



Australian Government

Australian Fisheries Management Authority



# Fisheries management paper 12

 INFORMATION DISCLOSURE

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## Document Change History

Revision Date	Version Number	Document Changes
21 May 2014	1.1	Minor changes to make the Policy consistent with changes to the <i>Privacy Act</i> . These include changes to Clause 2 relating to the definition of personal information and inserting new clauses for 6.1.2a) and b)



## 1. Purpose

This document sets out the Australia Fishery Management Authority's (AFMA) policy and procedures for disclosing information it collects.

## 2. Definitions

For the purposes of this policy "**personal information**" has the same meaning as in the *Privacy Act 1988* which is, "information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not."

As under the *Privacy Act*, it does not include information that is already (properly) in the public domain.

## 3. Background

### 3.1 Need

In performing its functions, AFMA *collects* a range of information. Information collected by AFMA is official information which is held on behalf of the Australian community. This does not mean that all of the information collected by AFMA may be *disclosed*. No information collected by AFMA can be disclosed, unless this would be in accordance with one of AFMA's functions or powers. Further, much of the information collected by AFMA is provided by holders of Commonwealth fishing concessions and can contain both personal information and information that has commercial value.

Therefore in deciding whether to disclose information it has collected, AFMA must ensure that:

- it acts consistently with the *Fisheries Administration Act 1991* (FA Act) and *Fisheries Management Act 1991* (FM Act);
- it acts consistently with the *Privacy Act 1988*, the purpose of which is to protect the privacy of personal information; and
- where personal or commercially valuable information is provided, measures are in place, as appropriate, to protect the information.

This policy establishes a decision making framework to ensure that decisions to disclose information are, consistent, legally sound and that proper account is taken of all relevant considerations.

### 3.2 AFMA's ability to disclose information it has collected

AFMA's legislation provides AFMA with both broad and specific authority to disclose information in the exercise of its powers and performance of its functions.

A number of AFMA's functions and powers *specifically* authorise the disclosure of information. For example:

- FA Act:      paragraph 7(1)(g) - AFMA may consult and exchange information with State, Territory and overseas bodies having functions similar to AFMA's functions;
- paragraph 7(1)(gb) - AFMA may disclose, *as authorised* under s7(4), information (including personal information) relating to:
- (a) possible breaches of laws of Australia or of a foreign country;



- (b) the control and protection of Australia’s borders;
- (c) the administration and management of fisheries or marine environments; or
- (d) research or monitoring conducted, or proposed to be conducted, into fisheries or marine environments.

Disclosure under paragraph 7(1)(gb) is authorized if done in accordance with the FA Act, the FM Act, the *Torres Strait Fisheries Act 1984*, or regulations made under one of those Acts.

FM Act: section 167 - AFMA may publish or make available, in any way it thinks fit, statistics compiled from logbooks or other sources.

section 108B - The Minister may disclose (or authorise a prescribed agency to disclose on the Minister’s behalf) information relating to fishing activities that may involve a breach of the laws of Australia or a foreign country to the government of a foreign country or the other specified bodies.

section 167B - AFMA may disclose VMS information to Customs.

AFMA may also disclose information in performing its other functions, where disclosure is necessary for the performance of those functions. This broader authority is conferred by FA Act s8, which provides that AFMA “may do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions”. For example, a central function of AFMA is to “devise management regimes in relation to Australian fisheries” (FA Act s7(1)(a)). In performing this function, it is necessary to disclose information AFMA has collected to external bodies (such as research providers or Independent Allocation Advisory Panels) to conduct research on AFMA’s behalf.

In performing its functions, AFMA is required to pursue its objectives (in FM Act s3, and FA Act s6). Therefore, a decision to disclose information must be consistent with pursuit of those objectives. In addition to the objectives of implementing efficient and cost-effective fisheries management on behalf of the Commonwealth (FA Act paragraph 6(a)) and ensuring that the exploitation of fisheries resources are conducted in a manner consistent with the principles of ESD (FA Act paragraph 6(b)), these objectives include ensuring accountability to the fishing industry and to the Australian community in AFMA’s management of fisheries resources (FA Act paragraph 6(d)).

## 4. Objective

To guide AFMA decisions to disclose information in accordance with its functions and powers, including powers specified in regulations made for the purposes of section 7(4) of the FA Act.

## 5. Scope

This policy applies to all AFMA decisions to disclose information already collected by AFMA, as well as information to be collected in the future.



## 6. Policy guidelines and procedures

### 6.1 Guidelines

6.1.1 AFMA will only disclose information it collects where it is:

- a) authorised by a provision of the FA Act or the FM Act that specifically authorises the disclosure of information (e.g. paragraphs 7(1)(g), (ga) and (gb) of the FA Act); or
- b) is otherwise required to perform a function where disclosure of information is not specifically authorised (FA Act section 8).

Note: The FA Act and FM Act provide that in performing its functions AFMA must pursue its objectives set out in FA Act s6 and FM Act s3.

6.1.2 In deciding whether to disclose *personal* information, AFMA will ensure the decision to do so is consistent with the *Privacy Act 1988*. This means that AFMA will not disclose personal information to a person, body or agency unless:

- a) the individual concerned would reasonably expect that AFMA would disclose the information for a purpose other than the purpose for which it was collected and, if the information is sensitive information, it is directly related to the primary purpose for which the information was collected.; or
- b) the individual concerned would reasonably expect that AFMA would disclose the information for a purpose other than the purpose for which it was collected and, if the information is not sensitive information, it is related to the primary purpose for which the information was collected: or
- c) the individual concerned has consented to the disclosure; or
- d) AFMA believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to life or health of the individual concerned or of another person; or
- e) the disclosure is required or authorised by or under law; or
- f) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.

6.1.3 To provide accountability to the fishing industry and Australian community in AFMA's management of fisheries resources, AFMA may publicly disclose the following fishing information for all fisheries, so far as it is consistent with Australia's obligations under international law:

- a) total fishing season catch and effort statistics for each species<sup>1</sup> aggregated by fishing method, sector and/or fishery;
- b) the total area of waters fished within a season by fishery, sector and/or method, reported at a minimum spatial resolution of one degree square. This does not include catch or effort information where the data represents less than five vessels; or
- c) any other catch and effort information, including spatial information, where the information represents data from five or more vessels.

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<sup>1</sup> Includes: target, byproduct, bycatch and Threatened, Endangered or Protected species



- 6.1.4 AFMA may publicly disclose more detailed fishing information than that outlined in (6.1.3) where:
- a) the information has or will be used to guide fishery management decisions (for example; research or information supporting the implementation of harvest strategies, Stock Recovery Plans, stock-based management measures); or
  - b) it is used to ensure that Australia meets its obligations under international law (for example, disclosure to Regional Fishery Management Organisations).

## ***6.2 Procedures for disclosing information that is not available in public domain***

- 6.2.1 Where information concerns the activities of individual operators that may have commercial value (in that the disclosure of the information may diminish the value of the information to the person who provided it to AFMA), AFMA will, as far as possible, having regard to the purpose of the disclosure, provide information in a form that will protect information.
- a) For example, the information may be provided in an aggregated form.
- 6.2.2 All decisions to disclose information will be made by officers who have been authorised to do so by the CEO (including, if required, under an instrument of delegation).
- 6.2.3 Where it has been requested to provide information, AFMA will make inquiries of the requesting person, body or agency, as appropriate, in order to be satisfied that the request correctly identifies the particular information relevant to the purpose of the request, and does not capture information that is not necessary for that purpose. AFMA will also make reasonable enquiries before releasing any information to ensure that sufficient controls exist for managing any information received.
- 6.2.4 AFMA will enter into a Memorandum of Understanding (MOU), covering the basis on which information will be provided, with agencies to which AFMA provides information on a reoccurring basis. Such MOUs will require that:
- a) the confidentiality of any information provided by AFMA will be maintained and the information will be properly protected; and
  - b) information provided by AFMA will not be disclosed outside the agency without AFMA's prior consent.
- 6.2.5 Where information is provided to a person or agency with which an MOU governing the provision of the information is not in place, the information will only be provided subject to conditions that protect the information. At a minimum, the conditions will include the following, that the information:
- a) will only be used for the purpose for which it is provided;
  - b) will only be disclosed to those persons and/or agencies with a 'need to know', as part of their duties;
  - c) will not be disclosed to a third party without AFMA's prior consent.
- 6.2.6 AFMA will keep a record of the disclosure. The record will include the data that was disclosed, to whom and for what purpose.



### **6.3 Cost recovery**

AFMA will recover costs associated with disclosing information in accordance with the Australian Government's Cost Recovery Policy.

## **7. Review**

This policy will be reviewed at a minimum period of five years, or as required, from its commencement.

