



Australian Government

Australian Fisheries Management Authority

FISHERIES MANAGEMENT PAPER

FMP No. 11

SCIENTIFIC PERMITS

February 2009

AFMA Policy for processing and approving scientific permit applications

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1 Purpose

This Paper sets out a policy for the granting of scientific permits by AFMA. The purpose of the scientific permit policy is to provide consistency on the types of research supported (priority areas), eligibility criteria and approval process. The policy also defines the scope within which AFMA grants scientific permits. Clearly defined procedural guidelines assist in improving coordination between the various sections in AFMA when approving and processing scientific permits. Section 33 of the FMA provides the legislative basis for granting scientific permits and should be referred to, along with this policy.

In this policy, the ‘FMA’ refers to the *Fisheries Management Act 1991* and the ‘FAA’ refers to the *Fisheries Administration Act 1991*.

2 Introduction

This policy applies to all fish resources under AFMA’s jurisdiction as set out in the FMA and various Offshore Constitutional Settlement arrangements with a State or Territory. While normally applying to fish resources within the Australian Fishing Zone (AFZ), this policy may also apply to:

- fishing activities (or proposed activities) outside of the AFZ (that is, on the high seas); or
- in waters relevant to a State or Territory over which AFMA has jurisdiction.

3 Types of Research

AFMA receives applications for scientific permits that are predominantly for ‘applied research’ and generally relate to fish stock assessment, gear technology and mitigation of bycatch. Periodically, requests are received for broad based ecological, biological and, occasionally, geological research where there is the likelihood of incidental capture of fish. Under this policy, applications are to be categorised as follows:

Table 1: Categories of scientific research that may be covered by a scientific permit

Category	Description of scientific research	Examples of scientific research	Process within AFMA for endorsing scientific research and issuing scientific permits
1	AFMA Endorsed Research – mainstream fisheries research, particularly surveys that AFMA run as part of research proposals.	Acoustic or abundance surveys. Research to evaluate the effectiveness of closures. Tagging studies.	(a) AFMA Research Committee (ARC) endorsement of research(1); followed by S. 33 Delegate approval of scientific permit. or (b) AFMA Management endorsement of research (2); followed by S. 33 Delegate approval and grant of scientific permit
2	AFMA Endorsed Research – gear trials	TEDs in the NPF. Bird mitigation measures in the ETBF. SEDs in the SETF. Measures trialled as part of the Bycatch Reduction Initiative.	(a) (ARC) endorsement of research(1); followed by S. 33 Delegate approval and grant of scientific permit. or (b) AFMA Management endorsement of research (2); followed by S. 33 Delegate approval and grant of scientific permit

3	Other Research endorsed by AFMA – other research that doesn't fit into categories 1 and 2 above.	Collection of spawn in the NPF.	(a) (ARC) endorsement of research (1); followed by S. 33 Delegate approval and grant of scientific permit. or (b) AFMA Management endorsement of research (2); followed by S. 33 Delegate approval and grant of scientific permit
4	Non AFMA Research/Teaching/Training – research/teaching/training that has a biological/oceanographic focus but does/can impact on the target, byproduct and bycatch species of a fishery.	AMC student education on the vessel 'Bluefin'. CSIRO research using the vessel 'Southern Surveyor'	(a) AFMA Management endorsement of research/teaching/training (2); followed by S. 33 Delegate approval and grant of scientific permit
5	Non AFMA Research – research that has a geological or biological focus that may have an incidental impact on fish as defined in the FMA	AGSO geological surveys. Foreign vessels sampling the water column in the AFZ.	(a) AFMA Management endorsement of research (3); followed by S. 33 Delegate approval and grant of scientific permit

Notes:

- (1) The AFMA Research Committee (ARC) and the Commonwealth Fisheries Research Advisory Body (ComFRAB) endorse/assess a number of scientific research projects through AFMA's Annual Cycle for Research. A rigorous process is used to determine which projects are supported. When an application is made for a scientific permit for one of these projects, no further assessment is required of the scientific merit of the project.
- (2) In addition to the process at (1) above, AFMA Management endorses some scientific research projects each year on the basis that they will help AFMA meet its legislative objectives by delivering particular benefits to a fishery or fisheries.
- (3) AFMA Management becomes involved in the approval process for some geological surveys in the Australian Fishing Zone (AFZ) where there is a significant risk of the incidental capture of fish

4 Exploratory Fishing

Scientific permits are not issued for exploratory fishing. Proposals for exploratory fishing are dealt with under a separate AFMA policy entitled 'exploration of fish resources (FMP No. 5)'. Fishing is defined as exploratory where fishing operations target a species (or multiple species), by a method and in an area not covered by current management arrangements.

5 Procedural Framework

Legislative requirements

The legislative requirements for the grant of a scientific permit are set out in s33(1) of the FMA:

“AFMA may, upon application being made in the approved form, grant to a person a scientific permit in respect of a specified boat (including a foreign boat) authorising the use of the boat by that person, or a person acting on that person's behalf, for scientific research purposes in a specified area of the AFZ or a specified fishery.”

The following must be given due consideration before AFMA grants a scientific permit (refer Attachment A – Decision tree for approving and processing scientific applications):

1. Does the proposed scientific activity require a scientific permit for the activity to be permitted under the FMA?

Whether a scientific permit is required depends on whether:

(a) The proposed activity is prohibited under the FMA unless authorised by a concession issued by AFMA:

- Paragraph 95(1)(b) of the FMA establishes the following offence:

“A person must not in the AFZ, have a fish in the person’s possession or under his or her control in a boat at a time when the taking of the fish was not authorised by a fishing concession or a scientific permit”.

If the proposed activity does not involve the taking of fish, or is not reasonably expected to involve the taking of fish, then no AFMA concession is required.

The definition of fish is broadly defined in the FMA (Section 4) and includes all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles. Plankton and other marine organisms residing in the water column fall within the definition of fish in section 4 and a permit is therefore required if it is considered likely that these species will be taken by the proposed activity.

A definition of sedentary organism is covered under the FMA, being an organism of a kind declared by Proclamation under section 12. Given section 12, section 4 must be read to exclude sedentary marine organisms other than sedentary marine organisms which are the subject of a section 12 proclamation. In effect, section 12 proclamations have the effect of extending the application of the FMA to sedentary species both within and to any areas outside the AFZ that are referred to in the Proclamation. This interpretation is supported by the Explanatory Statement to the *Fisheries Management Bill 1991* (clause 10).

There is presently one section 12 proclamation in force, made on 12 December 1995. That proclamation lists the sedentary organisms to which the FMA applies (i.e. the organisms listed are fish for the purposes of section 4).

(b) The activity is prohibited unless authorised by AFMA or whether the proposed activity falls within current fishery management arrangements;

- If the activity does fall within fishery management arrangements, the permit must be issued under the relevant management plan; or
- If the proposed activity falls outside the fishery management arrangements, whether (1) the activity satisfies the requirements of section 33, and (2) it is considered that the discretion under that provision should be exercised in favour of the application for a scientific permit.

2. Does the proposed activity constitute ‘scientific research’?

Research proposals are categorised into one of five categories (see Table 1). This categorisation is designed to facilitate the delegate’s decision on whether or not an application for a scientific permit is for scientific research purposes.

AFMA's policy on what constitutes 'scientific research purposes' is as follows:

(a) ARC Research – Categories 1 to 3

If a research proposal (including a research plan) has been approved by the ARC, the proposal will automatically be treated as being for a 'scientific research purpose' (that is, because the proposal has been approved by the ARC the delegate can be satisfied that the proposed activity will be conducted according to established scientific method).

(b) Non ARC Research – Categories 1 to 4

The proposal will need to meet the following test to satisfy the delegate that the proposed activity is for a 'scientific research purpose':

Is the activity to be conducted consistent with an established scientific method? To be considered there must be a comprehensive research plan, based on an established scientific method, which also includes planned reporting of outcomes and planned dissemination of results. The delegate can obtain further advice from the relevant Senior Manager in the fishery.

The fact that a proposal may also have a commercial purpose must be given due regard but does not preclude a scientific permit being issued. However, if the application involves the testing of gear, the delegate should consider whether a fishing permit granted under s. 32(4) of the FMA would be more appropriate.

Gear trials (category 3) can satisfy the requirements for a scientific permit by having a plan approved as part of AFMA's Bycatch Reduction Initiative. Advice on whether a proposed gear trial is to be approved as part of AFMA's Bycatch Reduction Initiative should be obtained from the relevant fishery manager and research manager.

(c) Non ARC Research – Category 5

The proposal will need to satisfy the delegate that it is for a 'scientific research purpose'

For example, if the scientific research has been approved by a Government scientific research organisation, eg CSIRO, AGSO, then the delegate could ordinarily be satisfied that the proposed activity is to be conducted according to established scientific method. In other instances, the delegate may need to obtain additional information from the applicant, to be satisfied that the proposal is for a scientific research purpose.

3. Is the application made on the approved form?

The application for a scientific permit must be submitted in the form approved by the relevant AFMA delegate. A copy of the approved form is attached.

4. Does the application provide sufficient information as AFMA reasonably requires for a proper consideration of the application (under s33(2))?

If the application does not provide sufficient information (i.e. does not address all questions on the approved form), the delegate should not proceed to consider the application but should return the application to the applicant with the request that further information must be provided if the applicant wishes AFMA to consider the application.

5. Should the application be approved?

Part A

If each of the above requirements are met – i.e. the application is on the approved form, it provides sufficient information for the application to be assessed, and the proposed activity is for a ‘scientific research purpose’ - the next step is for the delegate to decide whether to approve the application.

In order to approve an application that falls within categories 1 to 4, the delegate must be satisfied that the proposed activity would assist AFMA in pursuing its legislative objectives.

ARC research/research endorsed by AFMA management

Subject to Part B below:

Where the proposed research has been endorsed by the ARC, the delegate can be satisfied by the fact that the research is approved ARC research and that the proposed research will assist AFMA to pursue its legislative objectives (as set out in s3 of the FMA and s6 of the *Fisheries Administration Act 1991* (the FAA)).

Where the research has been endorsed by AFMA Management, the delegate can be satisfied that the proposed research will assist AFMA to pursue its legislative objectives. This is because, consistent with AFMA’s functions, AFMA Management only endorse a scientific research project where it is satisfied that the project will help AFMA meet its legislative objectives by delivering particular benefits to a fishery or fisheries.

Non AFMA Research (categories 4 and 5)

Subject to Part B below:

The delegate must consider whether the proposed activity would assist AFMA to meet its legislative objectives. In the case of category 5 research, for the application to be approved it is sufficient for the delegate to be satisfied that the research would not be inconsistent with, or contrary to, AFMA’s legislative objectives. The delegate must also be satisfied that there is a possibility that fish will be taken during the proposed activity.

In this respect, the objective that is most likely to be relevant is the objective specified in paragraph 3(1)(b) of the FMA and paragraph 6(b) of the FAA:

”ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development (which include the exercise 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.”

Part B

If the delegate is satisfied that the proposed scientific research would assist AFMA to pursue its legislative objectives (or in the case of category 5 research, would not be inconsistent with those objectives) the proponent should be granted a permit, subject to the following:

- There are no other factors that would likely affect approval of the application. Such factors would include:

- i. Compliance issues involving the applicant (individual/body corporate) or someone else who it is proposed will be involved in the research – for example, if the applicant: is considered by AFMA of having breached conditions on another fishing concession held by him or her; or, is suspected of having breached such conditions, and is the subject of an investigation by Compliance; or, is the subject of a brief referred to the CDPP by Compliance; or is before the court for an alleged offence under the FMA; or, has been convicted of any offence under the FMA;
 - ii. Outstanding levies, observer fees or contributions to other AFMA research projects;
 - iii. There is reason to believe that a requirement of a law of the Commonwealth, or of a State or Territory, has not been complied with in relation to the boat;
- In assessing an application nominating a foreign boat to undertake the research, AFMA will consider the level of Australian involvement in the scientific research project, the particular benefits that the foreign boat will bring to the scientific research and whether AFMA will be provided with the results of the research in its waters.

The terms '*foreign boat*', '*Australian boat*', '*Australian flagged boat*' and '*Australian resident*' are defined in section 4 of the FMA.

6 Existing permit holder in the relevant fishery

For compliance purposes, a person issued with a scientific permit should where possible be the holder of an existing fishing permit, issued under section 32 of the FMA, or a statutory fishing right (SFR) issued under section 22 of the FMA.

Therefore, as a general rule, the applicant should be an existing concession holder in the fishery where the applicant is proposing to use the scientific permit. AFMA recognises that this may not always be possible – proposed exceptions to this general rule must be addressed in the application.

If the activity does not involve the holder of an existing fishing concession, any scientific permit that is approved should be issued to the skipper of the vessel or the Principal Investigator of the scientific research project.

7 Procedure within AFMA

The AFMA Licensing section has the sub-delegation for approving and processing applications for scientific permits. The decision to approve a scientific permit will be in accordance with AFMA policy and will also rest heavily on advice from the relevant Fishery Section within the Fisheries Branch. Advice should also be sought from the Environment and Research Section within Fisheries Branch and the Domestic Compliance area of the Operations Branch. However, while a delegate should take into account the views of the relevant Fishery Section within the Fisheries Branch, the Environment and Research Section within Fisheries Branch, and other relevant areas, it is essential that the delegate exercise an independent discretion.

Applicants are required to provide 10 working days notice to enable proper consideration of their application.

The AFMA Observer section should be advised as soon as the application is approved in case their services are required. Fisheries management should be advised once approval has been given.

8 Commercial activities

Any scientific activity undertaken as part of a scientific permit must be undertaken in a manner consistent with the conditions on the permit which may make reference to other AFMA policies including those on bycatch and discarding. Paragraph 33 (5) (b) of the FMA states:

‘Without limiting the operation of subsection (4), the conditions that may be specified in a scientific permit include conditions relating to:

(b) the sale or disposal of fish taken during the course of activities carried out under the permit.’

Assessment of eligibility to sell either catch and/or bycatch from operations conducted under a scientific permit will be based on AFMA’s ‘Research Catch and Effort Allowance Policy’

9 Cost recovery

The applicant is responsible for the cost of the assessment and processing of scientific permits, upon application on a fee for service basis.

10 Reporting process

Scientific permit holders are required to submit a summary report to AFMA at the conclusion of the research. The relevant fishery manager is responsible for disseminating the summary report to relevant stakeholders in the fishery and for advising compliance of the receipt of the report. The relevant AFMA fishery manager, in liaison with the research manager, has the discretion to set the reporting requirement. If the required summary report is not provided then the applicant may not be issued with a scientific permit in the future.

11 Transferability

Scientific permits are non-transferable.

ATTACHMENT A

Decision tree for processing and approving scientific applications

