

The Auditor-General
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Performance Audit

Administration of the Domestic Fishing Compliance Program

Australian Fisheries Management Authority

Australian National Audit Office

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Executive Director
Corporate Management Branch
Australian National Audit Office
19 National Circuit
BARTON ACT 2600

Or via email:

webmaster@anao.gov.au





Canberra ACT
5 February 2013

Dear Mr President
Dear Madam Speaker

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

Following its presentation and receipt, 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'.

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

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For further information contact:
The Publications Manager
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Telephone: (02) 6203 7505
Fax: (02) 6203 7519
Email: webmaster@anao.gov.au

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Audit Team

Bronwen Jagers
Michelle Johnson
Andrew Byrnes
Mark Simpson

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Abbreviations

ABARES	Australian Bureau of Agricultural and Resource Economics and Sciences
AFMA	Australian Fisheries Management Authority
AGIS	Australian Government Investigations Standards
ASIS	Australian Special Information System
CDPP	Commonwealth Director of Public Prosecutions
CDR	Catch Disposal Record
CRMT	Compliance Risk Management Team
CRWG	Cost Reduction Working Group
FA Act	<i>Fisheries Administration Act 1991</i>
FM Act	<i>Fisheries Management Act 1991</i>
FMA Act	<i>Financial Management and Accountability Act 1997</i>
GPS	Global Positioning System
ITQs	Individual Transferrable Quotas
JADE	JADE Investigator Case Management and Intelligence System
KPI	Key Performance Indicator
MAC	Management Advisory Committee
MOU	Memorandum of Understanding
MRAI	Multiple Risk Aggregation Index
NSIU	National Special Investigations Unit

OMC	Operational Management Committee
PBS	Portfolio Budget Statements
QAR	Quality Assurance Review
SEWPaC	Department of Sustainability, Environment, Water, Population and Communities
SFRs	Statutory Fishing Rights
SMS	Short Message Service
TAC	Total Allowable Catch
TEP	Threatened, Endangered and Protected

Glossary

Bycatch	Under the Commonwealth's Bycatch Policy, bycatch is defined narrowly as discards and that part of the catch that does not reach the deck, but is affected by interactions with the fishing equipment.
Catch Disposal Records	Catch Disposal Records (CDRs) are required to be completed upon landing at port by the fishing permit holder, Statutory Fishing Rights holder, or a nominated authorised person (usually a fish receiver), detailing the species caught and their accurate weight. The main purpose of the CDR is to provide information relating to the quota/Total Allowable Catch. CDRs may also be used in non-quota fisheries, providing detailed information on landed catches for stock assessment purposes.
Commonwealth-nominated vessel	Under the <i>Fisheries Management Act 1991</i> (the FM Act), only vessels that have been nominated to Statutory Fishing Rights or a fishing permit may undertake commercial fishing activities in Commonwealth fisheries. AFMA undertakes an assessment to determine whether the vessel has the capacity to operate within the management plans and regulations for the relevant fishery.
Fishing licence	A fishing licence (also referred to as a concession) is held by a person who has been granted Statutory Fishing Rights or a fishing permit under the FM Act. ¹

¹ Licences are also held by people granted scientific permits or foreign fishing permits under the FM Act.

Fishing permit

Fishing permits are granted under section 32 of the FM Act. A fishing permit is granted to a person, and authorises the use of a Commonwealth-nominated vessel, by that person, or a person acting on the person's behalf, for fishing in a particular fishery or for a particular species of fish. While fishing permits are usually granted for one season, they can also be granted for up to five years.

Individual Transferrable Quotas ('quota')

Most Commonwealth fisheries are now managed under Individual Transferrable Quotas (ITQs) rather than input controls (for example, limits on the number of hooks set or days spent fishing). ITQs provide a guaranteed equal portion (quota) of the total catch to each fisher. This allows fishers to take advantage of favourable market conditions by choosing when to use their quota throughout the season. Fishers may trade under-utilised quota within a particular season, or purchase additional quota if they are likely to catch more than their quota allocation.

Logbooks

Catch and effort logbooks are distributed to fishers in all Commonwealth fisheries. Fishers are required to record in the logbook information on the location, time, equipment and method of fishing, as well as an estimation of the resultant catch for each fishing operation. Completed logbooks are returned to AFMA, where they are entered into a central logbook database. The primary purpose of the logbooks is to inform AFMA and researchers on catch, bycatch and fishing effort, quota and Total Allowable Catch. The logbooks are used to assess fish stocks.

Receiver permit	Fish receiver permits, granted under section 91 of the FM Act, are required where the management arrangements for a specified fishery require that receivers of fish, for example fish processors, wholesalers and retailers, hold a fish receiver permit. ² Fish receiver permits are granted for 12 months duration. They cannot be transferred.
Seabird Management Plan	AFMA introduced compulsory Seabird Management Plans for the Commonwealth Trawl Sector Fishery in October 2011. The plans aim to minimise the risk to seabirds from fishing activities. The plans require fishers to use specified equipment to deter birds, and to avoid discharging fish processing waste while fishing is underway.
Statutory Fishing Rights	Statutory Fishing Rights (SFRs) are rights granted under section 21 of the FM Act. The nature of SFRs in each fishery is detailed in each Fishery Management Plan. An SFR may be a right to use a boat, a unit of fishing equipment, or a quantity of catch, or other rights identified in the plan.
Total Allowable Catch	Total Allowable Catch (TAC) represents the amount of fish of a particular species that can be taken from a fishery in a prescribed period. TACs are set for fish species managed through ITQs.

² Currently, a permit is required to receive fish from the following fisheries: Eastern Tuna and Billfish; Southern Bluefin Tuna; Bass Strait Central Zone Scallop; Southern and Eastern Scalefish and Shark; Coral Sea; South Tasman Rise; Western Tuna and Billfish; Small Pelagic; and Southern Squid Jig.

Summary and Recommendations

Summary

Introduction

1. The Australian Fishing Zone is the world's third largest and it extends up to 200 nautical miles offshore.³ In 2010–11, the gross value of Australia's fisheries production was \$2.23 billion, including high-value export species such as salmonoids, rocklobster, prawns, abalone and tuna. The fishing industry is estimated to employ over 100 000 people, both directly in fishing activities, and indirectly in post-catch activities, such as processing, transport, wholesale and retail, and restaurants.⁴

2. The Australian Government manages commercial fishing in waters from three nautical miles offshore to the limit of the Australian Fishing Zone (Commonwealth fisheries). The states and territories manage fisheries in inland and coastal waters (up to three nautical miles offshore). Generally, the state and territory governments also assume responsibility for recreational fishing in the Australian Fishing Zone. The Commonwealth fisheries are shown in Figure S1 on the following page.

3. The Australian Fisheries Management Authority (AFMA or the Authority) is the Australian Government agency responsible for the efficient and sustainable management of Commonwealth fish resources on behalf of the Australian community. AFMA was established as a statutory authority in 1992 and operates under the *Fisheries Administration Act 1991* (the FA Act) and the *Fisheries Management Act 1991* (the FM Act).

4. AFMA's core responsibilities include: developing management plans for all Commonwealth fisheries; providing information to inform the setting of Total Allowable Catch (TAC) for Commonwealth fisheries; issuing and managing licences for commercial fishing activity in Commonwealth fisheries;

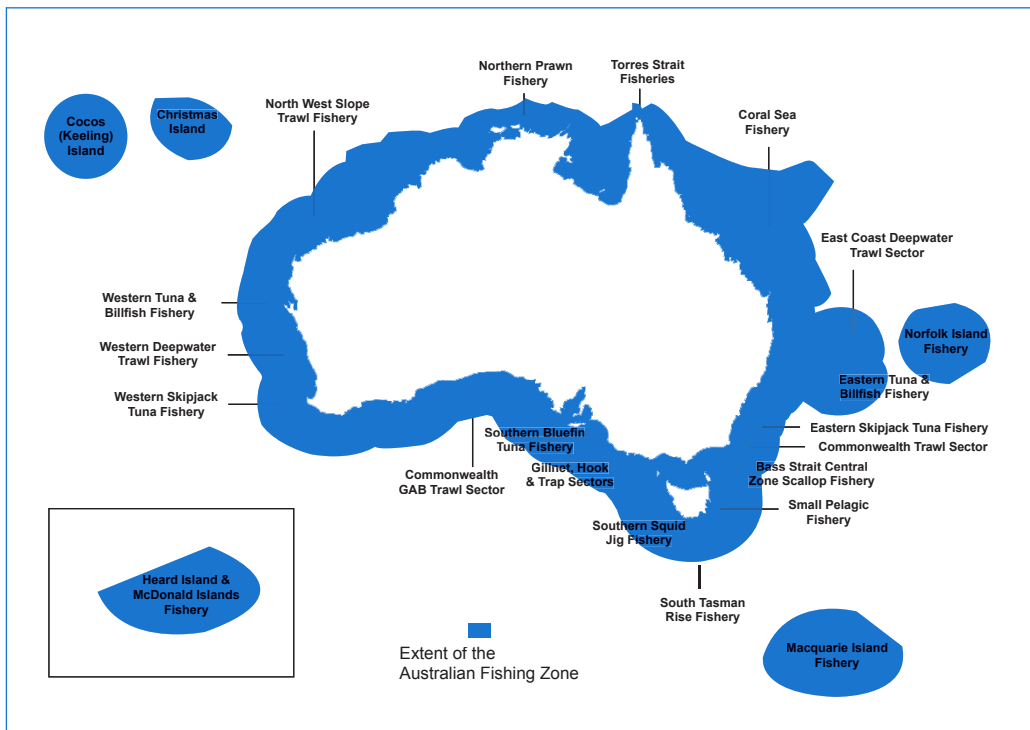
³ The Australian Fishing Zone was first declared in 1979 and relates only to the use or protection of fisheries. Further information is available from the Department of Agriculture, Fisheries and Forestry's website <<http://www.daff.gov.au/fisheries/domestic/zone>> [accessed 13 August 2012].

⁴ Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), *Australian Fisheries Statistics 2011*, December 2012, pp. 1, 2 and 39. Available from: <http://adl.brs.gov.au/data/warehouse/9aam/afstad9aamd003/2011/AustFishStats_2011_v1.1.0.pdf> [accessed 14 January 2013].

collecting scientific data to inform fisheries management⁵; managing the domestic and foreign fishing compliance programs; and providing input into international forums.

Figure S1

Commonwealth fisheries



Source: Department of Agriculture, Fisheries and Forestry.

Note: The Southern and Eastern Shark and Scalefish Fishery (not shown on map) incorporates the Commonwealth Trawl Sector, Commonwealth Great Australian Bight Trawl Sector, East Coast Deepwater Trawl Sector, and Gillnet Hook and Trap Sector Fisheries.

⁵ Scientific data can be collected by providing observers on domestic and foreign fishing vessels to capture information on the status of fish stocks, fishing catch and effort (referring to the location, time, equipments used and method), bycatch, interactions with Threatened, Endangered and Protected species, and weather.

5. AFMA has an annual budget of around \$42 million, with approximately \$14 million cost recovered from the fishing industry, via levies on licence holders.⁶ The levies are set each year based on AFMA's anticipated costs of managing each fishery for the following financial year. The levies do not cover the costs of AFMA's Domestic Fishing Compliance Program (Domestic Compliance Program), as these costs are funded directly by the Australian Government.⁷

6. In September 2012, the Government commissioned an independent review of the operation of the FA Act and the FM Act to ensure: that the FM Act is the lead document in fisheries management legislation; Ministerial powers are clearly set out; there is consistency in the precautionary principle as expressed in the FM Act and the *Environment Protection and Biodiversity Conservation Act 1999*; and that the FM Act is modernised, including updating penalty provisions and references to technology. The review report was provided to the Minister for Agriculture, Fisheries and Forestry for consideration in December 2012. At the time of preparation of this report, the Government had not issued a response to the review.⁸

AFMA compliance arrangements

7. AFMA's fisheries management rules and regulations are designed to protect the fisheries resource (that is, fish stocks), the broader marine environment, and the property rights (the Statutory Fishing Rights, fishing licences and quota that have been legitimately applied for by fishers).⁹ Non-compliance can lead to the depletion of fish stocks, environmental damage that may result in the closure of fishing grounds or entire fisheries, and/or reduced community support for the fishing industry. All of these factors may impact on the long-term sustainability of commercial fishing in Commonwealth fisheries.

⁶ A fishing licence (also referred to as a concession) is held by a person who has been granted Statutory Fishing Rights or a fishing permit under the FM Act.

⁷ In previous years, compliance costs were allocated between the Australian Government and industry, but in 2010 AFMA decided to assume 100 per cent of compliance costs following a review of its Cost Recovery Impact Statement. Available from: <<http://www.afma.gov.au/wp-content/uploads/2010/06/AFMA-Cost-Recovery-Impact-Statement-20101.pdf>> [accessed 26 October 2012].

⁸ Further information is available from: <<http://www.daff.gov.au/fisheries/review-of-fisheries-management-act-1991-and-fisheries-administration-act-1991>> [accessed 22 January 2013].

⁹ AFMA, *Domestic Compliance and Enforcement Program 2011–12*, p. 4.

8. Accordingly, the detection, investigation and enforcement of illegal foreign and domestic fishing activities in Commonwealth fisheries, and subsequent enforcement of penalties for illegal activities, are key AFMA responsibilities under the FM Act.

9. From 1 July 2009, AFMA adopted a centralised model for its Domestic Compliance Program, the subject of this audit.¹⁰ Under this model, AFMA plans and delivers the compliance program largely from its Canberra office. The annual budget for the Domestic Compliance Program is around \$2.8 million, and includes the following key components:

- compliance intelligence—collection, analysis and reporting of intelligence information to support the compliance function;
- risk assessment and planning—a biennial risk assessment process to assist in the targeted planning of compliance activities;
- communications—education and awareness activities to increase rates of voluntary compliance with fisheries management requirements;
- compliance monitoring—incorporating a planned general deterrence program, targeted activities addressing key identified compliance risks, and special operations to address specific issues or fishing operators; and
- enforcement—seeking to affect a timely and appropriate response to non-compliance.

Audit objective, criteria and scope

10. The objective of the audit was to assess the effectiveness of the Australian Fisheries Management Authority's administration of its Domestic Fishing Compliance Program. The ANAO assessed the extent to which AFMA has:

- an effective risk management framework, including the use of available intelligence, to identify domestic compliance risks and guide its compliance activities;

¹⁰ Prior to July 2009, AFMA's domestic fishing compliance functions were performed under Memoranda of Understanding (MOUs) with state and territory fisheries agencies. Under these arrangements, state and territory officers conducted the agreed compliance tasks outlined in annual Service Level Agreements.

- developed and implemented a compliance program that effectively meets its domestic fishing regulatory obligations; and
- appropriate measures to determine whether the Domestic Compliance Fishing Program is meeting its planned objectives.

11. The audit did not include aspects of AFMA's operations relating to: foreign fishing compliance; licensing services; the setting and administration of levies; and the setting of Total Allowable Catch (TAC) and quota management. In addition, AFMA's role in establishing the regulatory requirements for the fishing industry was not within the scope of this audit.¹¹

Previous audit coverage

12. In June 2009, the ANAO completed a performance audit that examined AFMA's regulatory compliance responsibilities in respect of domestic fishing in Commonwealth waters.¹² Overall, the 2009 audit found that, while AFMA was managing some aspects of its regulatory functions effectively, there were opportunities for improvement, particularly with regard to quota management, the inspection and enforcement program, and performance reporting.

13. The audit made five recommendations, with four recommendations related to the implementation and monitoring of compliance and enforcement activities. These recommendations were directed towards improving: the quality, consistency and targeting of the general deterrence inspections program; the outcomes of enforcement actions; and compliance intelligence, particularly its contribution to the proposed centralised approach to domestic fishing compliance. The audit also recommended that the Authority develop measurable intermediate outcomes linked to its overall outcome, and expand

¹¹ In August 2012, prompted by a complaint from Mr Andrew Wilkie MP, the Commonwealth Ombudsman announced an investigation into actions undertaken by AFMA in determining the Total Allowable Catch (TAC) for the Small Pelagic Fishery. On 16 January 2013, Mr Wilkie publicly released the Ombudsman's response which acknowledged AFMA's admission of the failure of one of its statutory committees to comply with legislative requirements for managing conflicts of interest. In this instance, a committee member with a declared commercial interest in the Small Pelagic Fishery and a concurrent financial interest in a commercial fishing vessel procured for its capability to better exploit any fishing quota (the *FV Margiris* (later renamed the *FV Abel Tasman* and referred to as a 'super trawler'), was allowed to provide input into discussions about the setting of fishing quota but was not allowed to vote on the committee's final position. The committee's recommendations are provided to the AFMA Commission, which has responsibility for determining the TAC for this fishery. AFMA advised the Ombudsman of a number of actions that had been undertaken to improve committee governance in response to the Ombudsman's review.

¹² ANAO Audit Report No. 47 2008–09, *Management of Domestic Fishing Compliance*.

its reported deliverables to include relevant quantitative performance measures for the Domestic Compliance Program. The current audit examined AFMA's implementation of the four recommendations related to the delivery of the centralised compliance program.

Overall conclusion

14. AFMA is responsible for the efficient and sustainable management of Commonwealth fish resources on behalf of the Australian community. The Authority's operating environment includes a large geographic area, with differing management arrangements established for each Commonwealth fishery. Approximately 320 vessels regularly fish in Commonwealth fisheries, landing their catch at up to 75 ports around the country.¹³

15. The Domestic Compliance Program is a key element of AFMA's regulatory framework and includes education and awareness activities, a general deterrence inspections program, and targeted risk mitigation activities undertaken by Compliance Risk Management Teams (CRMTs).¹⁴ In 2011–12, the Domestic Compliance Program conducted 222 inspections of vessels and fish receivers¹⁵, with 32 per cent of vessels fishing in Commonwealth fisheries inspected at least once for that year. Where AFMA detects non-compliance, there are a range of enforcement measures currently available under the FM Act. These range from warnings and fines through to prosecution. In addition, administrative sanctions, such as temporary suspension of a fishing licence, are used by AFMA to supplement current legislated enforcement actions.

16. Overall, AFMA has developed and implemented effective arrangements for administering its centralised Domestic Compliance Program. The delivery of targeted compliance activities, aimed at reducing or eliminating key compliance risks, is based on compliance intelligence and a documented risk assessment framework. Compliance activities are effectively

¹³ These figures reflect active vessels and ports as at June 2012. AFMA analysis indicates that 30 ports are the most regularly used for landings.

¹⁴ Compliance Risk Management Teams (CRMTs) involving AFMA compliance and intelligence officers and other relevant Authority staff are formed in response to risks identified in the Domestic Compliance Program biennial risk assessment and prioritised by AFMA for treatment.

¹⁵ Fish receivers are fish processors, wholesalers or retailers who purchase the catch from Commonwealth fishers. A number of Commonwealth Fishery Management Plans require fish receivers to hold a licence as provided for by the FM Act. This allows AFMA to monitor the catch unloaded to these receivers.

planned and delivered in accordance with AFMA's internal policies and guidelines. Compliance investigations reviewed by the ANAO adhered to the Australian Government Investigations Standards (AGIS), which is a requirement for all public sector agencies conducting investigations. Operating within the available enforcement framework, AFMA's enforcement actions are guided by internal policies and guidelines, consistently applied and generally recorded appropriately in the Authority's case management systems.

17. AFMA has also undertaken considerable work to implement the recommendations of the ANAO's 2009 audit of the Domestic Compliance Program. This work has included: increased resourcing of the compliance intelligence function; development of intelligence reports and analytical tools to support a risk-based compliance approach; and implementation or enhancement of compliance support tools, such as the Vessel Monitoring System (VMS).¹⁶ In addition, a new intelligence and case management system has been implemented and guidance materials enhanced to help ensure consistency in enforcement actions.

18. The current audit did, however, identify further scope for strengthening the Domestic Compliance Program. AFMA has recently decided to move from annual to biennial risk assessments to inform the planning of its compliance activities. AFMA's decision was taken in recognition that the risks had not significantly changed over recent years, and the process was resource intensive. Against this background, it will be important for AFMA to adopt a structured approach to monitoring existing and emerging risks to assess their likelihood and potential consequences, and to implement appropriate mitigation strategies, in the period between biennial risk assessments. Also, the Authority's measurement and reporting of performance for the Domestic Compliance Program would be enhanced by the development of measures and targets across all key compliance risks and activities, rather than the existing partial coverage. The ANAO has made two recommendations directed towards these areas.

¹⁶ All fishing vessels nominated to a Commonwealth fishing licence are required to have a VMS fitted and operating at all times. The VMS includes a Global Positioning System (GPS) receiver and satellite transponder, which transmits information on the vessel's location to AFMA.

Key findings by Chapter

Collecting and Analysing Compliance Intelligence (Chapter 2)

19. AFMA has significantly enhanced its intelligence capability since 2009, including an expansion of the sources of its intelligence data, an increased ability to share intelligence with other Commonwealth, state and territory agencies, and enhanced analytical capabilities.

20. While AFMA has developed and implemented a number of intelligence initiatives over recent years, the decisions to progress these initiatives were not underpinned by a structured analysis of intelligence capability gaps, or a strategy to implement the initiatives, as recommended in the 2009 audit. During the audit (in August 2012), AFMA prepared a *Functional Strategy* that outlines current intelligence sources and collection capabilities, and new intelligence analysis methodologies. The development of the Strategy will better position AFMA to adopt a more structured and planned approach to its intelligence function, including identifying and addressing gaps in information gathering and intelligence analysis.

Assessing Risks and Planning Compliance Operations (Chapter 3)

21. AFMA's Domestic Compliance Program is based on a documented risk assessment and management framework, with the underpinning methodology and risk assessments approved by AFMA's Senior Executive.

22. In 2012, AFMA moved from annual to biennial risk assessments. This decision was made on the basis that the key risks identified in the 2011–12 risk assessment remained unchanged and that the Authority has a clear understanding of key compliance risks and the likelihood of any change in risk profile.¹⁷ While the move to a biennial assessment may achieve efficiencies for AFMA, it is important for the Authority adopt a structured approach to monitoring existing and emerging risks to assess their likelihood and consequences, and implement appropriate mitigation strategies, in the period between biennial risk assessments.

¹⁷ The 2011–12 risk assessment identified the following risks requiring ongoing compliance monitoring and action: compliance with VMS requirements; fishing or navigating in closed areas against regulatory requirements; taking in excess of allocated quota and failing to reconcile within the required timeframe; quota evasion and avoidance; and failure to report interaction/retention of Threatened, Endangered and Protected (TEP) species.

23. AFMA has a well established and comprehensive planning framework for its Domestic Compliance Program. The framework clearly communicates AFMA's risk-based approach to compliance and the planned compliance activities for each financial year, including general deterrence inspections and Compliance Risk Management Team (CRMT) activities. AFMA has also outlined a range of compliance objectives across a number of key documents, such as the *Domestic Compliance and Enforcement Policy* and the Corporate Plan. The development of a clear and overarching objective that articulates the purpose of the program would further assist AFMA to coordinate, align and measure the effectiveness of its compliance activities.

24. The effective delivery of AFMA's planned compliance activities is reliant on an appropriately trained and qualified workforce. AFMA officers are required to obtain specific qualifications and training to perform their roles safely and effectively. AFMA monitors the currency of fisheries officers' qualifications and their attendance at required training courses through a register, and is developing a broader learning and development strategy. Fisheries officers are also provided with guidelines and standard operating procedures to assist them in fulfilling their responsibilities.

Managing Compliance (Chapter 4)

25. AFMA's targeted, risk-based program of compliance and enforcement aims to encourage voluntary compliance and deter non-compliance. As previously noted, the Authority implements a range of measures to achieve this, including education and awareness activities, general deterrence inspections program, and targeted compliance risk mitigation activities, including special operations.

26. AFMA's domestic compliance education and awareness activities are undertaken as part of ongoing compliance activities. These activities are not, however, covered by AFMA's communications strategy. Further, AFMA does not monitor or assess the effectiveness of its compliance-related education and awareness activities. There would be merit in AFMA updating the current communications strategy to include the activities delivered by the Domestic Compliance Program. Developing a set of measures against which the effectiveness of education and awareness activities can be assessed would further assist AFMA to monitor the effectiveness of its compliance communication activities.

27. General deterrence inspection activities are well planned and conducted in accordance with AFMA's policies and guidelines. A schedule of general deterrence inspections is developed on a 'rolling' two-month basis, taking into account key identified risks and intelligence analysis. Each inspection targets a particular geographic area, which may include a number of ports and fisheries. The ANAO reviewed the planning and reporting for 10 inspection visits conducted in 2011–12, and accompanied AFMA officers on three general deterrence inspection visits, covering four ports and 21 inspections of vessels and fish receivers. The ANAO's review found that, while each inspection was adequately planned and conducted in accordance with AFMA's Standard Operating Procedures, there was scope to improve the content and quality of post-inspection reporting.

28. In 2011–12 AFMA conducted a total of 222 inspections, including: 116 in-port vessel inspections; 27 at-sea vessel inspections; and 79 inspections of fish receivers. The number of general deterrence inspections has decreased from 476 in 2008–09, to an average of 236 per year in the three years since the centralised compliance program was implemented. This decrease was anticipated by AFMA and is, in part, due to the increased targeting of inspections. AFMA met its target of conducting inspections on at least three per cent of total landings¹⁸, for the previous three years (2009–10 to 2011–12).

29. AFMA has established five CRMTs to target the following key areas of non-compliance: compliance with VMS requirements; fishing or navigating in closed areas; taking in excess of allocated quota and failing to reconcile within the required timeframe; quota evasion; and failure to report interactions with Threatened, Endangered and Protected (TEP) species. Each CRMT has specific objectives and methodologies, which may include information analysis, inspections, and/or special operations, including surveillance of individual vessels or concession holders.

¹⁸ Total landings refers to the number of times vessels within the Commonwealth fleet have unloaded their catch. AFMA informed the ANAO that the three per cent target (previously five per cent under the decentralised model) was set to ensure a minimum presence in the field, within resourcing considerations. In November 2012, AFMA commenced drafting a new program plan for the general deterrence inspections program, including new targets for the inspections program.

30. Performance measures have been established for all five CRMTs and targets established for three (compliance with VMS requirements, closure breaches and quota reconciliation). To date, there have been positive results achieved from CRMT activities, for example:

- compliance with VMS requirements has increased from 87.5 per cent in 2008–09 to 96.7 per cent in 2011–12;
- activities conducted under the closure breach CRMT, which was established to address the risk of fishing or navigating in closed areas, have resulted in the number of suspected breaches reducing from 17 each month to an average of two each month; and
- the percentage of logbooks returned late to AFMA reduced from 5.5 per cent in 2009 to 1.4 per cent in 2010 (the target was three per cent).

Responding to Non-compliance (Chapter 5)

31. At the time of the audit, the enforcement options available to AFMA when non-compliance was detected ranged from infringement notices through to the referral of offences to the Commonwealth Director of Public Prosecutions (CDPP) for prosecution. Since 2009, there has been an overall decline in the number of enforcement actions taken, with AFMA's approach focusing on higher-risk non-compliance (as targeted by CRMT activities). For example, in 2008–09, AFMA issued one or more infringement notices for 12 instances of (minor) non-compliance, while in 2011–12 AFMA issued one or more notices on six occasions. In 2008–09, 11 prosecutions were completed, compared to seven prosecutions completed in 2011–12.

32. AFMA has also been exploring the greater use of 'administrative' sanctions, such as the temporary suspension of a fishing licence, to supplement current legislated enforcement actions. Since 2009–10, AFMA has suspended 11 fishing licences for periods up to 30 days and ordered eight vessels back to port for non-compliance with licence conditions, such as VMS operation requirements or Seabird Management Plan¹⁹ obligations. AFMA considers

¹⁹ AFMA introduced compulsory Seabird Management Plans for the Commonwealth Trawl Sector Fishery (see Figure S1) in October 2011. Each plan aims to minimise the risk to seabirds from fishing activities and require fishers to use specified equipment to deter birds, and to avoid discharging fish processing waste while fishing is underway.

administrative sanctions to be more immediate and that they provide a greater deterrent for fishers because of their financial impact.

33. AFMA has developed guidelines and standard operating procedures for the conduct of investigations and any subsequent enforcement actions. The ANAO reviewed 80 enforcement actions undertaken between 2009–10 and 2011–12 (20 per cent of the enforcement actions completed). This review found that AFMA has made improvements to its case management processes by more comprehensively: documenting key decisions; recording the reasons for these decisions; and ensuring relevant approvals are sought, where necessary. However, there is scope for AFMA to improve the integrity of information retained in its case management system to better capture relevant details of investigation and enforcement activities.

Measuring and Reporting on Compliance Effectiveness (Chapter 6)

34. AFMA's decision to move to a centralised model for its Domestic Compliance Program was designed to achieve cost savings and greater efficiencies. AFMA has achieved a modest decrease in the budgeted expenditure for the Domestic Compliance Program since 2009, with the budget reduced from approximately \$3 million to \$2.8 million. However, expenditure on the program now exceeds (by \$250 000 in 2011–12) the amount expended on domestic compliance under the previous decentralised model. The primary reason for this increase is because state fisheries agencies did not always expend the compliance budget allocated to them under the decentralised model. Since introducing the centralised model, actual expenditure for the program has closely aligned with the budget.

35. AFMA collects a range of data to measure the effectiveness of aspects of the Domestic Compliance Program, however, the approach to measuring performance was not consistent across all of the key compliance risks. Although performance measures were established for all CRMTs, performance targets had not been developed for the CRMTs addressing quota evasion and Threatened, Endangered and Protected (TEP) species reporting. Further, performance measures or targets had not been established for the general deterrence inspections program or the domestic compliance education and awareness activities. The Authority's measurement and reporting of performance would be enhanced by the development of performance measures and targets across all key compliance activities.

36. AFMA has established an appropriate reporting framework to communicate information on the Domestic Compliance Program to internal and external stakeholders, comprising: monthly internal reports; Ministerial/Parliamentary Secretary reports; annual reports and a regular newsletter. The absence of performance measures for some compliance activities, and integrity issues with some reported data²⁰, indicates that there is further scope for AFMA to improve its existing data management and reporting arrangements by:

- strengthening data controls and validations processes; and
- providing additional information on program performance to demonstrate the effectiveness of the Domestic Compliance Program in meeting AFMA's regulatory obligations.

Summary of agency response

37. AFMA's summary response to the proposed report is provided below, while the full response is provided at Appendix 1.

AFMA welcomes the ANAO's overall assessment that AFMA has developed and implemented effective arrangements for administering its centralised Domestic Compliance Program. AFMA also welcomes the ANAO's acknowledgement that compliance activities are now targeted at reducing or eliminating key risks based on compliance intelligence, risk assessment frameworks and effective planning programs. This ensures delivery of the program is in accordance with AFMA internal policies and guidelines, and that enforcement actions are applied consistently.

AFMA agrees with both of the ANAO's recommendations and has already begun work, or has incorporated into its planning schedule, activities to implement the changes required to address them. This includes;

- Refining the risk monitoring processes to incorporate a more structured approach whereby information collected through the risk monitoring mechanisms embedded within the compliance program are formally assessed on a quarterly basis.

²⁰ The ANAO's analysis highlighted discrepancies between AFMA's internal and external reports. For example, AFMA's *2010–11 Annual Report* indicated that there were 176 vessel inspections undertaken. However, the internal end-of-year report for the Domestic Compliance Program stated there were 163 inspections undertaken. The ANAO also noted differences between the number of compliance activities provided in the internal monthly reports and those included in reports generated by AFMA's case management system.

- Clearly defining program objectives and continuing to pursue the development of measures to assess the effectiveness of the National (Domestic) compliance program and in doing so recognising that it is the overall level of compliance achieved, rather than a quantification of activities, which will determine the success of the program.

Recommendations

Recommendation No. 1
Paragraph 3.51

To provide assurance that the Australian Fisheries Management Authority's compliance activities are directed towards key areas of risk, the ANAO recommends that AFMA adopt a structured approach to monitoring existing and emerging risks during the period between biennial risk assessments, to assess their likelihood and consequence, and implement appropriate mitigation strategies, where required.

AFMA's response: *Agreed*

Recommendation No. 2
Paragraph 6.32

To better position the Australian Fisheries Management Authority to measure, assess and report on the effectiveness of its Domestic Compliance Program, the ANAO recommends that the Authority:

- define a clear and consistent objective(s) for the program; and
- develop new measures and targets that cover key compliance risks and associated activities, where necessary.

AFMA's response: *Agreed*

Audit Findings

1. Background and Context

This chapter provides background information on Australian fisheries, the AFMA Domestic Fishing Compliance Program, and its wider context. It also sets out the audit objective and approach.

Australian fisheries

Economic and social value

1.1 The Australian Fishing Zone is the world's third largest and it extends up to 200 nautical miles offshore. In 2010–11, the gross value of Australia's fisheries production was \$2.23 billion, including high-value export species such as salmonoids, rocklobster, prawns, abalone and tuna. The fishing industry is estimated to employ over 100 000 people, both directly in fishing activities, and indirectly in post-catch activities, such as processing, transport, wholesale and retail, and restaurants.²¹

1.2 The Australian Government manages commercial fishing in waters from three nautical miles offshore to the limit of the Australian Fishing Zone (Commonwealth fisheries). The states and territories manage fisheries in inland and coastal waters (up to three nautical miles offshore). Generally, the state and territory governments also assume responsibility for recreational fishing in the Australian Fishing Zone. The Commonwealth fisheries are shown in Figure 1.1.

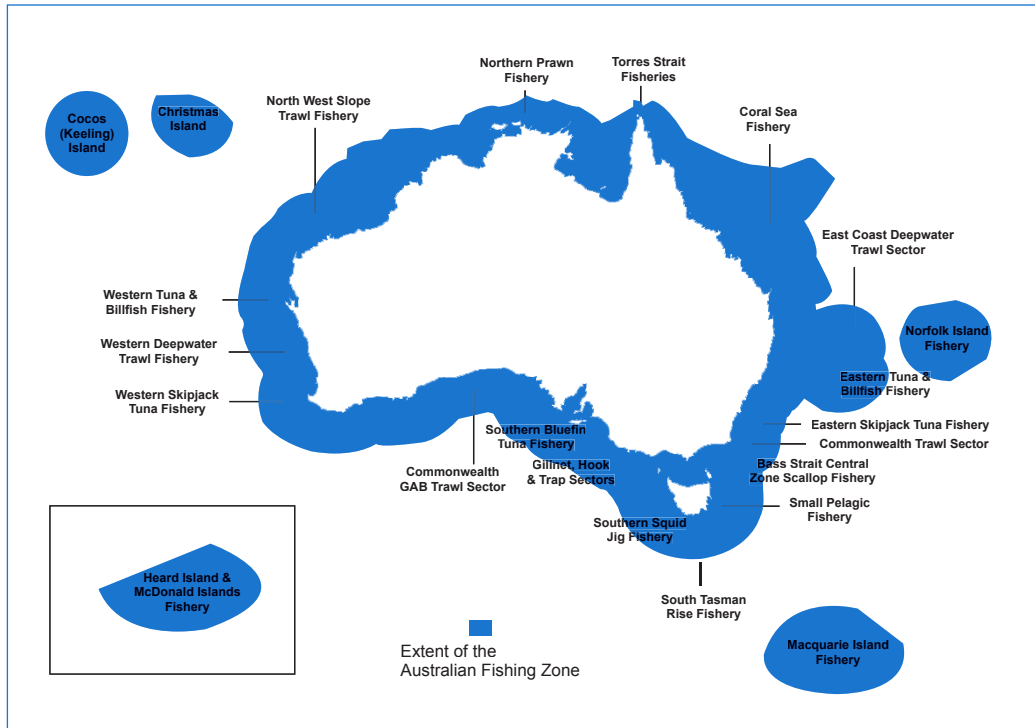
1.3 In 2010–11, Commonwealth fisheries were estimated to account for 14 per cent (\$320.4 million) of Australian fisheries' gross value production. The three Commonwealth fisheries with the highest production value in 2010–11 were the Northern Prawn Fishery, the Commonwealth Trawl Sector of the Southern and Eastern Shark and Scalefish Fishery, and the Eastern Tuna and Billfish Fishery.²²

²¹ Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), *Australian Fisheries Statistics 2011*, December 2012, pp. 1, 2 and 39. Available from: <http://adl.brs.gov.au/data/warehouse/9aam/afstad9aamd003/2011/AustFishStats_2011_v1.1.0.pdf> [accessed 14 January 2013].

²² ABARES, op.cit., pp. 11 and 18.

Figure 1.1

Commonwealth fisheries



Source: Department of Agriculture, Fisheries and Forestry.

Note: The Southern and Eastern Shark and Scalefish Fishery (not shown on map) incorporates the Commonwealth Trawl Sector, Commonwealth Great Australian Bight (GAB) Trawl Sector, East Coast Deepwater Trawl Sector, and Gillnet Hook and Trap Sector Fisheries.

Commonwealth fisheries management

Australian Fisheries Management Authority

1.4 The Department of Agriculture, Fisheries and Forestry is responsible for Commonwealth fisheries policy and the Australian Fisheries Management Authority (AFMA or the Authority) has responsibility for the day-to-day management of Commonwealth fisheries, including compliance with regulatory requirements. AFMA was established as a statutory authority in 1992 and operates under the *Fisheries Administration Act 1991* (the FA Act) and the *Fisheries Management Act 1991* (the FM Act).

1.5 The FA Act establishes AFMA and sets out arrangements for key administrative matters, such as the AFMA Commission, staffing, corporate

planning and reporting arrangements, Management Advisory Committees, and the co-management of fisheries. AFMA's legislated objectives include:

- implementing efficient and cost-effective fisheries management on behalf of the Commonwealth;
- ensuring that the exploitation of fisheries resources and related activities are conducted in a manner consistent with the principles of ecologically sustainable development (which include the use of the precautionary principle), in particular the need to have regard to the impact of fishing activities on non-target species and the long-term sustainability of the marine environment;
- maximising the net economic returns to the Australian community from the management of Australian fisheries;
- ensuring accountability to the fishing industry and to the Australian community in the Authority's management of fisheries resources; and
- achieving government targets in relation to the recovery of the costs of the Authority.

1.6 The FM Act defines the Australian Fishing Zone and establishes fisheries management arrangements, such as Statutory Fishing Rights, fishing and receiver permits, Fisheries Management Plans, and levies. The FM Act also outlines fisheries offences and provides for AFMA to appoint Commonwealth or state/territory government employees as fisheries officers. The powers of fisheries officers and the enforcement actions available to AFMA to respond to non-compliance are also set out in the FM Act.

1.7 AFMA's core responsibilities include: developing management plans for all Commonwealth fisheries; providing information to inform the setting of Total Allowable Catch (TAC) for Commonwealth fisheries; issuing and managing licences for commercial fishing activity in Commonwealth fisheries; collecting scientific data to inform fisheries management²³; managing the domestic and foreign fishing compliance programs; and providing input into international forums.

²³ Scientific data can be collected by providing observers on domestic and foreign fishing vessels to capture information on the status of fish stocks, fishing catch and effort (referring to the location, time, equipments used and method), bycatch, interactions with Threatened, Endangered and Protected species, and weather.

1.8 AFMA is a prescribed agency under the *Financial Management and Accountability Act 1997* (the FMA Act), with responsibilities shared between a Commission and the Chief Executive Officer (CEO):

- the Commission, which is comprised of nine commissioners, is responsible for performing and exercising the domestic fisheries management functions and powers of the Authority; and
- the CEO is responsible for performing and exercising the foreign compliance functions and powers of the Authority, and for assisting the Commission, including by giving effect to its decisions.²⁴

1.9 The CEO, who is also a Commissioner, is also responsible for management of AFMA's functions and powers under the FMA Act and the *Public Service Act 1999*.²⁵

1.10 AFMA has an annual budget of around \$42 million, with approximately \$14 million cost-recovered from the fishing industry, via levies on licence holders.²⁶ The levies are set each year based on AFMA's anticipated costs of managing each fishery for the following financial year. The levies do not cover the costs of AFMA's Domestic Fishing Compliance Program (Domestic Compliance Program), as these costs are funded directly by the Australian Government.²⁷ AFMA has a central office in Canberra (156 staff) and two regional offices located in Darwin (36 staff) and on Thursday Island (five staff). It also employs 27 staff on a casual basis to undertake observer duties on commercial fishing vessels around the country.

Industry stakeholders

1.11 AFMA has a number of formal and informal arrangements with various fisheries stakeholders, including the fishing industry, state and territory authorities, other government agencies and the scientific community.

²⁴ FA Act, section 10B.

²⁵ The current CEO was appointed for a five-year term on 30 March 2010. The other eight Commissioners are part-time and were appointed for a five-year term on 1 March 2009.

²⁶ A fishing licence (also referred to as a concession) is held by a person who has been granted Statutory Fishing Rights or a fishing permit under the FM Act.

²⁷ In previous years, compliance costs were allocated between the Australian Government and industry, but in 2010 AFMA decided to bear 100 per cent of compliance costs following a review of its Cost Recovery Impact Statement. Further information is available from: <<http://www.afma.gov.au/wp-content/uploads/2010/06/AFMA-Cost-Recovery-Impact-Statement-20101.pdf>> [accessed 26 April 2012].

The FM Act establishes a number of obligations for AFMA to engage with key stakeholders in developing its management plans for fisheries.²⁸

AFMA advisory committees

1.12 Under the FA Act, AFMA supports seven Management Advisory Committees (MACs) that cover all Commonwealth fisheries. MACs provide advice (but do not make decisions on) AFMA's Fisheries Management Plans, TAC (quotas) and input into the planning for the Domestic Compliance Program. Resource Assessment Groups that include fishery scientists, fishery economists, industry representatives and other interest groups, provide scientific information to the MACs.

Fishing industry associations

1.13 The Commonwealth Fisheries Association is the peak body representing fishers who operate in Commonwealth fisheries. The FA Act provides for formal input from a nominated peak body to be sought in relation to AFMA corporate planning, and for the AFMA Chairperson to provide the peak body with an annual briefing on the Authority's activities.²⁹

National Fisheries Compliance Committee

1.14 The National Fisheries Compliance Committee was established to: advise the Australian Fisheries Management Forum³⁰ on national strategies and approaches to improve the coordination and effectiveness of fisheries compliance policies and programs; provide a forum for information exchange and collaboration across jurisdictions on compliance matters; and undertake specific tasks at the request of the Australian Fisheries Management Forum.

1.15 The National Fisheries Compliance Committee includes compliance officers from AFMA and state/territory fisheries agencies, and aims to implement national compliance strategies and share better practice on compliance matters, where possible. AFMA currently chairs the committee.

²⁸ For example, section 17 of the FM Act requires AFMA to consult with all 'persons engaged in fishing', and to invite representations from others, during the development process for plans of management. AFMA must also maintain a register of persons wishing to be informed of the development of plans of management.

²⁹ FA Act, sections 72 and 89.

³⁰ The Australian Fisheries Management Forum includes the heads of the Australian and state and territory government fisheries agencies. The Forum considers issues relating to fisheries management and has a range of sub-committees, including the National Fisheries Compliance Committee.

AFMA compliance arrangements

1.16 AFMA’s fisheries management rules and regulations are designed to protect the fisheries resource (that is, fish stocks), the broader marine environment, and property rights (the Statutory Fishing Rights, fishing licences and quota that have been legitimately applied for by fishers).³¹ Non-compliance can lead to the depletion of fish stocks, environmental damage that may result in the closure of fishing grounds or entire fisheries, and/or reduced community support for the fishing industry. All of these factors may impact on the long-term sustainability of commercial fishing in Commonwealth fisheries.

1.17 Accordingly, the detection, investigation and response to illegal fishing activities in Commonwealth fisheries are key AFMA responsibilities under the FM Act. AFMA implements a range of compliance and enforcement measures to deter, detect and address illegal fishing in Commonwealth fisheries, including:

- compliance intelligence—collection, analysis and reporting of intelligence information to support the compliance function;
- risk assessment and planning—a biennial risk assessment process to assist in the targeted planning of compliance activities;
- communications—education and awareness activities to increase rates of voluntary compliance with fisheries management requirements;
- compliance monitoring—incorporating a planned general deterrence program, targeted activities addressing key identified compliance risks, and special operations to address specific issues or fishing operators; and
- enforcement—seeking to effect a timely and appropriate response to non-compliance.

AFMA’s centralised model for domestic compliance

1.18 In 2007, the AFMA Board established a Cost Reduction Working Group (CRWG) to identify and recommend options to reduce costs and generate efficiencies across the Authority. The working group recommended a

³¹ AFMA, *Domestic Compliance and Enforcement Program 2011–12*, p. 4.

centralised model for AFMA's domestic compliance function, which was subsequently accepted and implemented by AFMA from 1 July 2009.³² Under this model, AFMA plans and delivers the compliance program from its Canberra office, through the Fisheries Operations Branch³³, with targeted support from state and territory fisheries agencies. The annual budget for the Domestic Compliance Program is around \$2.8 million.

1.19 The delivery of the Domestic Compliance Program is overseen by an Operational Management Committee (OMC) that includes the General Manager of the Fisheries Operations Branch, and the senior managers of the National Compliance Strategy Section, and the National Compliance Operations Sections (Canberra and Darwin). The OMC was established in December 2008 as part of the transition to the centralised compliance model. The committee meets monthly and has a standing agenda covering planning, compliance operations, current investigations and completed compliance actions and may approve urgent matters out-of-session.

Previous ANAO audit coverage

1.20 In June 2009, the ANAO completed a performance audit of AFMA's Domestic Compliance Program.³⁴ The objective of the audit was to examine whether AFMA was effectively undertaking its regulatory compliance responsibilities in respect of domestic fishing in Commonwealth fisheries. Overall, the 2009 audit found that, while AFMA was managing some aspects of its regulatory functions effectively, there were opportunities for improvement, particularly with regard to quota management, the inspection and enforcement program, and performance reporting.

1.21 The audit also identified a number of risks in relation to the proposed centralised model for the Domestic Compliance Program, which was planned, but not implemented, at the time of the 2009 audit.³⁵ The ANAO considered

³² Prior to July 2009, AFMA's domestic fishing compliance functions were performed under Memoranda of Understanding (MOUs) with state and territory fisheries agencies. Under these arrangements, state and territory officers conducted the agreed compliance tasks outlined in annual Service Level Agreements.

³³ The Fisheries Operations Branch comprises three sections: the National Compliance Strategy Section, which includes the intelligence, planning, and data management functions; the National Compliance Operations Section, which includes the fisheries officers who undertake compliance investigations and inspections, and the Foreign Compliance Section (which is not within the scope of this audit).

³⁴ ANAO Audit Report No. 47 2008–09, *op.cit.*

³⁵ The audit made five recommendations which are provided at Appendix 2.

that most of these risks related to the distance of AFMA fisheries officers from ports, the anticipated reduction in the number of at-port inspections, and the reduction in compliance resources. AFMA considered that the benefits outweighed these potential risks and stated that the Authority had already commenced implementing some of the measures recommended by the ANAO, with all recommendations to be implemented within 12 months (that is, by mid-2010). This audit has reviewed AFMA's implementation of the four recommendations in the 2009 audit that directly related to the delivery of the centralised compliance program.

Recent developments

1.22 There have been a number of recent developments that have the potential to impact on AFMA's operations, including the Domestic Compliance Program. These include: reviews of aspects of Australia's fisheries management arrangements, proposed legislative amendments, and the establishment of new Commonwealth marine reserves. A further development related to the proposed operation of a 'super trawler' factory ship, although this has been prohibited for a period of two years while an independent expert panel assesses the potential environmental impacts of these vessels (discussed later in this section).

Reviews of Australian fisheries management

1.23 On 11 September 2012, the Minister for Agriculture, Fisheries and Forestry announced a major review of Australian fisheries policy and legislation, with a focus on the fisheries management regime, including legislation, penalties, Ministerial oversight, socioeconomic and environmental considerations.³⁶ The review will complement existing reviews of the *Bycatch Policy* and the *Harvest Strategy Policy*, which are currently underway. The review report was provided to the Minister for Agriculture, Fisheries and Forestry for consideration in December 2012. At the time of preparation of this report, the Government had not issued a response to the review.³⁷

³⁶ Senator the Hon. Joe Ludwig, Minister for Agriculture, Fisheries and Forestry, 'Major review of Australian Fisheries management', *Media Release*, 11 September 2012. Available from: <http://www.maff.gov.au/media_office/media_releases/media_releases/2012/september/major-review-of-australian-fisheries-management> [accessed 12 September 2012].

³⁷ Further information is available from: <<http://www.daff.gov.au/fisheries/review-of-fisheries-management-act-1991-and-fisheries-administration-act-1991>> [accessed 22 January 2013].

Review of the Bycatch Policy and the Commonwealth Harvest Strategy

1.24 The *Commonwealth Policy on Fisheries Bycatch* was released in June 2000.³⁸ The policy requires the development of fishery-specific Bycatch Action Plans to reduce bycatch, improve protection for vulnerable species, and monitor the ecological impacts of fishing over time. The *Commonwealth Fisheries Harvest Strategy* was developed in 2007 to implement the fisheries management component of the *Securing our Fishing Future* package.³⁹ The Harvest Strategy provides a framework for setting fishing targets, limits and decision rules in Commonwealth fisheries.

1.25 In March 2012, the Minister for Agriculture, Fisheries and Forestry announced separate reviews of the *Bycatch Policy* and the *Harvest Strategy*.⁴⁰ The reviews have included consultations with key stakeholders, submissions from the public, and the publication of discussion papers on the DAFF website. The reviews are scheduled to be completed in early 2013.

Legislative amendments

1.26 In June 2012, the Government introduced the *Fisheries Legislation Amendment Bill (No. 1) 2012*. The Bill aims to introduce e-monitoring as a fisheries management tool and to clarify the responsibilities of fishing licence holders in relation to the actions of the masters and crew of their vessels. The Bill also addresses several administrative matters, such as evidentiary certificates, waiving of levies, and implementing fisheries closures. At the conclusion of Parliamentary sittings for 2012, the Bill was before the Senate having passed the House of Representatives on 16 August 2012.

Commonwealth marine reserves

1.27 On 14 June 2012, the Government announced that it intended to significantly expand the national network of Commonwealth marine reserves, increasing the number of reserves from 27 to 60, to cover more than one-third of Commonwealth waters. The purpose of the Commonwealth marine reserves

³⁸ The *Bycatch Policy* is available from: <http://www.daff.gov.au/data/assets/pdf_file/0016/5812/bycatch.pdf> [accessed 12 September 2012].

³⁹ The *Harvest Strategy* is available from: <http://www.daff.gov.au/data/assets/pdf_file/0004/397264/HSP-and-Guidelines.pdf> [accessed 12 September 2012].

⁴⁰ Further information on the reviews is available from: <<http://www.daff.gov.au/fisheries/environment/bycatch/review>> and <http://www.daff.gov.au/fisheries/domestic/harvest_strategy_policy/review> [accessed 19 December 2012].

is to manage conservation of reserve ecosystems, habitats and the marine life they support. Following consultations with the fishing industry, environment groups and other interested parties, the Government proclaimed the national network of Commonwealth marine reserves on 16 November 2012.⁴¹

1.28 While commercial fishing will continue in many reserve areas, the Government acknowledged there will be an impact on the fishing industry, and announced a \$100 million structural adjustment package (the Fisheries Adjustment Assistance Package). The package will commence in 2013–14 and will include: payments to those fishers who have historically fished in areas now closed to fishing; grants for projects to assist industry development and long-term sustainability in affected areas; and a buyback of some fishing licences and/or quota in fisheries where fishing is reduced as a result of the new reserves.⁴²

1.29 AFMA currently provides the Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) with vessel monitoring services for commercial fishers in Commonwealth marine reserves.⁴³ The increase in the reserves network may, therefore, represent a significant expansion of AFMA’s services to SEWPaC.

‘Super trawler’

1.30 In March 2012, Seafish Tasmania, a fishing company in the Commonwealth Small Pelagic Fishery⁴⁴, announced that it intended to bring the *FV Margiris* to Tasmania to fish. The vessel, renamed the *FV Abel Tasman*, is a 142 metre factory ship that has the capacity to catch a large volume of fish, and to process and store them onboard in freezer holds.

⁴¹ Further information is available from: <<http://www.environment.gov.au/marinereserves/index.html>> [accessed 19 November 2012].

⁴² Department of Sustainability, Environment, Water, Population and Communities, *Fact Sheet: Fisheries Adjustment Assistance Package*, available from: <<http://www.environment.gov.au/marinereserves/publications/pubs/fs-faap.pdf>> [accessed 20 November 2012].

⁴³ AFMA signed a Memorandum of Understanding (MoU) with the then Department of the Environment, Water, Heritage and the Arts (now the Department of Sustainability, Environment, Water, Population and Communities—SEWPaC) in July 2008 for the provision of compliance and monitoring data for Commonwealth marine reserves.

⁴⁴ The target species in the Small Pelagic Fishery are redbait, jack mackerel, blue mackerel, and Australian sardines. Further information is available from AFMA’s website: <<http://www.afma.gov.au/managing-our-fisheries/fisheries-a-to-z-index/small-pelagic-fishery/>> [accessed 14 August 2012].

1.31 The proposed use of the *FV Abel Tasman* resulted in community debate about the impact of ‘super trawlers’. Concerns centred around the localised depletion of fish stocks, potential for bycatch (particularly dolphins and seals), the validity of the science underpinning AFMA’s setting of the TAC for the Small Pelagic Fishery, and aspects of AFMA’s administration of MAC meetings.

1.32 The *FV Abel Tasman* arrived in Australia in late August 2012, and Seafish Tasmania indicated that it planned to begin fishing once all government requirements were met. However, in September 2012 the Parliament passed legislation that allows the Minister for Sustainability, Environment, Water, Population and Communities (the Minister) to prohibit a ‘declared fishing activity’ for a period of up to two years while an independent expert panel assesses the potential environmental impacts of that activity.⁴⁵

1.33 The Minister issued an Interim Declaration on 21 September 2012, and subsequently a Final Declaration on 19 November 2012, that the following commercial fishing activity would be a ‘declared activity’:

That which:

- is in the area of the Small Pelagic Fishery; and
- uses the mid-water trawl method; and
- uses a specified vessel [that is: a type of vessel which is greater than 130 metres in total length; and has an on-board fish processing facility; and has storage capacity for fish or fish products in excess of 2000 tonnes].⁴⁶

1.34 In the period leading up to the Minister’s Interim Declaration, the licence conditions for the *FV Abel Tasman*, which would have stipulated operating requirements, for example, observer coverage and electronic monitoring to address the identified risks, had not been finalised by AFMA.⁴⁷

⁴⁵ *The Environment Protection and Biodiversity Conservation Amendment (Declared Fishing Activities) Act 2012*, was passed by the Australian Parliament on 21 September 2012.

⁴⁶ *Final (Small Pelagic Fishery) Declaration 2012*. Available from: <<http://www.environment.gov.au/coasts/fisheries/commonwealth/pelagics/index.html>> [accessed 20 November 2012]. The Interim Declaration was in force for 60 days, during which time the Minister was required to consult with affected licence holders prior to deciding whether to make a 24-month declaration.

⁴⁷ AFMA approved the *FV Abel Tasman*’s nomination to Seafish Tasmania’s fishing licence on 20 September 2012, as provided for under the FM Act. However, the Minister’s Interim Declaration, also made on 20 September 2012, prevented the vessel from fishing.

While AFMA had considered aspects of a compliance regime for the vessel, finalisation of the regime was dependent on the establishment of final licence conditions.

1.35 In the longer term, the operation of ‘super trawlers’ could affect AFMA’s approach to monitoring compliance, particularly if there are additional regulatory requirements placed on their operations.

Audit objective, criteria and methodology

1.36 The objective of the audit was to assess the effectiveness of the Australian Fisheries Management Authority’s administration of its Domestic Fishing Compliance Program. The ANAO assessed the extent to which AFMA has:

- an effective risk management framework, including the use of available intelligence, to identify domestic compliance risks and guide its compliance activities;
- developed and implemented a compliance program that effectively meets its domestic fishing regulatory obligations; and
- appropriate measures to determine whether the Domestic Fishing Compliance Program is meeting its planned objectives.

1.37 The audit also examined AFMA’s implementation of the recommendations from the 2009 performance audit directly related to improving: the quality, consistency and targeting of the general deterrence inspections program; the outcomes of enforcement actions; and compliance intelligence, particularly in light of its contribution to the planned centralised approach to domestic fishing compliance. The 2009 audit also recommended that the Authority develop measurable intermediate outcomes linked to its overall outcome, and expand its reported deliverables to include relevant quantitative performance measures for the Domestic Compliance Program.

1.38 The audit did not include aspects of AFMA’s operations relating to: foreign fishing compliance; licensing services; the setting and administration of

levies; and the setting of TAC and quota management.⁴⁸ In addition, AFMA's role in establishing the regulatory requirements for the fishing industry was not within the scope of this audit.

Audit methodology

1.39 In undertaking the audit, the ANAO reviewed AFMA's files and documentation, including a sample of compliance enforcement actions. AFMA staff and relevant stakeholders, including members of MACs, representatives of the fishing industry, and officers of fisheries agencies in other jurisdictions were interviewed. The audit team also accompanied fisheries officers on compliance inspections and reviewed the system documentation and key controls of the two Domestic Compliance Program business support systems. The audit was conducted in accordance with the ANAO Auditing Standards at a cost of \$356 000.

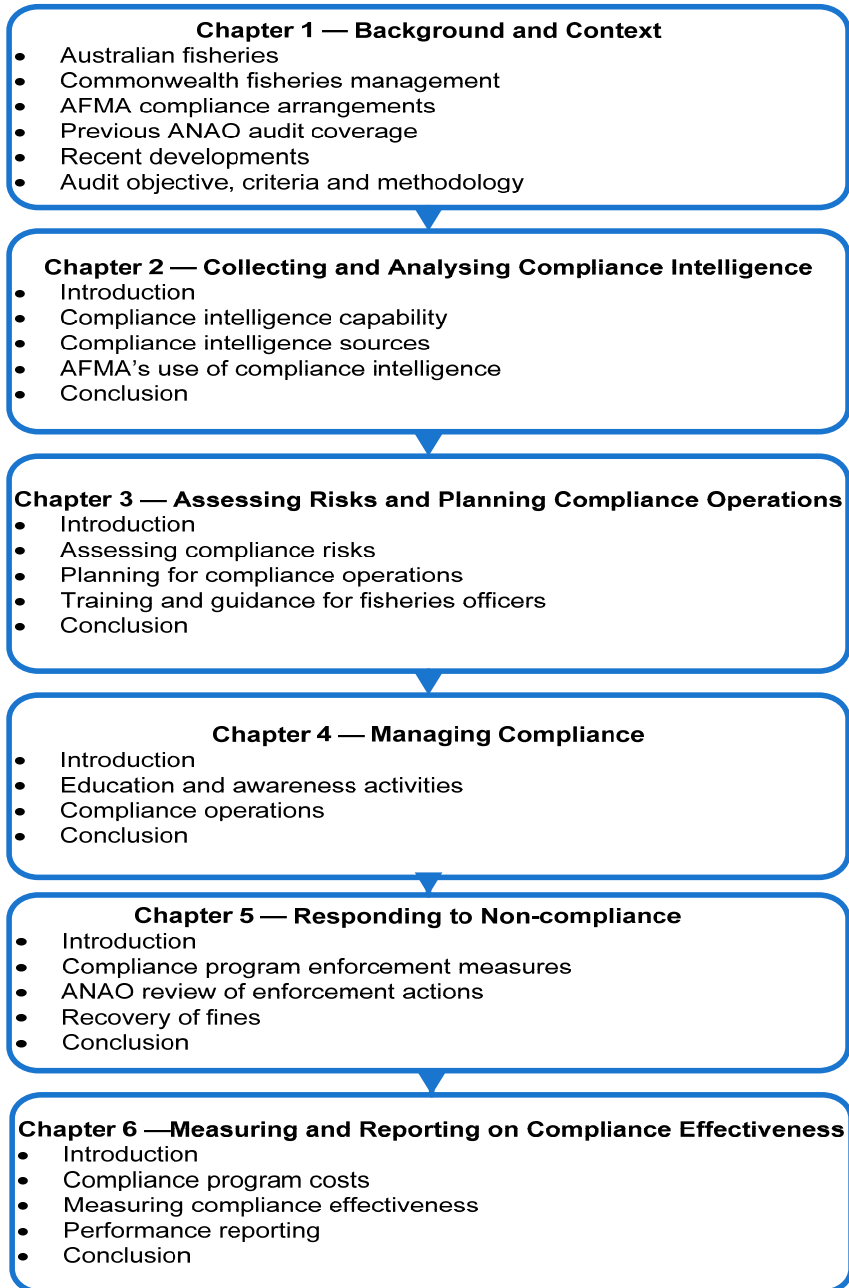
Report structure

1.40 The structure of the report is illustrated in Figure 1.2.

⁴⁸ In August 2012, prompted by a complaint from Mr Andrew Wilkie MP, the Commonwealth Ombudsman announced an investigation into actions undertaken by AFMA in determining the Total Allowable Catch (TAC) for the Small Pelagic Fishery. On 16 January 2013, Mr Wilkie publicly released the Ombudsman's response which acknowledged AFMA's admission of the failure of one of its statutory committees to comply with legislative requirements for managing conflicts of interest. In this instance, a committee member with a declared commercial interest in the Small Pelagic Fishery and a concurrent financial interest in a commercial fishing vessel procured for its capability to better exploit any fishing quota (the *FV Margiris* (later renamed the *FV Abel Tasman* and referred to as a 'super trawler'), was allowed to provide input into discussions about the setting of fishing quota but was not allowed to vote on the committee's final position. The committee's recommendations are provided to the AFMA Commission, which has responsibility for determining the TAC for this fishery. AFMA advised the Ombudsman of a number of actions that had been undertaken to improve committee governance in response to the Ombudsman's review.

Figure 1.2

Report structure



2. Collecting and Analysing Compliance Intelligence

This chapter examines AFMA's compliance intelligence capability, compliance intelligence sources, and the Authority's use of compliance intelligence in the Domestic Compliance Program.

Introduction

2.1 Compliance intelligence information may, in isolation, be inconclusive and it is the regulator's ability to combine elements of intelligence information and analyse linkages that determines the effectiveness of its compliance intelligence function. Compliance intelligence should feed into every aspect of the compliance function: planning, risk assessment, operations and enforcement activities.

Previous audit findings

2.2 In the 2009 audit, the ANAO found that AFMA did not have established processes or sufficient resources to regularly and systematically analyse intelligence data holdings. The ANAO recommended that if the centralised compliance approach was to be effective, AFMA would need to identify the gap between its current and desired intelligence capability, and develop a plan that outlined the actions, resources, and timeframes required to close the intelligence capability gap. AFMA agreed with this recommendation.⁴⁹

Current audit

2.3 To determine whether AFMA had effective arrangements in place to assess, prioritise and target compliance risks, the ANAO examined AFMA's:

- compliance intelligence capability, including resourcing, and whether AFMA had identified and addressed the gaps in its intelligence capability;
- internal and external compliance intelligence sources; and
- use of compliance intelligence.

⁴⁹ ANAO Audit Report No. 47 2008–09, op.cit., p. 112.

Compliance intelligence capability

2.4 The 2009 audit highlighted that AFMA's intelligence function in 2008–09 was nominally staffed by between 1.5 and 2.5 full-time equivalent staff members. Following the ANAO audit, staffing for compliance intelligence was increased to four full-time equivalent staff. AFMA also commenced planning for the implementation of the centralised compliance model, developed a vessel risk analysis tool, and upgraded its intelligence and case management system.

Planning for intelligence collection and analysis

Planning 2009–2012

2.5 In March 2009, as part of the planning process for the implementation of the centralised compliance model, AFMA developed a draft Domestic Intelligence Plan. This plan outlined the proposed intelligence functions, including research, analysis and reporting. AFMA informed the ANAO that the plan was not finalised, as it was decided that the business plans for each section within the Fisheries Operation Branch would include relevant information on compliance capability. AFMA further advised that, although the draft Domestic Intelligence Plan was not finalised, it informed the initial operations of the domestic compliance intelligence unit.⁵⁰

Internal review of intelligence capability

2.6 In July 2012, AFMA conducted an internal Quality Assurance Review (QAR)⁵¹ of its domestic compliance intelligence function against internationally accepted intelligence standards.⁵² The review did not conclude on the overall effectiveness of the intelligence capability, and the implementation and use of AFMA's intelligence and case management system was also not included in the review.

⁵⁰ The draft Domestic Intelligence Plan guided the development of a number of initiatives, including intelligence assessments, intelligence tasking reports and trend reports that outline patterns of non-compliance.

⁵¹ Quality Assurance Reviews (QARs) are conducted by AFMA to identify improvements to processes and procedures within the Domestic Compliance Program. While earlier QARs were conducted by officers in the Fisheries Operations Branch, the 2012 QAR included a wider range of AFMA officers.

⁵² The QAR reviewed AFMA's compliance intelligence function against the National Intelligence Model requirements. The National Intelligence Model was developed in the United Kingdom as a model for enforcement agencies and aims to ensure that information is fully researched, developed and analysed to provide integrated intelligence.

2.7 The QAR found that the absence of data collection plans was a significant weakness in AFMA's intelligence capability. The review recommended that an overarching data collection plan and 'sub' plans be established and documented to address known intelligence gaps. The establishment of these plans would assist AFMA to identify intelligence gaps.

Functional Strategy 2012–13

2.8 In August 2012, AFMA finalised an intelligence strategy—the *Functional Strategy 2012–13*, which outlines:

- current intelligence sources and AFMA's collection capabilities;
- planned new intelligence analysis methodologies⁵³;
- a re-developed suite of reports and other products to be provided in support of compliance activities and other AFMA functions; and
- a formal feedback process for all intelligence reports and analysis products.

2.9 While AFMA has developed and implemented a number of intelligence initiatives (outlined further in the following sections), the decisions to progress these initiatives were not underpinned by a structured analysis of intelligence capability gaps, or a strategy to implement the initiatives, as recommended in the 2009 audit. The implementation of the *Functional Strategy 2012–13* will, however, provide a sound basis for the collection, analysis and dissemination of compliance information within AFMA. The Authority has informed the ANAO that it intends to evaluate the effectiveness of the Functional Strategy following its first year of operation.

Vessel risk analysis tool

2.10 The effectiveness of the centralised compliance model is dependent on the targeting of compliance activities towards those fishers/fish receivers at greatest risk of non-compliance. To support the implementation of the new model, AFMA has developed and implemented a risk rating system—the Multiple Risk Aggregation Index (MRAI)—to determine which vessels are more likely to offend compared to others in the same port, fishery, state or territory.

⁵³ The new analysis methodologies are based on the National Intelligence Model, as well as training sessions conducted by the Australian Crime Commission and other intelligence agencies.

2.11 The MRAI aggregates the weighted ‘scores’ of risk indices developed by AFMA, to determine a score for each vessel out of 100. The following indices are used to compile the MRAI score:

- boat cash income analysis (following modified ABARES methodology)⁵⁴;
- Vessel Monitoring System (VMS)⁵⁵ compliance history (records from 2007);
- vertical integration analysis (vessel and fish receiver owned by the same entity, providing more opportunities for misreporting or non-reporting of catch);
- information report holdings (records from 1999);
- offence/court history (records from 2002);
- closure breach analysis (using VMS data);
- covert surveillance of catch unloads; and
- inspection report history (records from 2002).

2.12 The higher the score out of 100, the higher the risk of non-compliance. Once each vessel has a risk score, it is then possible to compare and rank vessels by port or by fishery, which also allows for targeted inspections or operations to be planned based on the highest risk. An MRAI evaluation had been conducted for each of the 317 Commonwealth-nominated vessels in operation at the time of the audit.

2.13 The MRAI provides a valuable indicative assessment of compliance risks, from which further analysis and investigation can be undertaken. The MRAI rankings are used to provide a reference for fisheries officers when attending ports, with rankings now used as one of the primary drivers of the general deterrence (port visit) calendar.

⁵⁴ Boat Cash Income analysis seeks to estimate a boat’s net cash flow over a period, usually a year. To do this, AFMA estimates the cash inflow—the revenue—and subtracts the estimated cash outflow—the expenditure. The Boat Cash Income is the most heavily weighted of all risks identified, as it is the most robust means of indicating propensity to commit offences. This is because a vessel that is identified as likely to be losing money, but continuing to fish, is more likely to be operating in ways contrary to regulations or its permit conditions.

⁵⁵ The VMS system was made mandatory for all Commonwealth-nominated fishing vessels from 1 July 2007. More information on VMS can be found at paragraphs 2.22 to 2.28.

Intelligence and case management system

2.14 Prior to 1 July 2009, AFMA used a range of software packages to store, access and analyse intelligence data. This data was held in around 30 repositories across the Authority. The Domestic Compliance Program also used the Australian Special Information System (ASIS) case management system to manage domestic compliance investigations. However, ASIS contained functional limitations, and data held in the system was used in isolation from other intelligence holdings. To overcome the limitations of ASIS, AFMA staff developed spreadsheets to record information, such as port attendance, number of investigations opened, landings per fishery, case loads, and VMS data.

2.15 In July 2011, AFMA implemented the JADE One Investigator Intelligence and Case Management System (JADE). JADE provides AFMA with case management functionality as well as the capability to consolidate intelligence holdings and to generate comprehensive vessel/operator risk profiles. AFMA has commenced data migration from ASIS and other information holdings into JADE, but will continue to use ASIS for historical case records until data migration issues are fully resolved. AFMA's use of JADE is discussed further in Chapter 5.

ANAO review of JADE

2.16 As part of this audit, the ANAO conducted a review of JADE, including controls testing.⁵⁶ As part of this review, the ANAO examined:

- internal audit reports;
- documentation relating to AFMA IT management and governance, business continuity management, disaster recovery management and backup strategies;
- documentation relating to the management of JADE, including security processes and procedures, user access management, password settings and administrator access; and
- change management processes and procedures (for JADE and systems used across AFMA).

⁵⁶ Controls testing includes a review of the design and operation of key IT controls, such as account management, password complexity, and audit logging to assess their effectiveness in reducing the risks to IT systems. Controls testing of key AFMA business systems was previously recommended to AFMA by an external review in 2010.

2.17 The ANAO also tested security and other system configurations in JADE to determine whether they aligned with AFMA’s documented requirements and the Government’s security standards (where applicable).

2.18 Overall, there was a lack of formal policies and procedures to support the use of IT applications across AFMA. The ANAO review highlighted that AFMA places a heavy reliance on the knowledge of key staff to support JADE. Procedures to support the use of JADE, such as the System Security Plan and user access management procedures, were either in draft form or had not been documented. The current password configuration for JADE (and more broadly for systems across AFMA) did not comply with the Government’s recommended password configurations.

2.19 AFMA advised the ANAO in October 2012 that it had commenced developing policies and procedures to address the issues highlighted by the ANAO’s testing.

Compliance intelligence sources

2.20 The effectiveness of the centralised compliance model is dependent to a large extent on AFMA’s capacity to obtain and share intelligence information with internal and external sources. The ANAO examined AFMA’s:

- internal sources of intelligence information, including internal business areas, VMS and electronic-monitoring arrangements; and
- external sources of intelligence information, including CRIMFISH and agreements/arrangements with other government agencies.⁵⁷

Internal sources of intelligence information

AFMA business areas

2.21 AFMA’s internal business areas are a key source of intelligence information. Table 2.1 outlines those AFMA activities that generate compliance intelligence.

⁵⁷ CRIMFISH is a telephone contact number established by AFMA for the industry and/or members of the public to ‘dob-in’ people, vessels or alleged incidences of non-compliance with fishing requirements.

Table 2.1

AFMA sources of intelligence information

Source	Intelligence information
Fisheries officers: General Deterrence program	Areas of non-compliance can be detected during inspections of vessels and fish receivers: <ul style="list-style-type: none"> • observations on vessel movements and fishing equipment requirements; • observations of crew members and their behaviour towards officers; and • information provided by third parties about other vessel movements or crew activities.
Data management section in AFMA	Includes: Licensing information—status of fishing licences, Statutory Fishing Rights (SFRs) register; VMS real time daily monitoring; catch and effort logbooks; Catch Disposal Records (CDRs) ⁵⁸ ; quota reconciliation; and e-monitoring.
Observer program ⁵⁹	Observer reports and observations, photos and information relating to potential non-compliant activities.

Source: AFMA.

Vessel Monitoring System (VMS)

2.22 All fishing vessels nominated to a Commonwealth fishing licence are required to have an Integrated Computer Vessel Monitoring System (VMS).⁶⁰ The VMS unit includes a GPS receiver and satellite transponder, which automatically transmits information on the vessel’s location to AFMA (see Figure 2.1 on the following page).

2.23 The VMS provides close to real-time data on the location of Commonwealth-nominated fishing vessels. It is a licence condition that the VMS system is operational and ‘polling’—that is, sending its location to AFMA—at all times. Vessels must poll even if they are in port, unless they

⁵⁸ Statutory Fishing Rights (SFRs), catch and effort logbooks; and Catch Disposal Records (CDRs) are defined in the glossary.

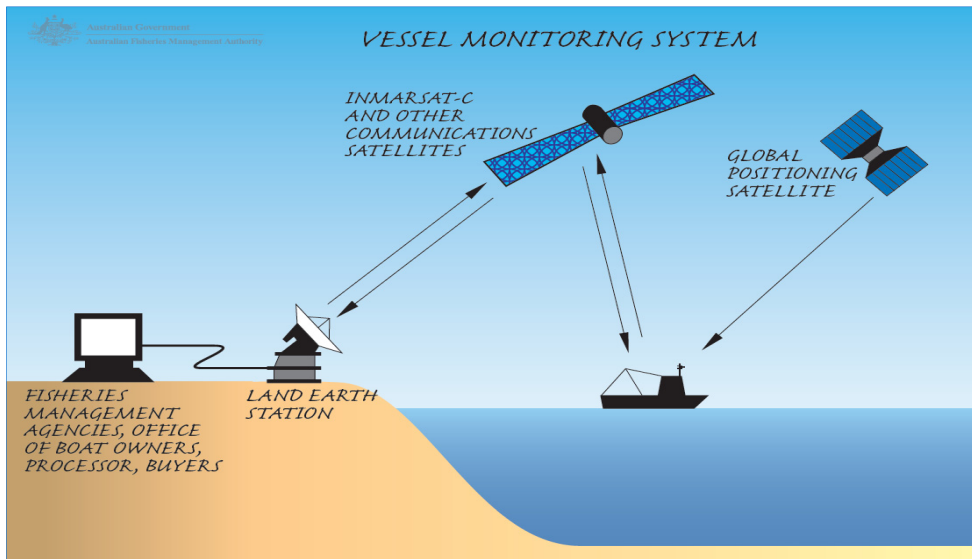
⁵⁹ The primary purpose of the Observer program is to provide AFMA fisheries managers, research organisations, environmental agencies, the fishing industry and the wider community with independent, reliable, verified and accurate scientific information on the fishing catch, effort and practice of a wide range of vessels.

⁶⁰ The VMS system was made mandatory by AFMA for all Commonwealth fishing vessels from 1 July 2007.

have an exemption.⁶¹ VMS units are securely fitted to the vessel and are not easily removed. VMS costs are included in licence holders' levies. In 2011–12, VMS costs were \$181 262 on polls, and \$59 010 for the VMS service provider (software and helpdesk).

Figure 2.1

VMS operation



Source: AFMA.

2.24 AFMA monitors VMS signals daily to identify vessels that are not polling. Through the VMS any fishing vessel activity of interest (for example, entry/exit of ports, entry/exit to a Commonwealth marine reserve) can trigger a pre-programmed Short Message Service (SMS) alert to fisheries officers or other compliance staff.

2.25 AFMA provides monthly reports based on the analysis of VMS and other compliance data to SEWPaC.⁶² The monthly reports contain information on Commonwealth-nominated fishing vessels potentially fishing illegally in

⁶¹ Temporary Switch Off arrangements are formal approvals obtained by licence holders from AFMA for a vessel to switch off its VMS unit. These arrangements are granted in limited circumstances, such as: vessel maintenance or repair where electrical equipment on board the vessel is required to be shut down; a nominated vessel is in an extended berth at a single port; or where the unit is not operating properly, but AFMA allows fishing to occur on the basis that the vessel manually reports its GPS position (via a phone call) every hour.

⁶² As previously discussed, AFMA provides compliance and monitoring data for Commonwealth marine reserves to SEWPaC.

Commonwealth marine reserves (compliance action against these vessels is, however, SEWPaC's responsibility), and more general information on all VMS plot data received from inside and within one nautical mile of the reserves.

2.26 Since the 2009 audit, AFMA has improved its use of VMS data by:

- increasing the use of automated alerts, including when a vessel enters a zone closed to fishing;
- strengthening the analysis of VMS data in conjunction with logbook/licence data; and
- automating the transfer of VMS and licensing information to the Border Protection Command's vessel tracking and information system.⁶³

2.27 As at October 2012, AFMA was in the process of procuring a new VMS system. AFMA anticipates that the new system will improve functionality and enhance integration with existing systems and processes under development within AFMA.

ANAO review of VMS

2.28 The ANAO reviewed documentation for the VMS and tested the alert settings. Similar to the findings in relation to JADE, there was a heavy reliance on the knowledge of key staff and there was a lack of documented policies and procedures to support the use of the system. As AFMA is currently undertaking procurement activities for a new VMS system, there is an opportunity to formalise the governance and support arrangements necessary to effectively manage and maintain the new system.

Electronic monitoring

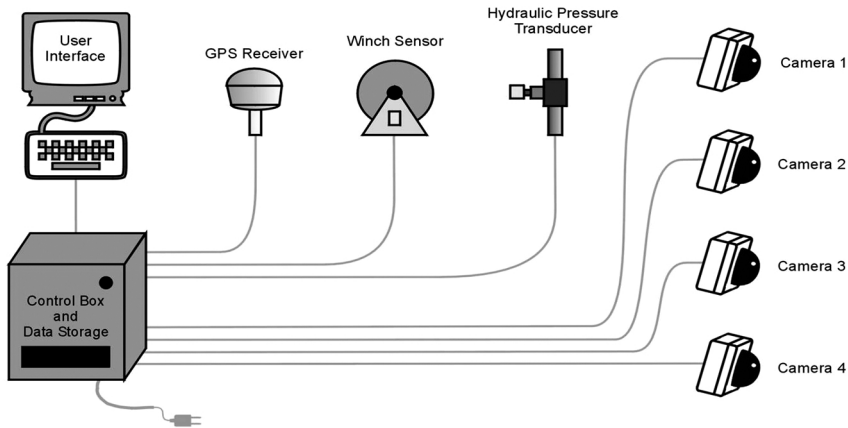
2.29 Electronic monitoring (or e-monitoring) systems use sensors⁶⁴ to automatically record video footage of fishing activity. The footage is stored on a hard drive onboard the fishing vessel, while information on the vessel's position and whether the e-monitoring system is functioning correctly is transmitted to AFMA by satellite (see Figure 2.2 on the following page).

⁶³ Border Protection Command is a multi-agency taskforce that was established in 2005 to coordinate national awareness and response efforts to protect Australia's interests in the Australian Maritime Domain. The Australian Maritime Domain comprises Australia's Economic Exclusion Zone and a broader region in which Australia is responsible for maritime search and rescue operations. Further information is available from: <<http://www.bpc.gov.au/default.asp>> [accessed 11 September 2012].

⁶⁴ Hydraulic pressure and drum rotation sensors detect when fishing begins and ends, which activate or de-activate on-board video cameras.

Figure 2.2

E-monitoring system



Source: AFMA.

2.30 E-monitoring has been trialled successfully throughout Europe, Canada, New Zealand and the United States. In Australia, e-monitoring has been implemented in one fishery and trialled across two fisheries.⁶⁵ The cost of these trials and the subsequent implementation in the Gillnet, Hook and Trap Fishery was around \$1.5 million, which was funded by the Australian Government. In 2012–13, approximately \$460 000 has been allocated to cover AFMA’s operational costs for an expanded e-monitoring program.⁶⁶ As at November 2012, there were 10 Commonwealth-nominated vessels with operational e-monitoring units, with AFMA conducting a procurement

⁶⁵ E-monitoring has been implemented in the Gillnet, Hook and Trap sector of the Southern and Eastern Scalefish and Shark Fishery, in response to Temporary Orders placed on the fishery on 1 May 2011 (protection for the Australian Sea Lion) and 23 September 2011 (protection for dolphins). It has been trialled in the Eastern Tuna and Billfish Fishery and the Northern Prawn Fishery.

⁶⁶ In June 2012, the *Fisheries Legislation Amendment Bill (No.1) 2012* was introduced to Parliament. The proposed Bill amends the FM Act and the FA Act to introduce e-monitoring to: Australian vessels authorised to fish under licences and scientific permit by the Commonwealth; expand AFMA’s powers to impose e-monitoring obligations on Commonwealth fishing licence and scientific permit holders; and make it an offence to hinder the operation of the e-monitoring equipment, or to modify, damage or destroy e-monitoring data. At the conclusion of Parliamentary sittings for 2012 the Bill was before the Senate, having passed the House of Representatives on 16 August 2012.

exercise for e-monitoring equipment and analysis for up to 50 additional units.⁶⁷

2.31 E-monitoring has the potential to complement existing AFMA data collection programs from observers, logbooks and VMS. Its expanded use would also increase monitoring and compliance activities, at a potential cost saving for AFMA.⁶⁸ For example, the e-monitoring trials have resulted in behaviour change by fishing crew, such as improved logbook reporting. Other areas with the potential for enhanced compliance are records of discards and verifying the use of bycatch mitigation devices.⁶⁹ Although there are clear benefits to introducing e-monitoring across all Commonwealth-nominated vessels, consideration needs to be given to the capital and management costs of electronic monitoring equipment for licence holders.

External sources of intelligence information

CRIMFISH

2.32 CRIMFISH is a dedicated telephone number that was established by AFMA for the industry and/or members of the public to 'dob-in' alleged non-compliance with regulatory requirements. An AFMA officer assigned to the Government's Border Protection Command is responsible for operating the service and providing the Authority with relevant information relating to allegations of non-compliant fishing activity. CRIMFISH costs AFMA approximately \$4000 per year to maintain.

2.33 AFMA has received 41 referrals from CRIMFISH in the last two financial years. Although this is a small number, AFMA advised the ANAO that the information provided has informed investigations and compliance action. AFMA has not, however, conducted an evaluation of the effectiveness of CRIMFISH or analysed the usefulness of the information provided. The ANAO suggests that AFMA explores options to monitor and analyse the information received from CRIMFISH over time, to assess its value against other intelligence-gathering methods.

⁶⁷ AFMA is planning to install e-monitoring equipment on up to 30 vessels in the Eastern Tuna and Billfish Fishery from 1 July 2013.

⁶⁸ AFMA's planned licence conditions for the *FV Abel Tasman* included a requirement for the vessel to install and operate e-monitoring equipment.

⁶⁹ Discarding refers to any part of the catch that is returned to the sea, whether dead or alive. Fishers are required to include discards in their logbook entries.

MOUs and inter-agency relationships for intelligence information sharing

2.34 Many Commonwealth and state and territory agencies interact with members of the fishing industry and are in a position to provide valuable intelligence to AFMA as well as benefit from intelligence information provided by the Authority. AFMA has increased its interaction with these agencies through Memoranda of Understanding (MoUs) and the membership of working groups. For example the:

- Australian Crime Commission—AFMA and the Australian Crime Commission signed a MoU in 2011 to facilitate AFMA’s access to the Australian Crime Commission’s primary criminal intelligence database—ACID/ALIEN.⁷⁰ This database includes intelligence holdings from 27 state, national and international law enforcement agencies, and provides intelligence on persons, places, vehicles and communications, as well as the relationships between these entities. Access to ACID/ALIEN allows AFMA to increase its intelligence capability through: conducting criminal history searches of persons of interest; collaborating with other agencies in combating organised crime syndicates; and mapping relationships between individuals and entities; and
- Cash Economy Strategic Working Group—this group comprises senior members of Australian Government agencies with an interest in combating illicit activities associated with Australia’s cash economy. AFMA has had a presence on the cross-agency working group since 2008.⁷¹

Relationships with state and territory fisheries agencies

2.35 The adoption of the centralised compliance model resulted in a loss of revenue for state and territory fishery agencies as they were previously responsible for undertaking the compliance function on behalf of AFMA. The changed responsibilities and the impact of reduced revenue on agencies presented challenges for AFMA in maintaining effective relationships with the

⁷⁰ ACID is an intelligence document repository that centralises national criminal information and intelligence, and ALIEN is the secure extranet that provides a gateway to ACID as well as a secure messaging channel for sharing information between authorised agencies.

⁷¹ As at September 2012, participating agencies included the: Department of Human Services; Australian Taxation Office; Department of Education, Employment and Workplace Relations; Department of Immigration and Citizenship; Fair Work Ombudsman; and the Australian Transaction Reports and Analysis Centre.

state/territory agencies. These relationships are important in reducing the risks relating to AFMA's distance from ports and the need to respond quickly to certain compliance issues.

2.36 Since July 2009, AFMA has worked to enhance its relationships with the state/territory fisheries agencies. As at November 2012, AFMA was reviewing existing MOUs and developing new MOUs with state/territory fisheries agencies to undertake compliance activities, on a fee-for-service basis, on behalf of AFMA.

AFMA's use of compliance intelligence

2.37 AFMA's compliance intelligence function contributes directly to the Domestic Compliance Program's risk assessment, planning and operational activities as illustrated in Figure 2.3 (on the following page).

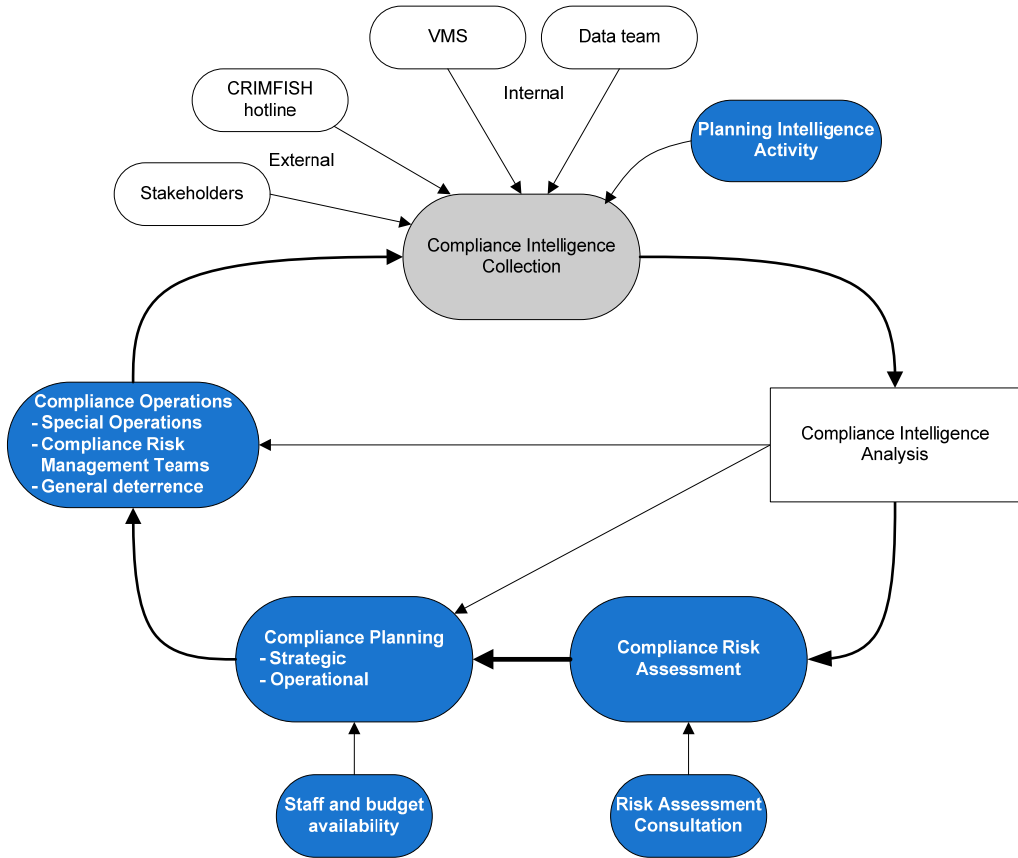
Risk assessment and planning process

2.38 Compliance intelligence assists the risk assessment and planning processes by: identifying new risk trends (through analysis of intelligence holdings); reviewing individual fishery management arrangements to identify new and emerging compliance risks; and conducting data analysis to inform the Operational Management Committee (OMC) about the potential impact of new and emerging risks.

2.39 The compliance intelligence function also contributes to the operational planning cycle through: participation in targeted risk mitigation activities (Compliance Risk Management Teams—discussed further in Chapters 3 and 4); providing recommendations based on the MRAI and current and emerging intelligence trends for the general deterrence program; and identifying opportunities for further collaboration with external agencies. These working partnerships are then formalised through the creation of MOUs, service level agreements and/or fee-for-service schedules, where appropriate.

Figure 2.3

Use of AFMA domestic compliance intelligence



Source: ANAO analysis of AFMA information.

2.40 In response to intelligence information received from internal and external sources, AFMA prepares an average of 15 information reports per month.⁷² Since September 2010, the Domestic Compliance Program monthly reports have provided an overview of the issues raised in information reports, such as: VMS non-compliance; quota evasion; closure breaches; and suspected fishing in Commonwealth marine reserves. The ANAO noted in its review of enforcement actions (discussed further in Chapter 5), that in the majority of cases, information reports had been linked in JADE to relevant cases and entities, and had been, where required, forwarded to the relevant officers for

⁷² There were 426 reports in the period March 2010 to July 2012.

compliance action. This information helps to build a profile of licence holders and vessels and enhances AFMA's intelligence capability.

Field operations

2.41 Compliance operations are also supported by intelligence. Targeted risk mitigation activities are underpinned by intelligence analyses, such as intelligence trends, compliance with VMS requirements and closure breaches. General deterrence inspection and special operation inspection activities are supported by intelligence analysis and reporting, including the development of a 'port pack' for each planned inspection. The port pack covers: the priority ports and vessels to be inspected (taking into account MRAI and recent landings analysis)⁷³; vessel profiles; a threat assessment; intelligence tasking requests (for example, seeking up-to-date skipper and crew details, or observations of equipment being used); and relevant information reports.

2.42 Ad-hoc intelligence reports and analysis are also provided to the Fisheries Operations Branch and more broadly across AFMA, where appropriate.

Conclusion

2.43 AFMA has significantly enhanced its intelligence capability since the 2009 audit. As part of its implementation of the centralised compliance model, AFMA has: allocated additional resources to its intelligence function; increased its intelligence analysis capabilities; and expanded the sources of its intelligence data. The Authority is also strengthening arrangements to share intelligence with other Commonwealth and state and territory agencies.

2.44 While AFMA has developed and implemented a number of intelligence initiatives to address intelligence capability gaps, the decisions to progress these initiatives were not underpinned by a structured analysis of intelligence capability gaps, or a strategy to implement the initiatives, as recommended in the 2009 audit. The implementation of the *Functional Strategy 2012–13* will, however, provide a sound basis for the collection, analysis and dissemination of compliance information within AFMA. The Authority has informed the ANAO that it intends to evaluate the effectiveness of the Functional Strategy following its first year of operation.

⁷³ After the first inspection in any port, AFMA may lose the 'element of surprise' for subsequent inspections. Therefore AFMA develops a list of the highest priority ports and vessels to target for inspection.

2.45 While AFMA effectively uses support systems, including VMS and JADE, to inform operational activities, the current lack of formal policies and procedures for these systems has the potential to undermine their usefulness. AFMA has, however, commenced work to address the issues raised by the ANAO.

2.46 AFMA is using compliance intelligence to inform the risk assessment, planning, operations and enforcement actions under the Domestic Compliance Program. The ongoing effectiveness of the compliance function will be dependent on the continued strengthening and refinement of the intelligence capability to identify, target and manage non-compliance.

3. Assessing Risks and Planning Compliance Operations

This chapter examines AFMA's risk assessment and planning processes for the Domestic Compliance Program, including the training and guidance provided to fisheries officers.

Introduction

3.1 A structured approach to risk management enables a regulator to identify, analyse and monitor regulatory risks, and to prioritise and plan compliance activities to mitigate these risks. To support the effective delivery of compliance activities, training programs and other guidance needs to be targeted towards developing and maintaining individual competencies⁷⁴, and meeting legislated requirements for work health and safety.

Previous audit findings

3.2 The 2009 audit found that, while AFMA was conducting risk assessments prior to the introduction of the centralised compliance model, the cost-effectiveness of the current controls was not analysed, risk ratings were not compared or contrasted over time to identify trends, and the inspections program undertaken by state and territory fisheries agencies did not always target the fisheries with the highest risk profile.⁷⁵

3.3 The ANAO recommended that, to improve the quality, consistency and targeting of the inspection program, AFMA direct program activities towards those fishers/fish receivers at greater risk of non-compliance. AFMA agreed with this recommendation, acknowledging that targeting high risk fishers/fish receivers would be the cornerstone to the success of the new centralised compliance program.⁷⁶

⁷⁴ ANAO, *Better Practice Guide: Administering Regulation*, Canberra, pp. 8 and 39.

⁷⁵ ANAO Audit Report No. 47 2008–09, op.cit., pp. 67 and 75.

⁷⁶ *ibid.*, p. 80.

Current audit

3.4 The ANAO examined the risk assessment and planning processes for AFMA's Domestic Compliance Program for the years 2009–10 to 2011–12.⁷⁷ To determine whether AFMA had implemented a risk-based approach to the program, the ANAO examined whether the Authority had established:

- a structured and documented approach to assessing compliance risks, including a risk assessment process that takes into account the views of internal and external AFMA stakeholders; and
- planning processes for compliance operations that target the highest risks.

3.5 The training and guidance provided to fisheries officers to enable them to meet AFMA's legislative and policy obligations was also examined.

Assessing compliance risks

Assessment methodology

3.6 In 2009, AFMA developed a risk assessment methodology that is based on the international risk standard ISO 3100:2009. The methodology involves identifying, analysing and rating risks, developing risk treatment strategies, and monitoring and reviewing risks informally on a monthly basis and formally on an annual basis.⁷⁸

3.7 The three risk assessments conducted since 2009–10 have covered the seven main Commonwealth fisheries.⁷⁹ Other fisheries are excluded from the assessment because they comprise a small percentage of the Commonwealth

⁷⁷ The FM Act provides for a formal planning process for each fishery. These fishery management plans are a key tool to facilitate AFMA's sustainable management of fisheries, and are developed with input from industry and approved by the Minister for Agriculture, Fisheries and Forestry. Fishery management plans impact on the AFMA Fisheries Operations Branch in so far as they stipulate particular conditions on fishing, which may be subject to compliance action. An examination of the development and review of fishery management plans was not within the scope of this audit.

⁷⁸ AFMA reviewed the methodology in 2010–11 and 2011–12 prior to conducting the annual risk assessment. The methodology is published on the AFMA website at: <<http://www.afma.gov.au/managing-our-fisheries/compliance-activities/>> [accessed 18 October 2012].

⁷⁹ The fisheries assessed are: Eastern Tuna and Billfish; Western Tuna and Billfish; Gillnet Hook and Trap; Commonwealth Trawl Sector; Great Australian Bight; Southern Bluefin Tuna; Bass Strait Central Zone Scallop and the Northern Prawn. The fisheries that are not covered by the risk assessment process are: Antarctic; Christmas Island and Cocos (Keeling) Islands; Coral Sea; High Seas; Norfolk Island; North West Slope Trawl; Skipjack Tuna; Small Pelagic; Southern Squid Jig; South Tasman Rise; Torres Strait; and Western Deepwater Trawl.

catch, have a small number of licence holders or compliance is assisted through 100 per cent observer coverage. In relation to the extent of coverage of the fisheries risk assessment process, AFMA has stated that:

Whilst the remaining fisheries managed by AFMA don't generally warrant formal assessment, the routine monitoring and inspection programs are conducted on all fisheries. Further, where prioritised risks overlap into these 'non-assessed' fisheries, risk treatments may also be applied in those fisheries.⁸⁰

3.8 On the basis of risk ratings provided by internal and external stakeholders, including MACs and industry associations for each fishery, AFMA arrives at a risk 'score', which is compared to a matrix to determine the overall risk level for each fishery. In the case of risks that are common to multiple fisheries/sectors, an average risk rating across Commonwealth fisheries is also calculated once the fishery-specific assessments are completed.

3.9 There are seven risk levels ranging from 'low' to 'severe'.⁸¹ According to the compliance risk assessment methodology, risks rated as 'moderate' or higher will generally require treatment and/or risk reduction. Risks rated as 'low/moderate' or below are considered acceptable risks and will not generally require specific treatment. They will, however, be continually monitored and AFMA may choose to identify a moderate/low risk for a Compliance Risk Management Team (CRMT)⁸² or other compliance activity.⁸³

3.10 Those risks that apply across all or most of the Commonwealth fisheries are allocated across the following three categories, as defined in the *AFMA Domestic Compliance and Enforcement Policy*:

- **Endemic risks**—these risks are considered pervasive through time or populations (or both) and constantly change, but rarely decrease.

⁸⁰ AFMA, *AFMA Domestic Compliance and Enforcement Policy*, Canberra, 2010, p. 14. An example of a risk treatment applied across all fisheries is Compliance Risk Management Teams (CRMTs) addressing compliance with VMS requirements, which aims to ensure all vessels have their VMS operating at all times.

⁸¹ The seven levels of risk are: 'low', 'low/moderate', 'moderate', 'moderate/high', 'high', 'high/severe', and 'severe'.

⁸² CRMTs are formed in response to risks identified in the annual (now biennial) risk assessment process and prioritised for action by the OMC (see paragraph 3.33).

⁸³ AFMA, *Domestic Compliance Risk Assessment Methodology 2011–12*, February 2011, p. 20. Available from: <<http://www.afma.gov.au/wp-content/uploads/2010/06/2011-12-RA-Methodology.pdf>> [accessed 12 September 2012].

AFMA has identified the inability to monitor vessels that do not have an operational VMS unit as an endemic risk.

- **Sporadic risks**—these risks arise at certain times or in certain populations (or both). AFMA cites sudden market increases in the price for a particular fish species, thereby increasing the risk of illegal or unreported catch of that species, as a sporadic risk.
- **Bedding down risks**—these risks are associated with a new activity or change in an activity. These risks are likely to decrease over time as stakeholders adjust to the changes. AFMA cites the introduction of a new closure to a fishery as a bedding down risk. There may be a higher risk of fishers breaching new closures until they become familiar with new arrangements.⁸⁴

3.11 The Operational Management Committee's (OMC's) final risk ratings and its categorisation of risks as endemic, sporadic or bedding down, contribute directly to the annual compliance planning process, discussed later in this chapter.

Compliance risk assessments

Annual risk assessments

3.12 Annual risk assessments were carried out for the first three years of the centralised compliance model (2009–10, 2010–11 and 2011–12). These risk assessments were prepared for internal purposes and not made public. AFMA does, however, disclose certain risks in its annual *National Compliance and Enforcement Program*, which is published.⁸⁵ For each risk assessment, AFMA followed its established methodology, including the incorporation of internal and external stakeholder ratings.⁸⁶ The assessments were also appropriately endorsed.

3.13 The most recent risk assessment (2011–12) did not include the Small Pelagic Fishery. Given the heightened public scrutiny of the management

⁸⁴ AFMA *Domestic Compliance and Enforcement Policy*, op.cit., p. 15. AFMA states that these categories were developed based on an Australian Taxation Office compliance model published in 2008–09.

⁸⁵ Each annual *National Compliance and Enforcement Program* for 2009–10, 2010–11 and 2011–12 disclosed all endemic and sporadic risks identified in the relevant risk assessments (bedding down risks were not identified in the risk assessments).

⁸⁶ The responses from all stakeholder groups are given equal weighting in calculating average residual risk ratings.

arrangements for this fishery, as a result of the proposed operation of a 'super trawler', AFMA may wish to consider including the Small Pelagic Fishery in its next formal risk assessment (currently scheduled for 2013–14) or earlier as part of ongoing risk monitoring arrangements (discussed at paragraph 3.19).⁸⁷

3.14 As outlined earlier, the 2009 audit found that risk ratings were not compared or contrasted over time to identify trends.⁸⁸ In this audit, the ANAO observed that, for the risk assessments reviewed, the previous year's risk ratings were reviewed and considered by AFMA in determining the ongoing or new risks for the upcoming year.

Introduction of biennial risk assessment

3.15 In December 2011, AFMA decided that a risk assessment for 2012–13 would not be prepared, and that risk assessments would be undertaken on a biennial basis. This decision was based on AFMA's view that the key risks identified in the 2011–12 risk assessment remained unchanged. The endemic risks requiring ongoing compliance monitoring and action included:

- VMS operating at all times (risk rating: *low/moderate*);
- fishing or navigating in closed areas against regulation (risk rating: *moderate*); and
- taking in excess of allocated quota and failing to reconcile⁸⁹ within the required timeframe (risk rating: *low/moderate*).

3.16 Sporadic risks that were the focus of CRMTs in 2011–12, and considered to be ongoing in 2012–13, were:

- quota evasion and avoidance (risk rating: *high*); and
- failure to report interaction/retention of Threatened, Endangered and Protected (TEP) species⁹⁰ (risk rating: *moderate/high*).

⁸⁷ AFMA advised that, in the event that a 'super trawler' was to be granted access to the Small Pelagic Fishery (or any fishery), the vessel's individual risk level would be assessed through the use of the Multiple Risk Aggregation Index and other ongoing risk monitoring measures, as is the case with other vessels.

⁸⁸ ANAO Audit Report No.47 2008–09, op.cit., p. 67.

⁸⁹ Licence holders are required to hold a quota to cover any catch for each fishing operation. In the event that their catch exceeds their quota, licence holders are required to obtain the necessary quota within a required timeframe (this timeframe currently varies across fisheries, but AFMA is considering adopting a uniform rolling 28-day reconciliation period). While AFMA previously facilitated a quota trading noticeboard (Quotaboard), the Authority ceased providing this service from 31 December 2012. This was both a cost-saving measure and a decision by AFMA to discontinue its involvement in quota trading.

3.17 The adoption of a biennial assessment of risk is likely to result in further efficiencies for AFMA, as the annual process which included reviewing the methodology and preparing a risk assessment with input from all stakeholders was time-consuming. After three years of preparing risk assessments under the centralised model, AFMA now considers that it has a clear understanding of the key compliance risks over time and the likelihood of any change in risk profile.

3.18 In relation to a change in risk profile in the period between formal risk assessments, AFMA informed the ANAO that it regularly monitors compliance risks through existing mechanisms, in particular the CRMTs and the compliance intelligence area, which regularly report to the OMC. AFMA noted its timely response to the increased rate in 2011 of sea lion and dolphin mortalities in waters off South Australia, as an example of the Authority's ability to recognise and respond to emerging risks.

3.19 Recent events, such as the proposed operation of a 'super trawler' and the Government's announcement of the expansion of the national network Commonwealth marine reserves, demonstrate that AFMA's operating environment can be subject to significant change. As the effectiveness of the centralised compliance model is reliant on the sound assessment of risk, it will be important for the Authority to establish an appropriate and structured approach for monitoring existing risks and to capture emerging and changing risks in the period between biennial risk assessments.

⁹⁰ The *Environment Protection and Biodiversity Conservation Act 1999* establishes a list of protected species in Commonwealth waters. Under the Act it is an offence to interact with a protected species (that is, any physical contact by a person, boat or fishing equipment that causes death, injury or stress to the animal). However, to facilitate commercial fishing, SEWPaC has accredited all Commonwealth fisheries on the basis that their management arrangements take all reasonable steps to ensure that protected species are not adversely affected by commercial fishing. This includes mandatory reporting of all interactions with protected species. AFMA coordinates this reporting by collating logbook data and submitting it to SEWPaC on fishers' behalf. Further information available from: <http://www.afma.gov.au/wp-content/uploads/2010/06/factsheets_introduction.pdf> [accessed 19 December 2012].

Planning for compliance operations

3.20 AFMA's compliance operations are underpinned by two key planning documents: a *Domestic Compliance and Enforcement Policy* (published in 2010)⁹¹ and an annual *National Compliance and Enforcement Program*. In addition, the Authority prepares internal plans for individual compliance activities.

Domestic Compliance Enforcement Policy

3.21 In April 2010, nine months after the centralised compliance model commenced, AFMA published the *AFMA Domestic Compliance and Enforcement Policy*. The purpose of the policy is to establish the framework within which AFMA's Domestic Compliance Program is delivered, including:

- the legislative basis for compliance and enforcement activities;
- an overview of its risk-based approach;
- how actions to address identified risks are determined;
- the enforcement actions available to AFMA under its legislation;
- mechanisms for consultation and communication between AFMA and the fishing industry; and
- an overview of AFMA's intention to implement consistent, integrated and coordinated enforcement action.⁹²

3.22 The policy, published on the AFMA website, provides a detailed overview of key aspects of the Domestic Compliance Program, including its risk-based approach. The governance and reporting arrangements to be adopted and the OMC's role and responsibilities are also outlined. In addition, the policy sets out a number of objectives for fisheries compliance, which have been agreed by all Commonwealth and state/territory fisheries agencies.⁹³

⁹¹ As at October 2012, AFMA informed the ANAO that an updated *AFMA Domestic Compliance and Enforcement Policy* was being finalised (the 2010 Policy foreshadowed a review after 12 months of operation). The Policy will be considered by the AFMA Commission.

⁹² AFMA, *AFMA Domestic Compliance and Enforcement Policy*, April 2010, available from: <http://www.afma.gov.au/wp-content/uploads/2010/06/compliance_policy_2010.pdf> [accessed 9 August 2012].

⁹³ These objectives were agreed by all Commonwealth and state/territory fisheries agencies in the Australian Fisheries Management Forum, as part of the *Australian Fisheries National Compliance Strategy 2010–15*.

3.23 A number of other AFMA documents, such as the Corporate Plan, annual operating plans, and the AFMA website, also set out a range of compliance objectives. However, AFMA has not developed a single overarching objective for the Domestic Compliance Program—expressed across all external and internal documents. A clear and well defined objective(s) should underpin a program’s performance management and reporting framework and inform the development of key performance indicators.

3.24 The policy also explains AFMA’s principles for enforcement decisions, but does not list the offences that apply under the FM Act. While AFMA does not consider that the inclusion of all fisheries offences is necessary or practical, there would be benefit in the policy providing an overview of categories of offences. This would assist in communicating the required behaviours to encourage voluntary compliance.

National Compliance and Enforcement Program

3.25 While the *AFMA Domestic Compliance and Enforcement Policy* establishes the framework for AFMA domestic compliance activities, the annual *National Compliance and Enforcement Program* is the key planning document for the Fisheries Operation Branch.⁹⁴ The program has been published annually at the beginning of the financial year since 2010–11 and is available on the AFMA website.⁹⁵ The program is developed by the National Compliance Strategy Section, with input from the Compliance Operations Section. The OMC reviews the proposed program and it is endorsed by AFMA’s Chief Executive Officer.

3.26 The 2010–11, 2011–12 and 2012–13 programs outlined:

- compliance risks, as prioritised by the OMC in the annual risk assessment, and whether they were endemic or sporadic risks;
- compliance strategies to address identified risks, including CRMTs, ongoing monitoring activities (for example VMS monitoring), and enforcement actions; and

⁹⁴ In previous years, this document was entitled the *Domestic Compliance and Enforcement Program*.

⁹⁵ AFMA website: ‘Compliance activities’, available from: <<http://www.afma.gov.au/managing-our-fisheries/compliance-activities/>> [accessed 27 August 2012].

- the general deterrence inspections program for the upcoming year (at a high level—that is, outlining the general deterrence program, but not stating where or when inspections may occur).

3.27 The *National Compliance and Enforcement Program* is a comprehensive document which clearly communicates AFMA's planned compliance activities. The program provides a useful tool for AFMA to outline desired behaviour to the fishing industry, and to explain the nature of its compliance activities. In developing the program, AFMA consulted with industry stakeholders, and in response to comments, changed the format and length of the document.

Detailed compliance planning

3.28 Underpinning the broad compliance activities outlined in the annual *National Compliance and Enforcement Program*, AFMA undertakes detailed planning activities for both its general deterrence inspections program and CRMTs.

General deterrence inspections program

3.29 AFMA plans a rolling schedule of general deterrence inspections for two-monthly periods. The schedule is developed taking into consideration a number of factors and information from a variety of sources including:

- the annual risk assessment;
- current intelligence information;
- work of CRMTs;
- current fishing activity; and
- existing budget and staff availability.

3.30 The schedule of inspections is approved by the OMC and a detailed planning process is then undertaken for each planned general deterrence inspection (discussed further in Chapter 4).

3.31 In October 2012, AFMA developed an overarching program plan for the general deterrence inspections program, similar to those developed for CRMTs (discussed below), which incorporates annual forecasting of activities to inform the existing two-monthly planning process. The program plan sets out, at a more detailed level than the *National Compliance and Enforcement Program*, the role, aim and objectives of the general deterrence inspections program, and the planning process for inspections.

3.32 The new program plan complements AFMA's other planning arrangements for key Domestic Compliance Program activities, and provides key performance indicators and targets against which the effectiveness of general deterrence inspections can be assessed (discussed further in Chapter 6).

Compliance Risk Management Teams

3.33 As outlined earlier, CRMTs are formed in response to risks identified in the risk assessment and prioritised for action by the OMC. The composition of each CRMT is determined by the nature of the risk to be addressed and/or the type of activities planned to address the risk. CRMTs typically include AFMA fisheries officers; intelligence officers; planning officers; and, where appropriate, officers from the Fisheries Management Branch. A number of CRMT activities have also involved external agency staff. For example, the quota evasion CRMT has conducted inspections in partnership with state fisheries authorities; and the Threatened, Endangered and Protected (TEP) species CRMT has conducted joint aerial surveillance flights with SEWPaC.

3.34 Initially, AFMA develops a proposal that outlines the planned strategies for the CRMT to address the particular compliance risk. The strategies may involve desk-based activities, such as performing analyses of VMS data or communicating and implementing compliance 'crack down' activities, or operational activities, including targeted inspections, or a mix of both. The OMC considers each CRMT proposal and determines whether to approve the team and the proposed activities. The ANAO reviewed the proposals for the five current CRMTs and observed that they included the:

- aim of the CRMT;
- methodology, including staffing and internal/external consultation; and
- three of the five CRMTs had key performance indicators or targets. Progress against these indicators is reviewed by the OMC, based on information provided in monthly reports (discussed further in Chapter 6).

3.35 Overall, the detailed compliance planning process for the general deterrence inspections program and the CRMTs has regard to the overarching domestic compliance framework (particularly the risk assessment and annual program), and is well documented, with plans considered and endorsed by the OMC.

Business planning

3.36 As part of the business planning process adopted by AFMA, sections within the Fisheries Operations Branch prepare annual business plans. The 2010–11, 2011–12 and 2012–13 plans included: an overview of the relevant section; available resources (financial and staffing); and key actions to be undertaken in the planned year, with targets/key performance indicators to be achieved.⁹⁶ Internal and external stakeholder communications were also outlined (which generally related to scheduled meetings), as well as people management strategies, including training and succession planning.

3.37 The plans reflected the two risks identified in the AFMA corporate risk register that apply to the Domestic Compliance Program: fishery officer injury at sea; and inadequate section planning. However, given the broader range of risks that may be encountered by regulatory compliance programs, there would be merit in AFMA more comprehensively addressing risks relating to the Domestic Compliance Program in its business planning process.

Training and guidance for fisheries officers

3.38 The FM Act provides specific powers to fisheries officers when undertaking fisheries compliance and enforcement activities. These include powers to: board vessels; examine and seize catch, equipment and other evidence related to possible non-compliance; request information or documents; and order a vessel to port or to remain at port.⁹⁷

3.39 The AFMA officers responsible for undertaking compliance activities are required to obtain specific qualifications and training to perform their roles safely and effectively. As at November 2012, there were 10 fisheries officers under the Domestic Compliance Program who regularly undertook compliance inspections. In addition, a number of other Domestic Compliance Program staff, for example members of the National Compliance Strategy Section, were designated fisheries officers, allowing them to implement enforcement measures under the FM Act.

⁹⁶ The Fisheries Operations Branch's business plans aligned with the broader AFMA corporate and operational planning framework.

⁹⁷ As provided for in sections 83 and 84 of the FM Act.

Qualifications and training

3.40 Fisheries officers undertake varied roles and often work in small teams in an out-of-office environment, for example on vessels, in freezer rooms, fish processing plants, and at sea. In performing their role, they may occasionally encounter hostile behaviour. To ensure the safety of its officers, and in line with Australian Government legislative requirements and internal policies, AFMA provides mandatory training on:

- the *Work Health and Safety Act 2011*;
- the FM Act;
- the Australian Government Investigations Standards (AGIS);
- AFMA’s internal investigation guidelines; and
- AFMA’s Sea Safety Policy.

3.41 Under AGIS, Australian Government officers conducting investigations, such as fisheries officers, must hold minimum formal qualifications. Officers require a Certificate IV in Government (Investigation), or to be supervised by an officer with this qualification. In addition, coordinators or supervisors of investigations (senior fisheries officers) are required to obtain a Diploma of Government (Investigation).⁹⁸

AFMA’s learning and development arrangements

3.42 AFMA categorises learning and development activities as being either ‘mandatory’ or ‘desired’. Mandatory activities provide officers with the minimum set of skills necessary to perform their duties required under the legislation. This involves officers attending courses delivered by external training providers, such as sea safety, defensive tactics, and senior first aid. Desired activities aim to increase the general skill base of AFMA officers, for example, in areas of professional writing and IT.

3.43 The Fisheries Operations Branch Learning and Development Section has established a training register to record the qualifications and competencies of officers. At the time of the audit, AFMA was working to

⁹⁸ The Diploma and Certificate IV (Cert. IV) in Government (Investigations) can be attained from a number of training providers, including TAFE and private organisations. There is flexibility in the delivery of the Cert. IV, which can be completed through a two-week intensive course. The Diploma can also be completed in two full-time semesters.

automate this register to enable alerts to be sent to officers advising them of the impending expiry date for their mandatory qualifications.

3.44 All fisheries officers who undertook compliance inspections at the time of the ANAO's fieldwork were qualified or were undertaking training to attain mandatory qualifications. Officers that were completing mandatory training were appropriately supervised by a qualified officer during inspections observed by the ANAO. AFMA anticipated that all fisheries officers would be fully trained to the mandatory requirements by December 2012.⁹⁹

3.45 In July 2012, AFMA began developing a learning and development strategy for the Fisheries Operation Branch. The strategy is intended to incorporate arrangements to monitor mandatory qualifications, as well as addressing officers' broader learning and development needs. At the time of the audit, development of the strategy was still being progressed.

Guidance for compliance activities

3.46 In addition to the mandatory training, AFMA has a range of guidance material to assist fisheries officers to perform their duties. This guidance material is required under the *Work Health and Safety Act 2011* to ensure fisheries officers conduct their work in a safe manner and meet their responsibilities under legislation and broader government standards, such as AGIS.¹⁰⁰

Standard Operating Procedures

3.47 Standard Operating Procedures (SOPs) are provided to fisheries officers to guide specific activities during inspections and investigations. A total of 11 SOPs were developed, which are used by officers in conjunction with the FM Act, Compliance Investigation Guidelines (the guidelines) and other relevant legislation. The SOPs cover: boarding a domestic fishing vessel; in-port inspection of a domestic fishing vessel; inspection of a fish receiver; reporting a use-of-force incident; issue of personal protective equipment; freezer and confined spaces inspections onboard fishing vessels; and digital

⁹⁹ Under the FM Act, state and territory fisheries officers can be designated as authorised fisheries officers to conduct work on behalf of AFMA. While AFMA provides guidance documents, standard operating procedures and other relevant materials, state/territory agencies are responsible for providing training for their own officers.

¹⁰⁰ The AGIS are discussed further in Chapter 5.

evidence examination and capture. The SOPs were reviewed in 2011–12 to ensure compliance with updated *Work Health and Safety Act 2011* requirements.

AFMA's Compliance Investigation Guidelines

3.48 AFMA developed the guidelines to help ensure that investigations conducted by fisheries officers are performed in accordance with AGIS and Commonwealth Fraud Control requirements. The guidelines comprise 14 modules, each addressing different aspects of the investigation process.¹⁰¹ As at November 2012, the guidelines were being reviewed to ensure consistency with the 2011 AGIS.

3.49 While the guidelines provide an important source of guidance to AFMA officers, there had not been any training or awareness activities to support the use of the guidelines. AFMA informed the ANAO that training would be provided once the review of all modules was completed and had been endorsed by AFMA's Senior Executive.

Conclusion

3.50 The Domestic Compliance Program is based on a sound risk assessment and management framework. This framework, underpinning methodology and risk assessments are approved by AFMA's Senior Executive. While the risk assessments have previously been prepared annually, AFMA has recently adopted a biennial risk assessment process. This approach was informed by the experience of three annual risk assessments, in which there was little observed change in the key risks identified. The change is expected to generate efficiencies for the Domestic Compliance Program, as the risk assessment process is resource-intensive and time consuming. However, it is important that the Authority continue to monitor existing risks and identify any emerging risks, with a view to assessing their likelihood and consequences and implementing mitigation strategies to reduce or eliminate these risks.

¹⁰¹ The modules include: Overview; Compliance Function; Working in a Compliance Unit; Decision Guidelines; Case Management and Recording Tools; Allegations; The Investigation Process; Field Operations and General Information; Search Warrants; Witness Management; Evidence Management; Brief of Evidence; Prosecution Support and Court Processes; and Finalisation of an Investigation.

Recommendation No.1

3.51 To provide assurance that the Australian Fisheries Management Authority's compliance activities are directed towards key areas of risk, the ANAO recommends that AFMA adopt a structured approach to monitoring existing and emerging risks during the period between biennial risk assessments, to assess their likelihood and consequence, and implement appropriate mitigation strategies, where required.

AFMA's Response: *Agreed.*

AFMA welcomes the ANAO's acknowledgement that the move to a biennial risk assessment is likely to result in further efficiencies for AFMA. Previously, the annual risk assessment was resource intensive and time consuming and, considering limited resources and that the key risks had not changed significantly in the preceding years, the decision was made to move to biennial assessments.

AFMA agrees that it is important to continue to monitor existing and emerging risks between formal assessments. In order to enhance the mechanisms currently in place to monitor existing and emerging risks between biennial assessments, AFMA is refining its processes to incorporate quarterly collation and a more structured assessment of information routinely collected as part of risk monitoring activities.

All information obtained from the ongoing risk monitoring work already undertaken by the individual Compliance Risk Management Teams, the cross analysis of AFMA data holdings, trends identified through intelligence information reports and the information obtained from stakeholders through direct engagement in the field will now be routinely reviewed to further assist in ensuring the implementation of appropriate mitigation strategies for emerging risks where required.

3.52 AFMA has a well established and comprehensive planning framework for its Domestic Compliance Program that clearly communicates AFMA's risk-based approach to compliance and the planned compliance activities for each financial year, including general deterrence inspections and CRMT activities. However, there would benefit in AFMA defining an overarching objective that clearly articulates the program's purpose. This would better position AFMA to monitor and report on the outcomes and impact of the program.

3.53 AFMA officers responsible for undertaking compliance activities are required to obtain specific qualifications and training to perform their roles

effectively. AFMA monitors the currency of its officers' qualifications through a register and is currently developing a learning and development strategy. In addition to mandatory training, AFMA provides its officers with guidance material relating to conducting inspections, investigations, and managing compliance information.

4. Managing Compliance

This chapter examines AFMA's education and awareness activities in support of the Domestic Compliance Program and the conduct of compliance operations.

Introduction

4.1 The sustainability of Australia's fisheries depends, in part, on fishers operating in accordance with regulatory requirements. An effective program of education and awareness, along with industry codes of practice, help to encourage voluntary compliance. A robust compliance and enforcement program is also necessary to deter illegal fishing activity and to detect areas of non-compliance.

4.2 AFMA has adopted a compliance and enforcement model that is designed to encourage and promote voluntary compliance, and detect non-compliance (see Figure 4.1 on the next page). This model recognises that fishers are not a homogenous group and fishers' willingness to comply with regulatory requirements can change over time.

4.3 Within the parameters established by the compliance and enforcement model, AFMA's *Domestic Compliance and Enforcement Policy* establishes the framework within which the Domestic Compliance Program is delivered. The policy incorporates two key approaches to manage non-compliance: undertaking general deterrence activities; and targeting the highest risks through focused activities (primarily through Compliance Risk Management Teams—CRMTs).

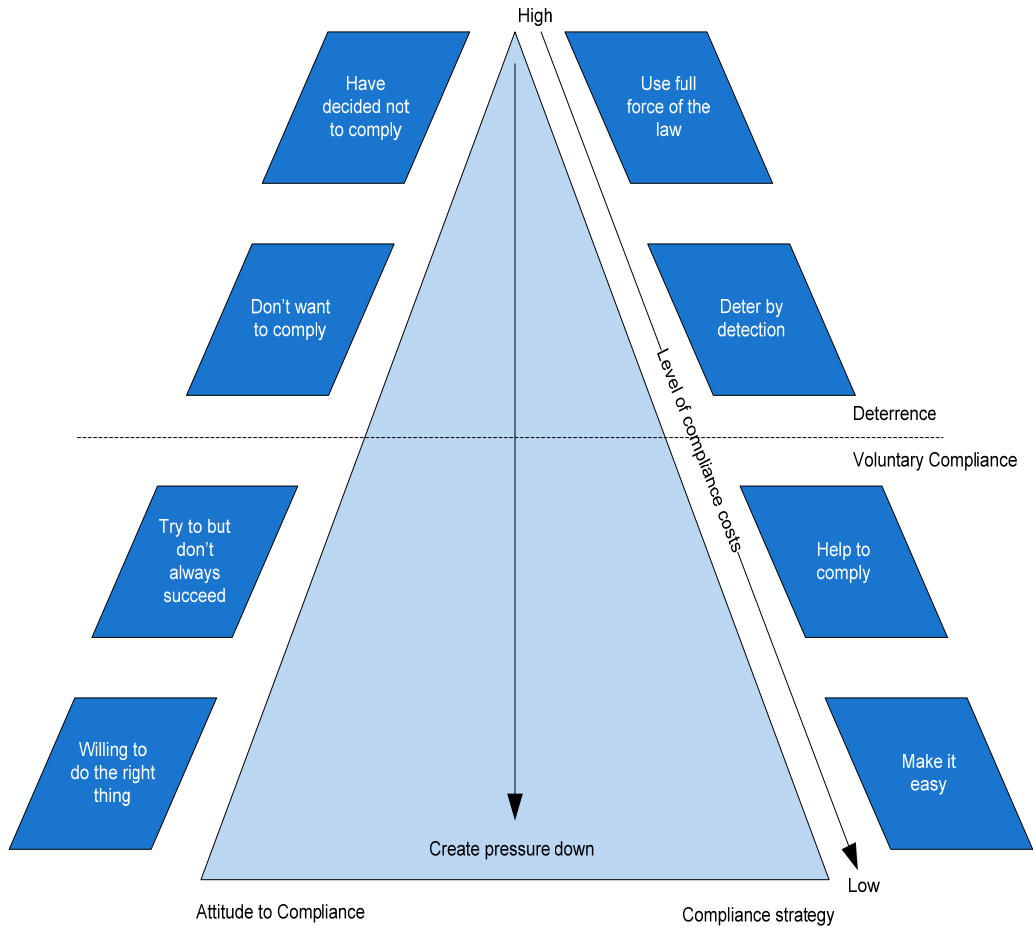
Previous audit findings

The 2009 audit recommended that, to improve the quality and consistency of its inspection program, AFMA should revise its inspection reports to capture all significant observations, problems encountered and follow-up action undertaken, and develop and implement a quality assurance program for its inspections. AFMA agreed with this recommendation.¹⁰²

¹⁰² ANAO Audit Report No. 47 2008–09, op.cit., p. 80.

Figure 4.1

AFMA’s compliance and enforcement model



Source: AFMA.¹⁰³

Current audit

4.4 The ANAO reviewed AFMA’s education and awareness activities, and compliance operations, including general deterrence inspections, aerial surveillance, CRMTs and special operations conducted by the National Special Investigations Unit. The ANAO assessed whether compliance operations were targeted towards identified compliance risks, and were carried out in

¹⁰³ AFMA advised that the compliance and enforcement model is adapted from the Australian Taxation Office’s *Compliance Program 2010–11*.

accordance with the Australian Government Investigations Standards (AGIS)¹⁰⁴, where applicable, and AFMA's policies and procedures.

Education and awareness activities

Domestic Compliance Program education and awareness activities

4.5 The Fisheries Operations Branch is responsible for communications, education and awareness activities directly relating to the Domestic Compliance Program, with activities often delivered in collaboration with other areas of AFMA. These activities include: media releases; articles for *AFMA Update*¹⁰⁵; letters, SMS texts or VMS alerts to licence holders informing them of changes in administrative and/or legislative requirements¹⁰⁶; presentations, for example at skipper accreditation courses¹⁰⁷ and conferences with partner agencies; the monthly Domestic Compliance Report, which is provided to state and territory fisheries agencies; and CRIMFISH stickers which are distributed to fishers to encourage reporting of illegal fishing activities.

4.6 In general, education and awareness activities occur as part of ongoing compliance activities, such as CRMTs, or in response to a request. While the business planning process for the Domestic Compliance Program (discussed in Chapter 3) includes a list of stakeholder engagement activities, these are limited to AFMA internal stakeholders and state fisheries agencies and primarily comprise scheduled or ad-hoc meetings, and reporting requirements.

¹⁰⁴ The Australian Government Investigations Standards (AGIS), issued by the Attorney-General's Department, establish the minimum standards for Australian Government agencies conducting investigations. The AGIS is mandatory for all agencies required to comply with the FMA Act.

¹⁰⁵ The *AFMA Update* is a monthly newsletter that is designed to keep stakeholders informed of AFMA activities. The newsletter includes a 'Fishes on Patrol' section that outlines the inspections undertaken for that month and the compliance issues identified.

¹⁰⁶ An example is the introduction of Seabird Management Plans in October 2011, which were implemented to minimise the risks to seabirds from fishing activities. The plans require fishers to minimise the amount of fish processing waste near fishing equipment and use equipment (warp deflectors or 'pinkies') that protect seabirds from entanglement.

¹⁰⁷ The Fisheries Research and Development Corporation has funded the South East Trawl Fishers Association to develop a training course aimed at improving skippers' environmental stewardship during fishing operations. The course is accredited under the National Seafood Industry Training package. Further information is available from: <http://www.fishwell.com.au/app/cmslib/media/lib/1205/m5549_v1_2011_330_skipperaccreditation.pdf> [accessed 18 September 2012].

4.7 The audit team accompanied AFMA fisheries officers on three inspection visits throughout June and July 2012¹⁰⁸, and also interviewed representatives of fishing industry associations to gain their perspectives on AFMA's education and awareness activities. Stakeholder views highlighted that: there was a lack of awareness that compliance activities were no longer funded through industry levies; licence holders and crew preferred face-to-face communication or the use of electronic communication—especially SMS—rather than long and complicated letters; and stakeholders considered that a greater presence of AFMA officers in the field would assist with the communication of compliance obligations.

4.8 Stakeholders also highlighted that AFMA materials regularly focused on compliance breaches resulting in enforcement actions, but positive actions taken by the fishing industry were reported less often. Throughout 2012 AFMA has increased the number of media releases and articles in the *AFMA Update* that highlight positive industry actions (for example, a high compliance rate with Seabird Management Plans), as well as continuing to outline AFMA actions to detect and respond to non-compliance.

Broader AFMA communication activities

4.9 AFMA's Communications Section is responsible for publishing information on AFMA activities, although content is generally provided by AFMA business units, such as the Fisheries Management Branch and the Fisheries Operations Branch. AFMA's public communications activities include media releases, the AFMA website, the *AFMA Update* newsletter, and its annual report.

AFMA's communication strategy

4.10 AFMA's *Communications Strategy 2011–12* was approved in August 2011 and included a list of key AFMA messages, identified external and internal stakeholders, and outlined a number of communication activities to engage stakeholders. While the strategy provides a useful basis on which to engage with relevant stakeholders, there is scope to enhance aspects of the strategy, including: assigning responsibility for particular activities; clearly addressing education and awareness activities specific to the Domestic

¹⁰⁸ The audit team accompanied AFMA fisheries officers on inspection visits in New South Wales (South Coast and Coffs Harbour) and Queensland (Mooloolaba).

Compliance Program; and establishing performance measures to enable AFMA to assess the effectiveness of its stakeholder engagement activities.

4.11 AFMA informed the ANAO that it is reviewing the *Communications Strategy 2011–12*. There would be benefit in the revised strategy specifically incorporating activities delivered under the Domestic Compliance Program. The strategy could also outline the activities to be delivered each financial year and set out the purpose of the activities, the target audiences and the resources that will be required to deliver them, and how they will be assessed. Such an approach would allow AFMA to maximise the effectiveness of its communications and education activities, given the limited resources available. The regular review of the strategy, including incorporating stakeholder feedback, would also help to expand the reach of education and awareness activities.

AFMA client survey

4.12 In August–September 2011, AFMA conducted a survey to gain a better understanding of its stakeholder engagement, including opportunities for communicating more effectively with external stakeholders.¹⁰⁹ AFMA received a total of 77 responses from 215 invited participants (a 36 per cent response rate) from: the fishing sector (46); government agencies (23); non-government organisations (6); and other clients (2).

4.13 The survey included a series of questions relating to AFMA’s compliance program. Stakeholders considered that AFMA was effectively ensuring that fishing activities were being undertaken in accordance with fisheries regulations. However, stakeholders indicated that AFMA could benefit from increased resources and greater collaboration with state-based regulators and regulators in other countries. In relation to non-compliance penalties, there were varied responses but, overall, respondents considered that current penalties were not effective in deterring illegal domestic and foreign fishing activities. The results of the client survey also reflected the diverse views of stakeholders and the challenging environment in which AFMA operates.

¹⁰⁹ The previous AFMA Client Survey was conducted in 2005.

Compliance operations

4.14 As previously discussed, AFMA has adopted a risk-based, targeted approach to compliance operations that includes undertaking general deterrence activities and targeting compliance risks through focused activities, such as CRMTs, aerial surveillance and special operations conducted by the National Special Investigations Unit (NSIU).

General deterrence compliance activities

Planning and approval

4.15 As discussed in Chapter 3, a schedule of general deterrence inspections is developed on a ‘rolling’ two month basis¹¹⁰, with inspection locations determined through the analysis of intelligence information. Each inspection targets a particular geographic area, which may include a number of ports and fisheries. In preparation for each inspection, fisheries officers are provided with a ‘port pack’, and monitor weather forecasts and the location of vessels via VMS, to maximise the likelihood of fishing and landings occurring at the time of the planned inspection.

Conducting and reporting inspections

4.16 AFMA fisheries officers may examine fishing permits, logbooks and equipment onboard when undertaking inspections. Officers may also assess the species and the quantity of fish being unloaded to ensure that it corresponds with the vessel’s logbook records, and is allowable under the licence conditions. Fisheries officers may take ‘on-the-spot’ enforcement action for lower-level compliance breaches, for example failure to display fishing permits or to complete logbooks accurately. These enforcement actions are generally verbal warnings.¹¹¹ Figure 4.2 shows a fisheries officer boarding a vessel to undertake an inspection.

¹¹⁰ The details of planned port inspections are not publicly released.

¹¹¹ Where a more serious compliance breach is detected, fisheries officers are required to gather relevant evidence and refer the matter to the OMC for approval to launch a full investigation or to undertake compliance action (enforcement actions are examined in Chapter 5). Fisheries officers may also generate information reports, which provide intelligence on persons or activities of interest to the intelligence officers within the National Compliance Strategy Section.

Figure 4.2

AFMA fisheries officer boarding a vessel for inspection



Source: ANAO attendance at AFMA inspections, July 2012.

4.17 Fisheries officers are required to record the outcomes of inspections, observations and comments in the Commonwealth Inspection Report template. Post-inspection reports are also required to be completed by fisheries officers. These reports summarise the inspections undertaken, issues of non-compliance and any enforcement actions taken. Individual inspection reports and photos are filed for analysis by compliance and intelligence staff, and are used to provide input into the Domestic Compliance Program monthly reports (discussed further in Chapter 6) and *AFMA Update*.

Numbers of general deterrence inspections undertaken

4.18 Table 4.1 (on page 84), shows the number of inspections of vessels and fish receivers conducted under the decentralised model in 2008–09 and in the first three years of the centralised model for domestic compliance (2009–10, 2010–11 and 2011–12).

4.19 The number of general deterrence inspections has decreased from 476 in 2008–09, to an average of 236 per year in the three years from 2009–10 to 2011–12. This decrease was anticipated by AFMA, partly due to the increased targeting of inspections under the centralised model. AFMA informed the ANAO that the significant decrease in the number of at-sea inspections was primarily in response to fisheries moving to Individual Transferrable Quotas (ITQs) rather than input controls such as the number of hooks used. In ITQ-managed fisheries, land-based inspections can be used to monitor the catch. AFMA also stated that at-sea inspections had decreased due to the use of VMS to monitor compliance with closed fishing areas, and the move to a risk-based general deterrence inspections program.

4.20 AFMA has met its target of conducting inspections of at least three per cent of total landings in the three years since the centralised compliance program was implemented (the target was five per cent under the decentralised compliance program). These broad operational targets were originally designed to ensure a minimum presence in the field, taking into account resourcing considerations.

Table 4.1

General deterrence inspections undertaken since 2008–09

Inspections	Decentralised compliance model	Centralised compliance model		
	2008–09	2009–10	2010–11	2011–12
Inspection days	198	95	70	64
Inspections per day	2.4	2.8	3.1	3.5
Port visits	NA ¹	41	37	70
Total number of inspections:	476	269	216	222
Breakdown:				
• in-port vessel inspections	226	119	113	116
• at-sea vessel inspections	83	102	63	27
• fish receiver inspections	167	48	40	79
Operations ²	3	10	5	NA
Percentage of Commonwealth-nominated vessels ³ inspected at least once	47% (161 of 342 vessels)	51% (166 of 326 vessels)	39% (131 of 335 vessels)	32% (101 of 317 of vessels)
Total landings ⁴	6655	6987	6872	6841
Total percentage of all landings covered by inspections	7.2%	3.9%	3.1%	3.2%

Note 1: As inspections in this year were undertaken by state/territory officers, port visits by AFMA were not required.

Note 2: Operations may include AFMA special operations, such as covert/overt surveillance and execution of search warrants, or joint operations with other Commonwealth or state/territory agencies. In 2011–12 AFMA changed the way it records these operations in JADE, they are now recorded as individual inspections or investigations.

Note 3: This percentage comprises vessels that were nominated to a Commonwealth fishing licence and were actively fishing throughout the financial year.

Note 4: Total landings refers to the number of times Commonwealth-nominated vessels have unloaded their catch. AFMA collects this data from Catch Disposal Records.

Source: AFMA data.

4.21 The adoption of a risk-based, targeted approach under the centralised compliance model, means that AFMA is better positioned to target general deterrence inspections towards those vessels posing a higher risk, based on intelligence and the Multiple Risk Aggregation Index (MRAI) assessment. As discussed earlier, AFMA’s policy and program documents establish an increased focus on targeted risk treatment activities (CRMTs), informed by intelligence collection and analysis, to maximise compliance levels.

Consequently, there has been less reliance on in-field inspection activity as a mechanism to detect and deter illegal activity, although a level of field inspection activity has been retained in order to maintain a general deterrence presence. AFMA's recent work to establish a more detailed set of measures and targets, discussed further in Chapter 6, will enable AFMA to assess the effectiveness of the general deterrence inspections program.

Cancellation of general deterrence inspections

4.22 Scheduled inspections may be cancelled or postponed due to: adverse weather conditions; resourcing constraints (such as a lack of availability of appropriately qualified fisheries officers); or reassignment of officers to other operational priorities, such as special operations. AFMA informed the ANAO that, generally, postponed inspections are re-scheduled to a time when resources are available, or when more favourable weather has increased vessel activity.

4.23 AFMA records indicate that, in 2010–11, 24 inspections were cancelled or postponed. In 2011–12, eight inspections were cancelled, postponed or reprioritised. AFMA advised that the higher number of cancellations in 2010–11 was partially in response to redeployments to address higher-priority compliance activities. For example, a block of five planned inspections was cancelled or postponed due to a joint operation in November 2010 that involved 11 fisheries officers, including at-sea inspection activities.

AFMA's distance from ports

4.24 The 2009 audit highlighted both the benefits and risks of a centralised compliance model. The most significant risks identified by the ANAO related to fisheries officers being based in Canberra, in contrast to state and territory fishery officers who are generally based at or near ports. The location of fisheries officers had the potential to limit AFMA's ability to respond quickly to a compliance issue, and reduced the deterrence effect that an ongoing presence at ports provides. To address this risk, AFMA has established formal and informal arrangements with a number of state/territory fishery agencies to undertake specific compliance activities on their behalf, where there is a critical need.¹¹² These activities are performed on a fee-for-service basis.

¹¹² The activities include: compliance inspections; meeting a vessel at port to provide a formal notice under section 84 (1) (k) of the FM Act which prevents the vessel operating or leaving port; and assisting in joint operations or at-sea inspections.

4.25 In 2011–12, AFMA sought and received assistance from state counterparts in three instances.¹¹³ The current MoUs with state and territory agencies do not specify priority for AFMA compliance activities over state and territory compliance activities. While AFMA considers that the establishment of set response times would present difficulties, the Authority advised the ANAO that it has agreed through the MOUs on an increased fee for ‘short notice’ assistance.

4.26 AFMA advised that its expenditure on activities undertaken by state and territory fisheries agencies (including hire of state fisheries vessels for at-sea inspections, a major part of the expenditure) was approximately: \$86 000 in 2009–10; \$176 000 in 2010–11; and \$63 000 in 2011–12.

2010 Review of the Domestic Compliance Program

4.27 In 2010, AFMA conducted a Quality Assurance Review (QAR) of the Domestic Compliance Program, with a focus on planned inspections. The QAR examined three planned operations in May and June 2010, as well as randomly selected tactical operations orders (directions to the fisheries officers about priority targets for inspection), post operation reports and information reports. The QAR made a number of recommendations to improve the: planning, budgeting and approval process of inspections; quality and format of tactical operation orders and post-inspection reports; and oversight of the completion of Commonwealth Inspection Reports. The ANAO examined whether these recommendations had been implemented, as part of the review of general deterrence inspections program.

ANAO review of general deterrence inspections

4.28 The ANAO reviewed general deterrence inspections over the last three years, including the planning, conducting and reporting of inspections. In addition, a sample of 10 general deterrence inspections conducted in 2011–12 (out of a total of 36 planned for that year) was examined in more detail. As previously indicated, the ANAO also accompanied AFMA fisheries officers on three general deterrence inspection visits, covering four ports and 21 inspections of vessels and fish receivers.

4.29 The review included AFMA’s processes for planning, conducting and reporting on inspections, and reasons for cancellation of planned inspections.

¹¹³ AFMA also received assistance from the Australian Customs and Border Protection Service, Queensland Police and SEWPaC for three separate joint operations.

In particular, the ANAO examined whether the inspections complied with AFMA's Standard Operating Procedures (SOPs) and guidelines for conducting inspections, and that the recommendations from the 2010 QAR had been implemented. The ANAO's review observed that:

- the OMC had approved the two-monthly schedule of inspections and each individual inspection was approved by the OMC or senior management;
- each inspection had a budget that included planned and actual expenses for the inspection;
- port packs were prepared for each inspection location;
- signed checklists were completed for nine out of 10 inspections;
- Commonwealth Inspection Reports were adequately completed for all inspections; and
- post-inspection reports were completed for all inspections.

4.30 Overall, inspections are well-planned and conducted in accordance with AFMA's SOPs and guidelines. However, the ANAO noted considerable variation in the content and quality of the post-inspection reports. AFMA acknowledged the variability in the content and quality of post-inspection reports, noting that it had developed a template and that some variability was to be expected, depending on the activities conducted on any given inspection. AFMA also informed the ANAO that a QAR on the general deterrence program, planned for late 2012, would include an assessment of post-inspection reporting.

Aerial surveillance program

4.31 In 2012, AFMA used aerial surveillance to complement existing compliance activities. In a joint operation with SEWPaC (which has responsibility for management of Commonwealth Marine Reserves), AFMA provided VMS data on fishing activities within the South East Commonwealth Marine Reserves, and accompanied SEWPaC officers on six surveillance flights (funded by SEWPaC) between March and May 2012.

4.32 As well as monitoring breaches of Commonwealth Marine Reserves, AFMA officers assessed vessels' compliance with Seabird Management Plans. Prior to the flights, AFMA advised all Commonwealth Trawl Sector licence holders that surveillance activity was being undertaken to monitor compliance

with Seabird Management Plans. The first surveillance flights observed two vessels that were in breach of the plans. AFMA issued official warnings to the two licence holders. On subsequent surveillance flights, two other vessels were observed breaching plan requirements, and were ordered back to port. This was followed by a media release outlining the actions taken by AFMA and advising licence holders that AFMA was continuing surveillance with regard to compliance with Seabird Management Plans.

4.33 Subsequent surveillance flights (funded by AFMA) recorded that all vessels observed were in compliance with Seabird Management Plan requirements.¹¹⁴ AFMA reported the outcomes of these surveillance activities in the monthly Domestic Compliance report and in *AFMA Update*.

Compliance Risk Management Teams

4.34 Compliance Risk Management Teams (CRMTs) are formed in response to risks identified through the Domestic Compliance Program risk assessment process. As at December 2012, there were five CRMTs to target domestic compliance risks. These CRMTs and the methodology adopted by each team are outlined in Table 4.2 (on the following page).

¹¹⁴ The ANAO accompanied AFMA on one of these flights. AFMA is assessing the possibility of undertaking further surveillance flights, taking into consideration resourcing priorities and the assessed risk of non-compliance with Seabird Management Plans.

Table 4.2

Compliance Risk Management Teams and key methodologies (2012)

CRMT	Methodology
<p>Compliance with VMS requirements: Vessels are required to have a VMS operating at all times, except in specific limited circumstances.</p>	<p>Daily monitoring of ‘active’ vessels. AFMA is aware of active vessels via logbook entries that are required to be submitted to AFMA within three working days of landing at a port. VMS records are cross-referenced with a list of active vessels.</p> <p>If an active vessel is not polling, AFMA has an approved enforcement response that includes warnings, alternative arrangements for faulty devices, and return to port orders (provided for under the FM Act) for ongoing non-compliance.</p>
<p>Closure Breach: There are number of zones where commercial fishing is prohibited, for example Marine National Park Zones within Commonwealth Marine Reserves.</p>	<p>Real-time monitoring of vessel positions via VMS. AFMA sets ‘geo-fences’ around closures, allowing an automatic alert to be generated by the VMS when a vessel enters a closed fishing area.</p>
<p>Quota Reconciliation: Fishers are required to ensure they hold adequate quota for their catch within a specified timeframe.</p>	<p>Licence holders’ catch is monitored against their approved quota, using data submitted to AFMA in Catch Disposal Records. There is a set timeframe for reconciling any over-quota amount, by buying quota from other licence holders (where available). AFMA has a graduated enforcement response for over-quota licence holders, particularly for those who are regularly over-quota.</p>
<p>Quota Evasion and Avoidance: Fishers attempt to avoid the use of allocated quota by misreporting or not reporting a catch.</p>	<p>Monitoring of fishing activity through covert and overt surveillance, and other investigations, including intelligence gathering.</p>
<p>Non-reporting of Interactions with Threatened, Endangered and Protected (TEP) Species.</p>	<p>AFMA gathers data from observers and e-monitoring, and cross-checks observed interactions with logbook entries over time to identify patterns of reporting. The CRMT also includes education campaigns and other mitigation strategies (for example, excluder devices and seabird deflectors) specific to TEP issues in individual fisheries.</p>

Source: AFMA, *National Compliance and Enforcement Program 2012–13*, op.cit.

4.35 Fishing and/or navigating in closed areas has been rated as a ‘moderate/high’ risk in three consecutive domestic compliance risk assessments. In response to this risk, AFMA developed the Closure CRMT. The case study on the following page illustrates the processes and treatment strategies to address the risk of fishing and/or navigating in closed areas.

Case Study Closure CRMT

Fishing/navigating in closed areas against regulation is a risk that has been ranked as 'moderate/high' in three consecutive annual domestic compliance risk assessments. As a result, the OMC ranked it as a sporadic risk to be addressed in 2010–11 and an endemic risk for 2011–12.

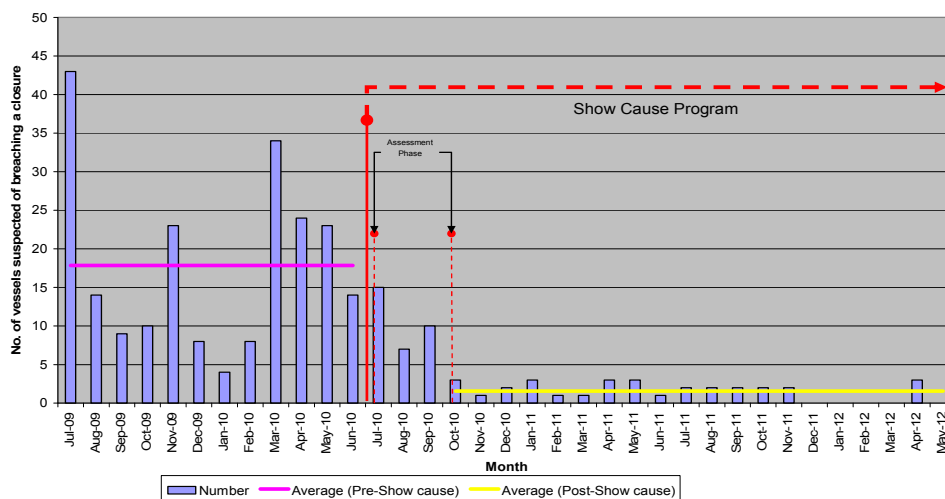
In 2010, the closure breach CRMT established the 'show cause' initiative, which was intended to: decrease the incidence, and therefore the risk associated with, navigating in closures; make fishers aware that AFMA analyses VMS data on a regular basis; and confirm that non-compliance with regard to closures is likely to be detected.

Through this initiative, licence holders' vessels assessed as having fished or navigated within closures are supplied with a plot showing the suspected unauthorised activity as depicted on AFMA's VMS, highlighting the entry, activity within, and exit from closures. In an accompanying letter, licence holders are given the opportunity to provide an explanation of their activity. Breaches that are of a more serious nature receive a 'show cause' letter and are referred to the Compliance Operations Section for further investigation or enforcement action, as deemed appropriate.

AFMA analysed VMS data for the period from July 2009 to June 2010 to determine the average number of suspected breaches detected for the 12 month period prior to the implementation of the 'show cause' program. The average number of breaches reduced from 17 to an average of two per month for the 12 months post-implementation. This represents an 88 per cent decrease in the number of suspected breaches detected since the inception of the 'show cause' initiative.

Between December 2011 and March 2012, there were no suspected closure breaches. In April 2012, there were three, and for May 2012 there were none.

Show Cause Program - Impact on Suspected Closure Breaches



Source: ANAO based on AFMA information.

National Special Investigations Unit

4.36 Quota evasion has been identified by the OMC as a high-level risk to the Domestic Compliance Program, and is the subject of a CRMT. The National Special Investigations Unit (NSIU) was established in 2011 to support this CRMT. The NSIU undertakes targeted operations, including intelligence gathering, surveillance, and execution of search warrants, with the aim of detecting quota evasion and referring appropriate cases to the Commonwealth Director of Public Prosecutions (CDPP) for prosecution. As at October 2012, AFMA had provided three briefs of evidence to the CDPP for potential prosecution. These briefs had been accepted by the CDPP and the matters were before the courts.

4.37 Given the sensitive nature of these operations, AFMA restricts the details of these operations to the limited number of staff 'who need to know'. This situation raises the risk that fisheries officers conducting general deterrence inspections may inadvertently disrupt activity (possibly covert) that the NSIU is conducting, which has the potential to jeopardise the investigation. The ANAO observed an instance of general deterrence inspections and special operations activity being undertaken in the same geographic area. These circumstances illustrate the ongoing risks in managing compliance programs and the need for managers to provide appropriate information, on a 'need to know' basis, to officers conducting compliance activities.

Measuring success

4.38 As outlined previously in Table 4.2, each CRMT has its own objective(s) and methodology, and these are tailored to address specific risks. In February 2011, AFMA decided to cease its Logbook Returns CRMT (established in 2010–11), as compliance had increased to the target level for an ongoing period (the percentage of logbooks returned late to AFMA reduced from 5.5 per cent in 2009 to 1.4 per cent in 2010—the target was three per cent). To date this is the only CRMT to cease operations in the three years since the centralised model of compliance was adopted.

4.39 CRMT progress and outcomes are reported in the monthly domestic compliance reports, which are submitted to the OMC. The ANAO reviewed these monthly reports for the period March 2010 to July 2012 and noted that status updates for each CRMT were provided. Reported information often included progress against established targets (where applicable). Results from the CRMT activities have included:

- compliance with VMS requirements has increased from 87.5 per cent in 2008–09 to 96.7 per cent in 2011–12; and
- activities conducted under the closure breach CRMT, which was established to address the risk of fishing or navigating in closed areas, have resulted in the number of suspected breaches reducing from 17 each month to an average of two each month.

Conclusion

4.40 AFMA’s targeted, risk-based program of compliance and enforcement aims to deter non-compliance and encourage voluntary compliance. The Authority implements a range of compliance measures, including education and awareness activities, a general deterrence inspections program, and targeted compliance risk mitigation activities, including special operations.

4.41 While AFMA undertakes a range of education and awareness activities, in general, these activities occur as part of ongoing compliance activities, and not as part of an overarching strategy. Although the current AFMA communications strategy provides a useful basis on which to engage with relevant stakeholders, there is scope to enhance aspects of the strategy, including: addressing education or awareness activities relating to the Domestic Compliance Program; and establishing performance measures to enable AFMA to gauge the effectiveness of its stakeholder engagement activities.

4.42 General deterrence inspection activities are appropriately planned and conducted in accordance with AFMA’s policies and guidelines. A schedule of general deterrence inspections is developed on a ‘rolling’ two-month basis, taking into account key identified risks and intelligence analysis. Each inspection targets a particular geographic area, which may include a number of ports and fisheries. The strengthening of post-inspection reporting of general deterrence activities would help to reduce the considerable variation in the content and quality of these reports.

4.43 The establishment of CRMTs has enabled AFMA to target key areas of non-compliance. Each CRMT has tailored objectives and methodologies, which may include information analysis, inspections, or special operations including surveillance of individual vessels or licence holders. To date, there have been positive results achieved from CRMT activities, for example:

- compliance with VMS requirements has increased from 87.5 per cent in 2008–09 to 96.7 per cent in 2011–12;
- activities conducted under the closure breach CRMT, which was established to address the risk of fishing or navigating in closed areas, have resulted in the number of suspected breaches reducing from 17 each month to an average of two each month; and
- the percentage of logbooks returned late to AFMA reduced from 5.5 per cent in 2009 to 1.4 per cent in 2010 (the target was three per cent).

5. Responding to Non-compliance

This chapter examines AFMA's implementation of compliance enforcement activities for the Domestic Compliance Program.

Introduction

5.1 As a regulatory authority, AFMA is required to take action to address non-compliance. The seriousness of the non-compliance and the entity's compliance history will influence the compliance actions taken. Responses to non-compliance should be timely, proportionate to the risks posed by the non-compliant activity, lawful (that is, provided for in relevant legislation), and fully documented.¹¹⁵

Previous audit findings

5.2 The 2009 audit recommended that, to improve outcomes for compliance and enforcement actions, AFMA develop and consistently implement enforcement policies and fishery-specific responses for recurring non-compliance. AFMA agreed with this recommendation. The 2009 audit also suggested that AFMA consider a 'more judicious application of its higher-level administrative enforcement powers, where warranted by the circumstances'.¹¹⁶

Current audit

5.3 The ANAO examined AFMA's management of enforcement actions to determine whether these actions were transparent, applied consistently, appropriately recorded, and for those matters referred for prosecution, met the requirements of the Commonwealth Director of Public Prosecution (CDPP).

Compliance program enforcement measures

5.4 AFMA's legislation provides a range of enforcement measures to address non-compliance, including infringement notices through to prosecution. AFMA considers that the range and scope of enforcement tools and measures currently available to the Authority does not have a high deterrent effect. For example, a Commonwealth Fisheries Infringement Notice

¹¹⁵ ANAO Better Practice Guide: *Administering Regulation*, op.cit., pp. 63 and 67.

¹¹⁶ ANAO Audit Report No. 47 2008–09, op.cit., pp. 87 and 96.

(CFIN) attracts a fine of two penalty units (at the time of the audit, \$220).¹¹⁷ A conviction for a domestic compliance offence under the FM Act may attract a maximum court-imposed fine of up to 500 penalty units for individuals (\$55 000 in 2012) or 2500 penalty units for corporations (\$275 000 in 2012).¹¹⁸ AFMA informed the ANAO that, although it can issue multiple CFINs where it is considered warranted, both the court fines and the multiple CFINs have a low deterrent effect compared to the potential economic gains from the non-compliant activity.

5.5 The FM Act also provides for the court to impose non-financial penalties, such as the cancellation or suspension (for longer than 30 days) of a fishing licence, or imprisonment for up to 12 months if a person continues to engage in commercial fishing after their licence has been cancelled or suspended.¹¹⁹

5.6 In response to the limitations of the legislated enforcement regime, AFMA has explored the use of supplementary options, such as 'administrative' sanctions provided under the FM Act, rather than using penalties for non-compliance. Administrative sanctions include: warnings and cautions¹²⁰; amendments to fishing licence conditions; directions by fisheries officers (such as for a vessel to immediately return to port); and suspension of fishing licences (up to a period of 30 days).

5.7 Since 2009–10 AFMA has: ordered eight vessels back to port for offences, such as: non-compliance with VMS requirements or Seabird

¹¹⁷ Commonwealth legislation generally specifies fines for offences as 'penalty units' rather than a dollar amount. This allows the Government to increase fines through amending one piece of legislation (the *Crimes Act 1914*). In November 2012, the Parliament passed legislation to increase the Commonwealth penalty unit from \$110 to \$170. The increase came into force on 28 December 2012.

¹¹⁸ Penalties are higher for unauthorised foreign fishing in the Australian Fishing Zone and the high seas, with a maximum fine of \$550 000 in 2012.

¹¹⁹ These cancellation provisions have been under review by DAFF since 2008, in response to industry concerns regarding the uncertainty over property rights (Statutory Fishing Rights), that cancellation provisions infer. However, as at December 2012, any outcomes of the review were not public. See the DAFF website for more information, available from: <http://www.daff.gov.au/fisheries/domestic/review_of_cancellation_provisions_in_commonwealth_fisheries_legislation> [accessed 15 December 2012].

¹²⁰ The *AFMA Domestic Compliance and Enforcement Policy* (op.cit., pp. 35–36) states that verbal or written warnings are issued where the breach of fisheries legislation/regulation is of a minor nature, the impact of the offence is minimal, a warning is fair and appropriate, and the matter can quickly and simply be addressed. Warnings may be issued even if *prima facie* evidence is not apparent. Official Cautions are also issued for minor offences but may only be issued if the officer believes there to be *prima facie* evidence of an offence. Where a Caution is not complied with in a specified period, for example, to reconcile quota, further enforcement measures may be pursued.

Management Plans; and has suspended 11 licence holders for offences relating to quota reconciliation. The suspensions relating to quota reconciliation are issued for 30 days, however, AFMA generally withdraws the suspension once the licence holder has reconciled their quota. These actions are immediate and may result in a substantial financial loss for the licence holder, as they must cease fishing immediately, thereby reducing the potential income for that particular fishing activity or time period.

Opportunities to review the enforcement regime

5.8 In 2010, AFMA provided input to the DAFF review of fishing licence cancellation provisions. However, AFMA advised that the work undertaken had not progressed because of resource constraints and other competing priorities. In September 2012, the Minister for Agriculture, Fisheries and Forestry announced a comprehensive review of fisheries management arrangements. Under its terms of reference, the review was to, *inter alia*, 'consider the need for modernising ... penalty provisions [and] licence cancellations.'¹²¹ The review report was provided to the Minister for Agriculture, Fisheries and Forestry for consideration in December 2012. At the time of preparation of this report, the Government had not issued a response to the review.

Guidance on enforcement action escalation

5.9 As noted earlier, the 2009 audit recommended that, to improve outcomes for compliance and enforcement actions, AFMA should develop and consistently implement enforcement policies and fishery-specific responses for recurring non-compliance. In response, AFMA developed and implemented in early 2011 a range of tailored flowcharts to support the consistent application of enforcement actions.¹²²

¹²¹ The terms of reference for the review are available from: <<http://www.daff.gov.au/fisheries/review-of-fisheries-management-act-1991-and-fisheries-administration-act-1991>> [accessed 26 November 2012]. AFMA's submission to the review outlined the Authority's view on the limitations of the current penalty provisions, and suggested a number of changes to support its compliance activities. The AFMA submission is available from: <<http://www.afma.gov.au/about-us/legislation-and-policy/fisheries-policy-review/afma-submission-to-the-review-of-commonwealth-fisheries-legislation/>> [accessed 12 December 2012].

¹²² These flowcharts include fishery-specific enforcement matrices for specific compliance issues, such as Eastern Tuna and Billfish Fishery and Southern and Eastern Shark and Scalefish Fishery over-quota offences, as well as flowcharts to cover common offences, such as VMS non-polling and navigating or fishing in closure areas. See Appendix 3 for an example of an enforcement flowchart outlining the enforcement action escalation to be followed.

Enforcement actions

5.10 Table 5.1 on the following page outlines the enforcement actions and administrative sanctions reported by AFMA under the decentralised compliance model in 2008–09 and under the centralised compliance model from 1 July 2009.

5.11 As Table 5.1 illustrates, overall, there has been a decline in the number of enforcement actions and administrative sanctions since the implementation of the centralised compliance model. The introduction of enforcement flowcharts in 2011 has resulted in a more consistent approach to enforcement, with a verbal or written warning generally the first step in compliance action.¹²³ AFMA informed the ANAO that the increase in warnings in 2011–12 was also due to: the more consistent recording of verbal warnings in that year, and officers' increased confidence in issuing 'on the spot' warnings for minor issues of non-compliance without first seeking approval from more senior officers.

5.12 While AFMA's enforcement flowcharts place a greater emphasis on the use of administrative sanctions because of their immediate financial impact, the actual numbers of sanctions implemented, particularly suspension of licences, has decreased slightly in recent years. AFMA advised the ANAO that this was due to greater rates of compliance with quota reconciliation requirements, and the success of less punitive enforcement measures, such as the 'show cause' process implemented by the Closure CRMT. In relation to prosecutions, the cost implications for AFMA assisting the CDPP with prosecutions (such as, preparing briefs of evidence, briefing the CDPP, attending court hearings) has also resulted in AFMA exploring the use of alternative actions (particularly suspension for smaller amounts of over-quota reconciliation) where it is considered appropriate.

¹²³ AFMA reserves the right to impose more substantial enforcement actions for serious 'first' offences.

Table 5.1**Enforcement actions and administrative sanctions**

Enforcement actions	Decentralised model		Centralised model	
	2008–09	2009–10	2010–11	2011–12
No further action ¹	40	110	42	42
CFINs for individual offences	12	13	6	7
Total CFINs ²	Not available	34	13	20
Brief of evidence referred to CDPP	7	2	7	3
Prosecutions concluded ³	11	14	7	7
Administrative sanctions	Decentralised model		Centralised model	
	2008–09	2009–10	2010–11	2011–12
Verbal or Written Warning	78	11	11	54
Official Caution	62	13	26	20
Suspension	7	0	6	5

Note 1: AFMA defines no further action to include a range of issues, for example: no offence disclosed; internal/external referrals to CRMTs or other agencies; insufficient evidence to proceed; statute of limitations expired; external referral to CDPP; or CDPP declined to prosecute due to reasons such as it was not in the public interest to do so. In 2009–10, 67 out of 110 enforcement actions labelled as 'no further action' by AFMA were internal referrals to CRMTs for failure to complete/submit logbooks and quota reconciliation.

Note 2: As noted in paragraph 5.4, AFMA may issue multiple CFINs for a single offence. During the period 2009–10 to 2011–12, the highest number of CFINs issued for one offence was 10 (totalling \$2 200).

Note 3: Prosecutions may take a number of years to complete.

Source: AFMA data.

ANAO review of enforcement actions

5.13 To assess AFMA's management of compliance enforcement activities, the ANAO reviewed a sample of enforcement activities over the three years since the centralised compliance model was introduced: 2009–10, 2010–11 and 2011–12. The review included an indicative sample of 80 out of the 391 (20 per cent) closed investigations and subsequent enforcement actions over the three year period. The sample included each type of fisheries offence and enforcement outcome across different fisheries.

5.14 The review assessed whether AFMA's investigations had been carried out in accordance with the Australian Government Investigations Standards (AGIS) and AFMA's internal Compliance Investigation Guidelines (the guidelines)¹²⁴, and whether:

- critical decisions and reasons for decisions were appropriately documented (highlighted as an issue in the 2009 audit);
- supporting documentation was filed in the relevant case management system (ASIS and JADE);
- key case information was recorded accurately; and
- referrals to CDPP met requirements.

Key decisions and reasons for decisions

5.15 Under AGIS and the AFMA guidelines, all critical decisions made during an investigation should be made by an appropriate officer and documented on the investigation file or electronic system. This documentation should include:

- the decision, including the reason for the decision, the person making the decision and the date of the decision;
- the material reviewed; and
- any expected or potential significant impact of the decision.

5.16 The 2009 audit identified that, in the main, key decisions were adequately documented. However, the reasons for the decisions were not as well documented. The ANAO's analysis of the sample cases in this audit identified four instances where the reason for the decision was not clearly recorded on the case management system (ASIS or JADE) or in supporting documentation attached to the case file. For the remaining 76 cases, key decisions and actions were documented and had been approved by the relevant senior officer, where necessary.

¹²⁴ Compliance with the AGIS is mandatory for all FMA Act agencies conducting investigations. AGIS outlines the minimum standards for: the operating framework, identification of breaches and case selection; investigation management; and investigation practices. AFMA's guidelines reflect the AGIS' requirements.

Supporting documentation

5.17 Under the AFMA guidelines, each case record should include cross-references to all relevant supporting documentation, such as correspondence, records of verbal discussions, OMC approvals, inspection reports or photographic evidence. JADE has the functionality to link case descriptions to supporting documentation, providing a comprehensive record of enforcement actions. While ASIS could not provide links to supporting documentation, case records should have included cross-references to relevant documents, including the file name and location on the AFMA IT system. The ANAO's review highlighted inconsistencies in the supporting documentation provided for specific types of investigations. For the 51 cases (63.8 per cent) in the sample that required supporting documentation to be attached:

- eight out of the 14 cases that were as a result of a general deterrence inspection had the Commonwealth Inspection Report attached;
- for over-quota cases, 15 out of 35 had the internal communication from AFMA's licensing section advising the Fisheries Operations Branch that a licence holder was over-quota attached, and only 10 of the 35 had the subsequent communications between the two AFMA sections regarding the compliance actions taken attached; and
- of the two cases relating to audits of Southern Bluefin Tuna holding nets, one had the audit reconciliation documents attached.

5.18 The ANAO's review also identified that there were different methods of record keeping (particularly in relation to the documentation attached to investigations) and varying levels of detail recorded by investigators. Although AFMA's guidelines outline recording requirements, the Authority has not undertaken a review to gain assurance that officers are complying with the record keeping requirements when using JADE (or previously ASIS). AFMA advised the ANAO that the planned Quality Assurance Review program for 2012–14 would have a strong focus on JADE case management documentation and administration.

Recording information on enforcement actions

5.19 The ANAO's examination of AFMA's compliance with its guidelines focused on case management and recording tools (module 6 in the guidelines). This module outlines the requirements for recording information on AFMA systems (ASIS, which was used for case management in 2009–10 and 2010–11, and JADE, which was used in 2011–12). In particular, it provides guidance

relating to accessibility of information, with responsible officers required to record sufficient information to enable other staff and management, not related to the case, to clearly ascertain all relevant details of the case. This information is to be recorded in the case description for each enforcement action's 'home screen'.

5.20 While AFMA's recording of information on enforcement action 'home screens' had improved over the three years reviewed, there was scope to further improve the manner in which enforcement information was recorded to ensure that other AFMA staff can easily obtain relevant information when necessary. For example, only 45 per cent of the closed cases reviewed by the ANAO had an explanation on the 'home screen' as to why the case was closed (although, this information was often provided in supporting documentation).

5.21 While AFMA's guidelines provide step-by-step guidance for staff, the ANAO's review highlighted that these requirements and guidance had not been consistently followed. As the information entered into JADE (and previously ASIS) provides the basis for AFMA's internal and external reporting, there would be merit in AFMA reinforcing to staff the need to comply with the guidelines.

AFMA referrals to the Commonwealth Director of Public Prosecutions

5.22 The CDPP and AFMA guidelines provide guidance on how to prepare a brief of evidence in support of a proposed prosecution. One measure of the quality of the briefs is the CDPP's decision to proceed, or not proceed, with a prosecution. A number of other factors, including CDPP resourcing constraints and the expected penalties to be imposed by the court, are also key considerations for the CDPP.

5.23 In November 2011, AFMA undertook a QAR of compliance investigations and briefs of evidence referred to the CDPP. The review assessed two briefs of evidence: one relating to domestic non-compliance; and one relating to non-compliance by a foreign fishing vessel. The review found that there was a lack of consistency in the templates, formats and styles being used by AFMA investigators. In response to the QAR findings, AFMA has:

- revised the operational guidelines and SOPs (as previously discussed);
- required investigating officers to consult with the AFMA Legal Section during the investigation process and the preparation of the brief of evidence;

- delivered in-house training for investigating officers on the use of compliance enforcement flowcharts and developed an AFMA evidence management handbook; and
- planned annual reviews of briefs of evidence.

5.24 The ANAO reviewed seven cases referred to the CDPP (out of 28 concluded over the three years 2009–10 to 2011–12), against internal SOPs and AFMA’s guidelines. Of these seven cases:

- all provided the information that is required under the CDPP guidelines for preparing a brief of evidence;
- in two cases the CDPP declined to proceed¹²⁵;
- as at October 2012, two cases had been accepted for prosecution by the CDPP and one was still under consideration; and
- two cases resulted in convictions and fines.

Recovery of fines

5.25 As outlined earlier, AFMA may issue a CFIN for non-compliance with regulatory requirements, which is payable within 28 days of issue.¹²⁶ AFMA has established processes to collect CFIN fines, including possible referral to the CDPP in the case of non-payment. The ANAO observed several cases in which AFMA reminded licence holders of their obligation to pay CFIN fines, and one case in which AFMA waived a CFIN fine due to the personal circumstances of the licence holder, including taking into account their previous compliance record.

5.26 In those circumstances where a case regarding a domestic fishing offence against the FM Act is successfully prosecuted by the CDPP, the court may impose fines on the licence holder. These fines may be paid by instalments, but are generally due 28 days from conviction. On 1 October 2011, the CDPP transferred responsibility for collecting fines to the referring agencies, including AFMA. At that time, outstanding fines for FM Act offences totalled \$63 432. AFMA advised the ANAO that the Authority was developing

¹²⁵ The CDPP declined to proceed in the first case as it did not consider that it was in the public interest to do so and, in the second case, it considered that there was a lack of clarity in the legislation relating to the matter.

¹²⁶ CFINs are issued under Part 10 of the *Fisheries Management Regulations 1992*.

standard operating procedures for the recovery of court-imposed fines. AFMA was also investigating the cost-effectiveness of outsourcing the debt recovery function.

Conclusion

5.27 At the time of the audit, the enforcement options available to AFMA when non-compliance was detected ranged from verbal warnings through to the referral of offences to the Commonwealth Director of Public Prosecutions (CDPP) for prosecution. Since 2009, there has been an overall decline in the number of enforcement actions taken by AFMA, with AFMA's approach focusing on higher-risk non-compliance (as targeted by CRMT activities). AFMA has also been exploring the greater use of 'administrative' sanctions, such as temporary suspension of a fishing licence, to supplement current enforcement actions designed to address non-compliance. AFMA considers administrative sanctions to be more immediate and that they provide a greater deterrent for fishers due to their financial impact.

5.28 AFMA has made improvements in its case management processes for enforcement actions through more comprehensively: documenting key decisions; recording the reasons for these decisions; and ensuring relevant approvals are sought, where necessary. AFMA has also developed more comprehensive guidelines and standard operating procedures, which provide guidance for the conduct of investigations and any subsequent enforcement actions. However, there is scope for AFMA to improve the integrity of information retained in its case management system (JADE) to better capture the relevant details of investigation and enforcement activities. AFMA has indicated that planned Quality Assurance Reviews for the Domestic Compliance Program will include JADE case management and record-keeping.

6. Measuring and Reporting on Compliance Effectiveness

This chapter examines the arrangements established by AFMA to measure and report on the effectiveness of the Domestic Compliance Program.

Introduction

6.1 A sound performance measurement framework, and associated reporting, enables a regulator to demonstrate to key internal and external stakeholders that its operations conform to legislative requirements, are cost-effective, and are achieving regulatory objectives.

Previous audit findings

6.2 The 2009 audit examined AFMA's performance measurement framework and recommended that the Authority develop measurable intermediate outcomes linked to its overall outcome, and expand its deliverables to include relevant quantitative performance measures for the Domestic Compliance Program. AFMA agreed with this recommendation, noting that the success of the compliance program ultimately depended on the level of compliance achieved, rather than the number of apprehensions, prosecutions, or other tangible deliverables.¹²⁷

Current audit

6.3 The centralised compliance model was designed to achieve cost savings and provide greater efficiencies in the Domestic Compliance Program. In this audit the ANAO reviewed the extent to which Domestic Compliance Program costs have been reduced, and how AFMA assesses the effectiveness of the program in increasing voluntary compliance and detecting non-compliance. In particular, the ANAO examined whether AFMA had:

- developed appropriate measures to monitor the program's performance; and

¹²⁷ ANAO Audit Report No. 47 2008–09, op.cit., p. 122.

- established a reporting framework that provides stakeholders with information on the extent to which the program contributes to the achievement of compliance objectives and AFMA's outcome.

Compliance program costs

6.4 In 2007, AFMA established a Cost Recovery Working Group (CRWG) to identify and recommend options to reduce costs and generate efficiencies across the Authority. One of the CRWG's recommendations was to move to a centralised compliance model, with expected savings of around \$300 000 per annum (with the Domestic Compliance Program budget reducing from \$3 million per annum to around \$2.7 million). AFMA accepted the recommendation and the centralised model was implemented from 1 July 2009.

6.5 The CRWG envisioned that, under the new model, AFMA would conduct a general deterrence inspections program covering three per cent of landings, rather than the five per cent targeted under the decentralised model. The CRWG also stated that, if AFMA continued to target five per cent of landings per year, while costs would not decrease the program would still be more efficient under the centralised model:

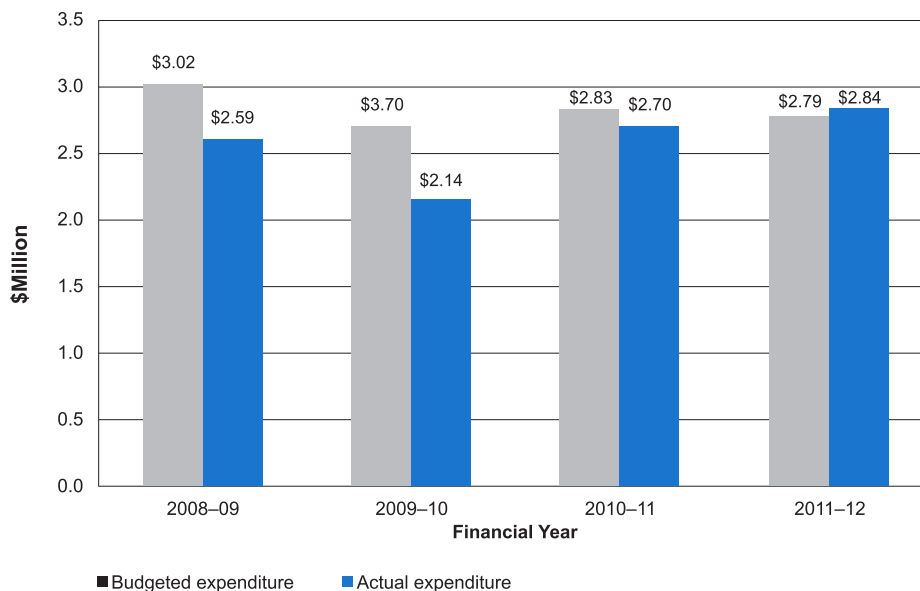
If the current coverage of 5% of landings is maintained under the centralised model, the corresponding budget would be \$3.2 million in the first year and \$3.05 million in the second and subsequent years. This would mean that cost savings could not be achieved but the Working Group was of the view that a centralised domestic compliance approach would result in significant efficiency gains. These coverage levels would be achieved without restricting the ports in which product can be landed.¹²⁸

6.6 The budgeted and actual expenditure on the Domestic Compliance Program from 2008–09 to 2011–12 are provided in Figure 6.1. Apart from salary expenses, the major expenses for the program are related to inspections such as travel and accommodation costs, and the hire of vessels for at-sea inspections and aircraft for aerial surveillance.

¹²⁸ AFMA, *Business Efficiency Review Discussion Paper*, Cost Reduction Working Group, February 2008.

Figure 6.1

Domestic Compliance Program budgeted and actual expenditure from 2008–09 to 2011–12



Source: ANAO from AFMA information.

Note 1: AFMA's records indicate that the underspend in 2008–09 was due to the state/territory service providers not fully expending the budget. In 2009–10 underspent state/territory funds from the previous year were carried over, but not expended.

6.7 AFMA has achieved a modest decrease in the budgeted expenditure for the Domestic Compliance Program under the centralised model (the budget was \$230 000 less in 2011–12 than in 2008–09). However, the Authority's actual expenditure on the Domestic Compliance Program over the last two years now exceeds (by \$250 000 in 2011–12) the amount expended on domestic compliance under the decentralised model. The primary reason for this increase is because state/territory fisheries agencies did not expend the budgeted amount under the decentralised model.¹²⁹ Over the last two years (2010–11 and 2011–12) actual expenditure more closely aligned with the budget.

¹²⁹ As outlined in Chapter 1, unlike many AFMA activities, compliance program costs are largely funded by the Government, rather than via industry levies (some elements, such as VMS polling costs and AFMA administration of e-monitoring are funded by levies).

Measuring compliance effectiveness

Performance measures and targets

6.8 AFMA considers that compliance and enforcement activities implemented under the Domestic Compliance Program assist the Authority to achieve its objective of sustainable management of Commonwealth fisheries. However, as previously discussed in Chapter 3, AFMA has not clearly articulated its objective(s) for the Domestic Compliance Program. A clear objective(s) would assist AFMA to identify the issues to be addressed by the program, and the expected results and impacts of the program.

6.9 AFMA informed the ANAO that it measures the effectiveness of the Domestic Compliance Program across the following three levels:

- fishery level 'economic and sustainability' outcomes (assessment of the health and sustainability of fish stocks in Commonwealth fisheries);
- 'risk' level outcomes (compliance with VMS requirements, closure breaches and over-catch reconciliation rates); and
- input/output measures (vessel inspections conducted, matters investigated and prosecution actions).

6.10 The current focus of AFMA's performance measuring activities is directed at its risk level outcomes. Within this context and, as outlined earlier, compliance activities under AFMA's Domestic Compliance Program are directed at those fishing activities presenting the greatest risk of non-compliance. The five key risks identified in the current risk assessment (2011–12) were:

- the failure to have a VMS operating at all times;
- fishing/navigating in closed areas;
- failing to reconcile quotas within the required timeframe;
- failure to report interactions with Threatened, Endangered and Protected (TEP) species; and
- quota evasion and avoidance.

6.11 As previously discussed, Compliance Risk Management Teams (CRMTs) have been established to respond to these risks. The ANAO reviewed the performance information being collected and analysed by AFMA for its Domestic Compliance Program activities, as published in the *National*

Compliance and Enforcement Program 2012–13. AFMA was collecting a range of data to measure the effectiveness of the CRMTs in addressing key compliance risks, with performance measures established for all CRMTs and targets established for three (compliance with VMS requirements, closure breaches and quota reconciliation).

6.12 Performance targets had not been developed for the CRMTs addressing TEP reporting and quota evasion, and there were no measures or targets for the general deterrence program and education and awareness activities. As a consequence, it is difficult for AFMA to determine whether these activities are effectively addressing the identified risks and to demonstrate to key external stakeholders and AFMA management the effectiveness of these elements of the compliance program.

6.13 While AFMA acknowledged the importance and value of performance indicators, it also noted the inherent difficulties in setting performance targets for aspects of compliance programs. However, AFMA informed the ANAO that it had commenced the development of performance measures for the remaining two CRMTs as well as media/communications strategies for all CRMT risk treatment plans.¹³⁰

6.14 As discussed earlier at paragraph 3.31, in October 2012 AFMA also developed an overarching program plan for the general deterrence inspections program that includes more detailed KPIs and targets than the previous years' target of inspecting three per cent of landings. These KPIs and targets are directed to ensuring that the general deterrence inspections focus on the highest risk ports and vessels, where possible.

6.15 AFMA reviewed its general deterrence program against these KPIs and targets for the previous three years and found that, while moderate and high risk ports had received adequate inspection coverage, only half of the vessels ranked as 'high risk' had been inspected at least once every year. AFMA has set a higher target for future years. The insights obtained from this analysis illustrate the usefulness of performance data, and associated measures and targets across all key aspects of compliance programs.

¹³⁰ CRMT treatment plans and strategies approved in September 2012 included a section on media and communications activities to be undertaken as part of the CRMTs.

6.16 The continued monitoring and reporting against performance measures¹³¹ and targets will provide AFMA with important information on the success (or otherwise) of its CRMTs, general deterrence inspections and education and awareness activities in addressing identified compliance risks over time.

Agency-level performance reporting

6.17 As a *Financial Management and Accountability Act 1997* (FMA Act) agency, AFMA is required by the Australian Government's financial framework to report against outcomes and programs.¹³² AFMA's outcome, as stated in the Department of Agriculture, Fisheries and Forestry's (DAFF's) Portfolio Budget Statements (PBS), is:

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 domestic and foreign fishing.¹³³

6.18 AFMA has one program contributing to this Outcome—Program 1.1 *Australian Fisheries Management Authority*. The Domestic Compliance Program is not a discrete program in the PBS, but is one of the deliverables that contributes to Program 1.1. PBS information relating to the Domestic Compliance Program is outlined in Table 6.1 on the following page.

¹³¹ To effectively support monitoring activities, measures should be relevant, reliable, and complete—that is, providing a balanced examination of the overall program performance, both quantitatively and qualitatively, and collectively addressing the program objective.

¹³² For more information see the Department of Finance and Deregulation's website, available from: <<http://www.finance.gov.au/financial-framework/financial-management-policy-guidance/outcomes-arrangements.html>> [accessed 19 December 2012].

¹³³ *Portfolio Budget Statements 2012–13: Agriculture, Fisheries and Forestry Portfolio*, available from: <<http://www.budget.gov.au/2012-13/content/pbs/html/index.htm>> [accessed 21 September 2012].

Table 6.1

PBS information related to the Domestic Compliance Program

Program 1.1 Objective	Deliverables	Key performance indicator	Target
To sustainably manage Commonwealth fisheries and deter illegal fishing in the Australian Fishing Zone	<p>AFMA pursues ecological sustainability and maximising the net economic returns to the Australian community from fisheries management by <i>[inter alia]</i>:</p> <ul style="list-style-type: none"> • conducting risk-based compliance programs to deter illegal fishing in AFMA managed fisheries – review annual domestic compliance risk assessment 	% of treatments implemented to meet priority domestic compliance risks identified through the domestic compliance risk assessment	90% in 2012–13 and forward years

Source: Portfolio Budget Statements 2012–13: Agriculture, Fisheries and Forestry Portfolio, p. 217.

6.19 The key performance indicator (KPI) included in the 2012–13 PBS, which was the first PBS to include a specific indicator relating to the centralised Domestic Compliance Program, focuses on the implementation of risk treatments. Given AFMA’s strong focus on measuring performance at the risk level, it is understandable that the Authority emphasises this aspect in the PBS.

6.20 The current indicator does not, however, provide stakeholders with performance information that demonstrates the program’s effectiveness. Further, the existing performance information does not sufficiently demonstrate how the Domestic Compliance Program is contributing to the achievement of the Program 1.1 outcome. The establishment of a clear objective for the Domestic Compliance Program (that is aligned to the Program 1.1 Objective), will better place AFMA to use performance measures to monitor and report performance, including through the PBS and annual reports. There would be benefit in AFMA revisiting its Domestic Compliance Program KPI in the PBS in light of suggested enhancements to the performance measurement framework.

6.21 AFMA informed the ANAO that, through its membership of the National Fisheries Compliance Committee, funding has been sought from the Fisheries Research and Development Corporation for a research program on developing KPIs for fisheries compliance. While this is an important initiative to pursue, there is scope for AFMA to progress the enhancement of its

performance measurement framework for the Domestic Compliance Program in the interim.

Proposed internal review of the Domestic Compliance Program

6.22 In July 2010, AFMA commenced an internal review of the centralised compliance model. The review was to cover the first 12 months of the centralised approach and to include the analysis of data on inspections and investigations, with the aim of demonstrating that the centralised model was operating effectively. However, AFMA experienced difficulties in accessing and verifying the historical data required to complete the statistical analysis planned in the review. Under the decentralised compliance model, state/territory fisheries agencies had provided inspection and enforcement information to AFMA. As highlighted in the 2009 audit, this information was held in a number of electronic and hard-copy files across the Authority. Cross-checking of this data with other information, for example logbooks held by AFMA for the corresponding periods, highlighted discrepancies in the data. Ultimately, AFMA decided not to proceed with the review.

6.23 Notwithstanding the identified difficulties in accessing historical data, there would be merit in AFMA regularly evaluating the effectiveness of the Domestic Compliance Program. Such an evaluation would assist the Authority to identify those aspects of the program where improvements are warranted. The enhancement to the performance measurement framework, outlined earlier, will also better position the Authority to evaluate the program.

Performance reporting

6.24 AFMA's domestic compliance activities and outcomes are reported through a range of internal and external reports. As noted earlier, the value of performance and management reporting is enhanced where measures and targets are established, and performance data is collected over time.

Internal Reporting

6.25 A monthly report on the Domestic Compliance Program, coordinated by the National Compliance Strategy Section, is the key internal and external reporting document. The report is provided to the OMC for endorsement and subsequently provided to AFMA senior executives. The reports include information on:

- the general deterrence program—port attendance and inspections as a percentage of landings;
- intelligence trends and information reports;
- prosecution activity—matters commenced, open and closed, caseloads and outcomes of enforcement actions;
- aerial surveillance patrols (where undertaken); and
- a status update for the CRMTs established to address both endemic and sporadic risks.

6.26 The Fisheries Operations Branch uses the monthly reports as the basis for additional briefings for AFMA’s CEO and senior executives, for example Senate Estimates briefs, and reports to the AFMA Commission (which meets at least quarterly). The monthly reports also assist AFMA to complete an internal end-of-year review of program activities and outcomes.

External Reporting

6.27 Information on the Domestic Compliance Program is reported to external stakeholders and the public through a number of reports, which are outlined in Table 6.2 on the following page.

Table 6.2**External reporting**

Report	Purpose	Frequency
Ministerial/Parliamentary Secretary Report	This report describes operational activity undertaken by AFMA for foreign and domestic compliance. The Minister and/or the Parliamentary Secretary are also informed of critical matters as they occur.	Bi-monthly
Domestic Compliance Report	State and territory fishery agencies are provided with a copy of the internal monthly domestic compliance report. This report provides information on AFMA's compliance activities and intelligence trends. AFMA plans to revise the domestic compliance report and provide it more broadly to stakeholders with an interest in fisheries management.	Monthly
AFMA <i>Update</i> (Approximately 600 subscribers and available on the AFMA website)	The AFMA <i>Update</i> is a monthly newsletter produced to inform stakeholders of activities across AFMA. The AFMA <i>Update</i> also has an educational role by assisting industry and the general public to become more aware of legislative requirements, recent administrative changes and compliance activities.	Monthly
Annual Report	Provides details of the operations and performance of AFMA for each financial year, as forecast in DAFF's PBS.	Annually

Source: ANAO from AFMA information.

Discrepancies in reported information

6.28 The ANAO's analysis highlighted discrepancies between the internal and external reports. For example, AFMA's 2010–11 Annual Report indicated that there were 176 vessel inspections undertaken. However, the internal end-of-year report for the program stated there were 163 inspections undertaken. The ANAO also noted differences between the number of compliance activities provided in the monthly reports and those included in reports generated by ASIS and JADE.

6.29 Given the need for accurate data to plan compliance activities, inform management decision-making and to assess and report on program performance, it is important for AFMA to establish appropriate controls and data validation processes. The expanded use of business support systems, particularly the JADE intelligence and case management system, should assist AFMA to better manage compliance data. AFMA informed the ANAO that it is

implementing processes to improve and validate its data management and reporting processes.

Conclusion

6.30 AFMA's decision to adopt a centralised model for the Domestic Compliance Program was designed to achieve cost savings and generate greater efficiencies. AFMA has achieved a modest decrease in the budgeted expenditure for the Domestic Compliance Program since 2009, with the budget reduced from approximately \$3 million to \$2.8 million. However, expenditure on the program now exceeds (by \$250 000 in 2011–12) the amount expended on domestic compliance under the decentralised model. AFMA advised that the primary reason for this increase is because state fisheries agencies did not expend the budgeted amount allocated to them under the decentralised model. Since the introduction of the centralised compliance model, with AFMA assuming responsibility for the delivery of compliance activities, actual expenditure for the program more closely aligned with the budget.

6.31 AFMA is collecting a range of data to measure the effectiveness of its compliance activities in addressing key compliance risks. The focus of AFMA's performance measuring activities is currently directed at its risk level outcomes (which are addressed by CRMTs). While AFMA has established performance measures for some compliance activities, not all CRMT activities were supported by performance measures and targets, nor were the general deterrence inspections or education and awareness activities. AFMA has indicated that it is working to develop measures and targets across all its key compliance activities. Establishing an overall program objective and performance measures will better position AFMA to measure, assess and report on the effectiveness of the program over time.

Recommendation No.2

6.32 To better position the Australian Fisheries Management Authority to measure, assess and report on the effectiveness of its Domestic Compliance Program, the ANAO recommends that the Authority:

- define a clear and consistent objective(s) for the program; and
- develop new measures and targets that cover key compliance risks and associated activities, where necessary.

AFMA's response: *Agreed*

Recommendation No. 2 (Dot Point 1): AFMA agrees that the articulation of a clear and well defined objective should underpin the performance management and reporting framework. AFMA welcomes the ANAO's observation that a range of overarching objectives are currently contained within AFMA documents such as the AFMA Corporate Plan, annual operating plans, and the AFMA Website. AFMA is doing further work to ensure these are completely consistent and are also included in key documents such as the Domestic Compliance and Enforcement Policy.

Recommendation No. 2 (Dot Point 2): AFMA welcomes the ANAO's acknowledgement of the work done by AFMA in collecting a range of data to measure the effectiveness of actions taken to address key compliance risks. In addition to the measures and targets in place during the time of the ANAO audit, for the risks associated with vessels not operating a Vessel Monitoring System, fishing or navigating in closed areas and not reconciling over quota catches, AFMA has undertaken further work to establish performance measures for its general deterrence program, and has documented the process for assessing outcomes of the risk treatment plans for both the Quota Evasion and Threatened and Endangered and Protected species treatment programs, through the use of a set of repeatable assessment/measurement programs. Further work is planned in developing performance measures for education and awareness activities.

6.33 AFMA has established an appropriate reporting framework to communicate information on the Domestic Compliance Program to internal and external stakeholders, comprising: monthly internal and external reports; Ministerial/Parliamentary Secretary reports; annual reports and the AFMA *Update* newsletter. However, there were issues relating to the integrity of performance data. There is further scope for AFMA to improve its existing reporting arrangements by providing additional information on program performance and strengthening data controls and validation processes.



Ian McPhee
Auditor-General

Canberra ACT
5 February 2013

Appendices

Appendix 1: Response from the Australian Fisheries Management Authority

15 JAN 2013



Australian Government
Australian Fisheries Management Authority

MNMT2013-00009

15 January 2013

Ms Barbara Cass *Cass 15/1/2013*
Group Executive Officer
Performance Audit Services
GPO Box 707
CANBERRA ACT 2601

Dear Ms Cass

AFMA thanks the Australian National Audit Office (ANAO) for its audit of the administration of the Domestic Fishing Compliance Program.

The audit report notes the significant achievements and considerable work undertaken to implement the recommendations of the ANAO's 2009 audit and recommends areas where there is further scope for strengthening the program. AFMA agrees, with some qualifications, with both of the ANAO's recommendations and has already begun work on activities to implement the changes required to address them or has incorporated such work into its planning schedule.

AFMA welcomes the ANAO's overall assessment that AFMA has developed and implemented effective arrangements for administering its centralised Domestic Compliance Program. AFMA also welcomes the ANAO's acknowledgement that compliance activities are now targeted at reducing or eliminating key risks based on compliance intelligence, risk assessment frameworks and effective planning programs. This ensures delivery of the program is in accordance with AFMA internal policies and guidelines, and that enforcement actions are applied consistently.

The shift to a centralised compliance model in July 2009 was a significant change to the way AFMA conducts its business and undertakes its National (Domestic) compliance role. In its previous report on the 'Management of Domestic Fishing Compliance', the ANAO made four key recommendations. As noted in this more recent audit AFMA has addressed, or made extensive progress towards addressing, all of the four recommendations. Some of the key achievements include the:

- development and adoption of the 'AFMA Domestic Compliance and Enforcement Policy' in 2010 (note: this Policy is currently under review)
- formation of the Operational Management Committee (OMC) to oversee the domestic compliance functions
- development and publication of annual compliance programs in 2010-11, 2011-12 and 2012-13
- implementation of the risk based compliance program using publically documented risk assessment methodologies
- establishment of diverse Compliance Risk Management Teams (CRMTs) to target

Canberra Office
Box 7051
Canberra Business Centre ACT 2610
Phone: (02) 6225 5555
Fax: (02) 6225 5500
ABN: 61 098 497 517

Darwin Office
GPO Box 131
Darwin NT 0801
Phone: (08) 8843 0333
Fax: (08) 8942 2887

Thursday Island Office
PO Box 376
Thursday Island QLD 4875
Phone: (07) 4089 1990
Fax: (07) 4089 1277

AFMA Direct 1300 723 621

www.afma.gov.au



Protecting our fishing future

- prioritised risks through a range of innovative programs
- establishment of a comprehensive planning framework to aid in the delivery of the domestic compliance program
- increased resourcing of the compliance intelligence function
- development of intelligence reports and analytical tools to support the risk based compliance approach
- implementation or enhancement of compliance support tools, such as vessel monitoring systems
- implementation of a new intelligence and case management system
- enhancement of frameworks to assist in ensuring consistency in enforcement actions
- development of performance measures for key compliance risks and identification of specific targets where possible
- implementation of a comprehensive continuous program involving the internal Quality Assurance Reviews (QARs) on key aspects of the National (Domestic) Compliance Program.

With respect to the two recommendations within the latest report we have the following comments.

Recommendation No. 1: Agreed. AFMA welcomes the ANAO's acknowledgement that the move to a biennial risk assessment is likely to result in further efficiencies for AFMA. Previously, the annual risk assessment was resource intensive and time consuming and, considering limited resources and that the key risks had not changed significantly in the preceding years, the decision was made to move to biennial assessments.

AFMA agrees that it is important to continue to monitor existing and emerging risks between formal assessments. In order to enhance the mechanisms currently in place to monitor existing and emerging risks between biennial assessments, AFMA is refining its processes to incorporate quarterly collation and a more structured assessment of information routinely collected as part of risk monitoring activities.

All information obtained from the ongoing risk monitoring work already undertaken by the individual Compliance Risk Management Teams, the cross analysis of AFMA data holdings, trends identified through intelligence information reports and the information obtained from stakeholders through direct engagement in the field will now be routinely reviewed to further assist in ensuring the implementation of appropriate mitigation strategies for emerging risks where required.

Recommendation No. 2 (Dot Point 1): Agreed. AFMA agrees that the articulation of a clear and well defined objective should underpin the performance management and reporting framework. AFMA welcomes the ANAO's observation that a range of overarching objectives are currently contained within AFMA documents such as the AFMA Corporate Plan, annual operating plans, and the AFMA Website. AFMA is doing further work to ensure these are completely consistent and are also included in key documents such as the Domestic Compliance and Enforcement Policy.

Recommendation No. 2 (Dot Point 2): Agreed. AFMA welcomes the ANAO's acknowledgement of the work done by AFMA in collecting a range of data to measure the effectiveness of actions taken to address key compliance risks. In addition to the measures

and targets in place during the time of the ANAO audit, for the risks associated with vessels not operating a Vessel Monitoring System, fishing or navigating in closed areas and not reconciling over quota catches, AFMA has undertaken further work to establish performance measures for its general deterrence program¹, and has documented the process for assessing outcomes of the risk treatment plans for both the Quota Evasion and Threatened and Endangered and Protected species treatment programs, through the use of a set of repeatable assessment/measurement programs². Further work is planned in developing performance measures for education and awareness activities.

AFMA will continue to pursue activities to enhance the compliance measurement framework through the development of both quantitative and qualitative performance measures to cover key risks and collectively assess performance against the overarching program objective. In doing so, AFMA recognises that it is the overall level of compliance achieved, rather than a mere quantification of outputs or activities, that will determine the success of the program. As noted in the report AFMA, through its membership of the National Fisheries Compliance Committee, is pursuing opportunities to progress work to develop key performance indicators and measures for federal and state fisheries compliance programs across Australia.

Finally, 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 taken. Thank you for the opportunity to comment on the audit

Yours sincerely



Dr James Findlay
Chief Executive Officer

¹ As noted by ANAO – Pg. 108-109 (paragraphs 6.14, 6.15 & 6.16)

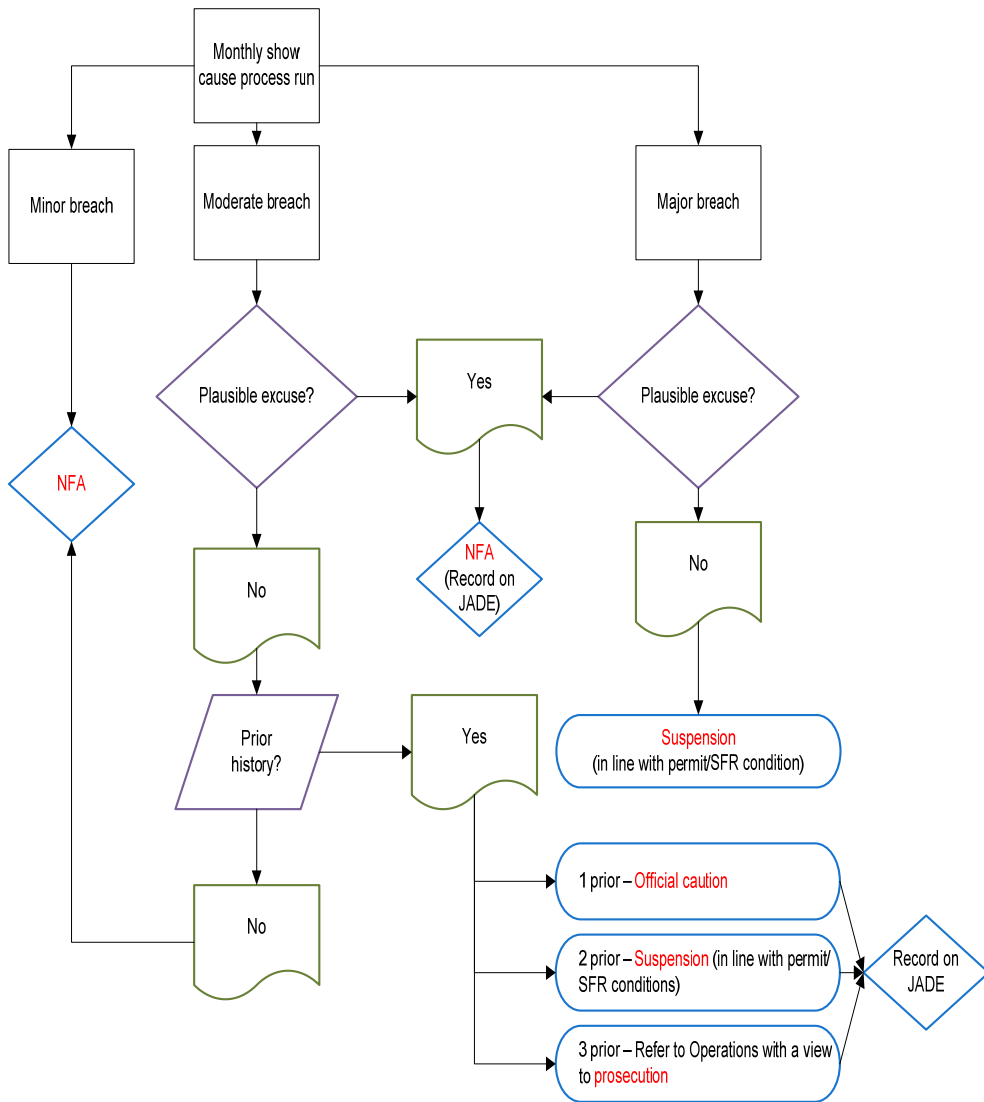
² Note: Both the TEP and Quota Evasion outcome assessments are dependent on the status of the treatment programs (i.e. how far along the treatment program is) and are likely to be conducted in 2013-14.

Appendix 2: Recommendations from ANAO Audit Report No. 47 2008–09

Number	Recommendation
1	<p>To facilitate the effective management of quota within Commonwealth fisheries, the ANAO recommends that AFMA:</p> <ul style="list-style-type: none"> (a) review the extent to which legislative requirements, policy imperatives and administration 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. <p>AFMA response: Agreed</p>
2	<p>To improve the quality, consistency and targeting of its inspection program, the ANAO recommends that AFMA:</p> <ul style="list-style-type: none"> (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. <p>AFMA response: Agreed</p>
3	<p>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.</p> <p>AFMA response: Agreed</p>
4	<p>To improve the effectiveness of its centralised approach to domestic fishing compliance, the ANAO recommends that AFMA:</p> <ul style="list-style-type: none"> (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. <p>AFMA response: Agreed</p>
5	<p>To enable AFMA to more effectively meet its legislative reporting requirements, the ANAO recommends that it review its planning and reporting framework to:</p> <ul style="list-style-type: none"> (a) develop, where applicable, measurable intermediate outcomes linked to its overall outcomes; and (b) expand its deliverables to include relevant quantitative performance measures for its domestic compliance function. <p>AFMA response: Agreed</p>

Source: ANAO, *Management of Domestic Fishing Compliance*, Report No.47, 2008–09. The blue shaded boxes indicate the recommendations examined in this current audit.

Appendix 3: Navigating/fishing in closures enforcement escalation flowchart



Source: AFMA.

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