

# Co-operation in fraud reduction in the fishing industry

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Where commercial fishing limits are set to enable a sustainable harvest of specific fish species, there always seems to be those who ignore this safeguard. To identify those in the fishing industry who are threatening the existence of several fish species by over fishing, the AFP has started looking at the money trail.

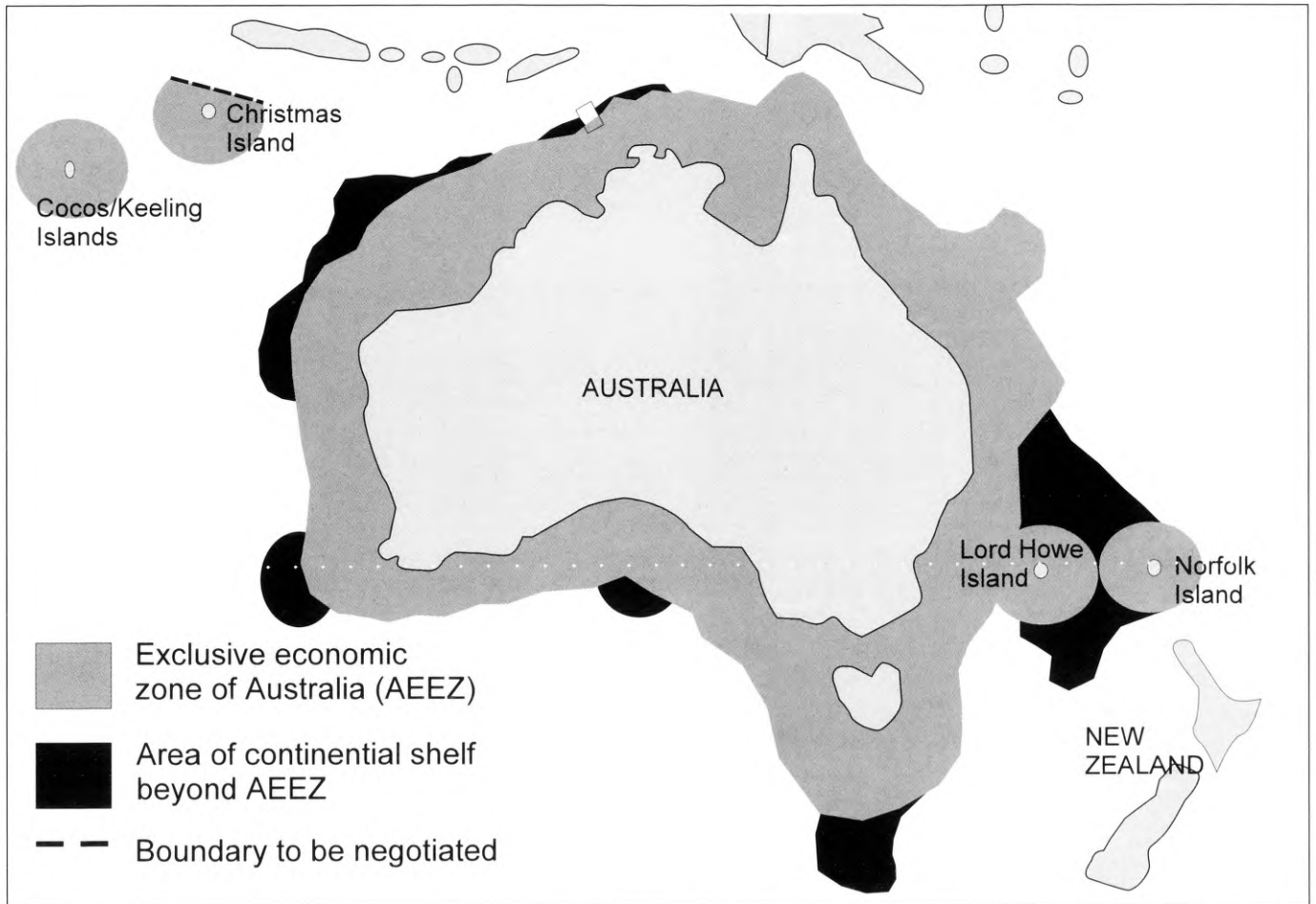
**I**n 1968 Garret Hardin, professor of biology at the University of California, published an article that described “the tragedy of the commons”.

In brief, this is a concept that can be interpreted as claiming that where a renewable resource exists to which everyone has unlimited access, the desire to maximise individual profit will take precedence over concerns for the survival of the resource.

“Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all...”.

Whatever the advantages of economic rationalism, it is obvious that individual profit should not be sought to the greater detriment of environmental sustainability or community benefit. Recognising this, society often places limitations on the harvesting of living natural resources, and one such limitation of relevance to the AFP is fish quotas.

In late 1994 the Australian Fisheries Management Authority (AFMA) approached the AFP with its concern about over fishing in some sectors of the fishing industry. It had estimated that the catch of some fish species from Commonwealth-controlled waters was between 50 per cent to 100 per cent in excess of the value of the maximum legal quota and, if the estimates were accurate, the eventual effect of the illegal catch



Australia's marine jurisdictional zones

upon some fish stocks would be devastating unless action was taken to combat its effects. An additional problem, but not an AFMA concern, was that the value of the illegal catch, being unreported, was untaxed and tax was therefore being evaded.

**The Scene**

Under the Commonwealth's *Fisheries Management Act 1991*, the Australian Fisheries Management Authority, which is responsible for day-to-day fisheries management (policy matters are handled by the Department of Primary Industry and Energy), allocates quotas to individuals or companies for particular types of fish caught within the Australian Fishing Zone (AFZ). The AFZ extends from 3 nautical miles off the baseline, which generally follows the coast, to 200 nautical miles.

Waters less than 3 nautical miles from the coast are called coastal waters and under states/territories fisheries jurisdiction. However, the Commonwealth and states/territories

have agreed on arrangements whereby they may confer jurisdiction on each other or form joint authorities to manage fish stocks that straddle the 3 mile (4.8km) boundaries — examples are the states/territories having control over rock lobster fisheries in offshore waters, and most states/territories giving management of major tuna fisheries to the Commonwealth.

Apart from three exceptions, the AFZ, in which Australia has UN-agreed management but not sovereign rights, is consistent with Australia's Exclusive Economic Zone (EEZ), in which context the Commonwealth has sovereignty over the sea-bed resources of the EEZ and its adjoining continental shelf (see map).

Typical of the compliance problems facing AFMA is the situation prevailing in the South East Fishery (SEF), which comprises that portion of the AFZ stretching from Barrenjoey Head, the southern tip of the entrance to Broken Bay just north of Sydney, to the eastern tip of Kangaroo Island off

South Australia, and includes the waters surrounding Tasmania.

Under the Act, AFMA funds what approximates to five compliance inspectors who are employed by the four states adjacent to the SEF. Tasmania has two; South Australia, Victoria and NSW allocate a number of working hours equal to one inspector each from their own resources. Part of their function is to check, whenever circumstances permit, the weight of individual catches. Given the size of the SEF and the number of Commonwealth-licensed fishing boats, physical checks are only possible in a relatively small number of landings. These staff also comprise AFMA's investigators.

An additional complication is that staffing funds have to be approved by the South East Trawl Management Advisory Committee (SETMAC), about half the members of which comprise commercial interests. Thus, applications to the committee for extra funding to police the activities of committee members and those whom they represent are not liable to be met with enthusiasm.

AFMA's small compliance/law-enforcement arm is backed up by surveillance equipment, covert informants and a small Canberra-based investigations unit that also carries out intelligence analysis. Run-of-the-mill cases of fishing permit holders misreporting catches can be handled by the authority if a minimum of surveillance and document checking is required, but large and involved cases require AFP assistance. AFP sworn members are officers under the Act, with the same powers as inspectors — broadly, these allow boarding, search and seizure without warrant in the case of vessels. Ashore, entry, search and seizure can be carried out only with proprietary permission or a warrant.

Under the Act's regulations, all links in the fish supply chain, from masters of vessels through permit holders, carriers, processors and wholesale receivers, have to complete various pieces of documentation to account for their fish holdings and their disposal. Collusion must exist, and in some cases is known to do so,

due to family, business and social links between fishing crews, carriers and processors, and processors and customers, in order to make illegal catches worthwhile and able to be marketed with impunity.

Apart from fishing boat owners profiting from under-declaring their catch and thus evading income tax, fish processors also benefit through under-declaring their receipt of fish by the same amount.

### *Apart from loss to revenue, under-reporting catches increases the difficulty of making current accurate scientific assessments of the status of a particular fishing area . . .*

It follows that they have to ensure that their output is consistent with this, and their customers also have to ensure the compatibility of any records they keep to preclude law-enforcement agencies from following the documentary chain backwards.

Thus, the matching of fishing and processing returns is a vital, but time-consuming, part of evidence collection when investigating catches in excess of quotas. Still, fish not being an illicit product, such investigations are more straightforward than drug operations, and participants in illegal activity can be identified relatively easily once the grind of collecting documentary evidence of misreporting is completed.

Apart from loss to revenue, under-reporting catches increases the difficulty of making current accurate scientific assessments of the status of a particular fishing area and can jeopardise the sustainability of stocks.

#### **Law-enforcement activity to date**

Federal agents in Melbourne and Hobart are currently involved in two fishery investigations relating to incomplete catch reporting. The Melbourne investigation is a spin-off from an Eastern Region operation that began in May 1992 and covered NSW, Victoria and Tasmania. Surveillance and documentary evidence had been obtained and

charges were to be laid, but in September 1992 the Federal Court ruled that the quota allocation was inoperative and the charges were dropped.

The legislation has been amended and the Eastern Region operation rehabilitated as a Southern Region operation, mainly revolving around a prominent fishing family who in one year were estimated to have had an unreported fish catch valued at \$10 million. Charges of imposition on the Commonwealth have been laid and four people will appear at committal proceedings in April 1996. Following the resolution of these cases, a number of summonses dating from 1993 are expected to be heard.

The Hobart inquiry is a separate investigation resulting from the Melbourne operation and centres on local fishermen, companies in Port Lincoln, Melbourne and Sydney and excessive catches of orange roughy. About 20 people have been charged and a brief is now with the Attorney-General's Department.

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The Eastern Region and Southern Region operations demonstrated that a large number of fishing companies and processors have been acting in concert to misreport catches.

The Australian Quarantine and Inspection Service (AQIS) manages the *Export Control Act 1982* and at any one time will have a number of seafood-related investigations and prosecutions in train. Commonly, offences are linked to poached abalone (abalone which is taken by unlicensed divers) and forged documentation and false declarations and descriptions made to facilitate seafood entry to the export market. Processors are sometimes involved. Inspectors check plants and where necessary work closely with AFP, state police and fishery and environmental departments (the AFP's Operation Sharkfin was basically assistance in

executing about 20 warrants). AQIS have commented that there appears to be more abalone being exported than is being caught. As it is only caught in coastal waters, compliance in relation to abalone is not enforced by the Commonwealth.

An article in *The Bulletin* of December 13, 1994 noted that Victorian authorities had charged about 450 illegal abalone divers so far during the year – some of them repeat offenders – with 24 being jailed. According to the Victorian Department of Conservation and Natural Resources, 95 per cent of abalone taken illegally is undersized and breeding stock is threatened. The annual value of the Victorian illegal abalone catch was estimated at about \$35 million, while the state's estimated legal catch in the 1994-95 financial year was \$50 million – Australia's total legal abalone catch would be \$202 million. Victoria has recently appointed an extra 13 rangers and increased their powers to seize property and search premises. Since an abalone's legal size is determined by its shell length, undersize abalone cannot be identified once they have been extracted.

A news item on SBS Television's 6:30pm news program on January 8, 1995 reported that the fishing industry was one of two – the other being the garment industry – that the Australian Taxation Office (ATO) had particularly targeted for cases of misreporting income and expenditure on the part of suppliers and buyers. A press item of January 15, 1995, reporting on a series of tax raids against the garment industry carried out late in 1994, quoted the ATO's assistant commissioner for small business as saying: "We believe the two industries were resulting in a combined loss of revenue of \$100 million, split roughly down the middle".

#### **Getting it together**

In March 1995, the AFP chaired an interdepartmental meeting to co-ordinate the implementation of the Government's policy on fraud control within government agencies and

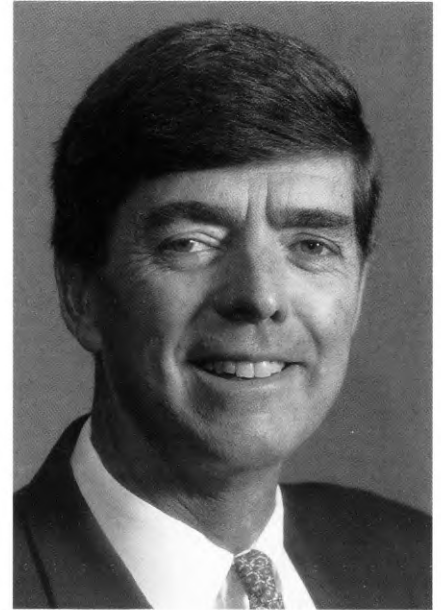
against government programs as outlined in the Commonwealth Law Enforcement Board (CLEB) publication Best Practice for Fraud Control insofar as it related to fishing interests. Overall, the meeting recognised the need for closer co-operation between all departments affected by the problem and it decided to hold a fisheries fraud-control workshop later in the year to examine exactly what steps needed to be taken.

The workshop was held over two days in December 1995 and was attended by eight agencies — AFMA, AFP, ATO, AQIS, CLEB, Australian Securities Commission (ASC), Australian Bureau of Criminal Intelligence (ABCI) and Tasmania Police, with an AG's Department officer acting as facilitator. Its aim was "to examine the feasibility of improved planning and co-ordination arrangements so as to ensure the achievement of a progressively improved Australian fishery". This was an aim it saw in terms of producing a strategy with the objective of contributing "to the maintenance of an ecologically sustainable fishery which maximises the return to the fishing industry and the broader Australian community by the minimisation of fraud through integrated national fraud control programs".

The strategy that was developed has four goals based on intelligence, assessment and information exchange, compliance, an integrated national strategy and inter-agency co-operation. For each goal, key result areas, key actions and implementation guidelines have been detailed and include, among other things, proposals for legislative change and educational programs. It now remains for the strategy to be approved by the heads of individual agencies, following which various alignments, in the shape of memoranda of understanding (MOU), working groups, committees and the like, can be formalised to more effectively meet the particular needs of each agency in achieving the common purpose.

During a formal dinner, workshop participants were addressed by Deputy

Commissioner Adrian Whiddett, who spoke on the theme that environmental crime tends to remain, at least for a time, 'invisible', typical examples of which were the current drastic reduction, if not near extinction, of orange roughy and southern bluefin tuna. Such crime is therefore not regarded as being as compelling a priority as other more traditional or conventional 'three-dimensional' crimes. Citing his personal witnessing of environmental degradation during three decades of canoeing and bushwalking, Mr Whiddett quoted some depressing facts and figures all indicative of the realisation that "we can never expect self-interest to self-regulate" and mentioned a claim in a book by James Michener, paraphrased to the effect that: "If a pair of dinosaurs were found to be alive somewhere on earth, some son-of-bitch from Idaho would see it as his right to kill one or both of them".



Deputy Commissioner Adrian Whiddett

*“...we can never expect self-interest to self-regulate...”*

#### The Future

Through the use of management advisory committees embracing industry and wider community interests, AFMA has sought to develop management arrangements which will not only secure the future of fishery resources but also be in the collective interest of fishery operators. However, there remains an incentive for individuals to break the rules for short term gain, and illegal fishing activities will continue to occur.

In some fisheries, the scope of the problem may be too large for AFMA's resources to handle, and the envisaged multi-agency approach offers the most effective means of fraud reduction if Australian fisheries are to remain commercially viable, economically sustainable and contribute their fair share of the national revenue. As a major participant in this approach, the AFP can expect to become further involved in the planning of administrative and operational measures to ensure its success. □