



Management of Domestic Fishing Compliance

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Introduction

The Australian Fisheries Management Authority (AFMA) was established in 1992 as a statutory authority under the *Fisheries Administration Act 1991* (the FA Act). Its role is to manage Australia's Commonwealth fisheries on behalf of the Australian community through the *Fisheries*

Management Act 1991 (FM Act), whilst also addressing the requirements of the *Environment Protection and Biodiversity Conservation Act 1999*.

From 1 July 2008, the AFMA Board was replaced with a Commission and the responsibilities for exercising AFMA's powers and functions were redistributed. Whereas previously the Board had full responsibility, the AFMA Commission is now responsible for domestic fisheries management and the Chief Executive Officer is responsible for foreign fishing compliance and AFMA's finances and human resources.

AFMA manages 24 Commonwealth fisheries that, collectively, encircle Australia and its territories. These fisheries generally extend from the three nautical mile limit of State/Territory coastal waters to the limit of the Australian Fishing Zone.¹ Approximately 350 fishing vessels currently operate within the Commonwealth fisheries. The number of fishing vessels has reduced considerably in the last five years and particularly following the *Securing our Fishing Future buyback program*.

AFMA has established fishery management plans for 12 fisheries.² Fishery management plans are legislative instruments prescribing the mechanisms through which the fisheries will be managed, including the combination of input and output controls. Input controls restrict fishing effort using limitations on: the number, type and size of fishing vessels and gear; fishing area; and fishing time. Output controls regulate the level of catch from a fishery by applying a quota system where each fisher's take is restricted to his/her proportion of the Total Allowable Catch (TAC) for each species. AFMA has been implementing government policy, issued in a Ministerial Direction in December 2005, to change, where applicable, its approach to managing Commonwealth fisheries from input controls to output controls. Using output controls to manage fisheries is central to the *Commonwealth Fisheries Harvest Strategy Policy*, which was released in September 2007, and is designed to support AFMA to manage its fisheries sustainably and profitably.

AFMA regulates access to Commonwealth fisheries using fishing concessions that can be either:

- ongoing access rights, known as Statutory Fishing Rights (SFRs) with conditions attached, which are incorporated into fishery management plans; or
- fishing permits of fixed duration, with conditions attached.

¹ The Australian Fishing Zone extends up to 200 nautical miles from the Australian coastline and includes the waters surrounding Australia's external territories, such as Christmas Island in the Indian Ocean and Heard and McDonald Islands in the Antarctic.

² The draft management plan for a further fishery has been released for public consultation. Management arrangements are in place for all Commonwealth fisheries, and formal management

plans for other fisheries will be developed where it is cost-effective to do so.

Domestic compliance monitoring

Since the mid 1990s, AFMA has engaged the States and Northern Territory departments and agencies with fishery compliance responsibilities (State fishery agencies) to monitor fishers' compliance in Commonwealth fisheries.³ Service Level Agreements (SLAs), negotiated annually with the agencies, accounted for approximately half of AFMA's domestic compliance budgets.

The SLAs establish a compliance budget for each fishery in each State and the compliance activities to be undertaken by these agencies. Compliance activities include fishing vessel inspections in port and at sea, inspections of those entities licensed to first receive fish caught in Commonwealth fisheries (fish receivers) and aerial surveillance. State fishery agencies have also been responsible for instituting enforcement action for breaches detected during their inspections, which included issuing warnings or fines and preparing briefs of evidence for the Commonwealth Director of Public Prosecutions. AFMA is responsible for preparing annual risk assessments of Commonwealth fisheries, collecting intelligence, monitoring SLA performance, and enforcement activities.

In April 2007, the AFMA Board established a Cost Reduction Working Group (CRWG), which included AFMA and industry representatives, to identify and recommend options to: reduce the costs of managing Commonwealth fisheries, including domestic compliance regulation; and generate efficiencies. At the time, AFMA committed to industry to reduce costs to the 2005-06 level by 2009-10. In June 2008, the Board accepted the CRWG's recommendation to centralise AFMA's compliance monitoring function to reduce costs and increase its effectiveness through improved consistency and inspection targeting.

From 1 July 2009, AFMA will use its own staff to undertake inspections of in port vessels and fish receivers. State fishery officers will continue to conduct at sea patrols and aerial surveillance. In implementing this new approach, AFMA has reduced its 2009 10 domestic compliance budget by 16 per cent to \$2.7 million—the cost of its 2005 06 domestic compliance program.

³ Specifically: the New South Wales Department of Primary Industries; the Victorian Department of Primary Industries;

Queensland Boating and Fishing Patrol; Primary Industries and Resources South Australia; Department of Fisheries Western Australia; Tasmanian Police; and, until March 2007, Northern Territory Police. Most Commonwealth fisheries are monitored by more than one State fishery agency.

Audit objectives and scope

The objective of the audit was to examine if AFMA is effectively undertaking its regulatory compliance responsibilities in respect of domestic fishing in Commonwealth fisheries. Particular emphasis was given to:

- the licensing of fishers and related transaction processing;
- the management of fishing quota by concession holders and AFMA;
- AFMA's domestic compliance monitoring and enforcement activities; and
- the governance arrangement for domestic fishing compliance.

As well as considering AFMA's future compliance approach, the ANAO examined the effectiveness of AFMA's current approach with a view to making recommendations and suggested improvements that can be applied in the future. The audit did not examine AFMA's role in the management of foreign fishing compliance.

The ANAO focussed its examination on the Southern and Eastern Scalefish and Shark Fishery (SESSF), the Southern Bluefin Tuna Fishery (SBTF) and the Northern Prawn Fishery (NPF). These major fisheries provided a representative sample of the management arrangements and transaction types that vary from fishery to fishery.⁴

⁴ AFMA's major fisheries are: the three sectors of the SESSF; SBTF; NPF; the Eastern Tuna and Billfish Fishery (ETBF); and the Western Tuna and Billfish Fishery (WTBF). For the purposes of this audit, at times, the sectors of the SESSF are also referred to as 'fisheries'.

Overall conclusion

AFMA is responsible for managing the ecological sustainability and economic efficiency of the 24 Commonwealth fisheries. It administers a complex regulatory and policy framework that varies from fishery to fishery on virtually all fundamental aspects including: access rights and conditions; types of boats and equipment; the setting of fishing gear; and catch/effort limits. The scope for non compliance is broad as fishing takes place out of the public gaze by approximately 350 vessels that land their catch at over 75 ports around Australia at all times of the day and night.

AFMA effectively manages fishing concessions that limit access to the fisheries and control the methods through which fishers can take fish. Its quota management arrangements also limit the type and quantity of fish that may be taken, protecting the integrity of the TAC for each species. However, AFMA is not undertaking its domestic fishing compliance responsibilities as effectively as it could be.

AFMA has a sound process for annually assessing domestic compliance risks, but its under-developed intelligence capability has not facilitated regular risk reviews or the targeting of compliance activities. Further, AFMA's enforcement approaches have not always achieved the desired compliance outcomes because of the limited range of enforcement responses adopted and their inconsistent application.

While the new centralised approach to compliance monitoring will give AFMA greater control and has benefits over the current decentralised approach, it also creates different risks to the effective management of the fisheries for AFMA. These risks have to be monitored and managed so they remain within acceptable tolerances. The success of the new approach also requires an overall compliance strategy that fully integrates: compliance risk assessments (at fishery and vessel/operator level); intelligence gathering and analysis; targeted compliance activities (including inspections); and a timely and appropriate enforcement response to non compliance. With reduced resourcing and recognising the geographic span of the Commonwealth's fishing operations, an effective intelligence capability must drive AFMA's compliance activities. Bridging the gap between its current and desired intelligence capability will require considerable investment over a number of years.

AFMA's new compliance approach has also changed the dynamics of its inspection program. The reduced number of planned inspections and its intermittent presence in ports will not provide as strong a deterrent as previously, and will inhibit inspections targeting 'at risk' fishers. In these circumstances, there would be benefits in AFMA introducing quality assurance measures into, and regularly reviewing the effectiveness of, its inspection program to inform its compliance strategy.

AFMA's compliance strategy is supported by an enforcement framework based on a range of graduated responses. Its responses are, generally, confined to opposite ends of the enforcement spectrum—warning/fines

or criminal prosecutions. AFMA could consider applying its higher level administrative enforcement powers, such as suspensions and cancellations, as these can be more timely and a more effective deterrent in certain circumstances. Its enforcement response would also be applied more consistently if it expanded its generic decision making criteria to be more fishery specific and to cover common offences such as quota violations. Aligning its fishery management plans, fishery policies and operating practices would also enable a more consistent response to non compliance.

AFMA's regulatory simplification project, co management trials and the e Monitoring pilot project are positive initiatives to improve the effectiveness and efficiency of Commonwealth fisheries management. However, the simplification project will require extensive legislative changes and the outcomes of the other two initiatives are intended to inform AFMA's decisions on changes to its management and monitoring arrangements more broadly. Consequently, any lasting benefits for AFMA from these initiatives are some years away.

AFMA has never measured the economic efficiency of Commonwealth fisheries, which is one of the two components of its outcome. It intends using the targets from the Commonwealth Fisheries Harvest Strategy Policy to measure performance against its outcome in the longer term. However, the review of the policy will not be completed until 2012. In the shorter term, AFMA could develop intermediate outcomes based on the report it recently commissioned and received from the Australian Bureau of Agricultural and Resource Economics (ABARE) and the indicators of fishery economic performance from ABARE's annual status reports and surveys.

The ANAO has made five recommendations to improve AFMA's domestic compliance function. These recommendations relate to quota management, its inspection program, enforcement actions, developing a compliance strategy and improving its intelligence capability, and performance reporting.

Key findings by chapter

AFMA has responsibility for the day-to-day management of Commonwealth fisheries. Its domestic compliance work centres on providing licensing services, managing concession holders' quota and ensuring compliance with fisheries legislation and management policies.

Licensing services (Chapter 2)

AFMA's licensing systems and processes are fundamental to the effective management of Commonwealth fisheries. Using these, AFMA limits access to fisheries to those entities in possession of fishing concessions, controls the methods through which fishers can take fish and limits the type and quantity of fish that may be taken. Information is also collected to maintain the Register of Statutory Fishing Rights (SFR Register) and monitor catch, bycatch, and interactions with threatened, endangered and protected species.

Licensing applications processing

The ANAO examined a sample of 52 licensing transactions and these were generally processed accurately and consistently, and in accordance with the clients' instructions. AFMA reported that, in the last two years, approximately 90 per cent of transactions have been processed within its Service Charter timeframe of seven days from receipt of all required information. However, it took between one and eight weeks to get this information in nearly one quarter of transactions examined.

Processing delays and the time spent by AFMA following up licensing applications could be reduced by improving the design and clarity of its application forms, and by assessing and putting in place strategies to address the main reasons for follow up action.

Licensing system replacement and move to e Licensing

AFMA expects that the introduction of its new licensing system (Pisces) and the move to e Licensing will improve the effectiveness and efficiency of its licensing services.⁵ However, the simultaneous nature of their introduction and the current lack of system documentation increase the risks already associated with major IT system changes. The inherently complex coding requirements of Pisces and the automated approval of some licensing transactions mean that future data processing problems are not unexpected.

Register of Statutory Fishing Rights

AFMA is required to maintain a SFR Register under s.44 of the FM Act. Its purpose is to provide a record of SFR holders (that is, owners) in Commonwealth fisheries and other parties with an interest in, or who claim an interest in, the SFRs (third party interests). The Register is published on AFMA's website and facilitates the trading of SFRs. The information it contains is admissible in court proceedings as prima facie evidence of SFR ownership and third party interests. AFMA maintains the SFR Register on a spreadsheet that is updated manually, as and when required, to reflect the licensing transactions it processes.

AFMA's management of the Register is deficient in several key aspects. It incorrectly uses the term 'holder' to refer to owners and lessees,

which has led to leases being recorded incorrectly in the Register. In addition, the SFR Register does not record all third party interests and provide an ownership trail, as required by legislation. This severely inhibits the Register's primary purpose of providing clarity of SFR ownership interests to facilitate their trading or use as collateral. AFMA appreciates the potential effect that ambiguities, errors or omissions in the SFR Register may have on third parties and SFR owners. AFMA's proposed restructure of the SFR Register would be in keeping with the requirements of the FM Act and address the more significant issues identified by the ANAO.

Quota management (Chapter 3)

In quota managed fisheries, such as the SESSF and SBTF, concession holders are responsible for meeting the quota management requirements of the fishery. This includes possessing sufficient quota to 'cover' the catch of quota managed species, within the (under catch and over catch) allowances and timeframes specified in the fishery management plans. Although, AFMA monitors catch against quota both individually and collectively, it produces little in the way of reports for management that would help it to manage the Total Allowable Catch (TAC) for each species and take timely enforcement action for unauthorised over catch.⁶

AFMA's quota management arrangements generally achieve their objective to protect the integrity of TAC for each species while providing flexibility and time for fishers to reconcile their quota to catch. Nevertheless, there are inconsistencies within and between the fishery management plans, AFMA's fishery policies and its quota management practices, which inhibit the effective management and enforcement of quota requirements. These include:

- although the plans require fishers to have uncaught quota prior to fishing, AFMA allows fishing without quota so long as by season's end sufficient quota has been purchased or leased in to cover the catch (less any over catch allowances);
- AFMA not addressing particular risks that arise from it approving the mid season sale of 'used' quota⁷ to other concession holders in the SBTF; and
- some SESSF fishers' under catch allowances being higher than AFMA intended because of incorrect definitions in the management plan and practices by AFMA that run contrary to its policy, adversely impacting on the quota available to other fishers.

Current compliance monitoring (Chapter 4)

From its establishment in 1992 until June 2009, AFMA has adopted a decentralised approach to monitoring compliance. Port-based staff of State fishery agencies have undertaken, on AFMA's behalf, most compliance monitoring activities in Commonwealth fisheries. Service

Level Agreements (SLAs), negotiated annually between AFMA and the State fishery agencies, established a compliance budget for each fishery in each State that determined the number and type of compliance activities (including inspections) to be undertaken. Since 2000, the SLAs have been informed by domestic compliance risk assessments, which are undertaken annually for all major fisheries.

Compliance risk assessments

Prior to 2006 07, AFMA assessed compliance risks annually on a fishery by fishery basis, which it found to be resource intensive. Since 2006 07, it and other stakeholders have assessed domestic compliance risks annually for the following year across the seven major fisheries. This approach allows resources to be better targeted towards addressing the highest risks. Although AFMA uses a structured approach to identify and rate compliance risks, its usefulness as a compliance management tool would be improved if AFMA analysed the cost effectiveness of current controls, identified trends in risk ratings over time, and eliminated data errors and omissions.

Intelligence capability

AFMA maintains an intelligence data management function to collect and analyse data received from various sources on potential non compliance by fishers and fish receivers. It uses various software packages to store, access and analyse intelligence data, which is held in some 30 repositories across the agency. However, until 2009, the resources devoted to intelligence gathering and analysis were minimal. AFMA did not generate regular intelligence reports based on a systematic analysis of its intelligence data holdings. The analysis of intelligence was generally instigated on an ad hoc basis by the Intelligence Section, based on what it considered to be most useful. AFMA advised that each intelligence report took many hours to prepare as most data comparisons were performed manually.

Decentralised compliance approach

The compliance activities conducted under the SLAs between AFMA and the State fishery agencies have been the primary means of addressing the greatest compliance risks facing Commonwealth fisheries. However, AFMA considers that the budget and operational inflexibility of State fishery agencies and the priority afforded to Commonwealth work, means that compliance activities are not as effective as they could be. AFMA has not analysed whether the planned compliance activity in each fishery aligns with its changing risk profile over time or assisted the States to target 'at risk' fishers and fish receivers for inspection.

Although State fishery agencies considered their domestic compliance funding insufficient, some States significantly under achieved in meeting their compliance targets and budgets. AFMA has not assessed the impact that this reduced compliance activity has on the effective

management of Commonwealth fisheries. Of particular concern was the 40 per cent under achievement in the ETBF, which is the major fishery with the highest inherent risk profile.

Inspection reports have not always documented significant problems and issues identified during inspections or the action taken to address them. AFMA's confidence in the quality and consistency of its inspection program under the new centralised approach would be enhanced if it reaffirmed inspection requirements, revised inspection report proformas, and introduced quality measures into the program.

Managing non compliance (Chapter 5)

AFMA's enforcement regime

AFMA has an enforcement framework containing a range of graduated responses to encourage and enforce compliance. However, there is a significant gap between a \$220 infringement notice and the next step, which is a prosecution and/or concession suspension. The outcomes of the current review of the cancellation provisions in Commonwealth fisheries legislation may bridge this gap. AFMA has changed its fishery management rules to successfully achieve compliance outcomes in specific circumstances. It could also consider including additional conditions on offenders' permits to specifically address areas of non compliance, although AFMA is not in favour of this approach.

AFMA's enforcement responses are, generally, confined to opposite ends of the enforcement spectrum—warnings/fines or criminal prosecutions—with reasons for decisions not always well documented. Administrative actions that restrict or suspend fishing activity can serve as a strong deterrent for non compliance. They are also more timely and flexible and less costly to impose than court action. There would be benefits in AFMA giving consideration to a more judicious application of its higher level administrative enforcement powers, where warranted by the circumstances.

Further, AFMA should regularly review the effectiveness of its enforcement approaches and adjust its enforcement actions, where necessary, to obtain the desired compliance outcomes. These reviews should inform annual domestic compliance risk assessments and planned compliance activities.

Offences detected

Detected non compliance in the major fisheries overall has fluctuated between 11 and 21 per cent of inspections over the last four years (2004 05 to 2007 08). Three offence types: logbook completion/submission problems; not reconciling quota; and unauthorised fishing, account for over half of all offences detected in the last two financial years.

Strategies to address ongoing non compliance

Recent actions taken by AFMA for Vessel Monitoring System (VMS) non polling⁸ and unauthorised over catch in the SESSF and SBTF, demonstrate that improvements could be made to developing appropriate enforcement policies and implementing existing policies more consistently to get better compliance outcomes:

- VMS polling non compliance has continued at around eight to nine per cent for over six months, but AFMA has not taken enforcement action, limiting its effectiveness as a compliance tool (although this non compliance is used as an input into intelligence assessments);
- AFMA has not established a policy on what enforcement actions should be considered for various levels of SESSF unauthorised over catch, contributing to inconsistent enforcement actions; and
- without legal advice and contrary to normal enforcement action in other fisheries, AFMA used Deeds of Agreement to deal with unauthorised SBTF over catch in consecutive seasons, which limited the ability of the Commonwealth Director of Public Prosecutions (CDPP) to prosecute.

Future compliance monitoring (Chapter 6)

The then AFMA Board agreed in June 2008 to implement a centralised approach to domestic compliance from July 2009 using Canberra-based AFMA staff to conduct most compliance activities. AFMA has also reduced its 2009 10 domestic compliance budget by 16 per cent to \$2.7 million, which was the cost of the partially completed domestic compliance program in 2005 06.

Benefits of the AFMA's new centralised approach to compliance monitoring include greater control and consistency in the conduct of compliance and enforcement activities, and improved flexibility to allocate resources. However, the new approach also presents different risks to the effective management of the fisheries for AFMA that have to be monitored and managed so they remain within acceptable tolerances. Most of these risks relate to its inspectors' distance from ports, the reduced proportion of fishing trip inspections and reduced resourcing. Within this context, there would be benefits in AFMA regularly reviewing the effectiveness of its inspection program to inform its compliance strategy.

The success of AFMA's centralised compliance approach requires the integration of the following elements: compliance risk assessments (at fishery and vessel/operator level); intelligence gathering and analysis; targeted compliance activities (including inspections); and a timely and appropriate response to non compliance. However, AFMA has not developed an overall compliance strategy for its new approach that integrates each of these elements. It is progressing each, but they will not have reached their full potential by July 2009.

AFMA has well established fishery risk assessments. Its ability to review these regularly and generate and maintain comprehensive vessel/operator risk profiles will be difficult and time consuming because of its current intelligence data storage limitations. Within this context, there would be benefits in AFMA identifying, and developing a plan to address, the gaps between its current and desired intelligence capability, and the investment required to bridge these gaps.

Governance arrangements for domestic fishing compliance (Chapter 7)

AFMA's governance arrangements are supported by its planning and reporting framework. AFMA advised that, having consolidated the corporate changes stemming from its transition from a statutory authority to a Commission, it will now improve and significantly refine the content of its 2009 12 Corporate Plan and 2009 10 Annual Operational Plan. These refinements will take into account changes in the content and structure of the information reported to Parliament via the Portfolio Budget Statements (PBS) from 2009 10.

Measuring performance

AFMA has never measured the economic efficiency of Commonwealth fisheries, which is one of the two components of its outcome. The ANAO acknowledges that developing measurable, reliable and timely key performance indicators for this outcome component is not easy. In this context, ABARE recently produced a report commissioned by AFMA that may be of assistance.⁹ AFMA intends using the targets from the Commonwealth Fisheries Harvest Strategy Policy to measure its performance in the longer term. However, the review of this policy will not be completed until 2012. To measure its performance in the short term, AFMA could:

- develop intermediate outcomes based on the indicators of fishery economic performance from annual ABARE economic status reports and surveys; an
- expand its quantitative deliverables to include performance indicators for domestic compliance similar to those used in previous PBSs.

⁵ The e Licensing website and portal will be the 'front end' of the Pisces system, allowing clients to enter licensing applications and have them processed automatically.

⁶ Unauthorised over catch is over catch in excess of over catch allowances.

⁷ 'Used' quota is quota that has already been fished against during the season.

⁸ All Commonwealth fishing vessels are required to carry VMS units that 'poll' at regular intervals, which allows AFMA to remotely monitor each vessel's position, speed and heading.

⁹ ABARE 2009, Development of methods and information to support assessment of economic performance in Commonwealth fisheries, Publication No. 09.5.

Summary of agency response

AFMA considers that this ANAO report provides a useful analysis of AFMA's approach to managing domestic compliance. The report identifies a number of suggestions for further improvement, many of which are already being pursued as part of our proposed new centralised compliance model. AFMA agrees with the 5 recommendations contained in the report and will commence implementing these as part of the ongoing approach to improving compliance in fisheries from 1 July 2009. We expect to address all of the recommendations within the next 12 months.

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