



Australian Government

Australian Fisheries Management Authority

National Compliance and Enforcement Policy

Securing Australia's fishing future
www.afma.gov.au

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Abbreviations

Abbreviation	Explanation
The Policy	National Compliance and Enforcement Policy
The Program	National Compliance and Enforcement Program
CEO	AFMA's Chief Executive Officer
AGIS	Australian Government Investigations Standard
AFNCS	Australian Fisheries National Compliance Strategy
ANAO	Australian National Audit Office
AFZ	Australian Fishing Zone
CDPP	Commonwealth Director of Public Prosecutions
CRMT	Compliance Risk Management Team
NGOs	Non-Government Organisations
NFCC	National Fisheries Compliance Committee
OMC	AFMA's Operational Management Committee

Introduction

Purpose of this policy

The AFMA National Compliance and Enforcement Policy (the Policy) establishes the framework on which AFMA's National (Domestic) Compliance and Enforcement Program (the Program) is based.

The Policy:

- provides a guide to AFMA on its compliance and enforcement role
- explains AFMA's risk-based approach
- provides a framework for maintaining the integrity of fisheries management arrangements through accountability, consultation and cooperation between the community, industry and AFMA.
- ensures transparency of operations
- ensures consistency of treatment
- assists in prioritisation and efficient use of resources.

Aims and objectives

The principal aim of the Policy is to:

'Effectively deter illegal fishing in Commonwealth fisheries and the Australian Fishing Zone (AFZ)'

To achieve the principal aim, these are AFMA's objectives:

- Conduct and enable compliance activity to target identified risks.
- Develop and implement programs consistent with the mission of the Australian Fisheries National Compliance Strategy and legislation administered by AFMA.
- Provide continued support to First Nations peoples in cultural fishing access and management of fisheries resources.

Policy framework

The Policy sits within the broader Australian Government law enforcement framework and should be read in conjunction with other relevant documents, including:

- *Prosecution Policy of the Commonwealth: Guidelines for the making of decisions in the prosecution process*
- *Commonwealth Fraud and Corruption Control Framework 2024*
- *Fraud Control Policy*
- *Australian Government Investigations Standard (AGIS) October 2022*
- *Australian National Audit Office – Administering Regulation*
- *Australian Fisheries National Compliance Strategy 2022-26*

AFMA's approach

In accordance with its objectives, the Program employs a risk-based, intelligence-led compliance and enforcement strategy. This approach incorporates targeted risk programs derived from biennial risk assessments, complemented by ongoing monitoring and maintenance initiatives.



The Australian Fisheries National Compliance Strategy

AFMA is committed to the [Australian Fisheries National Compliance Strategy \(AFNCS\)](#) and continues to ensure its programs complement and align with the mission, values, aims and principles of the AFNCS.

AFMA's approach

'Regulators have a responsibility to provide assurance to the Australian community that regulated entities are meeting mandated requirements. A systematic, risk-based program of compliance assessment activities provides a regulator with a cost effective approach to monitoring compliance, enabling it to target available resources at the highest priority regulatory risks and to respond proactively to changing and emerging risks.'



Figure 1: Factors that influence client behaviour¹

¹ Adapted from Australian Taxation Office, 'Compliance Program 2019'

AFMA has adopted a best-practice, cost-effective approach to compliance and enforcement, aimed at encouraging the fishing community to stay away from the tip of the enforcement pyramid (conscious non-compliance) and operate at the base of the pyramid (voluntary compliance) – Figure 2.

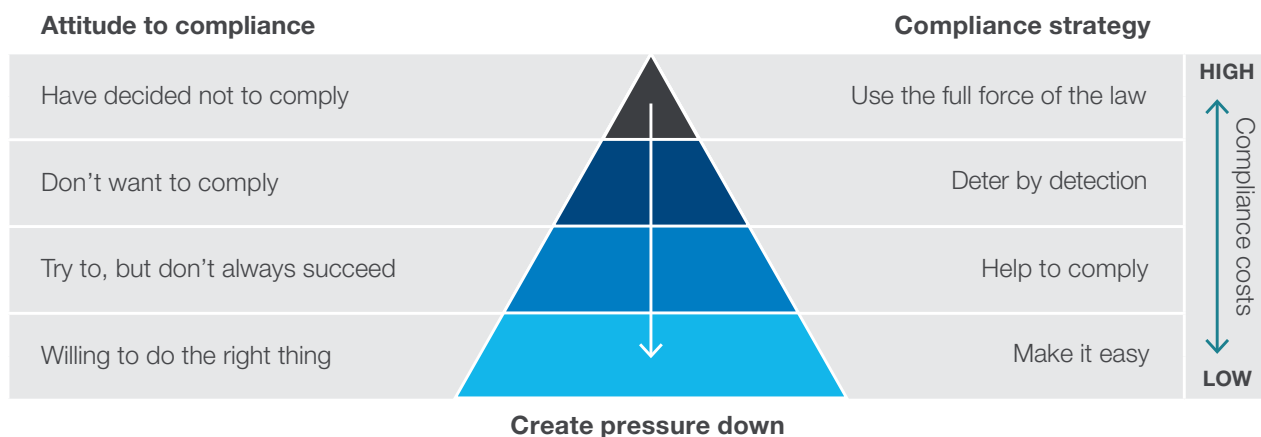


Figure 2: Compliance Model Pyramid²

In its compliance and enforcement role, AFMA's National Compliance and Enforcement Program is principally concerned with the upper (or deterrence) end of the pyramid. Other 'non-enforcement' based programs, such as the National Compliance Education and Engagement Strategy, can be utilised to promote a culture of compliance and encourage the fishing community to willingly comply. AFMA's effective enforcement and monitoring programs detect and deter instances of non-compliance, followed by appropriate enforcement action.



² Adapted from Australian Taxation Office, 'Compliance Program 2019'

AFMA's compliance and enforcement model

The risk-based approach

Why AFMA adopts a risk-based approach

A risk-based compliance approach enables AFMA's resources to be targeted towards areas where they are most needed and will prove most effective. It involves a series of steps to identify and assess non-compliance risks and then apply appropriate enforcement action to mitigate these risks.

Risk-based compliance has a range of benefits³, including:

- **Improved compliance outcomes:** AFMA can tailor or target compliance measures to effectively deal with the most significant non-compliance risks.
- **Efficiency gains:** Targeting compliance measures to the most significant risks ensures resources are concentrated in the areas where they are most likely to improve compliance outcomes.
- **Reduced industry compliance costs:** Compliance activities imposing burdens and costs on the fishing industry are only carried out where needed, thereby minimising costs.
- **Greater industry support for compliance programs/measures:** Risk management processes are widely understood by the fishing industry and wider community.

How risks are assessed

AFMA conducts risk assessments in accordance with the international standard for risk management (ISO 31000:2018). The assessments are conducted across the major Commonwealth domestic fisheries⁴.

The risk assessment process analyses and ranks non-compliance risks, including identifying where non-compliant activity across Commonwealth fisheries may be occurring.

How risks are prioritised

It will be the responsibility of AFMA's Operational Management Committee (OMC) to prioritise identified risks. In particular, the OMC will review outcomes of the risk

³ Risk-Based Compliance, www.betterregulation.nsw.gov.au

⁴ Note: while the remaining fisheries managed by AFMA do not generally warrant formal assessment, 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.

assessment and, having regard to the results of the assessment, provide a recommendation to AFMA's Chief Executive Officer (CEO) on which risk or risks will be the focus of the targeted compliance and enforcement (treatment) program(s).

The general deterrence/presence role

To ensure the 'general deterrence/presence' role is maintained, AFMA will also develop and implement a program of inspections and at-sea patrols that focus on targeting identified 'key'⁵ high-risk fishing ports, boats/operators and fish receiver premises relevant to the Commonwealth jurisdiction.

Voluntary compliance

The task of promoting and achieving voluntary compliance rests with AFMA as a whole, as well as the fishing industry more broadly. It is not the sole responsibility of AFMA's fisheries officers. AFMA has a responsibility to ensure rules applicable to the management of each fishery, and the reasons for such rules, are clearly understood by industry.

AFMA has a responsibility to clearly demonstrate:

- the purpose of applicable rules (to industry, the environment and the community)
- how the rules achieve the intended outcome
- how to comply with fisheries management rules.

AFMA's risk treatment cycle, and the National Compliance and Enforcement Program, will include elements designed to promote and achieve increased levels of voluntary compliance.

Reporting outcomes and monitoring performance

A key component of any compliance and enforcement program is the ability to report outcomes and assess qualitative and quantitative performance of these programs. AFMA will provide monthly and annual reports, outlining program outcomes and monitoring the performance of its risk reduction strategies.

⁵ 'Key' means key from a compliance perspective. Ports that are determined as 'key' fishing ports will be determined through the analysis of the level of compliance risk (including risk associated with the time since last inspected) and the actual level of port activity.

Reporting outcomes (quarterly reporting)

AFMA will report on outcomes through an ongoing quarterly reporting program. The report will focus on the two key program areas under the Policy:

- Status and results of the risk-based programs.
- Status and results of the general deterrence programs, including at-sea patrols, in-port, boat and fish receiver premises inspections.

The Operational Management Committee (OMC)

The OMC oversees the implementation of AFMA's national compliance program. It is also responsible for making the critical decisions on compliance and enforcement matters, including the allocation of resources to meet compliance program objectives.

The objective of the OMC is to enable efficient and effective delivery of AFMA's compliance and enforcement activities. It achieves this by providing a forum in which to prioritise matters and apportion resources accordingly. It also ensures transparency around decision-making.

The OMC also has responsibility for monitoring performance outcomes against AFMA's annual operating plan.

OMC structure

The OMC consists of:

- General Manager, Fisheries Operations Branch (Chair)
- Senior Manager, Compliance Operations Darwin (Member)
- Senior Manager, National Compliance Operations (Member)
- Senior Manager, Foreign Compliance Policy (Member)
- Manager, Compliance Operations Canberra and Lakes Entrance (Observer/advisor)
- Manager, Maritime Domain Awareness (Observer/advisor)
- Senior Government Lawyer, Legal Services
- Manager, Operations Darwin (Observer/advisor)
- Manager, Intelligence (Observer/advisor)
- Manager, Compliance Operations Thursday Island (Observer/advisor)
- Manager, International Compliance Policy (Observer/advisor)
- Manager, International Compliance Operations (Darwin) (Observer/advisor)
- Senior National Compliance Operations, Policy and Planning Officer (Observer/advisor)

Terms of Reference

The OMC addresses identified risks by:

- providing direction to National Compliance Operations team in:
 - undertaking proactive or reactive activities, programs, investigations, and/or operations
 - strategic intelligence tasks and/or intelligence collection programs
 - approving Compliance Risk Management Team (CRMT) program plans and/or enforcement matrices and principles.

The OMC is responsible for:

- with respect to risk treatment (proactive) programs:
 - recommending the biennial risk assessment and biennial National Compliance and Enforcement program to the AFMA CEO for approval
 - establishing CRMTs to address key risks
 - approving proposed programs developed by the CRMTs to address prioritised risks
- with respect to investigation/monitoring (reactive) programs:
 - providing direction in relation to complex investigations into suspected breaches
 - approving standard 'enforcement' matrices and other tools to guide AFMA fisheries officers in making enforcement decisions of a more routine nature
- with respect to general deterrence (routine) programs:
 - providing direction in relation to complex operations
 - deciding on the allocation of resources where there are competing priorities.

OMC decision principles

Referrals to the OMC are made, and presented to the OMC, by the responsible AFMA fisheries officer (and/or CRMT team member). Referrals made to the OMC will only be those of a 'complex nature'. Other investigative matters will be noted by the OMC and captured in the existing referral form.

An OMC referral⁶ outlines:

- the issue (for example, case details, offences and operation proposals)
- resources required (staff, equipment and costs)
- the relevant risk category that the proposal relates to
- the proposed standard responses/actions (in the event offences/issues detected)
- the circumstances when:

⁶ A template has been developed for all OMC referrals.

- the authorising officer or operation commander (for specific operations) will make operational decisions ‘in the field’
- decisions which will be referred to the relevant Senior Manager or the OMC
- proposed enforcement action, including decisions to refer a matter to the Commonwealth Director of Public Prosecutions (CDPP) for prosecution or issuing of an infringement
- the risks and/or consequences (to AFMA and industry) if a proposal is not approved
- measurables, or how it is proposed to identify that the strategy will deliver the expected results.

OMC meetings

The OMC meets on a quarterly basis. The committee will consider appropriate referrals, investigations and program activities for the upcoming quarter.

Urgent out of session referrals

For operational reasons, the OMC may be required to meet out of session to consider urgent matters requiring an immediate decision and/or approval.

Monitoring and review of the policy

Feedback around application of this policy will assist in ensuring it remains up to date, relevant and effective. It will also:

- enable evaluation of the Policy
- increase the effectiveness of operational guidelines
- ensure accountability.

AFMA will continue to, on a biennial basis, analyse the effectiveness of the policy with a view to:

- improving compliance behaviour
- tracking compliance rates
- monitoring enforcement outcomes

Disclaimer

An act or omission of the AFMA CEO, or a person acting on behalf of the AFMA CEO, shall not be called into question, or be held to be invalid on the grounds of failure to comply with the Policy.

The policy has no legal status and is not legally binding of AFMA. The policy cannot be used to limit the discretion of the agency to take any enforcement action.

The policy is only to be a general guidance on how AFMA will undertake enforcement action.





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Management Authority**