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Audit Report No.47 2008–09
Performance Audit

Management of Domestic Fishing Compliance

Australian Fisheries Management Authority

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of Australia 2009

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Canberra ACT
25 June 2009

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the *Australian Fisheries Management Authority* in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit and the accompanying brochure to the Parliament. The report is titled *Management of Domestic Fishing Compliance*.

Following its tabling in Parliament, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee', is positioned above the printed name.

Ian McPhee
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office. The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Abbreviations and Glossary

ABARE	Australian Bureau of Agricultural and Resource Economics
AFMA	Australian Fisheries Management Authority
AGIS	Australian Government Investigation Standards
AGS	Australian Government Solicitor
ANAO	Australian National Audit Office
AOP	Annual Operational Plan
BRS	Bureau of Rural Sciences
bycatch	incidental or non-target species.
CDPP	Commonwealth Director of Public Prosecutions
CDR	catch disposal record
centralised pools	Intra-State reallocation of Service Level Agreement funding for compliance activity from fisheries to a centralised State-based pool.
CFIN	Commonwealth Fishing Infringement Notice
concession holder	Persons or bodies corporate who hold one or more fishing concessions.
CRWG	Cost Reduction Working Group
CT fishery	Commonwealth or (South Eastern) Trawl sector of the Southern and Eastern Scalefish and Shark fishery
DAFF	Department of Agriculture, Fisheries and Forestry
ETBF	Eastern Tuna and Billfish Fishery
FA Act	<i>Fisheries Administration Act 1991</i>
fish receivers	Entities licensed to first receive Commonwealth fish.
fishing concession	A statutory fishing right or fishing permit as defined in the <i>Fisheries Management Act 1991</i> .

fishing permit(s)	Permits that give concession holders access rights to a fishery for the season in which they are granted. They are not an ongoing right and not usually transferable. Trading is effected by the permit's cancellation and re-issue to another party. Permits can be used to quota-manage fish species ('individual transferable quota') by attaching conditions to the permit to give it effect.
FM Act	<i>Fisheries Management Act 1991</i>
FRDC	Fisheries Research and Development Corporation
FTE	full-time equivalent
GABT fishery	Great Australian Bight Trawl sector of the Southern and Eastern Scalefish and Shark fishery
GHT fishery	Gillnet, Hook and Trap sector of the Southern and Eastern Scalefish and Shark fishery
individual transferable quota (ITQ)	Quota limits for specified fish species that are attached as conditions to fishing permits. Trading in ITQ is effected by the permit's cancellation and re-issue to another party.
KPI	key performance indicator
KRA	key result area
MAC	Management Advisory Committees
major (Commonwealth) fisheries	The three sectors of the Southern and Eastern Scalefish and Shark Fishery; the Southern Bluefin Tuna Fishery; the Northern Prawn Fishery; Eastern Tuna and Billfish Fishery; and Western Tuna and Billfish Fishery.
NPF	Northern Prawn Fishery
over-catch	The difference between a concession holder's seasonal catch and the quota held where the former is greater than the latter.
over-catch allowance	That part of over-catch that fishery management plans allow concession holders to deduct from the next season.
PBS	Portfolio Budget Statement
Pisces	AFMA's new licensing database
SBTF	Southern Bluefin Tuna Fishery

Service Level Agreements (SLAs)	Service Level Agreements with State fishery agencies.
SESSF	Southern and Eastern Scalefish and Shark Fishery
SFR Register	Register of Statutory Fishing Rights
State fishery agencies	States and Northern Territory departments and agencies with fishery compliance responsibilities. 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 Northern Territory Police.
statutory fishing right (SFR)	An ongoing right to undertake fishing activity, including fishing against a quota (SFR quota), operating a boat (boat SFRs) and using certain equipment (gear SFRs). They are established under fishery management plans produced by AFMA. They can then be traded, leased and used as collateral.
Total Allowable Catch (TAC)	The maximum catch that concession holders can collectively take from a fishery. A TAC is set seasonally by AFMA for each quota-managed fish species. The sum of each fisher's quota SFRs or fishing permit ITQs equals the season's Total Allowable Catch.
unauthorised over-catch	Over-catch that exceeds the over-catch allowance.
under-catch	The difference between a concession holder's seasonal catch and the quota held where the latter is greater than the former.
under-catch allowance	That part of under-catch that fishery management plans permit concession holders to carry forward to the next season.
VMS	Vessel Monitoring System
WTBF	Western Tuna and Billfish Fishery

Summary and Recommendations

Summary

Introduction

1. 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*.
2. 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.
3. 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.
4. 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

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.

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.

5. 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.

Domestic compliance monitoring

6. 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.

7. 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.

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.

8. 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.

9. 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.

Audit objectives and scope

10. 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.

11. 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.

12. 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

Overall conclusion

13. 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.

14. 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.

15. 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.

16. 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

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'.

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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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

22. 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)

23. 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

24. 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

25. 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

26. 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.

27. 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)

28. In quota-managed fisheries, such as the SESSF and SBTF, concession holders are responsible for meeting the quota management requirements of the

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.

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

29. 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)

30. 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

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.

undertaken. Since 2000, the SLAs have been informed by domestic compliance risk assessments, which are undertaken annually for all major fisheries.

Compliance risk assessments

31. 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

32. 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

33. 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.

34. 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.

35. 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

36. 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.

37. 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.

38. 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

39. 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

40. 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)

41. 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.

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.

42. 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.

43. 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.

44. 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)

45. 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

46. 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; and
- expand its quantitative deliverables to include performance indicators for domestic compliance similar to those used in previous PBSs.

Summary of agency response

47. 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.

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

Recommendations

Recommendation No.1

Para 3.27

To facilitate the effective management of quota within Commonwealth fisheries, the ANAO recommends that AFMA:

- (a) review the extent to which legislative requirements, policy imperatives and administrative practices for managing quota align with the Government's policy intent and, where necessary, seek amendments; and
- (b) establish procedures and processes for producing management reports on the status of fisheries' catch against quota at the end of reconciliation periods and additional trading periods.

AFMA response: Agreed

Recommendation No.2

Para 4.45

To improve the quality, consistency and targeting of its inspection program, the ANAO recommends that AFMA:

- (a) target its inspection program towards those fishers/fish receivers at greater risk of non-compliance;
- (b) revise its inspection report pro-formas to capture all significant observations, problems encountered and follow-up action undertaken; and
- (c) develop and implement a quality assurance program for its inspections.

AFMA response: Agreed

**Recommendation
No.3****Para 5.37**

To improve the outcomes of its enforcement actions, the ANAO recommends that AFMA develop, where appropriate, and consistently implement, enforcement policies and fishery-specific responses for recurring non-compliance.

AFMA response: Agreed

**Recommendation
No.4****Para 6.50**

To improve the effectiveness of its centralised approach to domestic fishing compliance, the ANAO recommends that AFMA:

- (a) develop and review annually a compliance monitoring strategy that integrates all compliance processes and activities; and
- (b) identify the gaps between its current and desired intelligence capability and develop a workplan of the actions, resources, and timeframes for completion, to close the intelligence capability gaps.

AFMA response: Agreed

**Recommendation
No.5****Para 7.22**

To enable AFMA to more effectively meet its legislative reporting requirements, the ANAO recommends that it review its planning and reporting framework to:

- (a) develop, where applicable, measureable intermediate outcomes linked to its overall outcome; and
- (b) expand its deliverables to include relevant quantitative performance measures for its domestic compliance function.

AFMA response: Agreed

Audit Findings and Conclusions

1. Background and Context

This chapter outlines the context for, and the broad approach to, AFMA's regulation of Commonwealth fisheries, as well as the audit's objective, scope and methodology.

Introduction

1.1 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). AFMA's management of fisheries is also impacted by the *Environment Protection and Biodiversity Conservation Act 1999*, which requires AFMA to undertake strategic assessments of Commonwealth fisheries and manage threatened, endangered and protected species.

1.2 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 compliance¹⁰, AFMA's finances and human resources, and giving effect to the Commission's decisions.

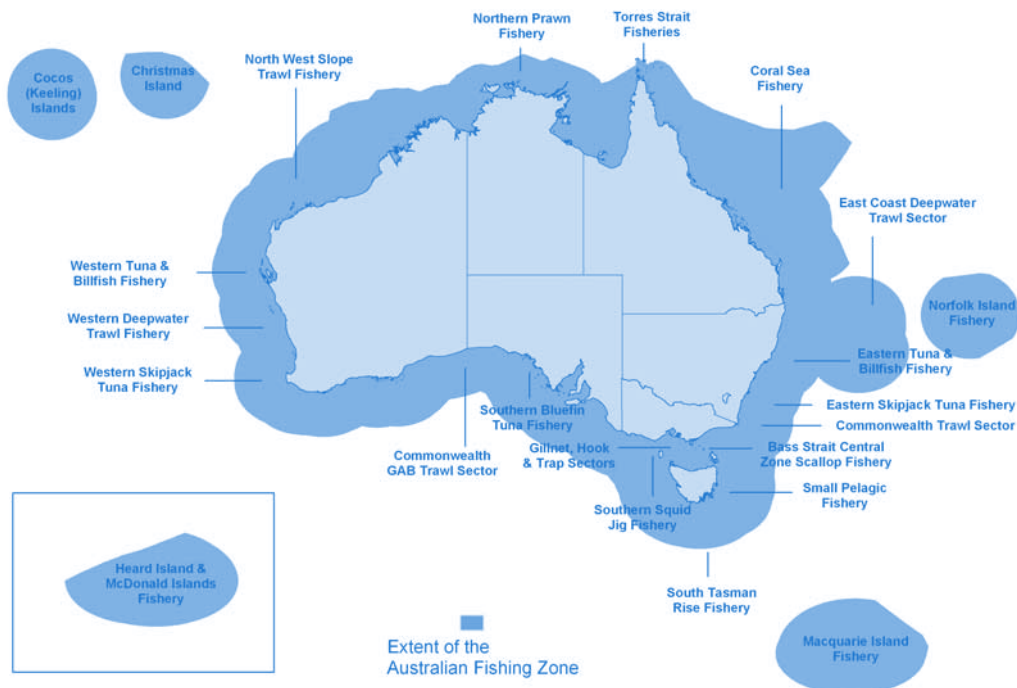
1.3 AFMA manages 24 Commonwealth fisheries that, collectively, encircle Australia and its territories. These fisheries generally extend from the three nautical mile limit of State/Territory coastal waters to the limit of the Australian Fishing Zone (shown in Figure 1.1).¹¹

¹⁰ Foreign fishing compliance covers illegal, unreported and unregulated fishing in the Australian Fishing Zone.

¹¹ 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. Offshore Constitutional Settlement arrangements between the Commonwealth and the States/Northern Territory can change the boundaries of their fisheries management responsibilities on a geographic and/or species basis.

Figure 1.1

Commonwealth fisheries in the Australian Fishing Zone¹



Note 1: The Commonwealth Trawl Sector, Gillnet Hook and Trap Sectors and Commonwealth GAB Trawl Sector combine to form the Southern and Eastern Scalefish and Shark Fishery.

Source: Australian Fisheries Management Authority

1.4 Commonwealth fisheries include more than 1700 species of fish, although less than 100 species are targeted by commercial fishers.¹² The gross take and value of Commonwealth fisheries production has decreased significantly, declining from 72 110 tonnes valued at \$563 million in 2000–01 to 56 800 tonnes valued at \$293 million in 2006–07.¹³ During this period, a major government initiative, the *Securing our Fishing Future* package, significantly reduced the size of the fishing fleet.¹⁴ There have also been changes in the

¹² Fish is defined broadly to include a wide variety of marine organisms such as crustaceans, molluscs, sharks and rays, but does not include marine mammals or marine reptiles.

¹³ Australian Bureau of Agricultural and Resource Economics (ABARE) 2002, *Australian Fisheries Statistics 2001*, p. 25; and ABARE 2008, *Australian Fisheries Statistics 2007*, pp. 11–12.

¹⁴ The primary element of the *Securing our Fishing Future* package was a buyback of fishing concessions in certain fisheries during 2006. More than 550 fishing concessions were purchased in the fisheries targeted by the package. The number of active fishing vessels operating in the targeted fisheries reduced by over 35 per cent.

market for seafood, the costs of fuel and labour, and monetary exchange rates. Approximately 350 fishing vessels currently operate within the Commonwealth fisheries.

Regulation of Commonwealth fisheries

1.5 AFMA has established fishery management plans for 12 fisheries and the draft management plan for a further fishery has been released for public consultation.¹⁵ Fishery management plans are legislative instruments prescribing the mechanisms through which the fisheries will be managed, including the: combination of input and output controls; concessions it will issue; types of boats and fishing gear that may be used in the fishery; and methods for managing bycatch.¹⁶

1.6 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. Since 2005, AFMA has been implementing the government's policy to change, where applicable, its approach to managing Commonwealth fisheries from input controls to output controls.¹⁷

1.7 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 manage its fisheries sustainably and profitably. AFMA advised that it has developed harvest strategies for all relevant Commonwealth fisheries that set sustainable harvest levels for key commercial species with management plans and provide certainty about the way that each fishery will be managed into the future.

1.8 AFMA regulates access to Commonwealth fisheries using fishing concessions. The FM Act provides that concessions can be either:

¹⁵ The development of a management plan for one other fishery is under consideration. 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.

¹⁶ Bycatch are incidental or non-target species caught when fishers are fishing for other species.

¹⁷ In December 2005, the then Minister for Fisheries, Forestry and Conservation issued a Ministerial Direction to AFMA requiring it to implement the Government's policy of managing Commonwealth fisheries using output controls by 2010, unless a strong case could be made to the Minister, on a fishery-by-fishery basis, that this would not be cost-effective or would be otherwise detrimental.

- 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.

1.9 SFRs are ongoing rights to undertake fishing activity, including fishing against a quota (SFR quota), operating a boat (boat SFR) and using certain equipment (gear SFR). SFRs can be traded, leased and used as collateral. Fishing permits are not an ongoing right and are generally re-issued annually. Conditions attached to fishing permits may limit the take of fish (through individual transferable quota (ITQ)), permit the use of a boat and certain gear, and regulate fishery access (including closures). Fishing permits are not transferable, but trading is given effect by the permits' cancellation and reissue to other parties. SFRs and fishing permits can co-exist in the same fishery. The relationship between the different types of fishing concessions and input and output controls is illustrated at Table 1.1.

Table 1.1

Relationship between concession and type of control

Fishing concession	Input control	Output control
SFR—quota		✓
SFR—gear	✓	
SFR—boat	✓	
Fishing permit—ITQ		✓
Fishing permit—other (including gear, boat and fishery access)	✓	

Source: ANAO analysis of AFMA data

Approach to domestic compliance monitoring

1.10 AFMA considers that most of its activities, which include: collecting biological and economic data; managing and monitoring fishing activities; and assessing the sustainability of Commonwealth fisheries, contribute to fishers' voluntary compliance with fishing regulations. Nevertheless, AFMA recognises that:

the scope for non-compliance in fisheries is broad. Fishing takes place at sea, in relatively isolated areas out of public gaze, where "policing" in a more conventional form ... is usually impossible and where weather, distance and conditions intrinsic to fishing can hinder investigation and apprehension. In addition, the non-exclusive nature of commercial fishers' access rights,

inefficient jurisdictional arrangements, and competing access to the resource by other sectors and the effectiveness of the regulation of those sectors, can negatively affect some fishers' sense of ownership of and commitment to the regulatory regime.¹⁸

1.11 In addition, a 2007 report by the Australian Institute of Criminology into crime in Commonwealth and State/Northern Territory fisheries found that:

- high-value, low-volume fish species are vulnerable to illegal exploitation; and
- there was widespread concern that the industry was vulnerable to infiltration by organised crime groups to mask criminal activity, such as the importation and distribution of illicit drugs and money laundering.¹⁹

1.12 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.²⁰ Service Level Agreements (SLAs), negotiated annually with the agencies, accounted for approximately half of AFMA's domestic compliance budgets.

1.13 The SLAs establish a compliance budget for each fishery in each State and the compliance activities to be undertaken by these agencies. Compliance activities included 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 was responsible for preparing annual risk assessments of Commonwealth fisheries, collecting intelligence, monitoring SLA performance and, enforcement activities.

¹⁸ AFMA Cost Recovery Impact Statement 2009 (Consultation Draft—16 January 2009), p. 12.

¹⁹ Australian Institute of Criminology 2007, *A national study of crime in the Australian fishing industry*, pp. 17, 23, and 28.

²⁰ 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.

1.14 Compliance monitoring in Commonwealth fisheries has been reviewed six times since 1988 by AFMA (and its predecessor, the Australian Fisheries Service within the then Department of Primary Industries and Energy). In the last of these reviews, the AFMA Board established a Cost Reduction Working Group (CRWG) in April 2007 to identify and recommend options to: reduce the costs of managing Commonwealth fisheries, including domestic compliance regulation; and generate efficiencies.²¹ 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.

1.15 From 1 July 2009, AFMA will use its own staff to undertake in-port vessel inspections and fish receiver inspections. 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. This audit has included an examination of the new compliance monitoring approach.

Audit objective, scope and methodology

1.16 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.

The audit did not examine AFMA’s role in the management of foreign fishing compliance.

1.17 The ANAO focussed its examination on three Commonwealth fisheries: the Southern and Eastern Scalefish and Shark Fishery (SESSF), the Southern

²¹ Membership of the CRWG included representatives from the Commonwealth Fisheries Association, Management Advisory Committees (MACs) and AFMA.

Bluefin Tuna Fishery (SBTF) and the Northern Prawn Fishery (NPF).²² These major fisheries were chosen because they: constitute a considerable portion of the total gross production of Commonwealth fisheries; are monitored by various State fishery agencies; and provide a representative sample of the management arrangements and transaction types that vary from fishery to fishery. Table 1.2 illustrates the number of SFR or permit holders and boats operating in the SESSF, SBTF and NPF.

Table 1.2

Concessions and boats in ANAO sample fisheries¹

Fishery	Holders		Boats
	SFRs	Permits	
SESSF	267 (quota)	234 (ITQ)	141
SBTF	96 (quota)	-	24
NPF	49 (gear and boat)	-	52

Note 1: Excludes permits for 'carrier' vessels.

Source: AFMA Annual Report 2007–08

Audit methodology

1.18 The audit methodology included:

- discussions with the AFMA Commission and staff, and State fishery officers;
- observation of in-port vessel and fish receiver inspections;
- observation of an AFMA/industry workshop into the progress of a co-management trial, and discussion with its participants²³;
- analyses of databases and spreadsheets supporting AFMA's domestic compliance function; and
- documentation and file reviews.

²² The SESSF has three sectors: Commonwealth Trawl (CT); Gillnet, Hook and Trap (GHT); and Great Australian Bight Trawl (GABT). The SESSF covers much of Australia's southern and eastern waters, extending from just north of Brisbane almost to Perth. Although the SBTF covers Australia's entire territorial waters, most fishing occurs in the Great Australian Bight (using the purse seine method) and off the south-eastern coast (using the long-line method). The NPF covers much of northern Australia, extending west from Cape York in Queensland to Cape Londonderry in Western Australia.

²³ Stakeholder views on AFMA's major domestic compliance initiatives, activities and governance have been well documented by AFMA, which reduced the need for broader consultations with stakeholders.

1.19 The audit was conducted in accordance with ANAO auditing standards and cost approximately \$560 000.

International comparisons

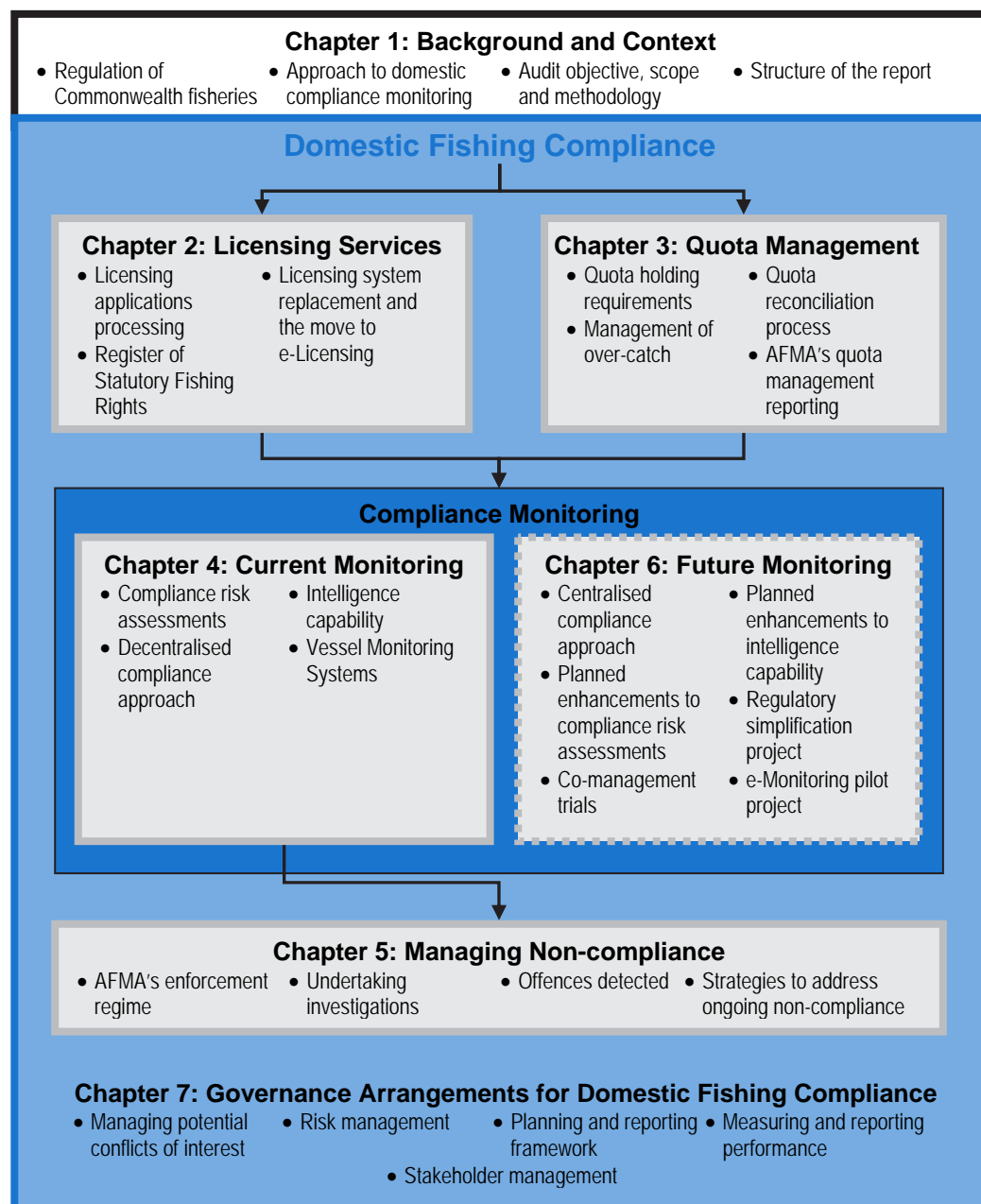
1.20 AFMA's approach to regulating Commonwealth fisheries is similar to how other countries regulate their domestic fisheries, albeit that the federal/state jurisdictional boundaries within Australia's domestic fisheries may not be replicated overseas. Fishery management agencies in the United States of America, United Kingdom, Canada and New Zealand all: license commercial fishers; set annual fishery limits for the take of (most) target species, which are distributed as quota among commercial fishers; and conduct inspections and patrols to monitor compliance. Recent audit reports into the management of domestic fisheries in these countries, to the extent that they are relevant to the scope of this audit, have raised similar issues to those discussed in this report.

Structure of the report

1.21 The structure of this report is outlined in Figure 1.2.

Figure 1.2

Report structure



2. Licensing Services

This chapter examines AFMA's systems and processes for managing concession holders' licenses. The maintenance of the Register of Statutory Fishing Rights is also discussed.

Introduction

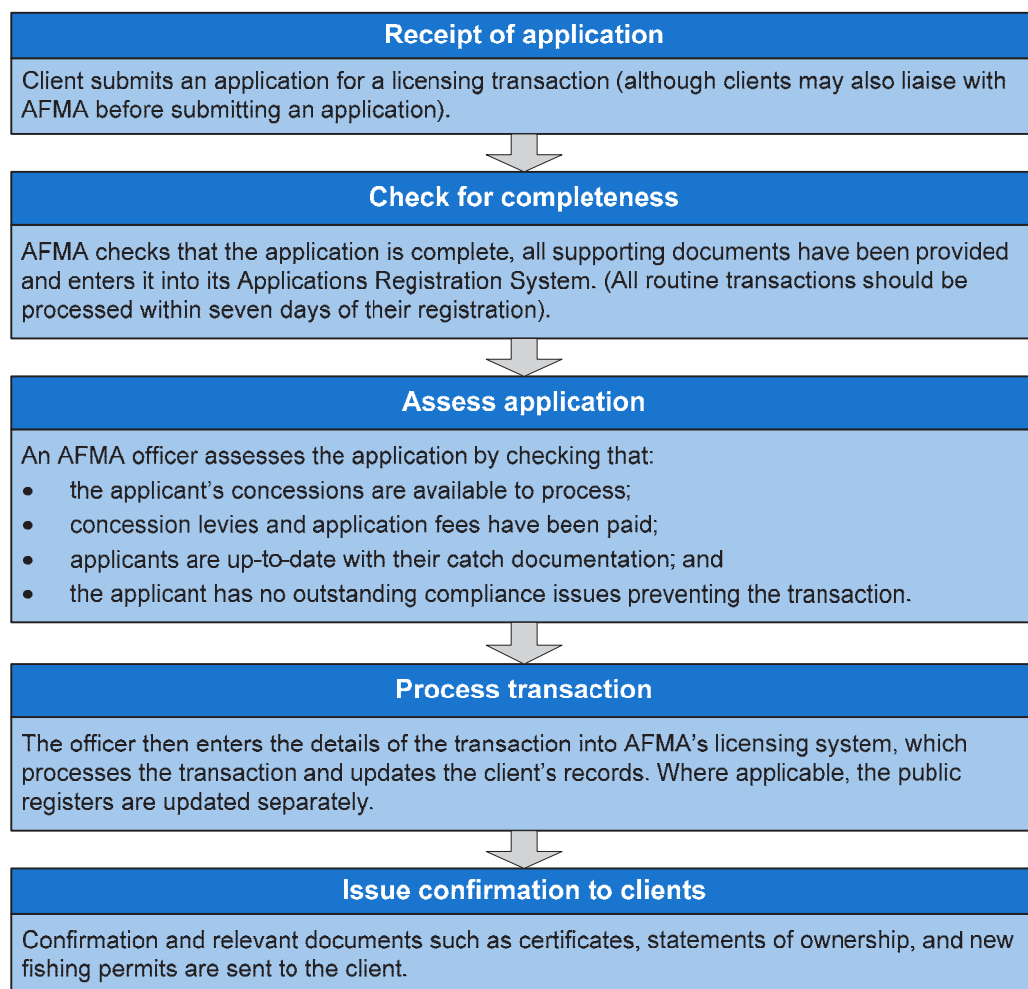
2.1 AFMA's licensing systems and processes are fundamental to the effective management of Commonwealth fisheries. Using these, AFMA limits access to fisheries to those entities in possession of fishing concessions, controls the methods through which fishers can take fish and limits the type and quantity 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.

2.2 The ANAO reviewed AFMA's licensing arrangements for the SESSF, SBTF and NPF. In particular:

- licensing applications processing;
- the licensing system and move to e-Licensing; and
- maintenance of the Register of Statutory Fishing Rights.

Licensing applications processing

2.3 Within the framework of legislation and policy, AFMA facilitates the trading of fishing concessions and quota by fishers. Differences between, and complexities within, the management and licensing requirements of the fisheries significantly complicates the work of the Licensing function. In 2007-08, AFMA processed 3432 applications, following the processes illustrated at Figure 2.1.

Figure 2.1**Licensing applications process**

Source: ANAO analysis of AFMA data

2.4 The ANAO examined a sample of 52 licensing transactions in the sampled fisheries that covered the following transaction types:

- transfers of concession ownership;
- concession leases to another party;
- registration of a 'third party interest', such as a mortgage, against SFR concessions;
- concession linkages to particular vessels;
- grant and renewal of fishing permit concessions; and

- concession surrenders.

Adequacy of application forms

2.5 Application forms are the primary means through which clients convey their transaction requests. Therefore forms that are well-designed, unambiguous, and elicit the required information will minimise the preparation time for clients and the resources expended by AFMA to process them. AFMA has prepared primary applications forms for each transaction type, which are common across the fisheries, and fishery-specific attachments that cater for the nuances of the various fishery management regimes. This process works well, but the forms themselves were not as user-friendly as they could be. In some cases, forms:

- did not clearly articulate the information, attachments, fees and supporting documentation that were required;
- did not exist for a certain (infrequent) transaction type in one fishery, requiring clients to use another form not designed for this purpose; and
- requested the same information more than once.

2.6 AFMA has advised that it intends revising its applications forms to improve their design and clarity. To this end, the ANAO has provided specific information on areas within forms that would benefit from revision. In addition, providing up-to-date guidance to fishers, including examples of how to complete applications on its website would be of benefit to both clients and AFMA Licensing.

Accuracy of applications processing

2.7 Sampled transactions were generally processed accurately and consistently, and in accordance with the clients' instructions. However, in some cases it was difficult to determine the intentions of clients because of the lack of documentation supporting consultations with clients to clarify application issues before transactions were processed. Processing checklists, which are tailored for each transaction type and fishery, are completed by a licensing officer. These checklists are counter-checked by a more senior officer before processing is completed, providing a good quality control measure.

2.8 Nevertheless, the ANAO has identified the following areas where improvement could be made to transaction processing:

- developing standard operating procedures for licensing transaction processing, which AFMA has advised would be in place before the start of 2009–10;
- addressing the risk of processing transactions more than once, by increasing manual checks or developing IT systems checks;
- better managing third party interest de-registrations, by AFMA: (i) establishing the bona-fides of the people purportedly representing third parties; and (ii) sending confirmations to third parties after the transactions cancelling their interest have been processed; and
- checking that all authorisations have been obtained before executing transactions.

Efficiency and timeliness of service delivery and client satisfaction

2.9 AFMA has committed, through its Service Charter, to process all routine transactions within seven days of the receipt of all required information. AFMA annual reports for 2006–07 and 2007–08 indicate that this target was met for approximately 90 per cent of those transactions. Of the transactions sampled by the ANAO, 84 per cent met the seven-day processing timeframe. Once all information relevant to applications was received, processing of the transactions usually occurred quickly.

2.10 Nevertheless, in nearly one-quarter of the transactions examined, AFMA took between one and eight weeks to resolve issues with the applications and obtain the information necessary to begin processing the transactions. Reasons for the delays included: incomplete or unsigned forms; ambiguity as to the client's intent; missing attachments or supporting documentation; and IT system issues. AFMA has acknowledged that a substantial proportion of the applications it receives require some follow-up with clients. For example, AFMA estimated that some 60 per cent of all transactions in 2007 required some follow-up, and about three per cent, on average, required a revised application. In association with reviewing the application forms, there would be benefits in AFMA determining the main reasons for follow-up action and developing strategies to reduce their likelihood and/or impact.

2.11 AFMA's 2007–08 annual report states that 'feedback has indicated that concession holders are satisfied with licensing services'. AFMA advised that the substance of this statement was based largely on its impressions of day-to-day interactions with clients. The most recent client satisfaction survey

undertaken by AFMA was in 2005, at which time 72 per cent of fishing industry members surveyed rated AFMA's licensing services as either 'satisfactory', 'good' or 'very good'. Given the basis for this information is now dated, it would be timely for AFMA to consider conducting a new survey to objectively review its performance.

Conclusion

2.12 AFMA's licensing function is complicated by the differences between, and complexities within, the management requirements of each fishery. Sampled transactions 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 the move to e-Licensing

2.13 An accurate and reliable licensing system is important to AFMA because as well as being used to manage clients' concessions and quota, licensing and quota data are key inputs into the setting of TACs by the Commission and the information published in the SFR Register. In January 2006, the AFMA Board approved an upgrade to AFMA's licensing information systems and the establishment of:

an accurate, reliable, fast, user friendly internet based system to provide electronic licensing services that will service both AFMA clients/stakeholders and staff, [and] improve service and cost effective administration.

2.14 After industry consultation and the CRWG's review of AFMA's costs of managing Commonwealth fisheries, in August 2008 the Chief Executive Officer reaffirmed its commitment to developing an e-Licensing system. AFMA has undertaken two major systems developments simultaneously to achieve this task:

- a new licensing database, Pisces, that can interact with an online environment; and
- an e-Licensing website and portal that enables clients to trade concessions and quota online at any time day or night and, to the extent possible, independent of AFMA.

2.15 The Pisces system has been used to manage licensing in the SBTF and SESSF for the last one and two seasons, respectively. Most other Commonwealth fisheries will move to Pisces from the start of their respective 2009 fishing seasons.²⁴ AFMA expects that the e-Licensing website and portal will go live from July 2009.

Replacement of the licensing system

2.16 AFMA advised that, in commissioning Pisces, it chose to develop an in-house system using a rapid application development methodology. However, as a result, there is little documentation of business rules or the system itself. AFMA is currently documenting the earlier developed modules (one for each fishery) to meet normal documentation standards, as time and budgets permit. Although AFMA's approach to developing Pisces resulted in its earlier implementation, it has created some additional costs and risks, including:

- time and effort being spent by AFMA staff documenting the system's business rules and processes that other AFMA staff or contractors have developed;
- difficulties in quickly locating programming problems when data processing errors occur; and
- delays to the development of user documentation and training for licensing staff.

2.17 As each fishery's rules vary from those applying in other fisheries, so does the coding for each module in Pisces. AFMA Licensing advised that it was satisfied with the results of the user acceptance testing it had undertaken on the 22 Pisces modules. Nevertheless, given the complex fishery

²⁴ Former licensing systems will be retained for historical information as not all licensing information has been (or will be) migrated to Pisces.

management rules that had to be coded in Pisces, data processing errors are not unexpected and occurred in March 2009:

- after the SESSF season rollover, a transaction relating to the previous season was entered into Pisces, which had unintended impacts on the current season. Pisces' coding has now been adjusted to correctly handle similar situations in the future; and
- over a period of months, AFMA Licensing staff had re-entered transactions into Pisces that they mistakenly believed the system had rejected. AFMA has subsequently expended considerable effort distinguishing the duplicated transactions from legitimate transactions, and removing them from the system and the SFR Register, where applicable.

There were significant ramifications for AFMA and concession holders while the problems were identified and corrected. AFMA suspended Quotaview²⁵ and transaction processing for three weeks in the fisheries concerned.

e-Licensing

2.18 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 (subject to system business rules and any approvals required from AFMA staff).²⁶ The automation of licensing transactions may save time and reduce licensing processing costs, but also poses a risk that any processing errors by the system will not be identified quickly. Automated processing will not have the benefit of both the licensing officer and a second officer checking each transaction for accuracy. This risk is increased with the move to a new licensing system where processing accuracy has not yet been verified through real transactions for all major fisheries. AFMA advised that it has the ability to disable automatic system processing of licensing transactions and revert to manual processing should the need arise.

2.19 The use of e-Licensing is not mandated, and clients will still be able to lodge hard-copy applications with AFMA. It expects that 80 per cent of its

²⁵ Quotaview is an online tool that provides concession holders with copies of their Quota Transaction Statements informing them of their current balance of quota entitlements relative to their catch of fish.

²⁶ AFMA is currently considering legal advice on the extent to which its legislation will need to be amended to allow Pisces to automatically make licensing decisions.

clients will be using online licensing services by 2010. AFMA is currently developing communications strategies and client trials to maximise the take-up of e-Licensing.

2.20 Despite the imminent introduction of e-Licensing, AFMA has not determined the cost of providing licensing and quota management services online or the likely proportion of transactions that Pisces will be able to process automatically. Nevertheless, in early 2008–09, AFMA estimated that the first twelve months of e-Licensing would reduce manual processing by up to 20 per cent and the budgets for AFMA’s licensing area were reduced on this basis for 2008–09 and out years. The costs of licensing services are recovered from industry and the levy base has been reduced. If savings do not eventuate, fee-for-service charges are likely to increase.

Conclusion

2.21 AFMA expects that the introduction of its new licensing system and the move to e-Licensing will improve the effectiveness and efficiency of its licensing services. However, the simultaneous nature of their introduction and the current lack of system documentation increases 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. Any problems will require timely detection and correction to minimise any potential flow-on effects for concession holders, and preserve the integrity of the SFR Register and TAC calculations.

Register of Statutory Fishing Rights

2.22 AFMA is required to maintain a Register of Statutory Fishing Rights (SFR Register) under s.44 of the FM Act. Its purpose is to provide a record of SFR ownership in Commonwealth fisheries and other parties with an interest in, or who claim an interest in, the SFRs (third party interests).²⁷ 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*

²⁷ The FM Act provides that AFMA must register a claim against an SFR if so requested by a concession holder or third party who advises AFMA that an interest in an SFR has been created, assigned, transferred, transmitted or extinguished. This would apply in circumstances where concession holders or third parties are not in a position to lodge the instrument evidencing the interest or a summary of the instrument with the particulars required by AFMA.

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.

2.23 The ANAO reviewed AFMA's maintenance of the SFR Register for the sampled major fisheries and found deficiencies impacting on the correct structure and contents of the Register, including:

- ambiguous terminology being applied;
- incomplete or incorrect registration of third party interests; and
- no record of historical SFR ownership (which also has implications for demonstrating the accuracy of the Register's content).

Terminology applied to the SFR Register

2.24 The FM Act uses the term 'holder' to reflect concession holders that have been granted SFRs, although it does not define the term. AFMA uses the terms 'owner' and 'holder', which have different meanings, in its management regime. An owner is the person to whom SFR ownership is *currently* vested (whether it is the person originally granted the SFR or a person who subsequently acquired the right). A holder refers to *current owners and lessees* of SFRs. AFMA's definition of 'holder' is consistent with the SESSF and SBTF management plans, where the policy intent is to apply the same obligations to lessees as are applied to SFR owners.

2.25 In 2003 and 2006, AFMA received legal advice from the Australian Government Solicitor (AGS) on the meaning of the term 'holder' that conflicts with its use of the term. AGS considers that a 'holder' of an SFR is the owner, which has the following implications for AFMA:

- lessees are incorrectly recorded in the SFR Register as 'holders' (as illustrated in Case Study 1 below), which may lead to concession holders and third parties gaining an inaccurate impression of ownership rights; and
- the achievement of AFMA's policy intent for lessees to be bound by the same obligations as owners, is in question.

Case Study 1

Recording lease interests in the SFR Register

Example: Person/Company A owns 100 SFR units and agrees to lease 30 SFR units to Person/Company B. AFMA currently records the SFR holdings after the transaction in the SFR Register as:

Holder (owner and lessee)	SFR quota
Person/Company A	70 units
Person/Company B	30 units

However, the SFR Register should record the SFR holdings as:

Holder (owner)	SFR quota	Third Party Interest	Description of dealing	No. of SFRs
Person/Company A	100 units	Person/Company B	Lease	30 units

Source: ANAO analysis of AFMA data

2.26 AGS recommended that AFMA consider including a definition of holder in the legislative review of the FM Act in 2006. However, AFMA advised it did not pursue this amendment because of resourcing issues and complexities with the current fisheries management arrangements. It intends to pursue the proposed changes through its regulatory simplification project (which is discussed in Chapter 6 *Future Compliance Monitoring*).

Registering third party interests in SFRs

2.27 The concept of an interest in SFRs was introduced in amendments to the FM Act in 1997. Section 46 recognises 'dealings' (such as mortgages, charges, surrenders of concessions, transfers of concessions or leases) that have the effect of creating, assigning or extinguishing an interest in an SFR. Section 46 also requires AFMA to record the dealing in the Register for the interest to have effect, including the name of the person registering the interest and a description or particulars of the interest (that is, the type of instrument AFMA received as evidence of the dealing between the parties).

2.28 However, the SFR Register does not record all third party interests. For example, for the major fisheries examined by the ANAO, the SFR Register was deficient in the following respects:

- SESSF—records lessees but does not identify the SFRs to which the leases relate. Other forms of third party interests are not recorded; and
- NPF—no third party interests are recorded.

2.29 In addition, AFMA's former licensing system only had the capacity to record one third party interest against each SFR, creating a risk that second and subsequent interests may not have been recorded in the SFR Register. Although the new licensing system, Pisces, has the capacity to register multiple interests against SFRs, only the first-registered third party interest has been or will be automatically transferred when licensing data was/is migrated to Pisces.

2.30 AFMA appreciates the potential effect of this position on third parties and SFR owners. In light of this, a review of the completeness of its third party registrations in Pisces and the SFR Register as fisheries licensing services are migrated onto Pisces would mitigate the risk of this effect.

Historical SFR ownership and accuracy of content

2.31 The FM Act requires the SFR Register to record details of the person originally granted the SFR and any changes in ownership in chronological order. However, the SFR register does not retain the details of previous SFR owners where they have fully transferred ownership to others. As the SFR Register is overwritten when updates are made and it is published at irregular intervals:

- a historical ownership record cannot be easily recreated; and
- the ANAO was unable to verify that the sample licensing transactions it examined were correctly recorded in the SFR Register, where required.

2.32 The lack of an SFR ownership trail inhibits the achievement of its primary purpose of providing prima facie evidence in court proceedings to resolve disputes about SFR entitlement. AFMA is proposing to address this issue going forward through its restructure of the SFR Register, which is discussed later in this chapter. The practicalities of recreating the historical ownership of SFRs would need to be considered on a risk basis.

Accuracy of SFR content

2.33 A past review of the SFR Register by AFMA identified errors in its contents. As part of the implementation of the buyback component of the *Securing our Fishing Future* package by the Department of Agriculture, Fisheries and Forestry (DAFF), the Department used AFMA's SFR Register to identify concession holders in its target fisheries and to inform them of the Request for Tender package.²⁸ During the process of issuing addenda to the Request for Tender package in May 2006, AFMA advised DAFF that 35 concession holders did not receive the addenda and 82 parties received the addenda who no longer held concessions. AFMA advised that it subsequently corrected these errors and omissions in the SFR Register.

2.34 Nevertheless, manually updating the Register and not retaining the records of each update, creates a risk that errors could remain undetected. Reconciling the contents of the SFR Register to its licensing system at regular intervals would help to mitigate this risk.

AFMA's proposed restructure of the SFR Register

2.35 During the audit, AFMA reviewed the future needs of the SFR Register as part of its upcoming move to e-Licensing. Its proposed structure for the SFR Register is in keeping with the requirements of the FM Act and would address many of the problems with the current SFR Register by:

- recording lessees as third party interests; and
- providing a trail of ownership going forward by identifying SFRs distinctly.

2.36 Nevertheless, the content of AFMA's proposed SFR Register would provide greater clarity for concession holders and third parties were it to also:

- describe the types of instruments that AFMA receives as evidence of the registered interests (for example, mortgage, lease); and
- identify the quantity of the SFRs affected by the registered interest, such as the amount of quota subject to lease by a particular third party interest.

²⁸ The target fisheries of the buyback component of the *Securing our Fishing Future* structural adjustment package were NPF, SESSF, ETBF and the Bass Strait Central Zone Scallop Fishery.

2.37 In May 2009, AFMA advised that the proposed restructure of the SFR Register was on hold pending discussions taking place with DAFF and the Attorney-General's Department on the Personal Property Securities Bill and Consequential Amendments Bills proposed to come before Parliament in the Winter 2009 sittings. AFMA's registration of SFRs—particularly in respect of third party interests—could be impacted should these Bills become law. However, new regulations (yet to be drafted) would determine their impact on the SFR Register.

Conclusion

2.38 AFMA maintains a SFR Register to meet the requirement for a public record of ownership under the FM Act. However, AFMA's management of the Register is deficient in several key aspects. Its incorrect use of the term 'holder' 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.

3. Quota Management

In this chapter, AFMA's systems and processes for monitoring concession holder's quota and their take of catch from Commonwealth fisheries is discussed.

Introduction

3.1 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 allowances and timeframes specified in the fishery management plans.

3.2 The AFMA Board/Commission sets the TAC (in kilograms) for each species each season. TACs are then distributed to concession holders as SFR quota or Individual Transferable Quota (ITQ). SFR quota is allocated to concession holders where ownership rights for the fish species have been determined under a fishery management plan.²⁹ Where ownership rights to fish species have yet to be determined under a fishery management plan, AFMA allocates ITQ to concession holders through conditions on their fishing permits.³⁰ In fisheries with multiple fish species (such as the SESSF) SFR quota and ITQ can be allocated to the same concession holders for different species. Unless otherwise indicated, AFMA's quota management arrangements are the same for both SFR quota and ITQ.

3.3 The ANAO reviewed AFMA's quota management arrangements for the SESSF and SBTF³¹, including:

- the requirement for concession holders to hold quota;
- the accuracy of the quota reconciliation process at the end of (and sometimes, during) fishing seasons;
- the management of over-catch (where catch exceeds quota) at the end of fishing seasons; and
- AFMA's quota management reporting.

²⁹ Quota amounts are distributed according to the proportion of SFRs the concession holder owns.

³⁰ The allocation of ITQ is usually based on concession holders' historical access to the fishery.

³¹ Quota management is not relevant to the NPF.

Quota holding requirements

3.4 Section 95 of the FM Act only allows commercial fishing in a Commonwealth fishery where the person holds a fishing concession (being either a SFR or fishing permit). The SESSF and SBTF management plans further require concession holders to have uncaught quota prior to fishing. However, this requirement is inconsistent with other provisions within the management plans that allow concession holders to:

- fish without uncaught quota so long as by season's end (and an additional trading period) they have purchased or leased-in sufficient quota to cover their catch; and
- exceed their season's quota in certain circumstances without committing an offence (that is, an over-catch allowance).

3.5 Fishery management arrangements that allow fishing without uncaught quota and over-catch, creates a risk that fishers:

- collectively, could exceed the fisheries' TACs (which occurred in the SBTF in the 2005–06 and 2006–07 seasons); and
- individually, catch more fish than permitted by their quota and the over-catch allowance (which occurred widely in the SESSF and SBTF in the 2005 and 2006–07 seasons, respectively).

3.6 Concession holders are responsible for having sufficient quota to cover the season's catch. Quota can only be purchased or leased from other concession holders who have not caught their full quota and are willing to trade.³² Consequently, AFMA monitors catch against quota both individually and collectively, and particularly near the end of the seasons when many TACs are close to being filled. AFMA provides a number of online services to minimise the likelihood of concession holders exceeding their quota, which includes:

- Quotaview, which provides concession holders with quota transaction statements that inform them of their current balance of quota relative to their catch of fish;

³² Concession holders in the SESSF are allowed to carry forward under-catches (that is, where quota exceeds catch) to the following season in certain circumstances, which can act as a disincentive to trade with other concession holders who have over-caught.

- Catchwatch, which informs concession holders about remaining levels of fish that can still be caught in the fishery relative to each species' TAC; and
- QuotaBoard, which is an online notice board for concession holders to advertise SFR quota or ITQ available for sale or lease.³³

Transfers of SFR quota mid-season without uncaught quota

3.7 The FM Act and the SESSF and SBTF management plans allow the mid-season transfer (that is, sale) of SFR quota. However, the management plans prohibit AFMA from approving the transfer of SFR quota if the transfer would reduce the holder's quota below the weight of catch currently counted against the holder's quota. The purpose of this prohibition is to prevent concession holders from reducing their SFR quota holdings to less than what they have already caught at any point during the season (that is, fishing without uncaught quota).

3.8 AFMA first approved these transfers in 2005. In conjunction with this sale, the seller leased back sufficient SFR quota from the purchaser to cover their season's catch against the sold SFR quota. AFMA has continued to approve similar SFR quota 'sale and lease-back' transactions in the SBTF. However, AFMA has not addressed the consequential risks that arise from SFR mid-season transfers without uncaught quota (and relate to the purpose of their prohibition), which include:

- that there is no impediment to the purchaser fishing against the transferred SFR quota, despite the seller having already fished against the same quota;
- the success of enforcement action against concession holders for quota violation may be jeopardised where AFMA has approved the transactions³⁴; and
- inconsistent management practices between fisheries as SFR mid-season transfers without uncaught quota are not allowed in other quota managed fisheries.

³³ The ANAO did not examine Quotaview, Catchwatch or QuotaBoard as part of the audit.

³⁴ For example, this situation could occur should the purchaser have insufficient SFR quota to lease back to the seller while still covering the purchaser's own catch. Similarly, there may be insufficient uncaught SFR quota in the fishery, particularly towards season's end, to cover the seller's catch against the sold quota.

3.9 In addition, the SFR mid-season transfers without uncaught quota adversely impact the accuracy and transparency of the SFR Register. After processing these transactions, the SFR Register records:

- the purchaser as holding the entire SFR quota that the seller sold; and
- the seller as holding SFR quota sufficient to cover the seller's catch (until season's end).

Consequently, until the end of the season some SFR quota is recorded twice in the SFR Register, against two holders.

3.10 AFMA advised that it is proposing to amend the management plans of all SFR quota-managed fisheries to allow concession holders to freely trade their SFR quota at any time during the season. AFMA will therefore need to introduce policies and procedures to manage these identified risks to effective quota management.

Quota reconciliation process

3.11 At the end of (and sometimes, during) fishing seasons, concession holders are required to reconcile their catch to their quota. At the end of each reconciliation period (which is quarterly for the SESSF and bi-annually for the SBTF), there is an additional period of trading (four weeks for the SESSF and two weeks for the SBTF). This period allows those who have caught in excess of their quota to purchase or lease-in additional quota to cover their catch.

3.12 AFMA assists concession holders to reconcile their catch to quota by providing them with reports of their quota positions at the end of the reconciliation and additional trading periods. AFMA tallies fishers' final quota positions at the end of additional trading periods and determines, in accordance with the fishery management plans:

- where quota exceeds catch (under-catch)—the amount of quota concession holders can carry forward to the next season (the under-catch allowance)³⁵; and
- where catch exceeds quota (over-catch)—the over-catch allowance that will be deducted from the concession holders' quota the next season.

³⁵ Concession holders are only entitled to carry-forward under-catch where they are allocated quota the following season. There is no under-catch provision for the shark species managed using ITQ in the SESSF fishery.

Any under-catch that exceeds concession holders' under-catch allowances lapses. Concession holders whose over-catch exceeds their over-catch allowances (that is, unauthorised over-catch) have committed an offence and can be subject to enforcement action. Figure 3.1 illustrates the quota reconciliation calculations that are applied to each concession holder and fish species.

3.13 Under-catch and over-catch provisions were designed to take into account the imprecision that can be associated with concession holders targeting, and estimating the weight of, the last catch for the season relative to their quota. As such, carryover amounts are generally expected to be small. The under-catch provision was also designed to aid concession holders who encountered circumstances that prevented them from fishing their full season's quota.

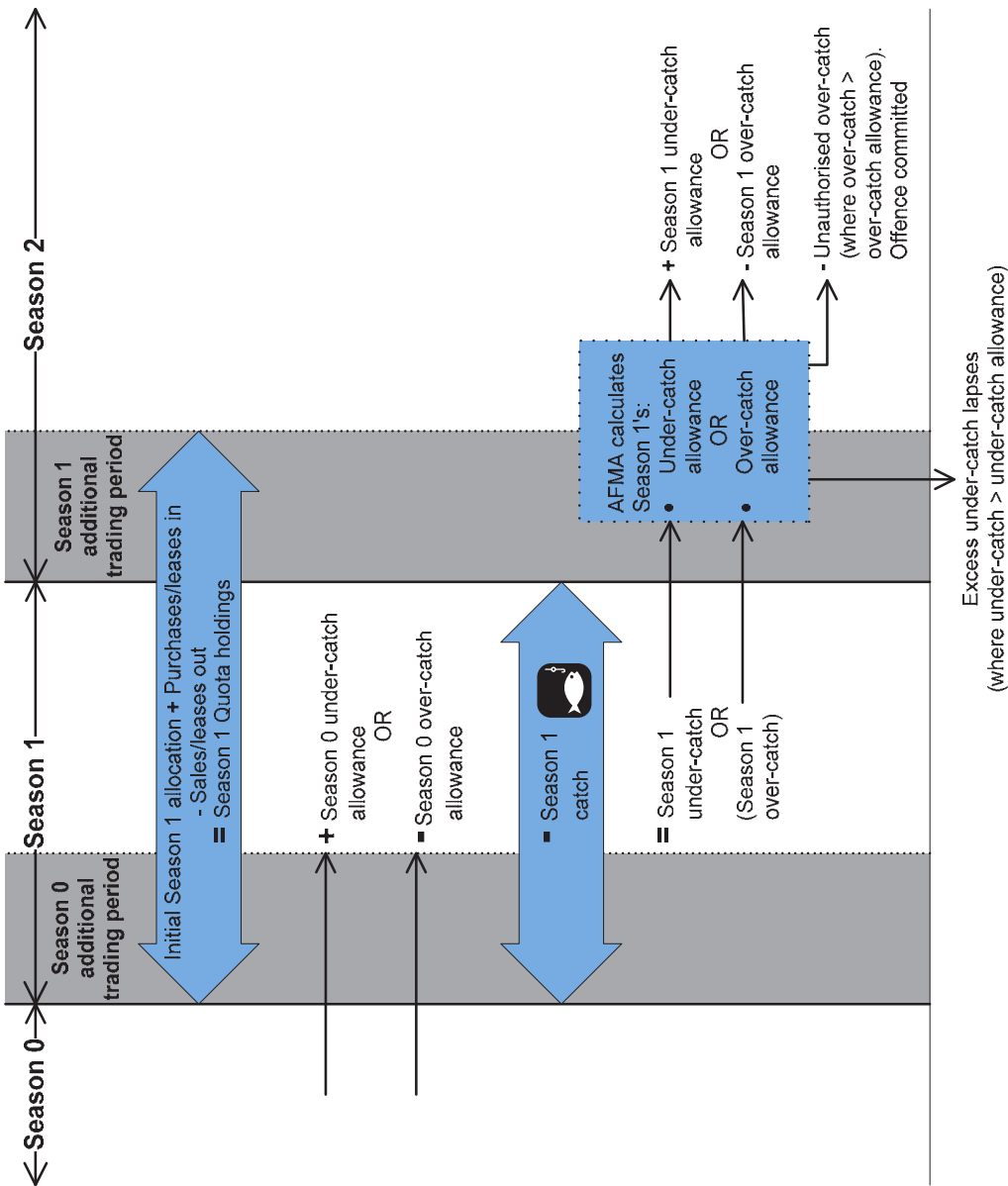
3.14 TACs are adjusted to accommodate the previous season's under-catches and over-catches. Consequently, over time, fishers collectively do not take more catch from fisheries than prescribed by AFMA as a result of under-catches and over-catches (both authorised and unauthorised). Nevertheless, under-catch and over-catch alter the timing of when fish is or can be taken from the fisheries. Where the under-catch and over-catch is significant, AFMA also needs to consider the impact on the sustainability of the fishery before adjusting the following seasons' TAC.

Accuracy of quota reconciliation calculations

3.15 The ANAO examined the under-catch and over-catch provisions as they apply to SESSF and SBTF, and identified two issues that impact the quota available to fishers. Firstly, the SESSF management plan's definition of how AFMA calculates under-catch allowances has meant that the allowances are greater than intended in certain circumstances. AFMA's calculations for under-catch are based on concession holders' quota holdings for the season. However, contrary to AFMA's intent, the management plan does not require over-catches from the previous season to be deducted from quota holdings. As a consequence, any under-catch amounts are higher than AFMA intended (by as much as the previous season's over-catch). AFMA is unable to advise the number of fishers impacted, the quantity of 'extra' under-catch involved and the number of seasons involved.

Figure 3.1

Quota reconciliation calculations for concession holders and fish species



Source: ANAO analysis of AFMA data

3.16 Secondly, it is AFMA's policy that only SESSF concession holders who generate an under-catch can benefit from the under-catch. However, current AFMA administrative practices, although meeting the requirements of the SESSF management plan, run contrary to the policy. AFMA allows SESSF concession holders with under-catch to sell or lease quota to other concession holders also with under-catch during the additional trading period (after season's end). Concession holders with larger holdings benefit more from the under-catch allowance provisions relative to concession holders with smaller holdings. An under-catch that would otherwise lapse in the possession of a concession holder with small holdings, can form part of the under-catch allowance of a concession holder with large holdings. AFMA advised that it is common for concession holders, particularly those with large holdings to purchase or lease-in the excess quota of concession holders with smaller holdings at season's end (a practice known as 'warehousing').

3.17 The implications of both these issues are that some concession holders took more catch in the following season than AFMA intended. As the following season's TACs are adjusted for the previous season's under-catches, it means that other concession holders must absorb the impact of these anomalies (by having their quota reduced by their pro-rata share of the anomalous under-catch amounts). The SESSF management plan should be revised to better reflect the way under-catch should be calculated and AFMA's administrative practices aligned accordingly.

ANAO analysis of quota reconciliations

3.18 The ANAO examined the end-of-season quota reconciliations for its sample of SESSF concession holders (two fish species per holder) and SBTf concession holders (southern bluefin tuna) for the 2007 and 2007–08 seasons, respectively, and found that:

- the reconciliations were conducted in accordance with the requirements of the respective fishery management plans; and
- the under-catch and over-catch allowances were calculated correctly.

Nevertheless, the ANAO noted two instances where catch recorded in the catch records were omitted from quota transaction statements due to miscoding or timing issues. These did not affect the allowance calculations in the ANAO's sample, but similar omissions could for other species, fishers and fisheries. Comparing each fishery's total catch as recorded in the catch records with the catch recorded in the quota transaction statements would enable AFMA to identify and investigate any discrepancies in a timely manner.

Management of over-catch

3.19 In recent years, AFMA has changed the over-catch arrangements for the SESSF and SBTf fisheries because of unacceptable levels of unauthorised over-catch.

SESSF over-catch

3.20 Prior to 2006, AFMA required SESSF concession holders to reconcile their catch to quota at the end of each season. At the end of the 2005 season, AFMA found that over 100 concession holders had caught nearly 3.5 million kilograms of fish (12 per cent of the collective TACs for the fishery) in excess of the quota they held at the time. After the additional trading period, the number of concession holders still with over-catch had been reduced to 72 and the total over-catch was less than 30 000 kilograms (as illustrated in Table 3.1).

Table 3.1

SESSF over-catch: 2005 to 2007 seasons¹

Season	At end of season			After additional trading period		
	No. of fishers	Over-catch kgs	% of collective TACs	No. of fishers	Over-catch kgs	% of collective TACs
2005	113	3 470 775	12.2	72	29 026	0.1
2006	36	253 134	0.9	0	0	0
2007	72	585 149	1.8	17	35 398	0.1

Note 1: As at June 2009, AFMA was finalising the over-catch calculations for the 2008 season that ended in May 2009.

Source: ANAO analysis of AFMA data

3.21 From the 2006 season, AFMA introduced quarterly reconciliations to reinforce to concession holders that they were required to manage their catch within quota on a timely basis. The more frequent reconciliations, coupled with further education and enforcement action from AFMA, achieved the desired result. By the end of that season, only a small number of fishers had caught in excess of their quota, and none had over-catch after the additional trading period. However, over-catch in the 2007 season has reversed this result. Should the recently-completed 2008 season produce similar over-catch results to the 2007 season, AFMA may need to adjust its future strategy for managing SESSF over-catch.

SBTF over-catch

3.22 AFMA monitors SBTF concession holders' quota position on a catch-by-catch basis during the season and follows-up with concession holders who have insufficient quota to cover their catch. However, AFMA's monitoring and reconciliation requirements could not prevent one SBTF Purse Seine fisher from taking catch in the last fishing trip of the 2005-06 season that breached the TAC for the fishery and resulted in the fisher having over-catch of nearly 42 000 kilograms. The TAC for the SBTF was breached again the following season by three Purse Seine fishers who collectively had over-catch of over 18 000 kilograms, including the fisher with over-catch in the 2005–06 season.³⁶ Table 3.2 illustrates the over-catch of SBT in the 2005–06 to 2007–08 seasons.

Table 3.2

SBTF over-catch: 2005–06 to 2007–08 seasons

Season	After additional trading period		
	No. of fishers	Overquota kgs	% of collective TACs
2005–06	1	42 696 ¹	0.81
2006–07	3	18 471 ²	0.35
2007–08	3	502 ³	0.01

Note 1: Includes 41 843 kilograms of unauthorised over-catch from the Purse Seine sector.

Note 2: Relates solely to unauthorised over-catch in the Purse Seine sector.

Note 3: Relates solely to authorised over-catch in the Purse Seine sector.

Source: ANAO analysis of AFMA

3.23 Southern bluefin tuna are a valuable fish species and concession holders are keen to fish their full season's quota, particularly as any under-catch cannot be carried forward to the following season. AFMA recognised that the time lag between fish being caught and officially weighed, together with the difficulty of getting reliable weight estimates at-sea, creates significant over-catch risks for individual fishers and the SBTF overall.³⁷ To manage these risks, for the 2007–08 and 2008–09 seasons, AFMA has trialled changes to the over-catch arrangements that give SBTF Purse Seine fishers

³⁶ Chapter 5 *Managing Non-compliance* describes AFMA's handling of the unauthorised over-catch from both seasons.

³⁷ In the Purse Seine sector of the SBTF, southern bluefin tuna are caught in nets and transferred alive into tow cages. The tow cages are towed slowly over the course of a month to fish farms.

collectively an option to select one fisher to represent them to either release live fish or retain up to a collective 25 000 kilograms per season (which would then be deducted from the fisher's quota from the following season).

3.24 AFMA's records indicate that its designated fisher released nearly 23 000 kilograms of catch under the revised over-catch arrangements, and no SBTF Purse Seine fishers had unauthorised over-catch at the end of the 2007–08 season. Nevertheless, the revised over-catch arrangements may not be consistent with the management of southern bluefin tuna internationally. AFMA advised that after it amended its SBTF management plan to accommodate over-catch in the Purse Seine sector, the international body that manages southern bluefin tuna, the Convention for the Conservation of Southern Bluefin Tuna, decided at its October 2008 meeting not to adopt over-catch provisions.

AFMA's quota management reporting

3.25 AFMA's quota monitoring practices have focused primarily on individual concession holders. While AFMA Licensing manages concession holders' quota positions, it produced little in the way of reports for management on the status of each fishery's catch against quota, including the number of fishers in over-quota positions. It is also extremely difficult to recreate historical management information from AFMA's quota management system. Reports on the status of a fishery's catch against quota at the end of reconciliation periods and additional trading periods would help AFMA to manage the TACs for each species and take timely enforcement action for unauthorised over-catch.

Conclusion

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

Recommendation No.1

3.27 To facilitate the effective management of quota within Commonwealth fisheries, the ANAO recommends that AFMA:

- (a) review the extent to which legislative requirements, policy imperatives and administrative practices for managing quota align with the Government's policy intent and, where necessary, seek amendments; and
- (b) establish procedures and processes for producing management reports on the status of fisheries' catch against quota at the end of reconciliation periods and additional trading periods.

AFMA response

3.28 AFMA agrees with this recommendation. Already underway are three important processes which align with recommendation 1(a). These include the development of a quota management policy (which will apply to quota managed species across all AFMA fisheries), a regulatory reform and simplification project (which will enhance consistency between fisheries) and improvements to automate various decisions as part of an electronic licensing capability to be implemented in mid 2009. We will consider the outcome of these processes, when undertaking the review suggested at recommendation 1(a), within 12 months.

3.29 We note that resources will be required to undertake the review outlined in 1(a) and that practical support from the Department of Agriculture, Fisheries and Forestry (DAFF) will be required to bring about any legislative changes that may be required. While we expect to identify any necessary legislative changes as part of the review within the next 12 months, the timeframe for effecting those changes will depend on Government priorities.

3.30 Regarding recommendation 1(b), we support the need for enhanced management and catch/quota reconciliation reporting, and will document and implement Standard Operating Procedures (SOPs) within AFMA over the coming 12 months.

4. Current Compliance Monitoring

This chapter examines AFMA's current decentralised approach to monitoring compliance in Commonwealth fisheries. Fishery compliance risk assessments, AFMA's current intelligence capability and its use of State fishery agencies are discussed.

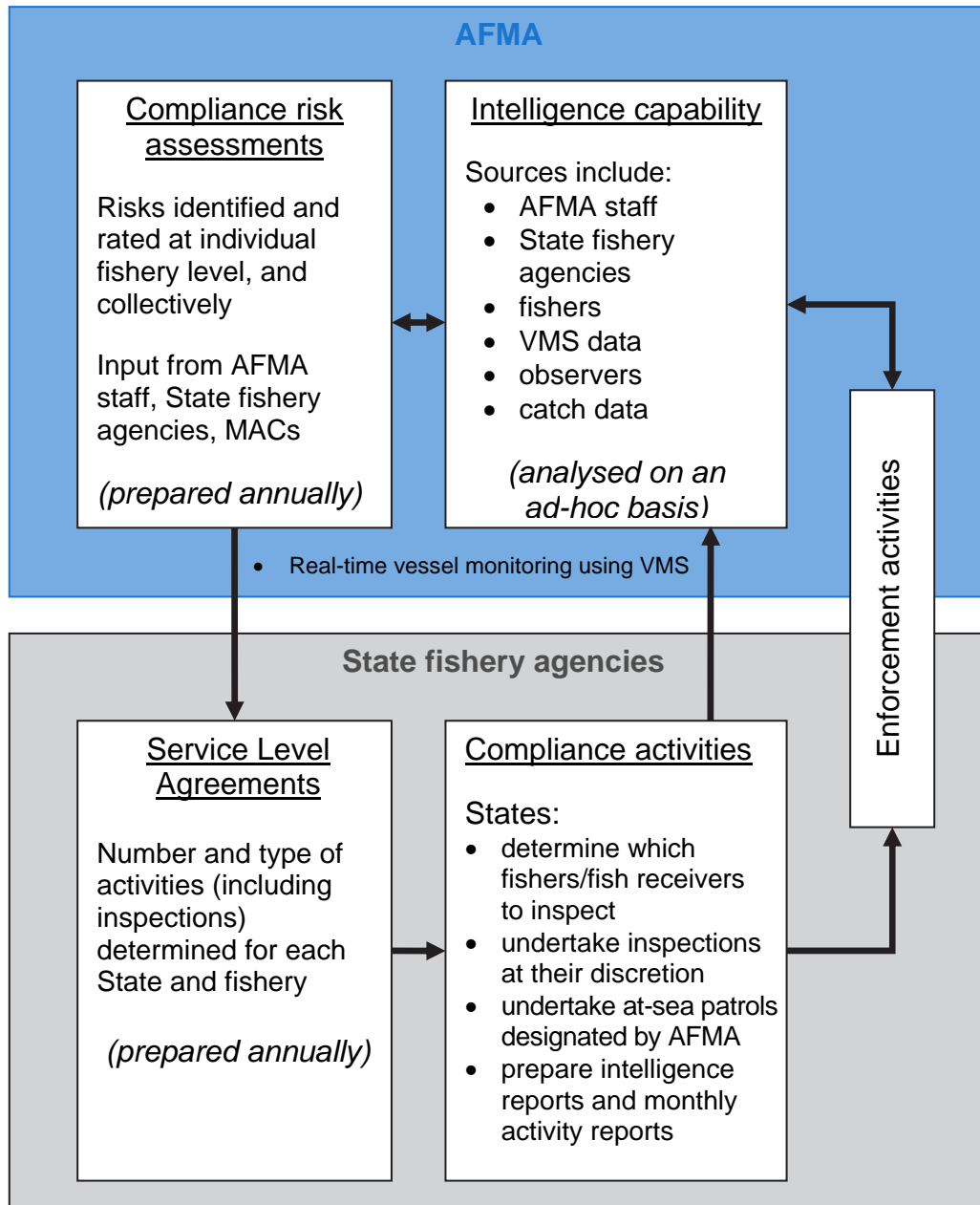
Introduction

4.1 From its establishment in 1992 until June 2009, AFMA has adopted a decentralised approach to monitoring compliance. State fishery agencies have undertaken, on AFMA's behalf, most compliance monitoring activities in Commonwealth fisheries.³⁸ 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. Figure 4.1 illustrates this approach.

New compliance monitoring approach

4.2 From 1 July 2009, AFMA will centralise its approach to compliance monitoring by using its own staff to undertake inspections of in-port vessels and fisher receivers (and is discussed in Chapter 6 *Future Compliance Monitoring*). This chapter examines the effectiveness of AFMA's current compliance activities with a view to making recommendations and suggested improvements that can be applied to its future compliance monitoring strategy.

³⁸ 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.

Figure 4.1**Current decentralised compliance approach**

Source: ANAO analysis of AFMA data

Costs of domestic compliance

4.3 The domestic compliance budget has fluctuated between \$4.5 million and \$5.1 million over the last six years (2003–04 to 2008–09). Actual expenditure on domestic compliance annually has been less than budget by an average of 17 per cent, although actual expenditure in 2005–06 was 32 per cent less than that year's budget. AFMA advised that most of the under-expenditure related to the State fishery agencies not meeting their inspection targets. AFMA also temporarily redirected a significant portion of its 2005–06 domestic compliance resources (approximately one-third) to foreign fishing compliance.

4.4 Since 2003–04, AFMA has maintained a policy of the government and industry equally sharing the costs of domestic compliance.³⁹ This split was based on the premise that compliance is divided into two categories of equal cost—surveillance and enforcement—with industry funding the former and government funding the latter. This funding policy has led to much industry scrutiny of the costs of domestic compliance. In January 2009, AFMA released for public consultation a draft Cost Recovery Impact Statement that, if implemented, would require the government to fund almost the full cost of domestic compliance from 2009–10 onwards.⁴⁰ AFMA considers that monitoring activities benefit the wider community, including different sectors of the fishing industry, and charging for enforcement activities is neither efficient nor cost-effective.

Compliance risk assessments

4.5 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 has assessed domestic compliance risks annually for the following year across its seven major fisheries.⁴¹ This approach allows resources to be better targeted towards addressing the highest risks. Input is provided by various

³⁹ Industry funds its 50 per cent share through management levies.

⁴⁰ The cost of VMS monitoring and data analysis would remain apportioned between government and industry.

⁴¹ 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'.

staff groups⁴², State fishery agencies and industry (through the MACs). AFMA is currently completing an assessment for 2009–10.

4.6 The risk assessments demonstrate that, overall, the inherent risks to Commonwealth fisheries are high, reflecting AFMA's general view that fishers' compliance would be poor without its presence. However, the current controls in place significantly reduce the ratings of most risks to 'moderate' or lower. In reviewing the assessments, the ANAO noted:

- that the inherent and residual risk ratings, overall, had increased slightly from 2007–08 to 2008–09;
- the cost-effectiveness of current controls are not analysed. Each control comes at a cost to AFMA and a review of their individual and collective effectiveness and cost would allow AFMA to determine their value for money and adjust its mix of controls accordingly;
- that some AFMA staff gave the same rating for inherent and residual risks, which indicates, prima facie, that they considered AFMA's controls to be ineffective in addressing these risks;
- risk ratings are not compared or contrasted over time to identify trends; and
- missing data and calculation errors, most of which did not affect the final ratings.

4.7 AFMA gave focus/priority to: risks common across multiple fisheries to ensure greatest coverage and deterrence; and to those high risks identified within the highest risk fishery, the ETBF. For 2008–09, the two core areas targeted by AFMA Compliance were:

- misreporting of catch in catch disposal records (CDRs), as these are a primary mechanism for monitoring quota and overfishing; and
- threat abatement plan provisions in the ETBF, as non-compliance could impact on the future continuation of the fishery.

⁴² Including Compliance, Fisheries Management, VMS/Intelligence, Data Entry and Observers.

Conclusion

4.8 AFMA uses a structured approach to identify and rate compliance risks to Commonwealth fisheries on an annual basis. Nevertheless, 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

4.9 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. Analysis of this data can lead to compliance investigations by AFMA or State fishery agencies and/or enforcement action, where sufficient evidence of non-compliance is obtained.

4.10 Intelligence data typically comes from a number of regular sources, including:

- AFMA's internal business areas, such as Data Entry for the catch data; Licensing for fishers' reconciliation of quota to catch; and Compliance during investigations;
- State fishery officers, from inspection and intelligence reports⁴³;
- catch data, including fishing logbooks completed by fishers and CDRs completed by fishers and fish receivers⁴⁴;
- fishers, particularly ex-fishers or those disgruntled by their current circumstances; and

⁴³ The SLAs prescribe a minimum number of intelligence reports to be prepared each year for each fishery. Using a standard pro-forma, State fishery officers prepare about 140 intelligence reports each year documenting the intelligence they gather and their opinion on its reliability and truthfulness.

⁴⁴ Fishing logbooks record detailed information on the amount and location of fishing effort and catch from each fishing operation or 'shot' (that is, each time lines/nets are deployed and retrieved). CDRs record the fishing trip's total catch of each species and form the basis for decrementing quota from fishers.

- Vessel Monitoring System (VMS) data, which documents the position, speed and heading of all Commonwealth fishing vessels at regular intervals.⁴⁵

4.11 AFMA uses various software packages to store, access and analyse intelligence data, which is held in some 30 repositories across the agency. However, until 2009, 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.

4.12 In 2007 and 2008, AFMA's Intelligence function was nominally staffed at between 1.5 and 2.5 full-time equivalent (FTE). However, AFMA advised that other work priorities, and predominantly VMS, meant that between one and 1.5 FTE was spent on intelligence gathering, analysis and reporting, which was insufficient for it to be effective.

4.13 In 2009, AFMA increased the resources dedicated to its Intelligence function and the analysis of its intelligence data holdings. It expects that the increased effort being given to data analysis together with the move towards a centralised compliance approach, will allow it greater flexibility in targeting non-compliance risks as they change over time. These enhancements and the centralised compliance approach are examined in Chapter 6 *Future Compliance Monitoring*.

Observers

4.14 AFMA has an Observer program whose primary role is to provide independent, reliable, verified and accurate data on the fishing catch, effort and practice on vessels (including commercial fishing vessels) operating inside, and periodically, outside the Australian Fishing Zone. Observer data is mainly used for scientific purposes related to fish stock management and fishery sustainability. AFMA currently employs about 30 seasonal observers who individually accompany selected fishers to sea and observe their fishing operations. In 2007–08, there were over 2500 observer deployments (calculated as sea-days) across 18 Commonwealth fisheries. Whilst at sea, observers

⁴⁵ The actual and potential uses of VMS as a compliance tool are discussed later in this chapter.

complete detailed spreadsheets documenting their observations, and a summary report at the end of each observed fishing trip.

4.15 Observers often provide the most reliable data on catch composition, the fate of target and non-target species, and fishing effort as this information cannot be obtained from any other source. Likewise, fishers' compliance with some rules can only be detected by direct observation of fishing activity (for example, the deployment of certain equipment designed to reduce interactions with threatened, endangered and protected species). Consequently, observers are in a position to detect non-compliant fishing activity.

4.16 Although AFMA encourages observers to report cases of non-compliance, it is acknowledged that giving observers an overt compliance role has the potential to interfere with their primary role of collecting scientific data. Such a role may also reduce the willingness of fishers to allow observers on-board their vessels and, in extreme circumstances, create a risk to observers' personal safety while at-sea. Consequently, AFMA does not pursue compliance action against particular fishers based on the observers' observations.⁴⁶ Summary reports from observer trips are reviewed by AFMA and any non-compliance reported by observers becomes an input into risk assessments.

Decentralised compliance approach

4.17 For many years, AFMA has entered into a series of memoranda of understanding with State fishery agencies. Under the most recent memoranda of understanding:

- AFMA and State fishery agencies develop annual SLAs that set the number and type of compliance tasks (including inspections) required for each fishery;
- State fishery agencies make appropriately skilled staff available to undertake the agreed compliance tasks and report back to AFMA regularly;

⁴⁶ Observer reports were the primary justification for AFMA closing the ETBF to daylight fishing from September 2008 because of an unacceptable number of encounters with threatened, endangered and protected species, particularly albatross.

- AFMA arranges for staff of the State fishery agencies to receive training in Commonwealth fisheries legislation (while the State fishery agencies remain responsible for other training); and
- AFMA provides State fishery agencies with manuals, guidelines, operating procedures and reporting forms.

4.18 State fishery officers based at dozens of ports across Australia undertake inspections on AFMA's behalf. Inspections generally involve: determining that valid fishing concessions or fish receiver permits are held; examining the catch and effort logbooks to see whether they have been accurately completed; observing the landing of catch or its official weighing (where applicable); and searching vessels or fish receiver premises for signs of illegal activity.

4.19 The at-sea and in-port inspections and aerial surveillance undertaken by State fishery officers address (either fully or partially) 13 of the 15 highest compliance risks facing Commonwealth fisheries. AFMA itself only addresses (fully or partially) five of these 15 risks. Consequently, it is important that AFMA and the State fishery agencies develop and implement SLAs that will address the identified compliance risks. AFMA should also assess the impact on fishery risks where significant variances between planned and actual compliance activities occur.

Service Level Agreements with State fishery agencies

4.20 The development of the annual SLAs with the State fishery agencies was a complex process. They included prescriptive budgets for, and the number of compliance tasks to be undertaken in, each Commonwealth fishery beyond the States' boundaries. Consequently, 16 separate budgets were developed for 2008–09, covering the seven major fisheries and six State fishery agencies.⁴⁷

4.21 The State fishery agencies are required to manage their resources within each budget, with little opportunity to reallocate resources between States and fisheries during the year. AFMA sees this budget inflexibility as one of the primary drawbacks of the current decentralised compliance approach. It is constrained by its inability to respond to new or emerging risks and issues in

⁴⁷ State fishery agencies conduct compliance activities in up to four major fisheries. Major fisheries are subject to compliance activity by up to four State fishery agencies (in the GHT and CT fisheries).

a timely manner. In 2007–08, AFMA endeavoured to introduce more flexibility by making intra-State budget reallocations for agreed, targeted operations and investigations ('the centralised pools'). However, it found that some States were unable to respond quickly to intelligence and undertake these operations and investigations at short notice.

4.22 The collective SLA budgets for State fishery agencies in 2008–09 were \$1.3 million.⁴⁸ Over the four year period 2005–06 to 2008–09, budgets declined by seven per cent, but the time State fishery officers planned to spend on compliance activity declined further—by 20 per cent. The reason for this decline was, primarily, increases in the per-hour cost of using State fishery officers and their equipment. In addition, the number of fishing trips by Commonwealth fishers over the same four year period also declined—by nearly one half, primarily as a result of the *Securing our Fishing Future* buyback package.

4.23 One indicator of planned compliance monitoring effort is the total time planned for compliance activities as a proportion of the number of fishing trips. Using this indicator, State fishery officers planned to inspect a greater proportion of fishing trips in 2008–09 than they did four years ago. This translated into an increase in the average time State fishery officers planned to spend on compliance activities per fishing trip by 43 per cent across the major fisheries (see Table 4.1).

4.24 Table 4.1 shows that the average planned compliance activity per fishing trip varied significantly from fishery to fishery—ranging from a nine per cent decrease in the NPF to a 629 per cent increase in the WTBF. AFMA has not analysed its annual domestic compliance risk assessments for trends over time, including the relativity of risk ratings across the major fisheries. While the average for the ETBF (the highest risk fishery) nearly doubled, the averages for some lower risk fisheries (SBTF and WTBF), increased by greater amounts.

⁴⁸ Excludes the reduction to the Victorian SLA because of a reduction in this State's involvement in compliance activities flowing from the Lakes Entrance Co-management Trial.

Table 4.1

Average planned compliance activity per fishing trip: 2005–06 to 2008–09¹

		2005–06	2008–09	Percentage change from 2004–05 to 2007–08
Fisheries	NPF	970 minutes ²	887 minutes ²	↓9%
	ETBF	28 minutes	54 minutes	↑91%
	WTBF	94 minutes	686 minutes	↑629% ³
	GHT	33 minutes	41 minutes	↑25%
	CT			
	GABT			
	SBTF	240 minutes	575 minutes	↑139%
	TOTAL	43 minutes	62 minutes	↑43%

Note 1: Planned compliance activity includes all inspections, surveillance and centralised pool activities applicable to major fisheries. Fishing trip data has been measured over the period 2004–05 to 2007–08.

Note 2: Unlike other fisheries, fishing effort in NPF has been based on the number of fishing vessels.

Note 3: The WTBF now has only one active fisher, which accounts for the large increase in planned inspection activity relative to WTBF fishing trips.

Source: ANAO analysis of AFMA Domestic Fishery SLAs 2005–06 and 2008–09, and AFMA Annual Reports 2004–05 and 2007–08

4.25 AFMA advised that some States' compliance budgets were greater than warranted by their fisheries' risk assessments due to the need to have a 'critical mass' of funding to maintain the States' interest in undertaking Commonwealth work. This is another drawback of the current arrangements that AFMA considers a centralised compliance approach (discussed in Chapter 6 *Future Compliance Monitoring*) will address. It advised that it would begin regular assessments of its performance against fishery risks at the end of 2008–09, and allocate its resources accordingly.

Compliance activity undertaken by State fishery agencies

4.26 Tables 4.2 and 4.3 illustrate the actual 2007–08 domestic compliance expenditure and activity of State fishery agencies by State and fishery, respectively. Overall, State fishery agencies underspent their 2007–08 compliance budgets by one-fifth, with the hours spent on inspections and other compliance activities also about one-fifth under budget.

Table 4.2

Actual 2007–08 SLA expenditure and compliance activity, and percentage variance from budget: by State¹

	Inspection and centralised pool activity						TOTAL
	NSW	Vic	Qld	SA	WA	Tas	
SLA expenditure (\$'000)	103 ↓69%	180 ↓6%	355 ↓9%	294 ↑6%	63 ↓13%	185 ↓1%	1180 ↓19%
SLA actual compliance activity (hours)	507 ↓77%	1452 ↑3%	1005 ↓31%	1538 ↑36%	458 ↓24%	1671 ↑1%	6630 ↓21%

Note 1: As reported by the States in their quarterly compliance reports.

Source: AFMA Domestic Fishery SLAs 2007-08 and quarterly compliance reports

Table 4.3

Actual 2007-08 SLA expenditure and compliance activity, and percentage variance from budget: by major fishery¹

	Inspection activity							Centralised pools ²	TOTAL
	NPF	ETBF	WTBF	GHT	CT	GABT	SBTF		
SLA expenditure (\$'000)	234 ↑16%	120 ↓48%	42 ↑40%	211 ↑2%	171 ↓11%	16 ↑104%	144 ↓12%	242 ↓12%	1180 ↓19%
SLA actual compliance activity (hours)	465 On budget	613 ↓40%	263 ↑4%	1676 ↑25%	1289 ↓20%	106 ↑77%	347 ↓41%	1871 ↓40%	6630 ↓21%

Note 1: As reported by the States in their quarterly compliance reports.

Note 2: By its very nature, it is not easy to attribute compliance activity in the centralised pools across the major fisheries.

Source: AFMA Domestic Fishery SLAs 2007–08 and quarterly compliance reports

4.27 As the tables illustrate, compliance activity in:

- NSW was 77 per cent under its planned activity, which impacted on most fisheries monitored by NSW (including ETBF, CT fishery, and SBTF) and its centralised pool;

- Qld and WA were also significantly under budget (by 31 and 24 per cent, respectively), with the impact being on their centralised pools;
- SA was significantly over budget, particularly in the GHT fishery.⁴⁹

4.28 Some States' significant under-achievement of compliance activity puts at risk AFMA's 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. However, AFMA has not formally assessed the impact of the States' under-achievement of compliance activity on its management of fishery risks. AFMA advised that under-achievement of annual inspection numbers was commonplace and it has limited scope to influence State fishery agencies undertaking planned compliance activity in Commonwealth fisheries. Some States readily acknowledge that Commonwealth work is a low priority, which is a function of it being only a small proportion of their total workload.

4.29 Over the past few years, State fishery agencies have continually expressed their disappointment over progressive reductions to their annual SLA budgets. When the introduction of centralised pools was foreshadowed to the States in October 2006, they were generally supportive of the flexibility it would provide to target major risks and conduct operations and investigations. At the same time, however, all State fishery agencies considered that:

- Commonwealth domestic compliance funding was inadequate to provide all the necessary elements of a successful compliance program; and
- the re-allocation of inspection resources to the centralised pools would diminish and undermine their ability to collect the relevant intelligence necessary to identify and support major investigations, and to maintain specialised compliance knowledge and experience in Commonwealth activities.

At the time, AFMA concluded that any further reductions in SLA funding could result in some States withdrawing from doing any Commonwealth compliance work.

⁴⁹ AFMA was only billed for part of these compliance costs due to: (i) SA covering the cost of compliance activity above agreed levels where prior approval from AFMA was not obtained; and (ii) calculation errors by SA that AFMA did not detect.

Inspection activities of State fishery officers

Inspection targeting

4.30 Within the parameters of the SLAs, State fishery agencies generally determine who to inspect and when, although the larger at-sea patrols are usually planned in consultation with AFMA. State fishery officers determine inspection targets largely based on two factors:

- their understanding of which fishers and fish receivers are more likely not to comply with requirements; and
- opportunity—when State fishery officers have available time to conduct inspections and when the fishers or fish receivers are within the State fishery officers' proximity. Inspections are more likely to occur close to where officers are based, which are the busier ports.

4.31 AFMA neither assists State fishery agencies to target in-port inspections activity, nor is it aware of the extent to which inspections undertaken target those fishers and fish receivers at greater risk of non-compliance. Analysis of catch data and the proactive use of VMS by AFMA could have assisted the States to better target their inspection activities. AFMA advised that the State fishery agencies could only make limited use of any targeting information as '[State] resources are relatively inflexible, because of State priorities'.

Documenting inspections

4.32 During each inspection, State fishery officers complete a proforma Commonwealth Inspection Report that records details of the: inspection subject; the checks performed and their results; and action taken (if any) in response to any identified non-compliance.⁵⁰ Completed reports are faxed to AFMA Compliance within 24 hours of the inspection. The details from all inspection reports are entered into a spreadsheet, with the free-form comments being summarised by the data entry operator. As the inspection reports are pre-numbered, AFMA ensures that all are accounted for. Compliance staff review the reports, paying particular attention to the 'action taken' field and any free-form comments. However, as these reviews are not documented, it is unclear how AFMA responded to the reports or if any follow-up action was initiated.

⁵⁰ Actions taken include either: 'no further action'; 'caution'—orally or in writing; preparing a 'Commonwealth Fishing Inspection Notice' (CFIN); or preparing a 'Brief of Evidence' for the Commonwealth Director of Public Prosecutions.

ANAO analysis and observation of inspections

4.33 The ANAO analysed AFMA's spreadsheet recording inspections since October 2004 and found that many relevant fields, including the 'action taken' field were left blank by State fishery officers. AFMA advised that it was accepted practice for some officers to report on an exceptions basis. Of the 3006 inspections undertaken between October 2004 and October 2008, 651 (22 per cent) did not specify the action taken. In many cases, further inquiries were required to determine the inspection result, but there is no facility for recording these inquiries or the results on the reports.

4.34 The ANAO found that 126 inspections (four per cent) recorded 'brief', 'CFIN' or 'caution' as the action taken, but the inspection report check-box responses did not signify any problems. A perusal of the free-form comments for these inspections indicated that either:

- positive or missing check-box responses should have been recorded as negatives;
- the problems identified did not easily fit within the check-box categories; or
- it was not possible to determine the problem(s) that led to the action taken.

4.35 During the audit, the ANAO observed a total of 18 in-port and fish receiver inspections at five fishing ports in four States. State fishery officers conducted 16 of these inspections and AFMA staff conducted the other two. The ANAO observed inconsistency with the extent to which inspectors followed AFMA's inspection guidance, particularly for fish receiver inspections. There were also six instances of non-compliance by fishers during the inspections that were not appropriately actioned and/or recorded in the inspection reports by State fishery officers. Instituting a quality assurance process for its inspection program would provide AFMA with assurance that inspections are being performed properly and consistently. Within this context, AFMA would also benefit from:

- revising the inspection report pro-forma to capture all significant observations and any follow-up action; and
- reinforcing its expectations of how inspections should be conducted.

Factors inhibiting State fishery agencies

4.36 State fishery officers in NSW, Vic, Qld and SA, raised a number of matters with the ANAO that they considered inhibited the effectiveness and efficiency of their Commonwealth fisheries work. These included:

- the effectiveness of communication between AFMA and State fishery officers on operational issues;
- complex and, at times, ambiguous fisheries legislation and fishery policy;
- insufficient access to VMS data; and
- insufficient training in Commonwealth fisheries regulation.

Communication between AFMA and State fishery officers

4.37 AFMA keeps State fishery officers informed of operational matters that could impact on their Commonwealth work, such as changes to fishing ground closures and suspended fishers. The process employed generally works well, but occasionally State fishery officers have not been informed of relevant issues in a timely manner. Communication breakdowns can create unnecessary angst and inefficiencies for State fishery officers and fishers. In the future, there would be benefits in AFMA improving its communication processes to keep inspectors informed of all relevant operational matters.

Regulatory issues

4.38 Quota evasion is one of AFMA's highest risks in quota-managed fisheries. State fishery officers advised the ANAO that there are two issues—no time limits to land catch and the location of where accurate catch weight is determined (described in Appendix 3)—where ambiguous fisheries legislation and policy inhibit their ability to manage quota evasion risks. The ANAO suggests that AFMA review these compliance issues as part of its Regulatory Simplification Project, which is discussed in Chapter 6 *Future Compliance Monitoring*.

Vessel Monitoring System data

4.39 AFMA's VMS provides close to real-time data on the location of fishing vessels with Commonwealth fishing concessions. This data can greatly aid the inspection of fishing vessels at-sea and can provide good indications of when and where particular vessels are returning to port. State fishery agencies must access VMS data via AFMA. The agencies consider that direct access to VMS, particularly outside business hours, would increase the effectiveness of

inspection targeting. AFMA advised that the costs of supporting the States' direct access to VMS would be prohibitive and that it has arrangements in place to provide VMS data to the States at all times. Under the centralised approach to compliance monitoring, AFMA inspectors will have direct access to VMS data.

Training provided to State fishery officers

4.40 Training for staff undertaking Commonwealth compliance activities helps new staff understand AFMA's requirements and gives experienced staff the opportunity to take onboard AFMA's experiences of better inspection practices and lessons learned from across Australia. It also demonstrates AFMA's commitment to, and the value placed on, the work of the State fishery officers. Over the last two years, in excess of 1200 hours has been budgeted in the SLAs for 'AFMA-organised fishery officer training'. However, little training was provided and the training budgets were re-allocated to compliance activities. AFMA's future compliance program will be more effective if it develops and maintains a training program for its inspectors.

Conclusion

4.41 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. These are some of the reasons why AFMA has chosen to centralise most of its compliance activities from July 2009.

4.42 Although planned compliance activity has reduced by 20 per cent over the last four years, actual Commonwealth fishing activity (as measured by the number of landings) has nearly halved over the same period. As a consequence, the average time State fishery officers planned to spend on compliance activities per fishing trip has increased by 43 per cent across the major fisheries. However, 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.

4.43 Although States fishery agencies considered their domestic compliance funding insufficient, some significantly under-achieved in meeting their

compliance targets and budgets. However, AFMA has not assessed the impact that this reduced compliance activity has on the effective management of Commonwealth fisheries. 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 would be enhanced if it reaffirmed inspection requirements, revised inspection report proformas, and introduced a quality assurance program.

4.44 State fishery officers considered that there were matters under the control and/or influence of AFMA that inhibited the effectiveness and efficiency of their Commonwealth compliance work. AFMA's future monitoring of the commercial fishing industry would benefit from reviewing identified regulatory issues as part of its regulatory simplification project, keeping its inspectors informed of all relevant operational matters, and developing and maintaining a training program for its inspectors.

Recommendation No.2

4.45 To improve the quality, consistency and targeting of its inspection program, the ANAO recommends that AFMA:

- (a) target its inspection program towards those fishers/fish receivers at greater risk of non-compliance;
- (b) revise its inspection report pro-formas to capture all significant observations, problems encountered and follow-up action undertaken; and
- (c) develop and implement a quality assurance program for its inspections.

AFMA response

4.46 AFMA agrees with this recommendation. We recognise that targeting high risk fishers/fish receivers will be the cornerstone to the success of the new centralised compliance program. AFMA is already increasing its resources in the intelligence area to identify and focus on those fishers/fish receivers that are considered of high risk of non compliance prior to 1 July 2009. This work will continue beyond 1 July 2009, consistent with recommendation 2(a).

4.47 Under the new centralised compliance program, AFMA believes that the deployment of its own officers in conducting and completing inspection reports will directly improve the quality and consistency of the inspections

being undertaken in Commonwealth fisheries. We acknowledge that the existing pro-forma reports could be improved, and consistent with the intent of recommendation 2(b) will be exploring alternate electronic methods to record and report inspections in a more cost effective and efficient manner. This work will be completed within the next 12 months.

4.48 AFMA intends to address recommendation 2(c) by developing a formalised Quality Assurance Review (QAR) program across all aspects of the new centralised compliance program to maintain quality control and business improvements associated with its compliance activities. A QAR program will be implemented within 12 months.

Vessel Monitoring Systems

4.49 In the December 2005 Ministerial Direction to AFMA, the introduction of VMS in all Commonwealth fisheries was one of a number of compliance measures proposed to strengthen AFMA's ability to monitor fishing activity. VMS had been introduced in sections of the Commonwealth fleet from 1993, but became a mandatory requirement for all Commonwealth vessels from July 2007.⁵¹ AFMA's introduction of mandatory VMS (encompassing its registration and continuous polling)⁵² is discussed in Chapter 5 *Managing Non-compliance*. Its use as a compliance tool is discussed below.

4.50 State fishery agencies use VMS data, accessed through AFMA, to aid the targeting of its at-sea patrols and in-port inspections (as discussed above). AFMA is also examining the potential for VMS to be a real-time compliance tool and an 'after-the-event' source of intelligence to assist the targeting of other compliance activities. VMS technology allows AFMA to establish virtual fences (or 'geo-fences') around areas closed to fishing. It receives an alert whenever fishers poll within a geo-fence.⁵³

4.51 AFMA's use of VMS alerts to monitor fisher compliance in real-time is complicated by the many 'false positives' it receives. Fishers are allowed to traverse most fishing closures, subject to certain conditions (such as remaining

⁵¹ A description of the VMS infrastructure is provided in Appendix 2.

⁵² VMS registration occurs when an approved VMS unit has been installed on a vessel. Continuous polling means that an installed VMS unit is operating normally by relaying its position to AFMA at the desired intervals.

⁵³ AFMA advised that, with technical assistance from Geoscience Australia, accurate geo-fences have now been established for all areas (over 130) regularly or periodically closed to fishing.

within the closure for only a limited time and maintaining a certain vessel speed). Consequently, AFMA has recently come to the conclusion that monitoring VMS alerts in real-time is not a cost-effective use of its resources. AFMA believes it would be more useful to prepare periodic reports (say, monthly) on the number of VMS alerts triggered in each closure and use these as the basis for targeting further analysis.

4.52 In late 2008, AFMA engaged an IT consultant to develop a suite of management reports to interpret the raw VMS data. It expects that the analysis of VMS data will require multiple iterations before useful intelligence is produced on a regular basis. The ANAO also considers that there would be compliance benefits (as part of the new centralised compliance approach) in AFMA:

- investigating the potential for refining its VMS alerts to take account of generic conditions that allow fishers to enter closures; and
- using its fishery managers to monitor regularly (for example, once daily) the current location of the Commonwealth fleet to gain confidence that there are no blatant contraventions of fishery closures.

5. Managing Non-compliance

This chapter examines AFMA's management of non-compliance with fisheries legislation. AFMA's enforcement regime, and the prioritisation and conduct of investigations, are discussed.

AFMA's enforcement regime

5.1 As the regulatory authority, AFMA must take action to address non-compliance. The seriousness of the offence and the entity's compliance history will influence its response. The ANAO examined AFMA's strategies to address non-compliance and how its enforcement regime is applied.

5.2 AFMA has a graduated range of responses to address fishery non-compliance. It provides guidance material to its staff and State fishery officers on: the generic criteria they should apply when determining the appropriate enforcement action; the factors the Commonwealth Director of Public Prosecutions (CDPP) considers when deciding whether to pursue prosecution; and examples of the types of situations that may warrant imposing particular enforcement responses. Criteria typically relate to the seriousness of the offence, the offender's compliance history, and whether the action is likely to lead to the offender's future compliance.

Available enforcement actions

5.3 AFMA's graduated range of responses to non-compliance include:

- encouragement and education—such as informal advice, seminars, information sessions, brochures, fact sheets and management arrangement booklets;
- warnings, cautions and infringement notices—for less serious matters, AFMA can issue verbal or written warnings/cautions, or a \$220 Commonwealth Fishing Infringement Notice (CFIN)⁵⁴;
- concession suspension or cancellation—for more serious matters, AFMA can suspend (usually for up to one month) or cancel a concession where its conditions have been contravened or where an

⁵⁴ The CDPP can also issue an offender an Official Caution in place of taking a matter to court.

offender has breached fishing laws of the Commonwealth, States/Territories, New Zealand or Papua New Guinea⁵⁵; and

- criminal prosecutions—for serious offences, AFMA prepares briefs of evidence, which are reviewed by the CDPP. The CDPP has discretion on what matters are brought before the courts, based on whether there is a reasonable prospect of conviction and prosecution is in the public interest.

5.4 AFMA's decision-making criteria for concession suspensions/cancellations and criminal prosecutions are similar. However, courts have a greater range of penalties they can impose, including: concession suspensions or cancellations; fines; the forfeiture of the fishing vessel and/or gear and/or catch; and custodial sentences of up to two years.⁵⁶

5.5 Existing regulations also allow AFMA to impose new, more onerous conditions on offenders' fishing concessions or fish receiver permits that could be tailored to address specific non-compliance. However, AFMA advised that it is not in favour of this approach. In its view, imposing additional conditions on permits for offences would:

- introduce new fishing requirements that industry members would need to understand and comply with;
- complicate licensing requirements⁵⁷ and elevate the risk of error;
- expand the scope for administrative challenge and merit review;
- increase monitoring, surveillance and enforcement activities;
- increase AFMA's administration costs; and
- be contrary to the regulatory simplification process, which is seeking to reduce complexity and streamline arrangements.

⁵⁵ Concessions can also be suspended or cancelled for the non-payment of any fee, levy or charge related to the concession.

⁵⁶ Courts can impose suspensions of greater than the one month that AFMA can under the FM Act. Fines for individuals can be up to \$27 500 of the FM Act and up to \$1100 for regulation breaches. Fines for corporations are five times that for individuals.

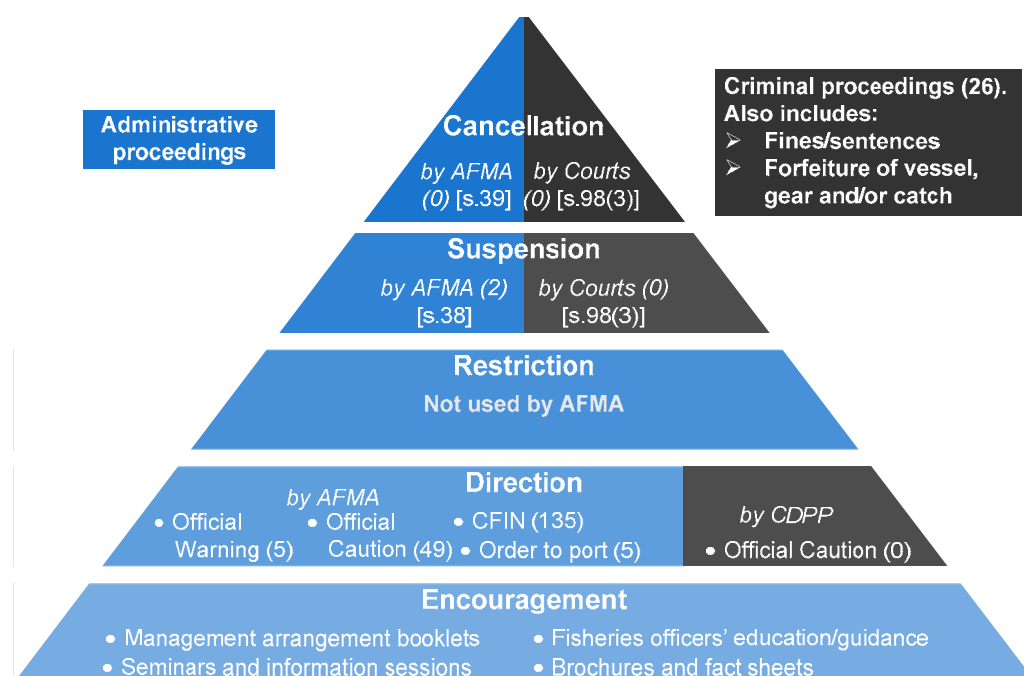
⁵⁷ For example: (i) the additional conditions would need to be removed from permits when they are traded to third parties, and imposed on permits obtained from third parties; and (ii) permits could also be transferred to third parties who are, in reality, related entities, to avoid the additional conditions.

Enforcement actions applied

5.6 Figure 5.1 illustrates the number of times AFMA has applied each enforcement response in the last two financial years (2006–07 and 2007–08). Enforcement actions of a directive nature, particularly CFINs, were applied most often. This result is to be expected as the more onerous actions are reserved for the smaller number of serious breaches. AFMA has rarely applied its powers of suspension and cancellation, while numerous matters went to criminal prosecution.

Figure 5.1

Graduated enforcement responses applied by AFMA: 2006–07 to 2007–08



Source: ANAO analysis of AFMA enforcement activities and mandate

5.7 CFINs are widely acknowledged as being an ineffective deterrent and penalty, except for only the most minor of offences. Should offenders contest the CFIN (by not paying) the offender becomes liable for prosecution for the substantive offence (not the non-payment of the CFIN). Enforcing a CFIN through prosecution is costly and resource intensive. The decision to refer CFINs for prosecution is made in consultation between AFMA's Chief Financial Officer and Compliance, with the final decision resting with the CDPP. In 2006, AFMA drafted, in association with the Office of Legislative

Drafting and Publishing, a revised fine structure for CFINs that, if legislated, would allow AFMA to impose fines up to a maximum of \$6600 (60 penalty units). AFMA advised that it has not pursued this issue due to other work priorities, although it could be reviewed in the future. In any event, AFMA would still be required to take offenders to court to prove the offence should the revised CFINs not be paid.

5.8 Of the 22 matters finalised by the courts in 2006–07 and 2007–08, AFMA was successful in 19. Although AFMA has a good success rate in the matters brought before the courts:

- a sizeable portion of AFMA's efforts produced little result when the CDPP declined to proceed to court with over a quarter of all matters referred to them by AFMA in 2006–07 and 2007–08⁵⁸; and
- court actions can take a considerable period of time to finalise.⁵⁹

5.9 DAFF is currently reviewing the feasibility of introducing alternative enforcement actions for Commonwealth fishing offences to replace the cancellation provisions of the FM Act.⁶⁰ A stakeholder workshop held in September 2008 considered a number of proposals, including increasing concession suspension periods from one month to up to 12 months for:

- non-payment of levies, after which time AFMA could compulsorily sell the concession; and
- offences against the FM Act, as well as increasing fines, using a tiered offence structure based on the offenders' intent and conduct.

5.10 AFMA supports a range of measures that would reduce the circumstances where cancellation provisions were required.⁶¹ Nevertheless, it

⁵⁸ AFMA established a prima facie case in six matters, but the CDPP declined to proceed for the following reasons: 'not reasonable/limited prospect of conviction' (three cases); 'mistaken fact/belief' (two cases); and 'unlikely to succeed' (one case). The other four matters did not proceed due to 'insufficient evidence' (two cases) and 'exceeded statute of limitations' (two cases).

⁵⁹ The six matters that AFMA referred to the CDPP in 2006-07 took 9.5 months on average to finalise. The two matters referred in 2007-08 are yet to be finalised.

⁶⁰ DAFF's *Review of Cancellation Provisions in Commonwealth Fisheries Legislation* honours a Government election commitment. Sections of the Commonwealth fishing industry are opposed to the cancellation provisions because the value of a concession as a form of security against lending is reduced. Between 2002-03 and 2007-08, AFMA cancelled only four concessions—all for the non-payment of levies (excluding concessions bought-out under the *Securing our Fishing Future* buyback package).

⁶¹ Measures such as increased fines, infringement notices incorporating a demerit point system, longer and more targeted suspension periods, and increasing responsibility of other industry participants.

considers that cancellation provisions deter concession holders from breaching fishery laws, particularly fishing while suspended. DAFF is currently finalising its review and preparing advice for the Minister for Agriculture, Fisheries and Forestry on enforcement proposals that might be pursued.

Alternative strategies for managing non-compliance

5.11 In addition to its enforcement regime, AFMA has introduced other strategies to manage non-compliance, particularly where it involves multiple parties or sections of the fishing industry. These strategies include changing fishery management rules (for example, for SESSF and SBTF over-catch management) and designating closures within fisheries, in response to fishers exceeding bycatch limits for seabirds. AFMA advised that the implementation of these non-compliance management strategies have generally been successful.

Conclusion

5.12 AFMA has 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 DAFF 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.

5.13 AFMA's enforcement responses are, generally, confined to opposite ends of the enforcement spectrum—warnings/fines or criminal prosecutions. 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.

5.14 Further, AFMA should regularly review the effectiveness of its enforcement approaches and adjust its enforcement actions, where necessary, to obtain the desired compliance outcomes. AFMA's annual domestic compliance risk assessments would also be better informed were they to include analyses of the effectiveness of enforcement approaches.

Undertaking investigations

Investigation referrals and priorities

5.15 AFMA generally becomes aware of fishers' potential non-compliance through a number of sources, including:

- inspection and intelligence reports from fishery officers;
- the 1800CRIMFISH dob-in telephone line;
- data analysis—logbooks, CDRs, VMS plots; and
- external agencies, both Commonwealth and State.

5.16 In the past, all allegations of non-compliance were forwarded onto case management officers in AFMA Compliance to action. AFMA advised that this approach resulted in large caseloads for staff (involving up to 20 investigations per officer per year—many of which ran concurrently), and delayed investigations and follow-up action.

5.17 During 2008, AFMA Compliance improved its approach to prioritising matters for investigation. Each allegation is now initially assessed by the Operations Manager to determine whether (i) the allegation or matter would constitute an offence if true; and (ii) the offence relates to one or more of the eight 'priority risk areas' common to most major fisheries. AFMA is attempting to prioritise for investigation those matters that pose the greatest residual risks for Commonwealth fisheries. However, its approach could be excluding other matters worthy of investigation that relate to risk areas that are not common across the major fisheries. There are 10 risk areas that are not common across the major fisheries that have residual risk ratings higher than or equal to the mean residual risk ratings of the 'priority risk areas'. AFMA would more fully address its fishery compliance risks were it to broaden its investigation priorities to encompass the 'uncommon' risks.

5.18 Those matters that meet the initial assessment criteria are entered onto AFMA's Case Management IT System and passed to the Operations Management Committee for full assessment.⁶² The Committee determines whether matters are:

⁶² Matters that do not pass the initial assessment are logged in a register and passed to AFMA Intelligence for information.

- handled by AFMA (which could involve AFMA or State fishery officers conducting an investigation)⁶³;
- referred to an external body (for example, the Department of the Environment, Water, Heritage and the Arts); or
- concluded due to insufficient evidence.

5.19 If the matter is to be investigated, AFMA uses an IT program developed in-house to determine the priority the case should be afforded relative to other matters accepted for investigation. However, there is no system documentation to support the program and current AFMA Compliance officers are unaware of how the program calculates the priority score from the ratings entered against each criterion. AFMA would be in a better position to demonstrate how it determines investigation priorities if it was aware of the prioritisation tool's calculations. It would also be better able to justify changing investigation priorities on a case-by-case or permanent basis.

Conducting investigations

5.20 Australian Government agencies that conduct investigations, such as AFMA, are required to adhere to the Australian Government Investigation Standards (AGIS). The AGIS provides a set of minimum best practice case handling standards for all investigations of offences (including fraud) under Commonwealth legislation.⁶⁴

5.21 Although AFMA's current *Compliance Procedures and Guidance* provides information on elements within investigations and criteria for determining what action may be appropriate, its draft National Investigation Guidelines better adhere to the AGIS. The Guidelines will introduce greater formality to the planning and documentation of investigations. Each investigation will require an Investigation Plan that covers the essential information and evidence gathered in the allegation assessment phase, and outline what other evidence will be sought in the course of the investigation. AFMA advised that the new Guidelines will be implemented from June 2009.

⁶³ It may also involve liaising with AFMA Fisheries Policy to address any unintended 'loopholes' in regulation, and/or seeking legal opinions on compliance/regulatory issues.

⁶⁴ AFMA is required to develop procedures that are consistent with, or exceed, the AGIS in the areas of: investigation management and support; methodologies; dealing with witnesses and suspects; managing exhibits; competencies of the investigator; and liaising with other agencies.

Timeliness of investigations

5.22 The duration of investigations reduced significantly in 2008–09, which AFMA considers reflects its revised approach to determining investigation priorities. As illustrated in Table 5.1, the length of investigations in 2006–07 and 2007–08 approached three months on average, but reduced to an average of less than two weeks in 2008–09. AFMA did not complete nine investigations during 2006–07 and 2007–08 because the statute of limitations expired (usually two years after the offence). Under its rationalised approach to prioritising investigations, AFMA expects that the statute of limitation timeframe will prove to be less of an issue going forward.

Table 5.1

Elapsed time to complete investigations¹

Year	No. of investigations closed ²	Average duration of investigations
2006–07	158	73 days
2007–08	65	90 days
2008–09 (to 20 April 2009)	47	12 days
Total	270	66 days

Note 1: Excludes 30 current investigations, which began in 2006–07 (1), 2007–08 (12) and 2008–09 (17).

Note 2: Investigations are closed when administrative action (where proposed) is taken or briefs of evidence are forwarded to the CDPP.

Source: ANAO analysis of AFMA data

ANAO's review of investigations

5.23 Over the period July 2006 to 20 April 2009, AFMA completed and closed 270 investigations⁶⁵ and a further 30 were still under investigation. During the audit, the ANAO examined a small sample of investigations (12) and prosecutions completed or significantly progressed within the previous 12 months.⁶⁶ Generally, most key decision points requiring the exercising of discretion by AFMA Compliance were adequately documented. However, the reasons for the decisions were not as well documented. Although AFMA has criteria against which it determines the enforcement action appropriate to the

⁶⁵ This number includes some investigations that began in earlier years, but excludes 'not investigated' and 'nil investigation' matters.

⁶⁶ Although small, the sample represented cases involving a variety of investigating officers and outcomes including decisions not to proceed, the issuing of CFINs, and matters brought before the courts.

circumstances they were not mentioned in the delegates' justification of the action recommended/taken in seven cases reviewed by the ANAO. In addition, past decisions were not referred to, for comparison purposes, in current decision-making. Documenting the reasons for decisions would enable AFMA to better demonstrate:

- the appropriateness of the action taken based on the circumstances of the case;
- the consistency of AFMA's enforcement actions over time; and
- to the CDPP the gravity of the matter referred (and the prosecution outcomes from similar past cases) when AFMA considers that prosecution action may be warranted.

Administrative failings that prevent enforcement action

5.24 During the audit, five recent cases came to the ANAO's attention where enforcement actions could not proceed due to the actions and/or inactions of others areas within AFMA or State fishery officers. These cases underscore the importance of all areas complementary to AFMA Compliance⁶⁷ taking responsibility for their part in monitoring compliance with legislation and AFMA policy. Shortcomings by these areas can, and have, inhibited AFMA Compliance's ability to penalise and prosecute offenders. AFMA has remedied, or is in the process of remedying, each shortcoming identified.

Conclusion

5.25 In 2008, AFMA improved its process for prioritising matters for investigation, which has reduced the time taken to conduct investigations. The prioritisation process now establishes links with its domestic compliance risks and gives consideration to the relative priorities of the matters accepted for investigation. Nevertheless, the ANAO has identified the potential for further improvements. Although most key decisions during investigations have been documented, the reasons for decision were not as well documented. There would also be benefits in reinforcing to staff the important part they play in the management of the fisheries and addressing non-compliance, and where necessary, instituting a review of management practices and providing additional training.

⁶⁷ Including Licensing, Data Entry, Legal and State fishery officers.

Offences detected

5.26 Table 5.2 illustrates the number of offences detected (and as a percentage of inspections conducted) in the major fisheries from 2004–05 to 2007–08. The table shows that detected non-compliance in:

- the major fisheries overall has fluctuated over the four year period—ranging from 11 to 21 per cent of inspections;
- SESSF reduced significantly from 2006–07 to 2007–08. AFMA attributed this to its filtering of investigation matters rather than an improvement in the fishery's compliance;
- NPF, ETBF and SBTF in 2007–08 were significantly above the major fisheries' mean; and
- WTBF has been consistently below the major fisheries' mean.

Table 5.2

Number of offences detected by major fishery (and as a percentage of inspections conducted): 2004–05 to 2007–08¹

Fishery	2004–05	2005–06	2006–07	2007–08
NPF	17 in 91 inspections (19%)	3 in 107 inspections (3%)	28 in 79 inspections (35%)	6 in 23 inspections (26%)
ETBF	38 in 242 inspections (16%)	20 in 183 inspections (11%)	23 in 102 inspections (23%)	20 in 71 inspections (28%)
WTBF	2 in 42 inspections (5%)	no inspections	0 in 27 inspections (0%)	2 in 16 inspections (13%)
SESSF	89 in 712 inspections (13%)	73 in 629 inspections (12%)	91 in 444 inspections (21%)	24 in 348 inspections (7%)
SBTF	0 in 28 inspections (0%)	5 in 28 inspections (18%)	6 in 40 inspections (15%)	5 in 20 inspections (25%)
Total	146 in 1115 inspections (13%)	101 in 953 inspections (11%)	148 in 692 inspections (21%)	57 in 538 inspections (11%)

Note 1: More than one offence may have been identified per inspection.

Source: ANAO analysis of AFMA data

5.27 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. Ten offence types account for 80 per cent of offences over the same period. Of particular note, is the reduction in the number of quota reconciliation offences in the SESSF from

25 in 2006–07 to zero in 2007–08, which AFMA attributes to the change from annual to quarterly reconciliations in conjunction with education and enforcement activity. Appendix 5 illustrates the frequency of the different offences detected by AFMA in 2006–07 and 2007–08.

Strategies to address ongoing non-compliance

5.28 AFMA's enforcement activities, appropriately applied, should provide a deterrent for future non-compliance. However, recent actions taken by AFMA for Vessel Monitoring System (VMS) non-polling 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 non-polling

5.29 VMS documents the position, speed and heading of Commonwealth fishing vessels at regular intervals. It allows AFMA to remotely monitor their location relative to the fishing areas and it helps with inspection targeting. Although VMS registration became mandatory from July 2007, it was not until May 2008 that AFMA began to monitor the extent to which the Commonwealth fleet's VMS units polled continuously. At this time polling non-compliance (defined as either intermittent polling or non-polling) was around 15 per cent.

5.30 In the following four months, AFMA contacted all fishers with non-polling VMS units to encourage their compliance. In October 2008, AFMA advised fishers that further non-compliance could result in fines, their vessels being ordered back to port, or suspension of fishing concessions. To date, AFMA has not taken this action even though VMS polling non-compliance continues at around eight to nine per cent. AFMA advised that it continues to warn fishers that their vessels could be ordered back to port, which has resulted in some vessels voluntarily returning to port to have their VMS units fixed. The information about VMS polling non-compliance is also used as a source of intelligence for future compliance focus. AFMA's failure to take proactive enforcement action has led to non-compliance continuing longer than necessary and limited its effectiveness as a compliance tool.

Unauthorised SESSF and SBTF over-catch

5.31 Both of the major quota-managed fisheries examined by the ANAO (SESSF and SBTF) have management plans in place that authorise fishers to

take some catch in excess of their quota (that is, over-catch allowances), which reduces fishers' allowable catch for the following season. However, taking fish in excess of the over-catch allowances (unauthorised over-catch) is an offence and offenders can be subject to enforcement action.

Unauthorised SESSF over-catch

5.32 Quota reconciliations have been conducted quarterly since the 2006 season. However, AFMA has not established a policy on what enforcement actions should be considered after taking into account the amount of unauthorised over-catch (in absolute terms and relative to their overall quota holdings) and its financial value. As a result, enforcement actions have been decided on a case-by-case basis, and with AFMA's line area and senior management having differing opinions as illustrated in the following Case Study.

Case Study 2

Penalties for first quarter over-catch in the 2008 SESSF season

At the end of the first quarter of the 2008 SESSF season (on 31 July 2008), AFMA Licensing wrote to all SESSF fishers reminding them that they were required to reconcile all their 2008 first quarter season catches by 18 August 2008. On 19 August 2008, AFMA identified 18 concession holders in over-catch positions totalling 71.7 tonnes.¹ After a further four weeks grace (by 15 September 2008) seven concession holders had fully reconciled their over-catch positions, two had reduced their over-catch positions and nine had not attempted to reduce their over-catch positions. The Operations Manager recommended that AFMA immediately suspend the nine concession holders who had not attempted to reconcile their quota. However, the AFMA Executive decided on a different course of action whereby the:

- three concession holders with the largest over-catch positions (none of whom reduced their over-catch positions) were suspended for one-month;
- six other concession holders who had not reduced their over-catch positions were sent Official Cautions; and
- two concession holders who had reduced their over-catch positions were sent Official Warnings.

Note 1: Excludes (i) concession holders with over-catch under a predefined, small amount (in accordance with a management decision made in February 2008); and (ii) eight concession holders participating in the Lakes Entrance Co-Management Trial who are not required to reconcile their catch until the end of the third quarter.

Source: ANAO analysis of AFMA data

Unauthorised SBTF over-catch

5.33 Southern bluefin tuna are a valuable fish species and fishers are keen to fish their full season's quota, particularly as any under-catch cannot be applied to the following season. Near the end of the 2005–06 season, one fisher

changed his fishing patterns and caught a large quantity of fish that resulted in the southern bluefin tuna TAC being exceeded and the fisher having an over-catch of over 40 000 kilograms. The situation was repeated the following season by three fishers with over-catch totalling over 18 000 kilograms, including the fisher with over-catch from 2005–06.

5.34 AFMA pursued the same unconventional course of action to deal with unauthorised over-catch in both seasons, even though it proved ineffective in the first season. Without legal advice, AFMA used Deeds of Agreement with the fishers concerned to: reduce their quota the following season; minimise the impact on SBT stock; and ensure Australia was seen to be a responsible member of the international body that manages southern bluefin tuna. The CDPP considered that actions taken by AFMA either prevented prosecution or meant that it was not in the public interest. Its treatment of unauthorised over-catches in the SBTF also contrasts starkly with the more conventional enforcement actions (such as concession suspensions or prosecutions) for over-catches in other fisheries, which could give rise to claims of inconsistent or unfair treatment by AFMA.

5.35 AFMA advised that the peculiarities of the Purse Seine fishing method used for fish farming⁶⁸ meant that the SBTF over-catch rules applying at the time of the 2005–06 and 2006–07 seasons could not reasonably be put into operation. Having now revised the over-catch rules, it is in a better position to enforce the SBTF management plan in conventional ways.

Conclusion

5.36 In the past, AFMA has sometimes pursued unconventional courses of action (such as Deeds of Agreement) in preference to established enforcement mechanisms, often with unsatisfactory results. AFMA's enforcement response would be applied more consistently if it expanded its generic decision-making criteria to be more fishery-specific and to cover common offences such as VMS non-polling and unauthorised over-catch. This would require AFMA developing tailored enforcement policies that take into account all relevant considerations and the consistent implementation of existing policies.

⁶⁸ As previously discussed, southern bluefin tuna are towed alive to fish farms. Although divers estimate fish quantities and weight at-sea, history has shown that their estimates can vary greatly with the official weights determined after the tow (which is used to decrement quota).

Recommendation No.3

5.37 To improve the outcomes of its enforcement actions, the ANAO recommends that AFMA develop, where appropriate, and consistently implement, enforcement policies and fishery-specific responses for recurring non-compliance.

AFMA response

5.38 AFMA agrees with this recommendation. This is a useful recommendation in supporting the highly targeted and focussed approach which will be essential under the centralised compliance model. While there has been significant work in developing appropriate and consistent enforcement policies and fishery specific responses, we recognise that this work will be ongoing and subject to continual improvement. We will seek to document these policies and responses as part of the introduction of centralised compliance in mid 2009, but will do so in a way which will allow them to be updated and reviewed regularly as we continue to learn from the new approach.

6. Future Compliance Monitoring

This chapter examines AFMA's move to a centralised approach for monitoring compliance in Commonwealth fisheries. AFMA's planned enhancements to its intelligence and risk assessment capabilities and compliance-related initiatives are also discussed.

Introduction

6.1 In April 2007, the AFMA Board established the Cost Reduction Working Group (CRWG) to identify and recommend options to: reduce the costs of managing Commonwealth fisheries, including domestic compliance regulation; and generate efficiencies.⁶⁹ Within this context, AFMA committed to industry to reduce costs to the 2005–06 level by 2009–10.

6.2 A discussion paper circulated to industry stakeholders by the CRWG in March 2008 identified a centralised approach to domestic compliance as being the most efficient and cost-effective. The CRWG recommended AFMA implement this approach from July 2009. Under a centralised model, many functions currently performed by State fishery agencies on AFMA's behalf—such as in-port inspections, compliance reporting and investigations—will be undertaken by AFMA staff. State fishery officers will still conduct at-sea patrols and aerial surveillance of Commonwealth fisheries.

6.3 The CRWG envisaged that under a centralised approach:

- State budgets would reduce from \$1.5 million to \$0.5 million per annum, with the difference redirected to the increased Canberra-based operations;
- fewer vessel inspections would be conducted (three per cent of landings, down from the current five per cent)⁷⁰ 'but with an effective and efficient response to non-compliance'; and
- the domestic compliance budget (excluding overhead) would reduce from \$3.2 million to \$2.8 million in the first year (a saving of \$400 000),

⁶⁹ Membership of the CRWG included representatives from the Commonwealth Fisheries Association, Management Advisory Committees (MACs) and AFMA.

⁷⁰ The CRWG estimated that, if vessel inspections were maintained at five per cent of landings, cost savings would not be achieved.

and to \$2.7 million in subsequent years (savings of \$500 000 per annum).

6.4 Industry bodies associated with commercial fishing were generally supportive of the centralised approach, while support from State fishery agencies was mixed. Of the State fishery agencies: two expressed general or in-principle support; two questioned its likely effectiveness and whether cost savings were achievable; and one advised that it would no longer conduct any compliance activities in Commonwealth fisheries.

6.5 After considering comments from stakeholders, the then AFMA Board agreed in June 2008 to implement a centralised approach to domestic compliance by July 2009. The success of this new approach relies heavily on AFMA's ability to:

- continually gather and regularly analyse relevant intelligence data;
- use the intelligence analyses to identify and rate compliance risks at the fishery and vessel/operator level, and review them regularly; and
- target compliance activity towards those fisheries, vessels and operators that pose the greatest compliance risks.

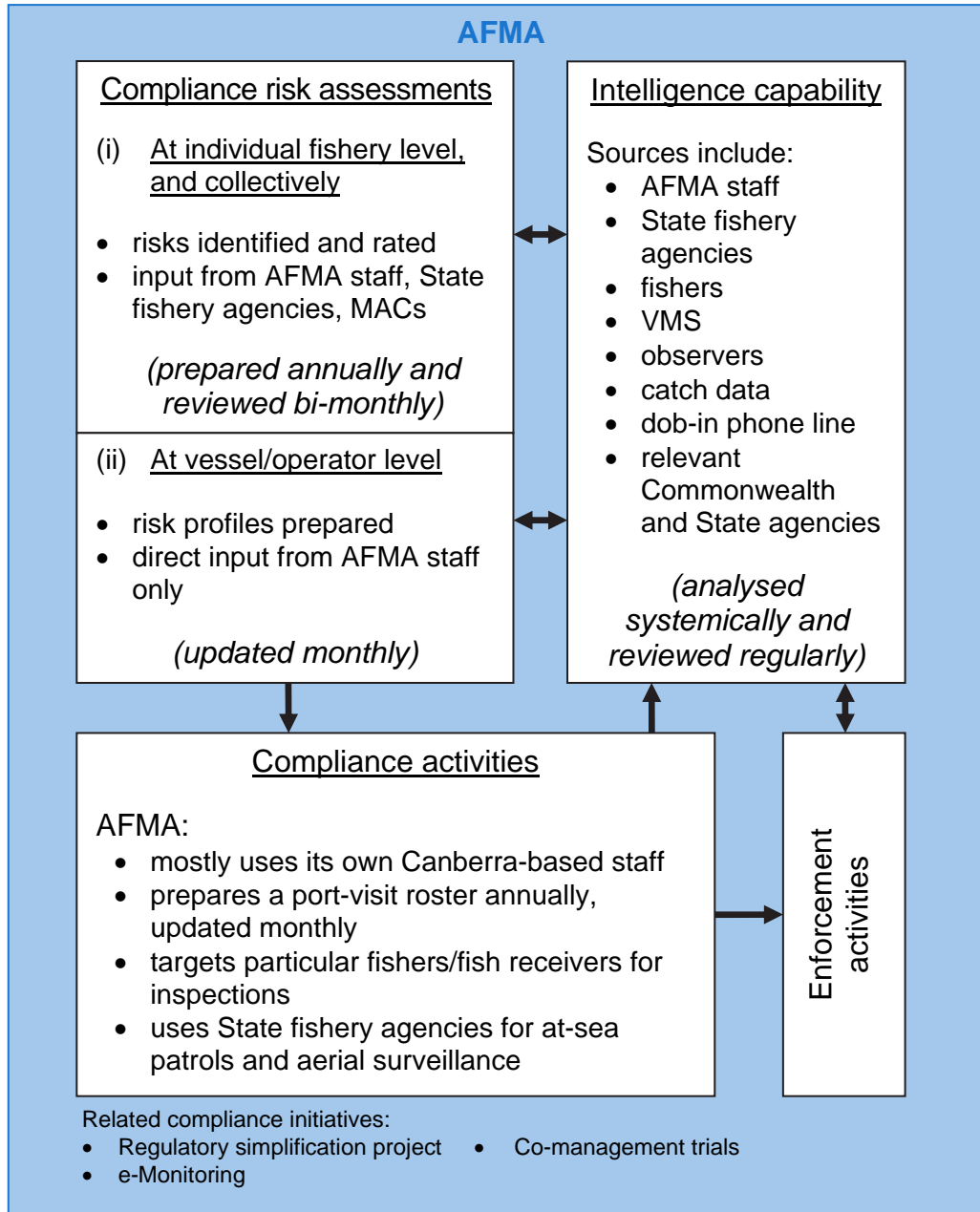
6.6 Figure 6.1 illustrates the relationship between these elements of AFMA's proposed centralised compliance framework, along with initiatives to:

- simplify the regulation of Commonwealth fisheries;
- explore options for AFMA and industry to trial co-management arrangements in fisheries; and
- explore options to enhance monitoring of fishing operations at-sea.

6.7 Also impacting on the management of Commonwealth fisheries is the recent Cost Recovery Impact Statement review. The review recommended a change to the funding of domestic compliance activities in the future—from the current split of 50 per cent government and 50 per cent industry, to 100 per cent government funded. If implemented, industry scrutiny of the distribution of AFMA's domestic compliance resources across the fisheries will decrease significantly.

Figure 6.1

Proposed centralised compliance approach



Source: ANAO analysis of AFMA data

Centralised compliance approach

6.8 The ANAO examined AFMA's centralised compliance approach in terms of the:

- proposed structure, including the residual role of State fishery agencies;
- benefits and drawbacks in comparison to the decentralised compliance approach;
- sufficiency of the domestic compliance budget; and
- sufficiency of the proposed inspection program.

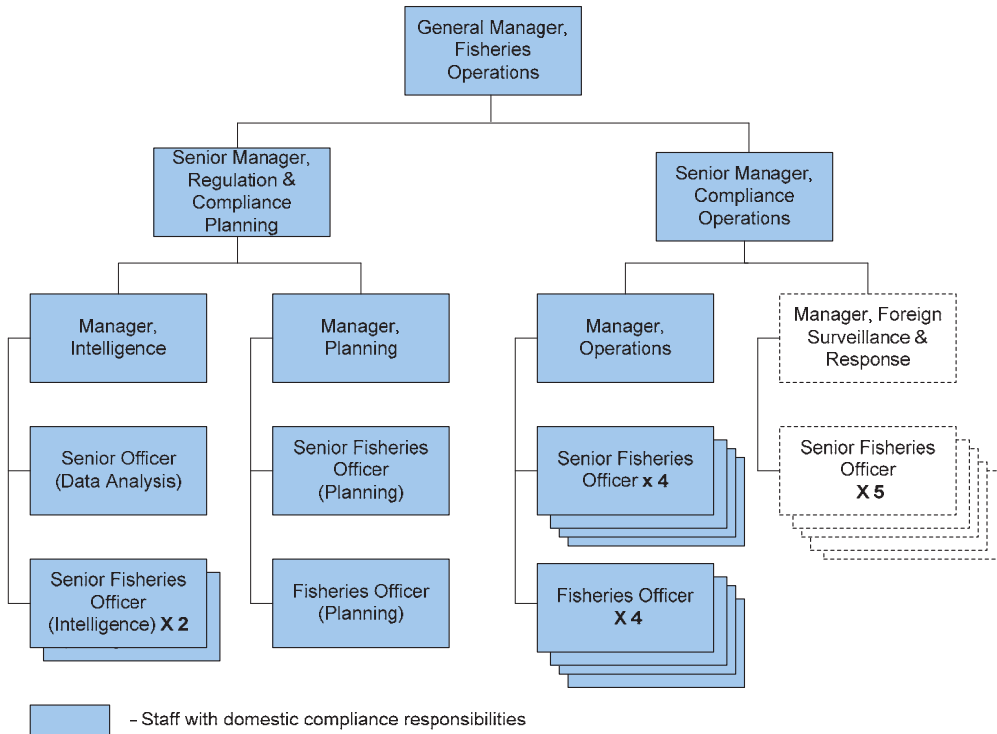
Revised structure of AFMA's domestic compliance function

6.9 Under the current decentralised compliance approach, AFMA's 2007–08 domestic compliance budget provided for the equivalent of 21.1 FTE, which comprised:

- 11.1 FTE for AFMA compliance staff based in Canberra; and
- the equivalent of 10 FTE staff from State fishery agencies located at the major ports across Australia.

6.10 Under the centralised approach, AFMA intends to increase its own staffing to 17 FTE, in accordance with the structure outlined in Figure 6.2. AFMA's domestic compliance function will be based in Canberra, requiring visits to ports to undertake inspections and other compliance activities. In addition, AFMA proposes to use its Darwin-based fishery officers for domestic sea patrols and operations in northern Australia when they are not required for their primary foreign fishing compliance function.

6.11 In June 2009, AFMA advised that it expects to have recruited all the extra staff by mid-June and their training to be completed in early July 2009. Most of the new recruits will conduct the compliance activities that have been undertaken by State fishery officers. Some State fishery agencies do not consider that sufficient time has been allowed for AFMA officers to 'skill up' and receive 'local knowledge' from the States.

Figure 6.2**Proposed structure of AFMA domestic compliance under centralisation**

Source: AFMA

6.12 AFMA has obtained in-principle agreement with most State fishery agencies to provide reduced services, including staff and equipment for at-sea patrols and aerial surveillance, and to share intelligence. As at March 2009, negotiations for the 2009–10 SLAs between AFMA and the State fishery agencies to reflect these new arrangements were continuing.

Benefits and drawbacks of a centralised compliance approach

6.13 Overall, AFMA considers that a centralised compliance approach will improve the quality and consistency of its compliance and enforcement activities. As noted in Chapter 4, AFMA found that the budget and operational inflexibility of State fishery agencies, and the priority they afforded to Commonwealth compliance work, inhibited its ability to deliver a compliance program that was responsive to changing risks. The benefits of the centralised compliance approach include:

- AFMA having full control over the allocation of its resources for compliance activities across Australia. It is free to direct and redirect

resources at short notice for compliance activities at whatever fisheries, ports or operators necessary to address the highest fishery risks;

- AFMA having the ability to control and improve the conduct and quality of inspections, and the consistency of enforcement action taken to address identified non-compliance; and
- the scope for cost savings through envisaged improvements to the efficiency and effectiveness of AFMA's compliance activities.

6.14 The drawbacks of the centralised approach stem primarily from having inspection staff based in Canberra in contrast to State fishery officers based in ports. AFMA will:

- achieve a reduced geographic coverage than is currently the case;
- pose less of a deterrent for non-compliance due to its intermittent presence at ports (which is discussed in more detail below); and
- receive, at least at first, much less field intelligence from fishers (until rapports can be established) and State fishery agencies (due to their reduced interactions with industry on Commonwealth fishing matters).

6.15 AFMA considers that the benefits of the centralised compliance approach outweigh its drawbacks, particularly when considered in association with the other compliance-related initiatives being pursued (and discussed later in this chapter).

Sufficiency of the domestic compliance budget

6.16 The domestic compliance budget for 2008–09 was \$3.2 million. AFMA advised that it plans to benchmark future domestic compliance budgets against its 2005–06 domestic compliance expenditure of \$2.7 million. To achieve this \$0.5 million budget reduction, the proposed budget for 2009–10 (the first under the centralised compliance approach) incorporates a 20 per cent reduction in variable costs from 2008–09. This will translate into reductions of between 11 and 21 per cent across the domestic compliance budgets for major fisheries.

6.17 Actual domestic compliance expenditure in 2005–06 (the benchmark year) was \$625 000 under budget, and the lowest annual expenditure in at least the previous nine years. Reasons for this included:

- the temporary redeployment of a third of AFMA's domestic compliance staff (3.2 FTE), and a significant proportion of State fishery officers, to foreign compliance activities; and
- a consequential reduction in travel for domestic compliance work.

6.18 Since 2005–06, AFMA's domestic compliance workload has increased. More fisheries and fish species have moved (or intend to move) to output controls. Also, implementing and maintaining VMS and an enhanced intelligence capability have, and will continue to, consume more resources.

6.19 AFMA has 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. Given its increased domestic compliance functions since 2005–06, AFMA should assess the impact that any reduction to its compliance program (including inspections) would have on its ability to manage fishery risks.

Sufficiency of the proposed inspection program

6.20 Fish caught in Commonwealth fisheries were landed at 85 Australian ports during 2005–06. AFMA's proposed compliance program indicates that inspections will be conducted at 35 ports across Australia (to ensure adequate coverage by State and fishery) with more frequent inspections conducted in the busier ports.⁷¹ Since July 2005, 94 per cent of landings have been recorded in the targeted ports. AFMA intends to use four Canberra-based teams of two officers to visit the targeted ports and conduct in-port and fish receiver inspections.

6.21 The proposed compliance program has been designed to meet the CRWG's revised number of inspections, which is three per cent of landings. The CRWG considered that improved targeting of inspections would compensate for the reduction in the number of inspections (five per cent of landings) under the decentralised approach. Under the decentralised approach, State fishery officers were stationed at the major ports and could inspect any vessel returning to port and local fish receivers at any time without forewarning. This acted as a deterrent for those operators contemplating not complying with their fishing requirements.

⁷¹ AFMA advised that it intends to regularly analyse trip landing data to enable its inspection program to respond accordingly.

6.22 The centralised approach sees AFMA's Canberra-based staff making short visits to each port to conduct inspections (between two and eight each visit). An inspection program of short port visits will prove challenging for AFMA to consistently target 'at-risk' operators and maintain the element of surprise. Inspections during each visit will be driven by the fishers who are in-port at that time. The local fishing industry is likely to become quickly aware of AFMA's presence in-port. Knowing that AFMA's port visits are time-limited, non-compliant operators in the vicinity are likely to either:

- take steps to remove evidence of their non-compliance for the duration of AFMA's port visit;
- delay their return to port until AFMA's port visit is completed; or
- land at another port.

Also the distance from the ports greatly inhibits AFMA's ability to respond when urgent action is required.⁷²

6.23 The effectiveness of the inspection program under the new approach will require close monitoring as the risks in a centralised approach are inherently greater than when inspectors are based at ports.

Planned enhancements to intelligence capability

6.24 As previously discussed, prior to 2009, AFMA did not have the processes established or sufficient resources to regularly and systematically analyse its intelligence data holdings. In March 2009, AFMA developed a draft Domestic Intelligence Plan that outlines the Intelligence function's intended place in domestic compliance management, including the research, analysis and reports it will produce regularly, and to whom within AFMA these reports will be distributed.

6.25 Within this context, AFMA advised that, from 2009, it was:

- expanding the sources of its intelligence data and improving its ability to share intelligence with other Commonwealth and State agencies;
- improving its intelligence analysis; and
- increasing the resources dedicated to its intelligence function.

⁷² Travelling from Canberra to many ports can take over half a day when planned in advance, and would take longer at short notice.

Sourcing and sharing intelligence

6.26 Under a centralised compliance approach, AFMA expects to receive intelligence regularly from a number of sources, including:

- AFMA staff, including the new fisheries inspectors who, like the State fishery officers before them, will prepare inspection and intelligence reports during ports visits;
- State fishery officers, with whom AFMA inspectors will liaise during port visits (and to be specifically covered in the 2009–10 SLAs)⁷³;
- the fishing community⁷⁴;
- VMS data (as currently being implemented and discussed in Chapter 4);
- catch data⁷⁵;
- 1800CRIMFISH—a toll-free telephone number for the industry and public to dob-in people allegedly not complying with fishing requirements; and
- relevant Commonwealth and State agencies.

6.27 Many Commonwealth and State agencies interact with members of the commercial fishing industry and may be able to provide valuable intelligence to AFMA, and vice versa. Amendments in 2007 to AFMA's functions under the FA Act broadened its ability to collect and disclose information related to fisheries management and possible breaches of Australian laws. A regulation has been drafted prescribing the Commonwealth and State agencies to whom AFMA may disclose information.⁷⁶ AFMA advised that consultations on the draft regulation are continuing with the Commonwealth Fisheries

⁷³ Many of the fishers that State fishery officers inspect for State fishing regulation, also have Commonwealth fishing concessions.

⁷⁴ AFMA considers fishers will be more forthcoming with intelligence on non-compliant industry activity if they see AFMA is targeting, and having better success at addressing, 'at risk' fishers.

⁷⁵ AFMA is currently pilot testing analytical research methodology that, in association with other intelligence, may quantify the extent of quota evasion by industry and aid inspection targeting.

⁷⁶ AFMA is developing a policy document to give effect to the regulation. Commonwealth agencies include Australian Customs Service, Australian Crime Commission, Australian Federal Police, Australian Secret Intelligence Organisation, Australian Taxation Office, Australian Transaction Reports and Analysis Centre, Centrelink, and Crimtrac. State agencies include State fishery agencies and State revenue agencies.

Association⁷⁷, and, once finalised, it will be submitted to the Minister for Agriculture, Fisheries and Forestry for approval.

6.28 AFMA has also started to establish formal relationships with some Commonwealth agencies to share intelligence. For example, a memorandum of understanding between AFMA and Centrelink was drafted in 2008 and is currently awaiting sign-off by the Minister for Human Services. A memorandum of understanding between AFMA and the Australian Taxation Office is at consultation draft stage.

Improvements to intelligence analysis

6.29 As noted in Chapter 4, AFMA's intelligence data is currently held in some 30 disparate repositories across the agency. Under a centralised approach, AFMA envisages that this data will be analysed systematically and updated regularly—at least once a month. From 2009, AFMA began regularly analysing a sub-set of its full intelligence data holdings (related to results of operations, inspection reports and intelligence reports from State fishery officers) to aid its fisheries management. However, the extent to which it is practical for intelligence data in all repositories to be compiled as frequently as desired by AFMA is uncertain. Significant IT investment, over a number of years, will be required before AFMA reaches its desired intelligence capability. In this context, it would be beneficial for AFMA to formally:

- determine and document the current status of its intelligence data holdings and analysis capabilities; and
- develop a workplan to address the gaps between current and desired capabilities (including required IT capability, other resources, and timeframes for completion).

Resourcing of the intelligence function

6.30 AFMA advised that in early 2009 it increased the resources devoted to VMS and intelligence to three FTE. It expects that the proportion of resources directed to VMS will decrease, significantly enhancing AFMA's ability to analyse intelligence data. Nevertheless, the ANAO considers that the legacy issues surrounding AFMA's storage, retrieval and compilation of intelligence data, and the significant gaps between current and desired intelligence

⁷⁷ The Commonwealth Fisheries Association is AFMA's peak industry body for the purposes of the FM Act.

capability, means that it will take time to have an intelligence capability that is fully effective.

Planned enhancements to compliance risk assessments

6.31 As noted in Chapter 4, AFMA uses a structured risk management approach to identify and rate risks to Commonwealth fisheries on an annual basis. AFMA advised that, from 2009, it would, on the basis of regular reviews of its intelligence holdings, review the fishery risks (at least bi-monthly) and prepare risk profiles for vessels/operators and update these regularly.

6.32 AFMA has recently established an Operational Management Committee, comprising the senior members of the Compliance Branch, that will meet at least monthly to:

- review the latest intelligence assessments;
- review fishery risks (bi-monthly);
- review vessel/operator risk profiles; and
- determine those fisheries and vessels/operators to be targeted for compliance effort.

6.33 AFMA considers that the flexibility and control provided by the centralised compliance approach will allow it to respond quickly to emerging fishery compliance risks at both the strategic and operational levels. However, it is yet to prepare its comprehensive risk profiles for the approximately 350 vessels/operators comprising the Commonwealth fleet. Given the legacy issues surrounding AFMA's data holdings (noted above), it will be difficult and time-consuming to develop and maintain these risk profiles. The same legacy issues currently inhibit the thoroughness of the bi-monthly fishery risk reviews. Nevertheless, AFMA has begun to use a sub-set of its data holdings, related mainly to the work of State fishery officers, to:

- identify incident numbers related to each fishery risk category (that is, groups of related risks) and review the incidents' potential impact on residual risk ratings; and
- recommend targeting specific risks in different geographic zones and vessels, based on their recent inspection and compliance history.

6.34 In the future, intelligence data from other sources will be factored into these reviews. However, it could be some time before AFMA has a fully integrated process for regularly analysing its intelligence data holdings to

review fishery risks and target 'at-risk' vessels/operators. In the short to medium term, this lack of integration has the potential to adversely impact on the effectiveness of AFMA's centralised approach to monitor and manage non-compliance.

Regulatory simplification project

6.35 AFMA has also identified the complexity of its domestic fishing rules as a significant source of inefficiency and cost generation. In June 2008, the then AFMA Board approved a regulatory simplification project to be undertaken over three years (2008–09 to 2010–11) to streamline the fisheries regulatory framework. The key deliverables for the project, and progress to date, are:

- *identify and review key management areas for reform*—AFMA's review of the regulatory domestic fishing rules identified 23 different regulated issues that were expressed in 161 different ways in fisheries legislation;
- *determine a process for making regulatory changes*—AFMA developed a detailed proposal outlining its preferred approach for proceeding with regulatory amendments, which will form the basis for stakeholder consultations; and
- *draft new rules reflecting these changes into regulatory instruments*—the Office of Legislative Drafting and Publishing will draft new regulations and amendments to the Act. The timing for the implementation of legislative amendments will be subject to the Parliamentary process.

6.36 A successful regulatory simplification project will have considerable benefits and far-reaching impacts on the efficiency of AFMA's processing of license applications and fishing permits (and the IT systems that support them), and the monitoring of domestic fishing compliance and management of non-compliance.

Co-management trials

6.37 The Fisheries Research and Development Corporation (FRDC) defines fisheries co-management (also known as co-regulation) as:

an arrangement in which responsibilities and obligations for sustainable fisheries management are negotiated, shared and delegated between government, fishers, and other interest groups and stakeholders.⁷⁸

In essence, fisheries co-management looks to reduce the level of government involvement in fishery management decision-making and increase the self-regulatory role of industry.

6.38 In late 2007, AFMA engaged a consultant to consider the suitability of co-management arrangements for Commonwealth fisheries. The consultant reported in January 2008 that the current potential for applying co-management broadly in Commonwealth fisheries was very limited. The reasons for this included:

- uncertainties created by jurisdictional overlap between DAFF, AFMA and the Department of the Environment, Water, Heritage and the Arts;
- uncertainties created by the interaction of the *Environment Protection and Biodiversity Conservation Act 1999*, FM Act and FA Act;
- a lack of industry associations that represent most or all fishery participants;
- a lack of clearly defined boundaries (resulting in co-management benefits being captured by those outside of co-management arrangements);
- a lack of strong leadership and professional capacity;
- a lack of strong interest in co-management; and
- unresolved or potential future quota allocation issues.

6.39 AFMA decided to pursue co-management in its fisheries as it identified a need to improve fisheries management and relationships with industry, as well as respond to the fiscal pressures facing AFMA and the industry. To manage its risks, AFMA has introduced co-management arrangements on a trial basis. This approach has been supported by the CRWG.⁷⁹ In April 2008,

⁷⁸ Fisheries Research and Development Corporation 2008, *Co-management: Managing Australia's fisheries through partnership and delegation*, Report of the FRDC's National Working Group for the Fisheries Co-Management Initiative—Project No. 2006/068, p. 1.

⁷⁹ Cost Reduction Working Group, *AFMA Business Efficiency Review Discussion Paper*, February 2008, p. 22

AFMA and FRDC entered into a three-year \$1.9 million⁸⁰ Co-management Project to design and implement a series of trials in three Commonwealth fisheries.⁸¹

Lakes Entrance co-management trial

6.40 The Lakes Entrance co-management trial will run for the 2008 SESSF fishing season that began on 1 May 2008. Parameters have been established with stakeholders through a memorandum of understanding. Key measures that differ from normal fishing requirements include:

- the electronic submission of catch records to AFMA by the primary fish receiver, on behalf of fishers (rather than fishers submitting paper-based CDRs);
- a simplified quota management and reconciliation process whereby fishers can pool their quota holdings (not normally allowed) and reconcile their quota to catch less frequently than normal; and
- AFMA conducting regular audits of the fish receiver's business records (for sample periods) rather than conducting fish receiver inspections.

6.41 AFMA is using the trial to develop a detailed audit regime that can be applied generically across all fisheries in the future to improve the monitoring of catch. To date, AFMA has undertaken two audits (with the results of the second yet to be finalised), which resulted in minor discrepancies between the catch reported to AFMA and catch sales records.

6.42 This co-management trial is the first time that AFMA has taken on an auditing function as a compliance and program evaluation tool. However, the AFMA staff who undertook the audits had no previous auditing experience or training. AFMA advised in June 2009 that it has now obtained external auditing expertise and work is underway to provide auditing training and develop a quality assurance program for the audit function.

6.43 The co-management trials offer AFMA and those sections of the industry keen to improve the efficiency and effectiveness of fishery management, the opportunity to test new and revised management

⁸⁰ AFMA is contributing \$1.2 million and FRDC is contributing \$0.7 million.

⁸¹ The SESSF trial at Lakes Entrance began in late 2007-08, the NPF trial in January 2009 and the GABT fishery trial in May 2009. Given the timing of the trials, the ANAO examined the parameters and progress of only the Lakes Entrance trial.

techniques, such as auditing, in a safe environment. Where these techniques prove successful under trial conditions, AFMA will consider applying them more broadly, as appropriate. Nevertheless, as noted by AFMA's consultant, there are significant institutional and industry barriers to overcome—most of which are beyond AFMA's control—before co-management can become commonplace in Commonwealth fisheries.

e-Monitoring pilot project

6.44 e-Monitoring (or electronic monitoring) will allow AFMA to observe vessels' fishing activities remotely by using strategically-placed video cameras. AFMA advised that there was strong industry and management support for e-Monitoring because of the information it can provide on fishing effort, catch, catch fate, bycatch mitigation, and interactions with threatened and endangered species.

6.45 In June 2008, the then AFMA Board approved a 10-boat pilot study to implement e-Monitoring in the ETBF for the 2008–09 season. However, because of delays, it will now be trialled in the 2009–10 season. The study's overall goal is to evaluate the feasibility of using e-Monitoring as a replacement for, or complement to, observer coverage in the ETBF. As at March 2009, AFMA advised that the detailed design of the pilot study was only half completed and it would be some months before installation of e-Monitoring equipment occurred. AFMA expects to evaluate the success of the trial in late 2009–10, and then consider the efficacy of its broader introduction into Commonwealth fisheries.

Conclusion

6.46 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.

6.47 The success of AFMA's centralised compliance approach relies on the integration of: compliance risk assessments (at fishery and vessel/operator level); intelligence gathering and analysis; targeted compliance activities; 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.

6.48 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.

6.49 The 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.

Recommendation No.4

6.50 To improve the effectiveness of its centralised approach to domestic fishing compliance, the ANAO recommends that AFMA:

- (a) develop and review annually a compliance monitoring strategy that integrates all compliance processes and activities; and
- (b) identify the gaps between its current and desired intelligence capability and develop a workplan of the actions, resources, and timeframes for completion, to close the intelligence capability gaps.

AFMA response

6.51 AFMA agrees with this recommendation. The new centralised approach has been developed with a clear focus on integrating all compliance processes and activities, in support of the overall program objectives. Details of how we review and report on the progress of the program will continue to be

developed over the coming months, when we will seek to have a monitoring strategy in place which can be applied and reviewed annually, as per recommendation 4(a).

6.52 Considerable preparatory work has already been completed in identifying gaps between our historical intelligence capabilities and future intelligence needs, as outlined in recommendation 4(b). Ensuring that we have appropriate intelligence capability will be essential to identifying compliance risks and therefore targeting our activities. Although this process will continue over future years, at the time of providing this response, relevant recruitment processes were well underway for securing additional intelligence analysts, to fill gaps identified in 2008/09.

7. Governance Arrangements for Domestic Fishing Compliance

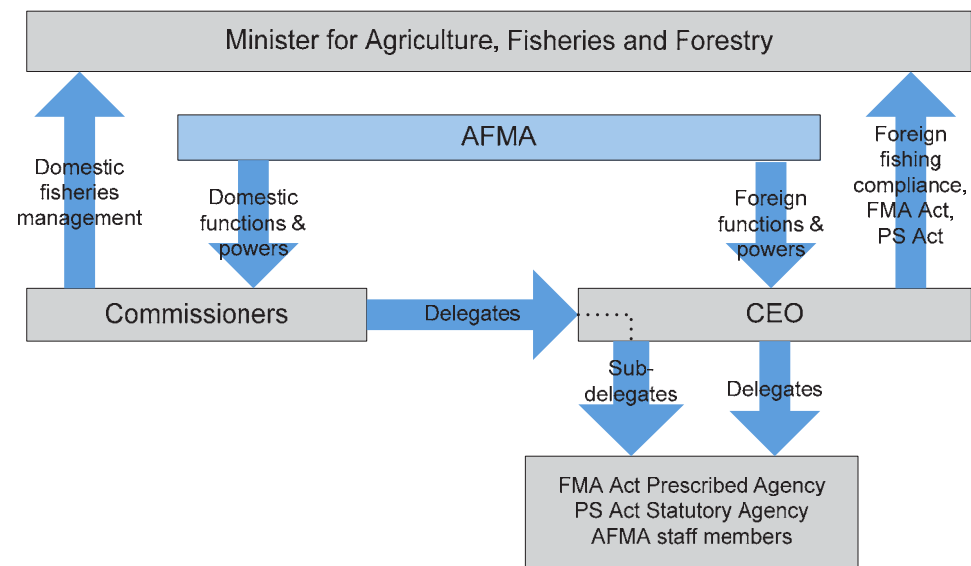
This chapter examines the governance arrangements in place to manage domestic fishing compliance.

Introduction

7.1 AFMA was established in 1992 as a statutory authority with a board of directors. Its enabling legislation was subsequently aligned with the *Commonwealth Authorities and Companies Act 1997*. From 1 July 2008 AFMA became a prescribed agency under the *Financial Management and Accountability Act 1997* (FMA Act). Under the new arrangements, AFMA’s powers and responsibilities are split between the Commission and its Chief Executive Officer (CEO), who is also a Commissioner. The Commission is responsible for domestic fisheries management and the CEO is responsible for foreign fishing compliance. The CEO is also responsible for AFMA’s finances (under the FMA Act) and human resources (under the *Public Service Act 1999* (PS Act)). Figure 7.1 illustrates AFMA’s revised governance arrangements.

Figure 7.1

AFMA governance arrangements from 1 July 2008



Source: AFMA

7.2 In March 2009, the Minister for Agriculture, Fisheries and Forestry appointed four new Commissioners, including the Chair. Five of the Commissioners (including the current CEO) were re-appointed.

7.3 The ANAO reviewed AFMA's governance arrangements as they related to the management of domestic compliance, including:

- managing conflicts of interest;
- risk management;
- business planning;
- measuring and reporting performance; and
- stakeholder management.

Managing potential conflicts of interest

7.4 Recent changes to AFMA's legislation included additional restrictions being imposed on those eligible to serve as Commissioners.⁸² The conflict of interest requirements for Directors/Commissioners are contained in the: FA Act; *Directors Code of Conduct* and supporting guidelines (for Directors); and *Statement of Governance 2009* (for Commissioners). In summary, these documents require:

- AFMA to maintain a register of interests disclosed by Directors/Commissioners; and
- Directors/Commissioners to:
 - disclose, prior to and during their appointment, any interest that may relate to their AFMA functions or in a matter to be considered by the Board/Commission; and
 - not take part in any deliberation or decision in which he/she has an interest, unless the Board/Commission determines otherwise.

7.5 The ANAO reviewed AFMA's arrangements for managing potential conflicts of interest in relation to all domestic compliance management matters considered by the Board/Commission between July 2006 and December 2008.

⁸² Persons ineligible to serve as AFMA Commissioners include: (i) anyone who holds an executive position in a fisheries industry association; (ii) holders of a Commonwealth fishing concession, permit or license and (iii) majority shareholders or persons in executive positions in companies holding Commonwealth fishing concessions, permits or licenses.

Whilst conflict of interest requirements were followed by the AFMA Board/Commission during meetings, there was scope to improve the transparency of dealing with potential conflict of interest situations.

7.6 AFMA maintains a register of Directors'/Commissioners' interests. However, before 2009, the register only listed the interests by name; not their nature and the areas of AFMA responsibility where conflicts of interest could arise. AFMA advised that these omissions from the register will now be recorded. Although potential conflicts of interest are considered before Board/Commission agenda papers are sent to Directors/Commissioners, AFMA's guidance does not restrict providing these papers on potential conflicts of interest grounds. Explicit guidance should be included in AFMA's *Statement of Governance*. In addition, where Commissioners declare possible conflicts of interest at the beginning of Commission meetings, the actions taken (if any) in response should be noted in the meeting minutes. This action was not always recorded in previous Board meeting minutes.

7.7 Potential conflicts of interest for Directors/Commissioners can also arise outside of Board/Commission meetings. The requirements for Directors/Commissioners are silent on managing potential conflicts that arise outside of Board/Commission meetings and should be expanded to cater for circumstances external to Commission meetings.

Risk management

7.8 After being in abeyance for two years, AFMA directed attention and resources to improve and update its corporate risk management arrangements in March 2008. In early 2009, AFMA adopted a risk management framework and plan:

- to identify, analyse, evaluate and treat individual risks within the following categories: Strategy; Operations; Financial Management; Compliance; Reputation; and Occupational Health and Safety; and
- that established a Risk Management Committee, comprising senior officers from across AFMA, to review the currency of the risk register (bi-annually) and review the risk management policy, framework and plan (annually).

7.9 Workshops conducted since late 2008 have populated AFMA's risk register (as at March 2009) with 53 separate risks. For each risk, the register records the risk category and sub-category⁸³, the causes, current controls in place, risk rating, additional mitigating actions proposed (if any), and risk owner. The Risk Management Committee is responsible for changing existing risks, approving new risks and assigning owners to risks.

7.10 AFMA has developed a risk management framework that, if properly implemented and integrated into its planning and decision-making processes, will enable it to assess, manage and review its strategic and operational risks. Every six months, AFMA intends to examine the risk register and summarily report to the CEO and the Finance and Audit Committee on its management of its highest-rated risks. The first such summary, awaiting clearance from the CEO, identified a number of generic risk areas relating to AFMA's human, financial and IT resources that require additional mitigating actions.

Planning and reporting framework

7.11 AFMA's governance arrangements are supported by its planning and reporting framework, which is illustrated at Figure 7.2. The ANAO focused its examination on the most recently completed annual cycle in respect of AFMA's planning (2008–09), performance measurement (2009–10) and reporting (2007–08). The ANAO considered AFMA's performance against its overall outcome, as well as for domestic fishing compliance.

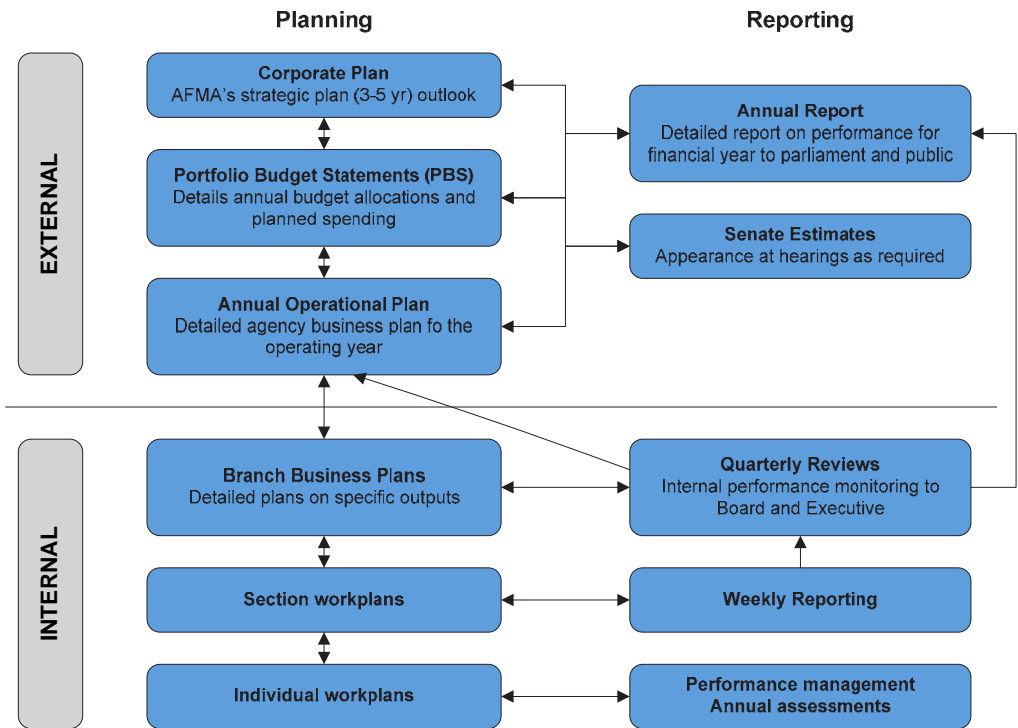
7.12 AFMA's Corporate Plan 2008–2011 provides a strategic overview and four-year outlook for the agency. It also outlines AFMA's vision, mission, outcome and key result areas (KRAs). The Annual Operational Plan 2008–09 (AOP) details the strategies that AFMA will pursue, and the indicators to measure AFMA's performance, against each output.⁸⁴ However, there are no clear linkages between the Corporate Plan's KRAs and the AOP's output-based structure and strategies.

⁸³ Risk sub-categories allow AFMA to refine the focus of the risk to particular operational areas (for example, Licensing) or locations (for example, Darwin).

⁸⁴ The outputs and the indicators to measure performance are the same as those in the Portfolio Budget Statements 2008-09 (PBS).

Figure 7.2

AFMA’s planning and reporting framework



Source: AFMA's Corporate Plan 2008-11

7.13 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 AOP. 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 (and discussed below). AFMA also intends to introduce more formality into the development and regular review of Branch business plans and Section workplans. Establishing clear linkages between its cascading plans would enable AFMA to report more easily on its performance.

Measuring and reporting performance

7.14 From the 2009–10 Budget onwards, the structure and content of PBSs for all General Government Sector entities, which includes AFMA, will change from an outcomes and outputs basis to an outcomes and programs basis. AFMA’s outcome has been expanded to indicate how it intends to achieve its

outcome. Instead of two output groups and six outputs, AFMA has a single program and objective:

Ecologically sustainable and economically efficient Commonwealth fisheries, through understanding and monitoring Australia's marine living resources and regulating and monitoring commercial fishing, including domestic licensing and deterrence of illegal foreign fishing.

Performance information now includes statements of deliverables and key performance indicators aligned to the outcome/program objective and quantitative performance information for the current year and three out-years.

7.15 The statement of deliverables related to domestic fishing compliance are:

AFMA pursues ecological sustainability and maximising the net economic returns to the Australian community from fisheries management by:

- applying the Commonwealth Harvest Strategy Policy which defines targets for pursuing precautionary, economically efficient catch levels; and
- conducting risk based compliance enforcement to deter illegal fishing in AFMA managed fisheries.

7.16 AFMA's quantitative deliverables in the 2009–10 PBS are generally lacking for domestic fishing compliance. The only quantitative deliverables relate to licensing services (the expected number of licensing transactions that will be processed and the expected percentage of levies that will be collected). AFMA's quantitative deliverables could be expanded to include the following compliance matters that were in previous PBSs:

- all major domestic fisheries have compliance risk assessments conducted;
- reduction in the number of high risk domestic compliance areas identified; and
- all licensing and revenue collection transactions are completed within seven working days of receipt of an application.

Other quantitative deliverables indicators that would be appropriate to measure its investigation function include the number and percentage of: allegations that are assessed within a certain timeframe of their receipt; and investigation briefs submitted to the CDPP that meet the prima facie standard.

7.17 In 2009–10, AFMA is to measure the achievement of the two arms of its outcome/program objective (that is, ecological sustainability and economical efficiency) using the KPIs outlined in Table 7.1. The ecological sustainability KPIs effectively cover all five components of marine ecosystems: target species; by-product and bycatch species; protected species; habitats and communities.

Table 7.1

Measuring the achievement of AFMA's outcome: 2009–10

Arm of outcome	Key Performance Indicator	Targets	Source
Ecologically sustainable Commonwealth fisheries	Minimise the number of fish stocks subject to overfishing	1 in 2009–10, and 0 in 2010–11 to 2012–13	Independent assessment by the Bureau of Rural Sciences (BRS) in annual fishery status reports
	Reduce the number of species assessed as remaining at high risk after mitigation	292 (or 3.6% of species) in 2009–10 to 2012–13	Fishery assessments under the <i>Environment Protection and Biodiversity Conservation Act 1999</i>
Economically efficient Commonwealth fisheries	None determined to date. To be 'independently assessed by the Australian Bureau of Agricultural and Resource Economics through surveys and status reports'.		

Source: PBS 2009–10

7.18 The 2009–10 PBS does not include KPIs for the second element of the outcome—'economically efficient Commonwealth fisheries'. For many years, AFMA has found it difficult to develop suitable performance indicators to measure the economic impact of its fishery management. Since 2004–05, the outcome effectiveness indicators for economically efficient Commonwealth fisheries have changed each year. The 2008–09 PBS included the following outcome effectiveness indicators:

- positive contribution by AFMA to productivity trends in Commonwealth fisheries; and
- cost-effective regulation of the fishing industry.

These indicators are difficult to measure, which is why they have not been brought forward to the 2009–10 PBS.

7.19 AFMA has advised that, in the shorter term, it intends using data from the fishery economic status reports and surveys produced annually by the Australian Bureau of Agricultural and Resource Economics (ABARE) to measure economical efficiency. Although there will be a lag between an

economic impact occurring and AFMA's reporting of the impact, indicators of economic performance from these ABARE reports could form the basis for developing intermediate outcomes.⁸⁵ ABARE's recent report on measuring economic performance in Commonwealth fisheries commissioned by AFMA may also be of assistance.⁸⁶

7.20 In the longer term, AFMA has signalled its intention in the 2009–10 PBS to tie the achievement of its outcome to meeting the targets in the Commonwealth Harvest Strategy Policy. It considers that the Strategy and associated guidelines provide a framework to maintain key commercial stocks at ecologically sustainable levels and maximise economic returns through precautionary default settings. To this end, AFMA advised that:

AFMA, BRS and ABARE are reviewing and testing harvest strategies to assess their effectiveness at meeting the objectives of the Commonwealth Harvest Strategy Policy. ...This work is expected to be completed by July 2012. Progress will be reported in AFMA's annual reports.

Conclusion

7.21 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 KPIs for this outcome component is not easy. In this context, ABARE recently produced a report commissioned by AFMA that may be of assistance. 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; and
- expand its quantitative deliverables to include performance indicators for domestic compliance similar to those used in previous PBSs.

⁸⁵ Intermediate outcomes are often used when an agency's contribution to its outcome statement is difficult to measure. These are partial outcomes, which can be achieved in a shorter timeframe and for which relevant effectiveness indicators can be more easily developed.

⁸⁶ ABARE 2009, *Development of methods and information to support assessment of economic performance in Commonwealth fisheries*, Publication No. 09.5.

Recommendation No.5

7.22 To enable AFMA to more effectively meet its legislative reporting requirements, the ANAO recommends that it review its planning and reporting framework to:

- (a) develop, where applicable, measureable intermediate outcomes linked to its overall outcome; and
- (b) expand its deliverables to include relevant quantitative performance measures for its domestic compliance function.

AFMA response

7.23 AFMA agrees with this recommendation. Work to address recommendation 5(a) is well underway. Throughout the first half of 2009, AFMA has been developing a range of new measurable performance indicators through a number of processes, including the revision of AFMA's Outcome Statement, preparation of AFMA's input into the 2009/10 Portfolio Budget Statement (PBS), development of a 2009–14 AFMA Corporate Plan and 2009/10 AFMA Annual Operational Plan (AOP).

7.24 AFMA, like all Government regulatory agencies which have a compliance program, will continue to find it challenging to define meaningful quantitative performance measures. However, we will continue to pursue recommendation 5(b), while keeping in mind that the success of the compliance program will ultimately depend on the level of compliance achieved, rather than a simple quantification of the number of apprehensions, prosecutions or other tangible deliverables.

Management reporting

7.25 AFMA regularly reports to the CEO (weekly), the Minister for Agriculture, Fisheries and Forestry (fortnightly) and the Board/Commission (approximately every six weeks) on current management issues or activities. In addition, it is to formally review and report to the Managing Director/Board (now CEO/Commission) each quarter on the year's cumulative performance against the AOP. From July 2006 to June 2008 only one quarterly review was undertaken. AFMA advised that a recent AOP performance review covering the first six months of 2008–09 was the start of a refocus on regular internal

performance monitoring. When reporting on the progress of activities in its quarterly reviews, the substance of the activities and the timeframe for their completion also needs to be included.⁸⁷

Public reporting

7.26 AFMA's annual report is expected to report on its achievement against the Corporate Plan, PBS and AOP. The 2007–11 Corporate Plan grouped activities and actions that AFMA was expecting to undertake over the life of the plan into four strategies. However, the 2007–08 Annual Report did not report against these strategies, and there is no clear alignment between the activities and actions within the strategies and what has been reported. The Annual Report contains an assessment of AFMA's performance against the outcome effectiveness and output KPIs in the PBS.

7.27 Although AFMA reported performance against its outcome indicators in 2007–08, the achievement of its outcome is not fully measured by these indicators. AFMA's reported performance can be summarised as follows:

- fish species assessments conducted by the BRS reported a reduction in species overfished, but a small increase in the species subject to overfishing;
- a large increase in the number of species to which harvest strategies were applied;
- a decrease in the number of threatened, endangered and protected species being caught (although the percentage released alive also decreased); and
- performance information on the reductions of discarding and bycatch will become available during 2008–09 and 2009–10, respectively.

7.28 AFMA's performance against most of its output indicators for domestic compliance was readily identifiable in the Annual Report. However, the performance reported against some indicators was ambiguous or contrary to the practices observed by the ANAO during the audit, as illustrated in Table 7.2.

⁸⁷ For example, performance results such as 'strategies designed to reduce the highest compliance risk are underway' (reported against one AOP performance indicator) do not adequately inform the Commission or the CEO on what the strategies are, how they are being implemented or the timeframe for their delivery.

Table 7.2

Incomplete reporting of performance by AFMA

Performance indicator	Comment
Investigations conducted in a timely manner and quality briefs are accepted by the CDPP where charges are recommended (Output 2.1)	AFMA's only measure of timeliness for investigations is that all referred matters should be assessed within seven days. However, this measure is not monitored internally or used in the annual report. In the last two years, the CDPP has declined to proceed to court with over one-quarter of all matters referred by AFMA. Although AFMA established a prima facie case in most of these matters, the CDPP declined to proceed on public interest grounds. (See Chapter 5 <i>Managing Non-compliance</i>)
Tasks identified as key priorities in compliance plan are delivered (Output 2.1)	The annual report indicates, among other things, that service level agreements (SLAs) with State fishery agencies have been implemented. However, what has not been made clear is that the States actually spent one-fifth less time on compliance activities than was budgeted for under the SLAs. (See Chapter 4 <i>Current Compliance Monitoring</i>)
Licensing data correctly reflects entitlements (Output 2.4)	The annual report says that licensing registers are accurate and any errors found were rectified. The ANAO identified systemic shortcomings in the structure of AFMA's public registers. (see Chapter 2 <i>Licensing Services</i>)
All amendments to fishing concessions are actioned in response to fishery management initiatives (Output 2.4)	The annual report says that all were actioned within necessary timeframes. The ANAO noted that one investigation found fishing concessions did not refer to reissued logbooks, which prevented AFMA from taking enforcement action. (see Chapter 5 <i>Managing Non-compliance</i>)

Source: 2007–08 AFMA Annual Report; ANAO analysis of AFMA data

Conclusion

7.29 Although AFMA provides regular reports on current management issues, reinstating quarterly performance reviews will allow it to monitor its progress in achieving its outcome, program objective and KRAs. AFMA's accountability to Parliament and the public would be better demonstrated were its future annual reports to explicitly link performance reporting to its Corporate Plan and AOP, and include clear and concise information on its performance against all PBS performance indicators.

Stakeholder management

7.30 AFMA consults regularly and widely with the following key stakeholder groups:

- DAFF—in relation to international relations, high-level fisheries policy, strategic fisheries assessments, export certifications, and threatened and endangered species nominations;
- Commonwealth Fisheries Association—as the peak industry association, AFMA must involve them when preparing its Corporate Plan;
- MACs—established under s.56 of the FA Act for most fisheries, discuss strategic management and policy matters relevant to Commonwealth fisheries with key stakeholder groups and make recommendations to the Commission; and
- numerous research bodies⁸⁸—who provide scientific and economic advice to assist the Commission to manage Commonwealth fisheries.

Stakeholder surveys

7.31 Stakeholder surveys, undertaken at regular intervals, are a good way of assessing an agency's performance (including trends) in the eyes of its stakeholders and identify areas for improvement. AFMA last surveyed members of the fishing industry, the general public and the organisations it deals with in 2005. It advised that the surveys were useful and have been taken into account in management's decision-making. However, the ANAO sighted no mention of the 2005 client survey or its results in any documentation associated with the management of domestic compliance.

⁸⁸ Including the AFMA Research Committee, Resource Assessment Groups (RAGs) associated with most major fisheries, MAC research sub-committees, Commonwealth Fisheries Research Advisory Board (ComFRAB), Fisheries Research and Development Corporation (FRDC), Australian Bureau of Agricultural and Resource Economics (ABARE), Bureau of Rural Sciences (BRS), and Commonwealth Scientific and Industrial Research Organisation (CSIRO).

7.32 AFMA's operating environment has changed significantly in the four years since the last client surveys. For example, the *Securing our Fishing Future* structural adjustment package was announced in November 2005, accompanied by the Ministerial Direction to AFMA. Consequently, AFMA's performance in the eyes of its stakeholders may have changed since the 2005 client surveys. It would be timely for AFMA to consider conducting a new stakeholder survey to assess its performance.



Ian McPhee

Auditor-General

Canberra ACT

25 June 2009

Appendices

Appendix 1: AFMA Response



Australian Government
Australian Fisheries Management Authority

15 June 2009

Matt Cahill
Group Executive Director
Performance Audit Services Group
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Dear Mr Cahill

Thank you for your letter of 15 May 2009 requesting comments from the Australian Fisheries Management Authority (AFMA) on the proposed audit report on the *Management of Domestic Fishing Compliance*.

AFMA welcomes the opportunity to provide formal comments on this draft report, which has been developed following an extensive period of investigation by ANAO staff, supported by frequent interaction with AFMA officers.

Delivering an efficient and cost effective compliance program for Australia's domestic fisheries continues to be a significant and challenging component of AFMA's work, reflecting the continually changing nature of fisheries. The commercial fishing boats licensed to operate in AFMA's domestic fisheries, fish over several million square kilometres of ocean and land catches at ports right around the Australian coastline. There is the added complication of the Offshore Constitutional Settlement (OCS) arrangements and the overlap with State managed fishing fleets.

In recognition of the way the Authority was meeting this challenge, AFMA received a national award in 2007 for excellence in implementing a risk based approach to the domestic compliance program. Despite those achievements, AFMA has been planning a major redesign of its compliance program to ensure that it continues to become more cost effective and efficient. This was considered particularly important in the wake of the Government's successful "Securing our fishing future" program which significantly reduced the number of boats operating in AFMA managed fisheries since 2006.

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 our ongoing approach to improving compliance in fisheries starting from 1 July 2009. We expect to address all of the recommendations within the next 12 months.


AFMA's detailed response to the individual report recommendations are summarised in Attachment 1. Attachment 2 contains a short summary of AFMA's comments to be included in the Executive Summary and associated brochure.

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 Protecting our fishing future

Over the past two years, AFMA has undertaken an extensive program to actively pursue a range of improvements in many of our processes, procedures and reporting structures. The recommendations in this report will assist us in continuing to become more efficient and effective as we move forward.

AFMA would like to recognise the high level of professionalism, integrity and courtesy shown by all ANAO staff engaged in performing this audit and the cooperative approach undertaken to ensure that the details of the audit were understood and accurately conveyed.

If you require any further information, please contact me at Glenn.Hurry@afma.gov.au or on phone 02 6225 5555.

Yours sincerely



Glenn Hurry
Chief Executive Officer

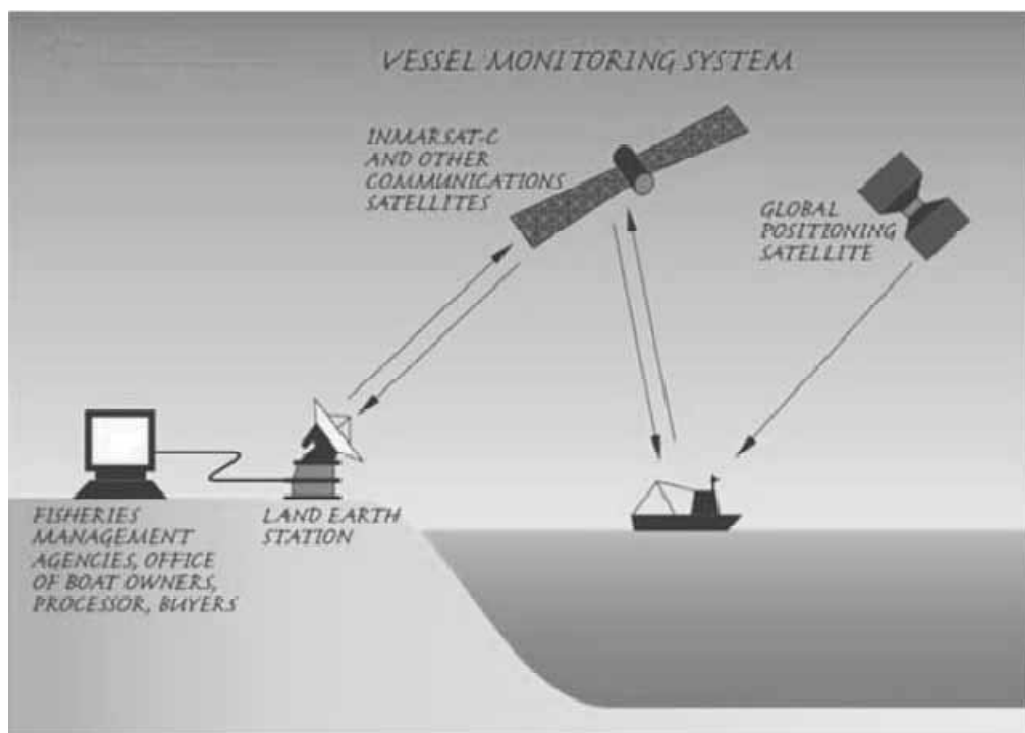
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Appendix 2: VMS Infrastructure

Vessels equipped with VMS technology require a computer (unless exempted by AFMA) to be linked with a VMS unit. The VMS unit includes a Global Positioning System (GPS) receiver and satellite transponder, which automatically transmits information on the vessel's location to AFMA via the Inmarsat satellite and a land earth station, as depicted in Figure A1.

Figure A1

VMS system



Source: AFMA

The computer provides the added functionality of two-way communication between AFMA and the vessel, via the satellite system. A primary use of the technology is to inform vessel operators of discrete fishery management arrangements, for instance, the boundaries and timing of fishery closures. Conversely, AFMA is able to program the system to generate alerts for individual vessels that breach management arrangements, for example, when a vessel crosses a boundary into a closed area.

Appendix 3: Regulatory issues adversely impacting State fishery officers

Issue	Description and comment
No time limits to 'land' catch	<p>As there is no legislative definition of 'landing', it is generally accepted that 'landing' occurs when fish leave the vessel and reach the dock. There is no time limit to land catch, and all catch is not required to be landed at the same time. Consequently, fishers could declare that any under-reporting of catch identified during landing inspections relates to catch that will be 'landed' at a later time. In the absence of the inspection, there is a risk that the unreported catch would never be declared and deducted from the fisher's quota.</p>
Location of determining accurate catch weight	<p>Based on practices accepted by AFMA from the mid-1990s, fishers determine 'accurate estimates' of their catch weight on landing (using methods such as 'the number of boxes/bins' and 'guess'). However, quota is only decremented from fishers on the basis of the catches' 'accurate weight' which is determined by scale measurement at the fish receivers' premises. It is not uncommon for fish to travel by road hundreds of kilometres from the port to its fish receiver. This presents a quota evasion risk as:</p> <ul style="list-style-type: none"> • it is not practicable for inspectors to covertly observe whether fish receivers are recording true weights, while true weights would be recorded during overt inspections; and • catch could be unloaded illegally during transit from the port to the fish receiver before the 'accurate weight' is determined. <p>The most obvious way to mitigate the quota evasion risks is to require fishers to accurately weigh their catch as it is landed.</p>

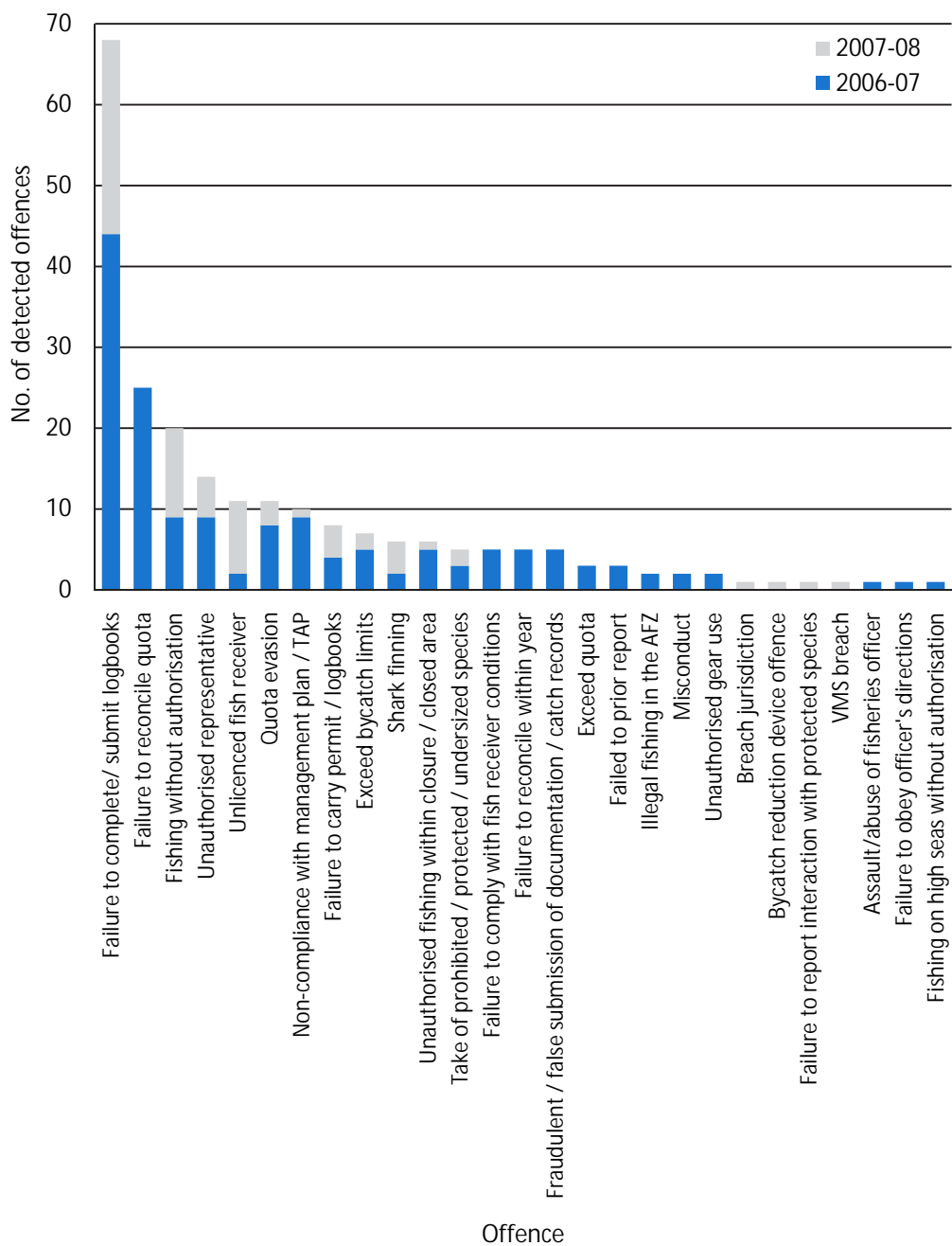
Source: ANAO discussions with State fishery officers

Appendix 4: Circumstances in which fishing concessions can be suspended or cancelled

Suspensions by AFMA (s.38 of the FM Act)	Cancellations by AFMA (s.39 of the FM Act)
1. Non-payment of any fee, levy, or charge relating to a fishing concession as it falls due.	1. Non-payment of any fee, levy, charge relating to a fishing concession within 21 days of becoming due.
2. If suspension is in accordance with a condition of the fishing concession relating to suspension or cancellation.	2. If cancellation is in accordance with a condition of the fishing concession relating to suspension or cancellation.
3. The concession holder is convicted of an offence against fishing laws of the Commonwealth, States/Territories, New Zealand or Papua New Guinea.	3. The concession holder is convicted of an offence referred to in s.39, including an offence against the Act.
4. AFMA has reasonable grounds to believe that there has been a contravention of the concession or the concession holder made a false or misleading statement when applying for a concession.	
Length of suspension Except in the case of 3. above, suspensions cease at the conclusion of criminal proceedings, or, in any other case, one month (unless revoked sooner).	
Suspensions and cancellations by the courts (s.98(3) of the FM Act)	
Courts may, in addition to imposing a penalty for an offence committed while a person was doing something authorised by a fishing concession, make an order cancelling the fishing concession or suspending the operation of a concession for a specified period. AFMA's powers under ss.38 and 39 remain unaffected.	

Source: AFMA 1999, *Fisheries Management Paper 9—Consideration applied where an offence is believed to have been committed* (February 1999)

Appendix 5: Offences detected by AFMA: 2006–07 and 2007–08



Source: ANAO analysis of AFMA data

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