN provides a quick and costed solution, with potentially reduced uncertainty around legal costs.

The fixed penalty scheme does not replace the existing court process. If the person decides not to pay a fixed penalty notice offered to them the case will automatically be referred to the Crown Office and Procurator Fiscal Service (COPFS) for consideration of criminal proceedings.

FPNs should only be issued where there is considered by Marine Scotland Compliance officers to be sufficient evidence to secure a criminal conviction through the courts. FPNs offer the person the opportunity to avoid a potential criminal conviction. Should an offer of an FPN be accepted but not subsequently paid, then the legislation provides that the case will be referred to the Crown Office and Procurator Fiscal Service.

It is important to bear in mind that acceptance of an FPN does not constitute a criminal conviction – it remains an administrative action although 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.

In line with much of fisheries legislation deriving from the European Commission, the FPN scheme operates on the principle that, as well as punishing the individual who has committed the alleged offence through a fixed penalty notice, the FPN seeks to address any gain that was made in committing the alleged offence.

This means that the extent of any financial gain made through the alleged conduct should be reflected in the level of the FPN. 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.

We also recognise that an alleged offence can occur but without there being any obvious financial gain identified. In such a case then the FPN will simply be at one of the penalty levels as set out elsewhere in this document.

HISTORY OF SCHEME

The original parameters of the FPN regime were established through the Aquaculture and Fisheries (Scotland) Act 2007. When the 2007 Act first came into force, the FPN regime related solely to sea fisheries offences. The provisions for issuing Fixed Penalty Notices (FPNs) for fishery offences were provided for in the Aquaculture and Fisheries (Scotland) Act 2007, Part 4, sections 25 – 31. They provided for the issue of an FPN by a British Sea Fishery Officer; the form and content of an FPN; payment of the FPN; and other matters; and they set out that the offences which would qualify for an FPN would be provided for in a subsequent Order.

Section 25 of the 2007 Act originally provided that the sea fisheries offences for which an FPN could be offered had to be specified in an order made by the Scottish Ministers. The detail of the sea fisheries offences covered by the FPN scheme was set out in the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2008¹⁰, schedule 1 (SSI 2008/101). The 2008 Order was amended by the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Amendment Order 2011¹¹ (SSI 2011/60).

Guidance on the original scheme can be found on the Scottish Government website here: <http://www.scotland.gov.uk/Topics/marine/Sea-Fisheries/Regulation/guidance>. This new document replaces the guidance on the original scheme, which was issued in 2008.

The Aquaculture and Fisheries (Scotland) Act 2013 amended the FPN scheme and provided for additional offences to qualify for an FPN. Into the FPN scheme were brought certain offences in the following broad areas:

- marine protection and nature conservation;
- aquatic animal health; and
- marine licensing.

The FPN scheme is managed on a day to day basis by the Surveillance and Enforcement Branch of Marine Scotland Compliance in Edinburgh where questions in relation to this document can be addressed:

Surveillance and Enforcement Branch
Marine Scotland Compliance
Area 1-A North
Victoria Quay
EDINBURGH
EH6 6QQ

However, your local Fishery Office should be your first contact for advice on enforcement. You can find details of your local office here: <http://www.scotland.gov.uk/Topics/marine/Compliance/fishoffices>.

¹⁰ <http://www.legislation.gov.uk/ssi/2008/101/contents/made>

¹¹ <http://www.legislation.gov.uk/ssi/2011/60/contents/made>

OFFENCES

SEA FISHERIES

The extension of the FPN scheme through the 2013 Act did not add any new offences to the list of sea fishery offences for which an FPN can be issued. However, it did remove the requirement for Ministers to specify the offences in an Order. In addition, while the amendments made through the 2013 Act did not change the definition of “Sea Fisheries enactments”, they did introduce a new link to the exercise of functions by specified enforcement officers. The offences in respect of which a fixed penalty notice may be issued are specified in section 25 of the Aquaculture and Fisheries (Scotland) Act 2007, as amended.

The sea fisheries offences which are eligible for an FPN have themselves been organised into categories as shown in table 1 below which are, broadly: marketing offences; miscellaneous offences; technical conservation gear offences; technical conservation catch offences; recovery and special permit stock offences; control order offences which are related to logbooks, licences and satellite monitoring; and finally access offences.

These categories are based on a general scale of seriousness. Offences falling within the least serious categories are more likely to be dealt with by having a penalty imposed at Level 1 (see page 18) whereas offences falling within the most serious categories are more likely to be dealt with at the higher levels. However, this does not indicate the level of penalty that will apply in any given case as other factors, such as the financial gain, will require to be considered along with the alleged offence.

TABLE 1

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

Our observations suggest 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”. This may suggest that there is not enough of a deterrent in the level of FPN being offered. The amount of the financial penalty that is imposed at each of the four existing penalty levels is therefore doubled. This is reflected in the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2015.

Extent of Use of FPNs in Sea Fishery Offences

Marine Scotland has issued in the region of 117 FPNs since the scheme commenced in 2008, the majority (88% or 104) of which have been paid.

Of the FPNs issued so far in relation to sea fisheries offences, initial analysis indicates that roughly 78% of the FPNs have been issued across 6 broad types of offence including: misreporting (21%); retention of fish after an area closure (15%); technical conservation offences e.g. undersize cod-ends and other gear related offences (15%); fishing in closed areas (9%); breach of licence offences with many of them related to electro fishing (9%); and boarding ladder offences (9%). The remaining 22% have been issued across 9 further types of offence.

MARINE PROTECTION / NATURE CONSERVATION

There are a number of offences within this area which have been brought within the remit of the FPN scheme by virtue of the 2013 Act.

We recognise that the issuing of an FPN for some of these offences may prove to be controversial and emotive, and might be seen as “de-criminalising” the offence. Furthermore, a number of the offences listed under this section can attract a custodial sentence should a person be convicted in court proceedings. This is a new development in the FPN regime as none of the sea fishery offences that comprised the initial scheme attracted such a sentence. This perhaps indicates an increased level of seriousness for the offence.

Within the Marine Protection and Nature Conservation area of the FPN scheme, there are a further set of constraints to consider as some of the offences set out in the 2013 Act are not likely to be encountered in a marine environment.

The potential offences to be added to the FPN scheme by the 2013 Act are as follows, and the maximum punishment allowed for in the legislation is provided next to it:-

Offence	Current Punishment
Marine (Scotland) Act 2010	
Contravention of Marine Conservation Orders, section 94 of the 2010 Act	Summary – a fine not exceeding £50,000 Indictment – fine
Prohibited act in the Nature Conservation Marine Protected Areas (MPA), section 95 of the 2010 Act	Summary – a fine not exceeding £50,000 Indictment – fine
Prohibited act in an Historic Marine Protected Area, section 96 of the 2010 Act	Summary – a fine not exceeding £50,000 Indictment – fine
Killing, injuring or taking a live seal, section 107 of the 2010 Act	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 (£5,000) on Standard Scale or both
Failure to comply with seal licence conditions, section 112 (5) of the 2010 Act	Summary – imprisonment not exceeding 3 months or a fine not exceeding Level 5 (£5,000) on Standard Scale or both
Harassment at seal haul out sites, section 117 of the 2010 Act	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 (£5,000) on Standard Scale or both
Wildlife and Countryside Act 1981 as amended by both the Nature Conservation Act 2004 and the	

Wildlife and Natural Environment (Scotland) Act 2011	
Protection of wild birds, nests and eggs and prevention of poaching, section 1, subsections (1), (2), (5), (5A), (5B) and (5C)	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 (£5,000) on Standard Scale or both
Prohibition of certain methods of killing or taking wild birds, section 5(1)	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 (£5,000) on Standard Scale or both
Registration etc of certain captive birds, section 7(1), (3), (4) and (5A)	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 (£5,000) on Standard Scale or both
Sale etc of live or dead wild birds, eggs etc, section 6(1), (1A), (1B), (2), (2A) and (3)	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 (£5,000) on Standard Scale or both
Protection of certain wild animals and prevention of poaching, section 9(1), (2), (4), (4A), (5) but subject to exceptions to those offences in section 10	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 (£5,000) on Standard Scale or both
Protection of wild hares etc. (section 10A(1)) – but subject to exceptions to those offences in section 10B	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 (£5,000) on Standard Scale or both
Prohibition of certain methods of killing or taking wild animals, section 11(1), (2), (3C), (3D) and (3E)	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 (£5,000) on Standard Scale or both
Snares: training, identification numbers, tags etc (section 11A(1), (5), (6))	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 (£5,000) on Standard Scale or both
Snares: duty to inspect etc. (section 11B(1), (2) and (3))	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 (£5,000) on Standard Scale or both
Snares: authorisation from landowners etc. (section 11C)	Summary – imprisonment not exceeding 6 months or a fine not exceeding

	Level 5 (£5,000) on Standard Scale or both
Snares: record keeping (section 11E(1), (3) and (4))	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 (£5,000) on Standard Scale or both
Prevention of poaching: wild hares, rabbits etc. (section 11G(1)) – but subject to exceptions to those offences in section 11H	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 (£5,000) on Standard Scale or both
Sale, possession etc. of wild hares, rabbits etc. killed or taken unlawfully (section 11I (1) and (2))	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 (£5,000) on Standard Scale or both
Protection of wild plants, section 13(1), (2) and (2A)	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 (£5,000) on Standard Scale or both
Introduction of new species, section 14(1) and (2)	Summary – imprisonment not exceeding 12 months or a fine not exceeding £40,000 or both Indictment – imprisonment not exceeding 2 years or a fine or both
Prohibition on keeping etc. of invasive animals or plants, section 14ZC(1)	Summary – imprisonment not exceeding 12 months or fine £40,000 or both Indictment – imprisonment not exceeding 2 years or fine, or both
Prohibition on sale etc of certain animals or plants, section 14A(2)	Summary – imprisonment not exceeding 12 months or fine not exceeding £40,000 or both Indictment – imprisonment not exceeding 2 years or fine, or both
Notification of presence of invasive animals or plants etc., section 14B(1) and (5)	Summary – imprisonment not exceeding 6 months or fine not exceeding Level 5 on Standard Scale (£5,000) or both
Offences in relation to species control orders, section 14K(1), (2) and (3)	Summary – imprisonment not exceeding 12 months or fine not exceeding

	£40,000 or both Indictment – imprisonment not exceeding 2 years or fine, or both
Vicarious liability for certain offences (under section 1(1), (5) or (5B) or section 5) by employee or agent, section 18A(1) and (2)	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 on Standard Scale (£5,000) or both
Liability where securing services through another in relation to certain offences (under section 1(1), (5) or (5B) or section 5), section 18B(1) and (2)	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 on Standard Scale (£5,000) or both
Conservation (Natural Habitats, &c.) Regulations 1994	
Capturing, injuring, killing, disturbing, harassing, taking or destroying the eggs of, obstructing access to or damaging or destroying breeding sites of a European protected species, regulation 39, subject to exceptions in regulation 40	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 on Standard Scale (£5,000) or both
In taking or killing a wild animal it is an offence to use the means listed in regulation 41	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 on Standard Scale (£5,000) or both
Picking, cutting, collecting, uprooting or destroying a wild plant of a European protected species; transporting, possessing or controlling, selling, exchanging etc any live or dead plant or part thereof of that species, regulation 43	Summary – imprisonment not exceeding 6 months or a fine not exceeding Level 5 on Standard Scale (£5,000) or both

As noted in the “Consultation on Wildlife Crime Investigative Powers for Inspectors in the Scottish Society for the Prevention of Cruelty to Animals” (ISBN: 978-1-78412-373-4 found here: <http://www.scotland.gov.uk/Publications/2014/03/1374>) of March 2014, proving the offence has been committed can be challenging in wildlife crimes and sufficiency of evidence can often be considered an issue:-

“It is widely accepted that wildlife crime is difficult to detect and investigate and that this leads to difficulties in mounting prosecutions and convicting those responsible. These crimes often occur in remote locations where there are few or no witnesses.”
(page 2)

The FPN scheme, while offering an alternative to court proceedings, does not affect evidential issues. If an FPN is issued in respect of an alleged offence, there should still be a sufficiency of evidence that would, in the view of Marine Scotland Compliance, support court proceedings.

AQUATIC ANIMAL HEALTH

There are a small number of offences in relation to aquatic animal health which would qualify for the offer of a Fixed Penalty Notice.

The offences that would qualify for an FPN are noted below. The maximum level of penalty is noted beside them.

Aquaculture and Fisheries (Scotland) Act 2007

Offence	Current Punishment
Contravention of an enforcement notice under section 6 in respect of the prevention, control and reduction of parasites	On summary conviction a fine not exceeding level 4 (£2,500) on the Standard Scale

2007 Act, section 25(2A)(f):

Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997 (SI 1997/1729)

Offence	Current Punishment
Defacing, removing or obliterating markings, Regulation 21(2)(c) by virtue of regulation 23(1)(b)	On summary conviction a fine – not exceeding the statutory maximum (£10,000) On indictment – a fine Time barred – 3 years from its commission or 1 year from its discovery

Following this analysis, it can be seen that there are very few aquatic animal health offences that would be added to the FPN scheme. Experience suggests that the number of offences in this regard that may come forward for an FPN are likely to be very small indeed. We therefore anticipate the use of FPNs in relation to these offences to be minimal.

Offences which do not qualify for an FPN are noted below.

2007 Act, section 25(2A)(d):

Aquatic Animal Health (Scotland) Regulations 2009 (SSI 2009/85)

None of the offences contained in these Regulations are relevant to the FPN scheme as all of the offences involve obstruction or non-compliance with directions or requirements. These types of offences are not included in the FPN scheme by virtue of section 25(2D) of the 2007 Act.

2007 Act, section 25(2A)(e):

Animals and Animal Products (Import and Export) Regulations 2007 (SSI 2007/194)

REPEALED	
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This is considered to be a largely compliant section of industry and we do not anticipate there will be many offences where an FPN will be offered.

MARINE LICENSING

Again there are a small number of offences. However, the particular offences in the marine licensing area can cover a wide range of activities. The offences are:

Offence	Current Punishment
Contravention of section 20(1) (offence of carrying on a licensable marine activity, or causing or permitting any other person to carry on such an activity, except in accordance with a marine licence), or failure to comply with any condition of a marine licence, section 39	On summary conviction a fine not exceeding £50,000 On indictment – imprisonment not exceeding 2 years or a fine or both
Contravention of section 42(1) (offences relating to information)	On summary conviction a fine not exceeding the statutory maximum (£10,000). On indictment – a fine.
Failure to comply with a compliance notice or a remediation notice – section 45 of the 2010 Act	Summary – a fine not exceeding £50,000 Indictment – a fine or imprisonment not exceeding 2 years
Failure to comply with a stop notice – section 56 of the 2010 Act	Summary – a fine not exceeding £50,000 Indictment – a fine or imprisonment not exceeding 2 years
Failure to comply with an emergency safety notice – section 58 of the 2010 Act	Summary – a fine not exceeding £50,000 Indictment – a fine or imprisonment not exceeding 2 years

Similar to some of the offences under the marine protection and nature conservation heading, contravention of the offences here can attract a custodial sentence which suggests an extra level of seriousness of offence is now being captured within the FPN scheme.

As noted above there is a broad range of activities that fall under the marine licensing regime at Part 4 of the 2010 Act. Licensable activities may include, but are not limited to:

- The deposit of substances or objects into the sea or onto the sea bed;
- The removal of substances or objects from the sea bed;
- Construction, alteration and improvement works;
- Dredging; and
- The deposit or use of explosives.

Marine licences, which replace consents previously issued under FEPA and CPA, are issued by the Marine Scotland Licensing Operations Team (MS LOT). MS LOT provides a 'one-stop-shop' for all marine licence applications in Scottish Waters.

Should it be suspected that either of the offences noted above has occurred, an investigation will take place. Should officers think it appropriate in light of such investigation, the case may then be referred to officers in Edinburgh for consideration of an FPN or indeed whether a report to COPFS in the first instance is necessary.

LEVELS OF PENALTY

The levels of penalty were set out in Schedule 2 of the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2008. They were:

Penalty Level	Amount
1	£250
2	£500
3	£1000
4	£2000

Under the Aquaculture and Fisheries (Scotland) Act 2007 (Fixed Penalty Notices) Order 2015, and within the new parameters agreed by Parliament, the scale of the existing penalty levels are each doubled. In addition, three further penalty levels are provided for. Penalty levels 1 and 5 may be applied in respect of “first offences”. Penalty levels 2, 3, 4, 6 and 7 may be applied in respect of first offences or in respect of penalty amounts which are “doubled up” once under the doubling up principle (see page 20).

Penalty Level	Amount
1	£500
2	£1000
3	£2000
4	£4000
5	£5000
6	£8000
7	£10,000

This will ensure that the levels of penalty that can be imposed represent a sufficient deterrent to engaging in illegal activity.

Multiple offences committed at the same time, each of which qualify for an FPN, may be categorised and given individual fixed penalties at the discretion of staff within Surveillance and Enforcement Branch of Marine Scotland. The maximum penalty set in the legislation for a single FPN is now £10,000. If there are a number of offences being considered together and the total gain made from those offences is in excess of £10,000 then the case will automatically be referred to COPFS.

PAYING

Once a decision has been made to offer a fixed penalty, a fixed penalty notice will be sent to the person, detailing the circumstances of the alleged offence, the level of fixed penalty being offered, and how to pay the fixed penalty notice.

Wherever possible fixed penalty notices will be sent out via recorded delivery letter. The person will have up to 28 days from the date of the penalty notice to decide whether to accept the offer and pay.

A person who is offered a fixed penalty will be able to pay the penalty and therefore discharge all criminal liability in respect of the matter. If the person does not pay the Fixed Penalty Notice, the case will be referred to COPFS for consideration for possible prosecution. If the penalty is paid within the specified time, no criminal proceedings will be taken and no criminal conviction will be recorded in respect of the alleged offence.

If the fixed penalty is paid, a record of the fixed penalty will be kept to ensure Marine Scotland Compliance is fully informed should a second alleged offence be detected. If the penalty is not paid, the matter will be forwarded to COPFS for consideration of court action. Fixed penalty notices will only be offered in appropriate cases. In cases where an offence qualifies for an FPN but it is not considered appropriate in the circumstances to issue one, no FPN will be issued and the matter will be reported to COPFS.

If an accused person is acquitted in court in relation to an alleged offence, the circumstances of that alleged offence will not be taken into account in the investigation of any future offences which may or may not result case in the offer of a fixed penalty.

An alleged offender will usually have 28 days to pay. There is an exception to the 28 day rule for persons who do not live in the UK; in such cases , the period for paying may be shortened to 7 days. This shorter time scale is designed to deal with the practicality of foreign nationals. Essentially the vessel concerned will be detained in port until any fixed penalty is paid, or the matter is dealt with by the courts in the normal way which may include the setting of a bond for its release.

If an FPN is offered to a person, it is an alternative to court proceedings. This means that officers must be of the view that there is sufficient evidence to merit criminal prosecution. It also means that should the FPN be accepted and paid, then the matter in respect of the offence under consideration at that time is now concluded.

PART PAYMENTS

An FPN must be paid in full within the required time. There is nothing to prevent someone making several part payments within the time required to pay the FPN if they total the overall value of the FPN. However, if the part payments made do not meet the total amount of the FPN by the time payment is due then the case will be referred to COPFS for consideration of prosecution.

DOUBLING UP

In line with the previous FPN regime, the principle of “doubling up” continues within the scheme.

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.

So, for example, if an offence attracted an FPN of £1,000, committing the same category of offence a second time would mean that the level of penalty would be “doubled up” to £2,000 and so on. The FPN scheme currently operates the principle that when a second offence of the same category is subsequently detected as having been committed by the same person, then an FPN of double the value of the original FPN should be issued. This is demonstrated in the table below.

Penalty Level	First Penalty	Second Penalty	Third Penalty
1	500	1000	Referral to COPFS
2	1000	2000	Referral to COPFS
3	2000	4000	Referral to COPFS
4	4000	8000	Referral to COPFS
5	5000	10000	Referral to COPFS
6	8000	Referral to COPFS	
7	10000	Referral to COPFS	

FINANCIAL GAIN

In both EU and domestic legislation, on top of the level of fine set out in statute, some offences also attract a further fine up to the value of the catch, or essentially the financial benefit that had been realised.

The level of fixed penalty offered will reflect any financial gain. Other factors which will be taken into account in determining the level of fixed penalty offered are:

- whether the stock in question is identified by the Commission as a Recovery Stock (i.e. is subject to a recovery plan); and
- whether the person offered the fixed penalty has received a fixed penalty for the same category of offence, except in cases where a second offence attracts a referral to COPS for consideration of prosecution.

**Marine Scotland Compliance
August 2015**