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PERFORMANCE AUDIT

Regulation of Commercial Fishing



**Office of the Auditor General
Western Australia**

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The Office of the Auditor General acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community. We pay our respects to all members of the Aboriginal communities and their cultures, and to Elders both past and present.

Front cover image: Taken by OAG employee, Keagan Vorster, as part of an audit site visit.

WESTERN AUSTRALIAN AUDITOR GENERAL'S REPORT

Regulation of Commercial Fishing

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**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

REGULATION OF COMMERCIAL FISHING

This report has been prepared for submission to Parliament under the provisions of section 25 of the *Auditor General Act 2006*.

Performance audits are an integral part of my Office's overall program of audit and assurance for Parliament. They seek to provide Parliament and the people of WA with assessments of the effectiveness and efficiency of public sector programs and activities, and identify opportunities for improved performance.

The audit examined the Department of Primary Industries and Regional Development's regulation of the commercial fishing industry.

I wish to acknowledge the entities' staff for their cooperation with this audit.

A handwritten signature in black ink, appearing to read 'C Spencer'.

CAROLINE SPENCER
AUDITOR GENERAL
7 December 2022

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Auditor General's overview

Commercial fishing is a high value industry, worth hundreds of millions of dollars a year, much of it generated from exports. While some of the operators are small family businesses, there are a number who are now significant commercial concerns, having been in the industry since it began, and some have sold to large overseas participants.



The Department of Primary Industries and Regional Development (the Department) plays a dual role in the commercial fishing industry.

It promotes and develops the industry as well as regulating it. This creates a risk of industry capture for the Department, a risk faced by all regulatory bodies. As recently highlighted in the *Perth Casino Royal Commission Final Report*¹, capture occurs when the views of the regulator become dominated by those it is tasked to regulate. Capture is a serious threat that strikes at the heart of effective regulation. When it occurs, it can be difficult for the regulator to acknowledge the need to change, as its own position and views become difficult to distinguish from those of industry.

In the case of commercial fishing, the industry also has inherent risks around over extraction and black-market sales. Illegal fishing creates an uneven playing field for operators who are doing the right thing and can threaten sustainability of fish stocks and the long-term viability of the industry.

In this environment, robust regulation and strong integrity frameworks are essential. Monitoring and enforcing compliance with the rules helps ensure that fisheries are sustainable, but sustainability cannot be the only goal. Making sure operations are safe and legal and that all of those in the industry operate with integrity are also essential for West Australian commercial fishing to maintain its social licence and legitimacy. Fisheries are, after all, a State resource.

Commercial fishing risks can and do change over time, as fish populations fluctuate due to overfishing or environmental change, and as fishing technology improves. This is evident right now in the West Coast Demersal Scalefish fishery, where concerns around fish stocks not recovering as the Department expected have resulted in policy changes affecting both commercial and recreational fishers. The Department's enforcement activities need to be driven by risk to keep up with any such changes.

So far, the Department has taken a light touch approach to engaging with commercial fishing compliance risk. It isn't using risk information effectively to ensure its more than 100 highly trained and professional fisheries officers target activities with the most impact within a strong integrity framework that minimises the risk of industry capture at a local and corporate level. Also, there are no consistent strategies in place across regions to help officers manage this risk at a local level. With a few straightforward but important improvements, the Department can shift its commercial fishing regulation into a coherent and effective risk-based model and strengthen its integrity framework. We have made a set of recommendations to help the Department make that shift, and its overall response welcomes this report as an opportunity to improve.

However, the Department's response to some of the recommendations indicates that in some key areas it does not see the need for change. The findings and recommendations in this report are very similar to those in our 2009 report² on Compliance in WA's Commercial and Recreational Fisheries, which indicates that little has changed in the meantime. That makes it difficult for me to be entirely optimistic at this time that the Department will improve its compliance monitoring and enforcement despite the obvious benefits that would bring.

¹ Perth Casino Royal Commission, *Perth Casino Royal Commission Final Report*, PCRC, Perth, 2022, p. 585.

² Office of the Auditor General, *Second Public Sector Performance Report*, OAG, Perth, 2009.

Executive summary

Introduction

This audit examined the Department of Primary Industries and Regional Development's (the Department) monitoring and enforcement of regulatory compliance in the commercial fishing industry. We assessed if the Department's regulatory approach mitigates the risk that Western Australian (WA) commercial fishers take more fish than they are allowed under their licence conditions or take fish in a way that is not permitted. We focused on the management of licensing and entitlements, monitoring and compliance, enforcement and staff integrity.

The audit did not look at recreational fishing, aquaculture, customary fishing, charter operators, research and policy or the sustainability of the fisheries.³ However, it is important to recognise that each of these aspects interact to inform the Department's understanding of the available fisheries resources and determination of entitlements and restrictions that affect all participants. Consequently, the effectiveness of regulation of commercial fishers will determine the allocation available for recreational fishers and vice versa.

Background

Commercial fishing rights provide access to a State resource and are subject to legislative requirements of the *Fish Resources Management Act 1994* (FRMA) and the Fish Resources Management Regulations 1995 (FRMR). The *Aquatic Resource Management Act 2016* (ARMA), when enacted in full, will replace the FRMA and *Pearling Act 1990* to become the primary legislation for aquatic resources.

The ARMA's main objective is to legally recognise fishing access rights for all sectors.⁴ ARMA changes the regulatory framework of fishing entitlements which may affect compliance risks in the sectors, including licence holder behaviours and incentives to comply with regulations.

The Department has not yet considered how it will operationalise the changes in the proposed legislation and is of the view that the transition will be gradual. The ARMA allows for existing management arrangements to remain in place until it is fully proclaimed and resource management is transitioned to the ARMA. No dates have been set for when fisheries will transition to the new management regime.

The Department is responsible for the effective management and regulation of WA fisheries. Its primary objective is to ensure that the fisheries remain sustainable and accessible for customary, recreational and commercial fishing. The commercial fishing industry, with its substantial export markets, currently contributes \$339 million annually from fish sales to the economy and employs thousands of people. There are 1,555 commercial managed fishery licensees that pay up to \$30 million per year in licence fees.

The Department is responsible for the regulation of commercial and recreational fishing in coastal waters extending up to three nautical miles offshore⁵, except where otherwise agreed with the Commonwealth. Beyond these coastal waters, the Commonwealth Australian Fisheries Management Authority generally regulates Australian waters to the limit of the

³ The *Fish Resources Management Act 1994* defines a fishery as (a) one or more stocks or parts of stocks of fish that can be treated as a unit for the purposes of conservation or management; and (b) a class of fishing activities in respect of those stocks or parts of stocks of fish.

⁴ Sectors include commercial, recreational and customary.

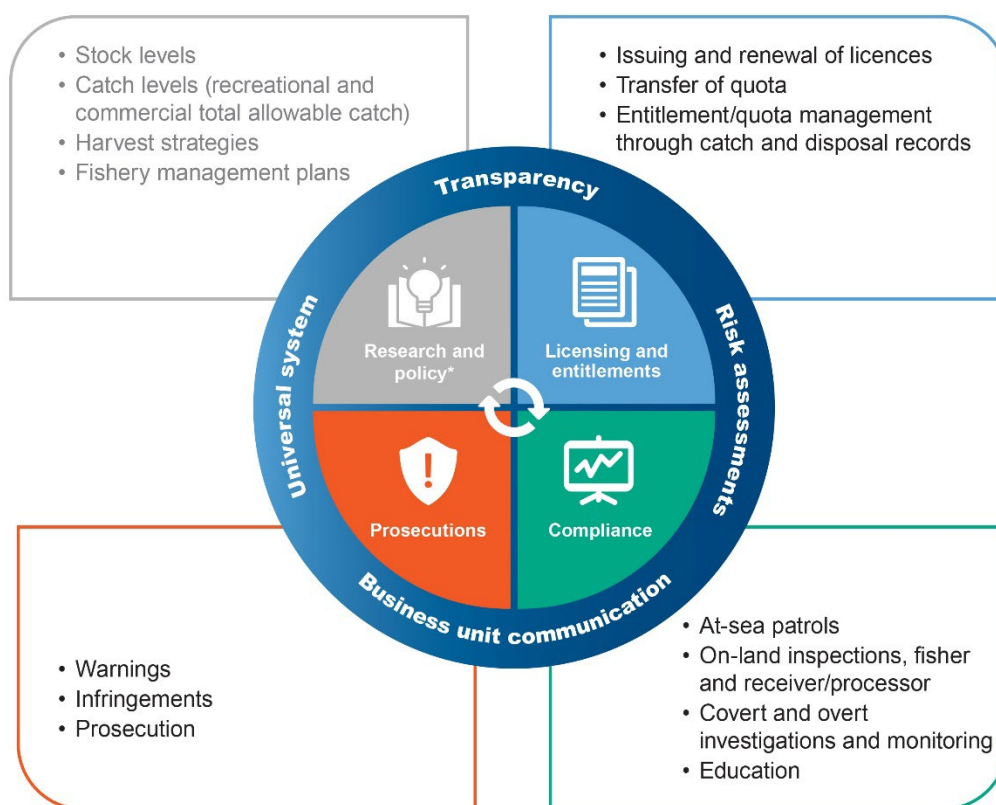
⁵ Three nautical miles equals 5.55 km.

Australian Fishing Zone⁶. The Department manages most of these resources on behalf of the Commonwealth to the 200 nautical mile limit of Australia's Economic Exclusion Zone.

The Department's management of fisheries is underpinned by its scientific research which focuses on determining the maximum sustainable catch. Almost all fisheries (98%) are currently assessed as sustainable. This includes the Western Rock Lobster (WRL) fishery which has been worth close to half a billion dollars annually and is WA's most valuable fishery. The 2020-21 WRL commercial catch of 9,132 tonnes was worth \$225 million.

There are 43 fisheries with management plans (MPs) that define what fish can be taken and how fishers are permitted to catch them. Fisheries are defined according to species and location spanning six bioregions⁷ (Appendix 1) and a mainland coastline of 12,889 km⁸. To support MPs, the Department has developed a regulatory framework that includes research and policy development, licensing and entitlements, monitoring and compliance, and prosecution (Figure 1).

As part of its regulatory functions, the Department issues a range of licences (Appendix 2). The licence conditions, qualifying criteria and quota allocation of fish that can be taken are determined by the MPs. Commercial licence fees are not a royalty for the State. They defray the cost to develop and manage the commercial fishing industry as outlined in the FRMA. Licensing and fishing quotas (called entitlements) are part of the regulatory framework. They work in conjunction with monitoring and enforcement to form the compliance program.



Source: OAG based on DPIRD information

* The research and policy components were not within the scope of this audit.

Figure 1: Commercial fishing regulatory framework

⁶ Australian Fishing Zone is 200 nm or 370 km from shore. Australian Government, 5 February 2021, Department of Agriculture, Fisheries and Forestry, The Australian Fishing Zone, viewed 6 October 2022, <<https://www.agriculture.gov.au/agriculture-land/fisheries/domestic/zone>>.

⁷ A bioregion is determined by features of the natural environment rather than by man-made divisions.

⁸ Government of Western Australia, 10 March 2021, Landgate, Interesting WA facts, viewed 6 October 2022, <<http://www0.landgate.wa.gov.au/maps-and-imagery/wa-geographic-names/interesting-wa-facts>>.

Effective deterrence includes enforcement of sanctions, penalties and prosecution. Some key control measures for compliance include at-sea patrols and inspections⁹, on-land inspections¹⁰, education, electronic monitoring, intelligence, and overt and covert operations. The Department currently employs 114 officers which includes 104 dedicated fisheries officers and 7 investigations staff, located in the metropolitan area and the regions to enforce the commercial and recreational compliance programs. There are also three officers allocated for aquatic biosecurity duties. Other staff employed by the Department help support the enforcement of fishing laws.

Integrity is fundamental to an effective and strong regulatory function, especially given the extensive enforcement powers the Department has and the risks it manages on behalf of the people of WA. The Department has competing dual roles of enforcing commercial fishing laws to promote resource sustainability along with growing and supporting the State's fishing industry's economic contribution. This places the Department at risk of industry capture, especially in an environment that encourages productive fishing to support a valuable export market¹¹. A robust regulatory framework and explicit recognition of this risk is needed to minimise the risks to the sustainability of fisheries and to ensure industry capture does not affect the Department's proper role in regulatory compliance monitoring and enforcement.

Conclusion

The Department has significant engagement with the fishing industry, but its regulatory compliance monitoring and enforcement of commercial fishing laws is only partially effective. Weaknesses in key areas, including a lack of overall coherence and utilising a sound risk-basis for compliance activities, increase the risk of illegal fishing by commercial fishers. Effective regulation is essential to manage the risks to fishery sustainability, and to balance the Department's competing roles in both developing and regulating the industry, while supporting its economic and social contribution to the State.

Risk assessments do not separately consider commercial and recreational fishing activities to appropriately balance compliance monitoring between the two. The Department also does not clearly target its compliance activities to the highest risk. It does not track the completion or effectiveness of its compliance monitoring and enforcement functions, which means it does not know where it needs to strengthen or divert its regulatory efforts. The Department does not explicitly recognise the risk of industry capture at a corporate level and there are also gaps in the Department's integrity framework relating to conflicts of interest, ongoing integrity checks and managing complaints that increase the risks at a local level.

The Department needs to improve its use of data, intelligence and management information. Much of the key data already exists but could be more effectively used to generate improvement while the Department progresses a longer-term digital transformation strategy. The Department also needs to use its understanding of compliance risks to ensure its fisheries officers spend their time on tasks that are most likely to detect and deter serious offending in vulnerable fisheries. The Department should strengthen its integrity framework to specifically address industry capture and support fisheries officers in managing conflicts of interest at a local level.

⁹ At sea inspections include boarding vessels for checks of licences, quantity of fish, species of fish and gear. Compliance activities specific to each fishery can be found in the MP.

¹⁰ On-land inspections for vessels upon landing include the quantity of fish, species of fish, and licences. They also include the processor and receiver for catch consignment. Compliance activities specific to each fishery can be found in the MP.

¹¹ Department of Primary Industries and Regional Development, *Wild catch seafood industry snapshot*, accessed 15 November 2022, <<https://www.agric.wa.gov.au/WAindustrysnapshots>>.

Key findings

Compliance activities are not clearly targeted to highest risk, increasing the risk of undetected illegal fishing

While the Department assesses the compliance risks in most fisheries, it often fails to set out how it will reduce risks to an acceptable level. It does not always distinguish between risk management strategies for commercial and recreational fishing, and there is no clear basis on how it allocates its compliance efforts between commercial and recreational fishing. In most cases the Department does not specify the volume and types of compliance activities needed to target and reduce risks, and has not set targets for time spent on planned and reactive compliance activities.

The Department's risk assessment shows that it does not have the right mix of resources or strategies in place to manage all its compliance risks. This means the Department may be missing serious non-compliance.

The Department does not measure how effective its compliance monitoring and enforcement is, so is not identifying areas that need to improve

The Department does not evaluate the performance of its regulatory enforcement activities. It has not established measures or targets to demonstrate how well the key components of its regulation are working. There is no regular analysis or management reporting of its licensing, compliance or enforcement functions and management information is inadequate.

Compliance monitoring is not systematically informed by relevant information, such as intelligence reports or licensing and entitlement trends, because information is not routinely shared across the Department. Information systems are ageing and reports are generally ad-hoc and manually generated.

The Department meets key enforcement timeframes and has a high rate of prosecution success. However, offence numbers have dropped significantly during the last five years with no clear explanation for the trend. The Department lacks the detailed data quality and systems it needs to understand this performance, for example, it is difficult to tell what type of offences are occurring and in what fisheries.

Fees are collected in accordance with regulatory requirements, but our Financial Audit team has previously identified serious problems with how the Department has spent money from the Fisheries Research and Development Account, an issue the team will continue to monitor. While there is a defined process for allocating commercial fishing entitlements, licensing and entitlement processes are partly manual and partly paper-based, which results in inefficiencies for both fishers and the Department and does not encourage compliance.

The integrity model needs strengthening to better manage risks of industry capture and conflicts of interest, and to improve complaints management

We found limited recognition of the risk of industry capture by the Department. There was structural separation of research, policy and enforcement functions but limited explicit recognition of the risk in the documents such as the corporate risk register and there were no consistent strategies in place across regions to help officers manage this risk at a local level.

The Department's integrity framework does not contain specific guidance around recognising and managing the conflicts of interest that fisheries officers are likely to face in their law enforcement role. Because fisheries officers can work with the same commercial fishers over a long period of time, and live and raise their families in the same small communities, the risk of over-familiarity needs to be explicitly considered and managed.

The small number of specialist fisheries officers with extraordinary covert powers and assumed identities are subject to in-depth, ongoing integrity checks. However, with the exception of those who need to meet a third-party obligation, all the other fisheries officers still have significant law enforcement powers but are not subject to any ongoing integrity checks.

Finally, the Department's complaints procedure does not require complaints about officer conduct to be handled independently as is the case in other law enforcement services. This makes it less likely that misconduct matters will be properly identified and appropriately managed.

Recommendations

The Department should:

1. improve its compliance planning to make sure staff time and other regulatory resources are targeted to the most effective risk mitigation strategies for each fishery and sector, specifically:
 - a. use relevant data and information to better understand risks to illegal fishing across the entire fish resource
 - b. set clear targets for its compliance activities and track performance against those targets to assess whether compliance activities are undertaken and effective

Implementation timeframe: July 2023

Entity response:

- a. The Department accepts the recommendation that compliance planning could be improved, noting that compliance resources are not simply targeting illegal fishing and that addressing overfishing is a broader matter generally not related to compliance oversight.
 - b. The Department accepts that targets based on plans could be better used to demonstrate how actual service delivery is tracking against plans.
2. ensure it can understand its own regulatory compliance monitoring and enforcement performance and identify required improvements by introducing regular analysis, management reporting and evaluation of its regulation functions (across all sectors). This builds trust and confidence in decisions that are taken across all fish resources and sectors

Implementation timeframe: Ongoing as part of statutory and other assessment and reporting requirements.

Entity response:

The Department is of a view that sufficient analysis, reporting and evaluation of its regulatory performance occurs. The statutory State of the Fisheries Report, Annual Report and audited Key Performance Indicators provides appropriate levels of assessment and reporting. Confidence and trust in regulatory arrangements is also maintained through engagement with key stakeholders and third party assessments including Marine Stewardship Council accreditation, and as required meeting Commonwealth Government requirements under the *Environment Protection and Biodiversity Conservation Act 1999*.

3. strengthen its integrity framework by:
 - a. developing and formalising strategies to mitigate the risk of industry capture
 - b. ensuring the framework reflects integrity risks specific to fishery officers and the industry
 - c. ensuring complaints about conduct are investigated independently

Implementation timeframe: December 2023

Entity response:

The Department will review existing arrangements and will also consider options to mitigate risks of capture specific to fisheries officers.

4. improve the efficiency and effectiveness of licencing, entitlements, monitoring and reporting by implementing its Digital Transformation Strategy

Implementation timeframe: June 2024

Entity response:

The Department accepts this recommendation.

5. analyse and report types of enforcement action by fishery and offence type to give a clearer view of effectiveness of actions and trends over time.

Implementation timeframe: July 2023

Entity response:

The Department accepts this recommendation.

Response from the Department of Primary Industries and Regional Development

DPIRD has important statutory functions as a regulator. The contribution of science, policy and compliance teams within DPIRD supports the development and implementation of quality regulatory services. In the regulation of commercial fishing, these teams are aligned to a common goal of effective regulation to meet the objectives of the *Fish Resources Management Act 1994*.

The Department reports annually on the status of fisheries and aquatic resources and reports performance against Key Performance Indicators. Overtime, these indicators have demonstrated strong sustainability outcomes and, where sustainability is at risk, recovery arrangements are implemented. Sustainability of fisheries is also assessed at times through third parties including the Commonwealth government through the *Environment Protection and Biodiversity Conservation Act 1999* and the Marine Stewardship Council Fisheries Standard.

Compliance measures which range from education and stewardship through to deterrence and sanctions are an essential component of the fisheries management system. Compliance is undertaken in accordance with DPIRD's published Regulatory Compliance Approach¹² which seeks a culture of strong, fair, and accountable compliance service delivery.

DPIRD is committed to delivering comprehensive awareness and education programs to ensure people are aware of the legislation, understand the reasons for it, and to increase people's ability to willingly comply with regulatory requirements.

DPIRD delivers a range of monitoring, surveillance, inspection, and investigation services using capable, professional and trained officers. This compliance program plays an important role in general deterrence, providing confidence to the community that offences will be detected, and appropriate sanctions imposed on those who break the rules governing our fish resources.

DPIRD has confidence in its regulation of commercial fishing, and in the integrity and effectiveness of its compliance program - but always seeks to do better. DPIRD welcomes benchmarking and assessment by the Auditor General knowing that such review is healthy and will assist DPIRD with continual improvement. We have commenced a review of relevant findings with a view to identifying options and implementing improvements where required.

¹² Department of Primary Industries and Regional Development, *Regulatory Compliance Approach 2022*, accessed 15 November 2022, <<https://www.wa.gov.au/government/publications/regulatory-compliance-approach>>.

Audit focus and scope

This audit assessed if the Department of Primary Industries and Regional Development (Department) licences and regulates the commercial fishing industry to effectively maintain integrity and reduce the risks of non-compliance.

Our criteria were:

- Is the management of licences and the distribution of entitlements clear, transparent and equitable?
- Are monitoring activities undertaken to proactively prevent and detect non-compliance?
- Is enforcement action timely and consistently applied?
- Does the Department appropriately manage internal integrity risks associated with fishing regulation?

We reviewed:

- the Department's strategies, policies and procedures
- relevant legislation, regulations and fishery management plans
- a sample of licence applications, renewals and grants, and fees paid in the audit period of 2016-17 to 2020-21
- fishery risk assessments
- monitoring and compliance activities
- a sample of enforcement actions and prosecutions conducted in the audit period of 2016-17 to 2020-21.

We interviewed key Department staff and consulted stakeholders including industry representatives and the Western Australia Police Force. We conducted site visits in Fremantle, Albany and Geraldton.

The audit did not look at recreational fishing, aquaculture, customary fishing, charter operators, research and the sustainability of the fisheries. The focus of the audit was on the regulatory framework of commercial fishing. We did not look at the financial management controls or expenditure of the Fisheries Research and Development Account.

This was an independent performance audit, conducted under section 18 of the *Auditor General Act 2006*, in accordance with Australian Standard on Assurance Engagements ASAE 3500 *Performance Engagements*. We complied with the independence and other ethical requirements related to assurance engagements. Performance audits focus primarily on the effective management and operations of entity programs and activities. The approximate cost of undertaking the audit and reporting was \$430,000.

Findings

Compliance monitoring of the commercial fishing industry is not clearly targeted to highest risks

The Department's compliance risk assessment is missing some key features which undermines how effectively it manages those risks. Risk assessments are not adequately linked to planning. The types and amount of compliance activity needed to mitigate the risks are not always specified and are not linked to target assurance levels. Assessments do not distinguish between risks from commercial and recreational fishing or identify the appropriate balance of compliance monitoring between the two. These gaps make it very difficult to determine if resources are being targeted to areas of highest risk.

There are key gaps in the way the Department assesses compliance risk

The Department considers risks separately for 76 fisheries (which, for the risk assessment, are also broken down by location). These assessments:

- identify threats
- provide a preliminary risk score
- identify the total compliance resources (patrol hours) needed to reduce the risk score
- set out a residual risk score that confirms the level of remaining risk after the compliance resources are considered.

However, risk assessments contain few details on what types of compliance activities should be conducted, and how frequently, to effectively manage the identified risks. Effectively mitigating risk requires more than an allocation of resources. The Department also needs to specify what those fisheries officer resources will do. For example, we expected the Department to specify how many times licences, boats, fishing gear and catches would be inspected. We found only 37 specific activity targets compared to 846 threats. When the Department does make plans to manage the threats it identifies in its risk assessment, it does not monitor whether they are put into practice.

We expected to see specific risk strategies aimed at mitigating commercial fishing risks, because these risks are often different in nature, likelihood and consequence from recreational fishing risks. However, there were very few activity targets in the risk assessment and little detail about activities targeting commercial compliance.

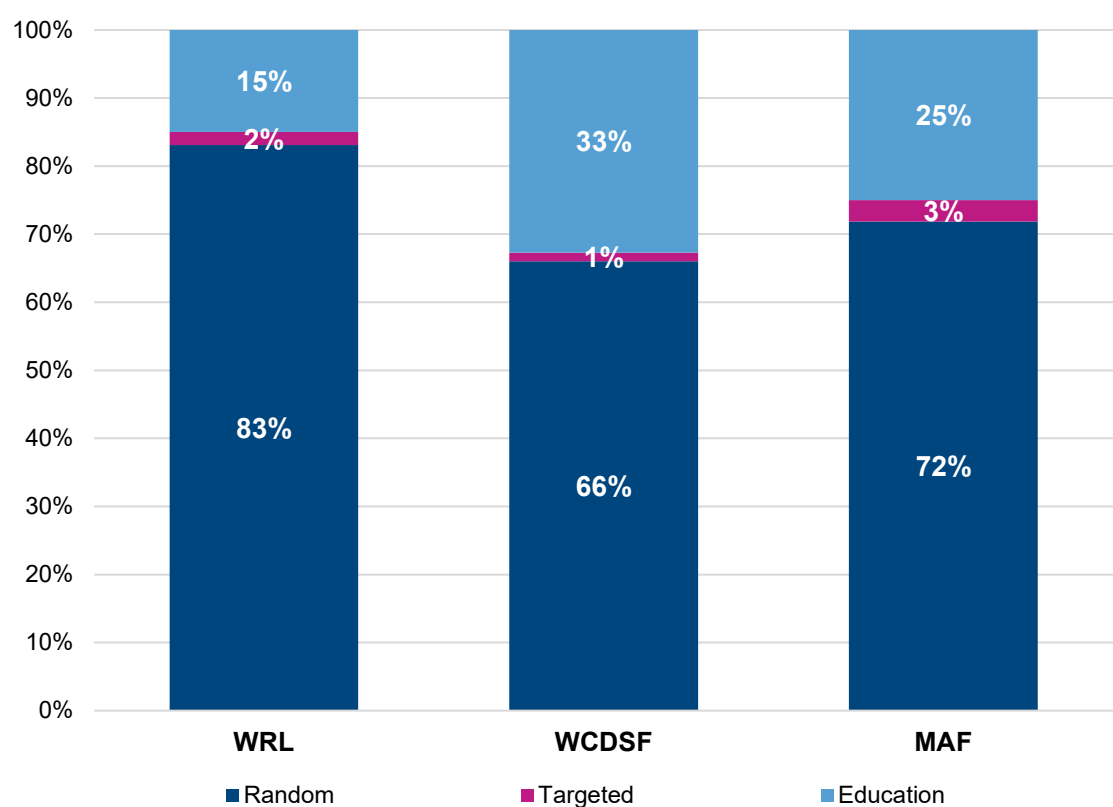
Nearly half of fisheries (37 of 76) have at least one residual high risk score after taking into account planned mitigation strategies. The Department's qualitative assessments of its compliance strategies show that the strategies are considered to be inadequate in 17 cases. The Department has advised that in some of these instances, it considers that non-compliance will not affect sustainability and they are not a priority. Overall, there remains a high risk of undetected non-compliance for many fisheries.

The Department is not using key information to target compliance monitoring to risks

Until recently, gathered intelligence did not inform risk assessments and the intelligence unit was not actively involved in risk assessments. In early 2022, the intelligence unit started preparing quarterly bulletins for the fisheries officers to inform them of patterns and areas of compliance focus. Further, the data collected by the licensing and entitlements unit is not shared and therefore does not assist in predicting trends in potential non-compliance or

assist in compliance planning activities. Sharing and use of information increases the Department’s ability to manage compliance risks.

As part of risk mitigation planning, we expected to see a statement of how much fisheries officers should focus on targeted activities over reactive work during their patrols. However, this was not clearly outlined or justified in risk assessment or planning, which means the Department does not know if the balance is right. For three sampled fisheries, most activities were random or reactive (between 66% and 83%) rather than targeted inspections (between 1% and 3%) designed to address identified risks, such as operators known to exhibit certain patterns or non-compliant behaviour. The remaining activities were categorised as education (Figure 2). Separating targeted work from random and reactive activities would assist the Department to direct its resources where they will have the most impact.



Source: OAG based on Department data

Figure 2: Targeted, random/reactive and education contacts by fisheries officers for the Western Rock Lobster (WRL), West Coast Demersal Scalefish (WCDSF) and Marine Aquarium (MAF) commercial fisheries between 1 July 2016 to 30 June 2021

In addition to the risk assessment, each region develops its own compliance plan. We expected to see a clear link between regional work plans and the Department’s overall fisheries compliance risk assessment but found this was not consistently the case. Regional plans are not standardised. We reviewed three regional plans for the Southern, Metropolitan and Mid West regions and found that two lacked detail on how much time officers would spend on what activities in what fisheries. The lack of detailed operational planning aligned to risk assessments makes it less likely that the Department can show that it is effectively managing fishing compliance risks.

The Department does not monitor the completion or effectiveness of its compliance monitoring and enforcement functions

Management information and systems do not support effective performance monitoring

The Department has not established measures to evaluate the effectiveness of its commercial fishing regulation. It undertakes only ad hoc operations to test aspects of its compliance activities. These strategies may provide useful insights but do not provide the Department with a comprehensive understanding of how effective its regulation is, or indeed whether planned compliance activities have been completed.

The Department collects a lot of data about licensing, entitlements, compliance and enforcement activities but it does not regularly analyse and report it to management. Many of the information systems holding data are aging and have limited automated reporting capabilities. Because of this, the Department has recently completed a business case for its Digital Transformation Strategy.

The Digital Transformation Strategy is not yet approved or funded. Until new systems are implemented, the Department needs to decide the type and frequency of analysis needed to understand its performance, ensure it is collecting the right data and put manual processes in place to analyse and report. Without monitoring performance in this way, the Department may miss out on understanding where it needs to perform better and put improvements in place.

The Department is missing opportunities to understand and improve its regulation

While the Department does not have specific measures or reports to monitor its effectiveness, it does carry out targeted operations to test the effectiveness of its compliance framework for some fisheries in some locations. For example, in the past the Department has conducted an extensive covert operation to test the effectiveness of its compliance strategies for the WRL fishery. These types of targeted operations help the Department understand how much non-compliance is going undetected and should become part of a program of ongoing evaluation, rather than an ad hoc event.

The Marine Stewardship Council's certification of 12 WA fisheries as sustainable provides the Department with some assurance, but as the Council is an external body and as the industry regulator, the Department should have its own comprehensive mechanism to evaluate effectiveness.

Evaluating compliance and enforcement performance would help the Department find ways to use technology to increase efficiency. For example, most fisheries, including the WRL industry, are currently not required to use the Vessel Monitoring System (VMS). VMS is a key surveillance system that tracks the location of boats and fishing equipment and can help detect illegal fishing in other fisheries. The WRL fishery is the highest valued in the State, worth \$225 million in 2020-21 and is currently allocated a significant number of compliance hours. Other industries are regulated using similar technologies. For example, global positioning or similar systems are used to monitor specified heavy vehicles in WA. The introduction of VMS in more fisheries could potentially help the Department target illegal fishing and free up fisheries officer resources for other compliance work.

Licensing, entitlement management and enforcement could be more efficient and effective

We examined the Department's commercial fishing licensing processes, its management of entitlements, its compliance activities and its enforcement work. Some aspects of each were effective but we also found improvements were required. Specifically, the method used to calculate fees is due for review, manual licensing and entitlement processes are inefficient and, while prosecution of offences is successful, offence numbers and penalties are reducing but it is not clear why.

Fees were collected in accordance with regulations

Fee collection and allocation is accurate but the methodology used to calculate fees is overdue for review. Commercial fishing fees are worth around \$30 million each year (Table 1). We tested sampled transactions for three types of fees collected between 2016 and 2022 and found fees were charged, receipted and allocated correctly to the special purpose account for commercial fishing as required by legislation. However, the Department has not reviewed the methodology used to calculate the Gross Value of Production (GVP) for its commercial fishing fees since 2015. Fees are set at a proportion of GVP and a ministerial guideline requires regular independent audits of GVP calculation methodology. This provides assurance to stakeholders that fees are set at a fair amount.

Year	Commercial	Recreational
2019-20	\$30 million	\$8.5 million
2020-21	\$30 million	\$9.2 million
2021-22	\$28 million	\$9.3 million

Source: OAG based on Department data

Table 1: Licence fees collected for commercial and recreational fishing

We did not test if the funds in the Fisheries Research and Development Account were spent in accordance with legislation. The Auditor General has previously qualified the Department for deficiencies and weakness of controls in the cash monitoring system that manages the Fisheries Research and Development Account.¹³ Through the financial audit process, we will continue to follow this up.

Licensing and entitlement processes are inefficient

Licensing and entitlement processes are largely manual and paper based, creating processes that are inefficient and time-consuming, making it more difficult for fishers to comply. While online applications are available for some common transactions, to apply for and renew licences (such as fishing boat licences or to transfer entitlements to fish), commercial fishers must complete a paper form and either submit it by post or in person. Reminders are also sent out in the post.

Industry members expressed their frustration at the lack of digital capacity to manage licensing and entitlements, and make payment of fees. Making it easier for fishers to comply with licensing requirements will encourage compliance. We note that the Department has embarked on a fisheries Digital Transformation Strategy to transform and modernise current systems, such as Fish Eye¹⁴, that are aging or paper based.

¹³ Office of the Auditor General, [Audit Results Report – Annual 2020-21 Financial Audits of State Government Entities](#), OAG, Perth, 24 November 2021, p. 14.

¹⁴ Fish Eye online services allows some licence holder to securely transact online, provide trip nominations, and catch and disposal records.

Commercial fishing entitlements, specifically the amount and type of fish you can take, are determined by the Department when a fishery changes from open access to a managed fishery. Commercial fishing entitlements are allocated to those who were fishing the open access fishery when the decision to create a managed fishery was made. Entitlements are then limited to keep fishing at a sustainable level. People can only enter the fishery if they purchase entitlements from existing participants. We did not examine how the Department determined the split between commercial and recreational fishing entitlements.

While individual enforcement actions are managed well, recorded offences have reduced over five years

The Department demonstrates sound administration of its enforcement functions but it needs to better capture and analyse data to understand the clear downward trend in enforcement actions and penalties. Enforcement practices are carried out according to established policies and procedures. The Department clearly communicates the penalty and sanction to offenders in accordance with the schedule set in the regulations and legislation, and almost always meets legislative enforcement timeframes for issuing enforcement notices.

There are appropriate levels of review and escalation depending on complexity of the matter, with all commercial offences escalated to the State Solicitor's Office to help manage complex prosecutions. Prosecutions generally result in conviction. Guilty verdicts were handed down for 99 of 102 offences prosecuted in the five years to 30 June 2021, including that in Case study 1, a 97% rate of conviction. The high rate of prosecution success is also likely to have a deterrent effect.

Case study 1: Prosecution of serious illegal commercial fishing

The largest penalty for illegal commercial fishing in WA was imposed against a Western Rock Lobster (WRL) licence holder that intentionally or recklessly contravened the management plan over three years from 2013 to 2016. The offences were detected during a Departmental operation targeting the WRL industry. The offences included overfishing of nearly 22,500kg of lobster and providing false or misleading nominations to fish. The offender was convicted in 2020 and the following penalties imposed:

- forfeiture of fishing gear including the boat
- permanent cancellation of the Commercial Fishing Licence
- fines and costs close to \$300,000
- loss of fishing entitlements worth nearly \$5.4 million.

However, the number of commercial fishing offences recorded has fallen by 26% over the five years to 30 June 2021. There was a high of 360 offences in 2016-17 and a low of 214 in 2019-20 (Table 2). This could indicate either a change in compliance and enforcement practice, improved compliance by industry or ineffective compliance monitoring by the Department. Because the Department does not have regular analysis and management reporting, or a defined method to assess how effective its compliance monitoring is, it cannot easily demonstrate what is driving the drop in enforcement actions and penalties. For example, it is difficult to tell what type of offences are occurring and in what fisheries.

We reviewed 80 offences that were serious enough to be prosecuted in court and noted more than half (48) of these were for breaches of a fishery MP. These included fishing in a prohibited area or having fish on board a fishing vessel without authorisation. A further 11 related to recordkeeping offences and another 11 related to taking or mutilating protected fish.

Financial year	Infringement penalties	Court penalties	Offences
2016-17	\$216,400	\$198,855	360
2017-18	\$185,900	\$252,406	292
2018-19	\$193,400	\$90,401	252
2019-20	\$110,500	\$53,318	214
2020-21	\$95,350	\$9,731	266

Source: OAG adapted from Department data

Table 2: Offences and penalties for commercial fishing offences

Gaps in the integrity framework increase the risk of industry capture and conflicts of interest

There is little explicit recognition of the risk of industry capture

Industry capture is a key risk for the Department because it must balance its role in enforcing fishing laws with its other role to support the economic development of the industry. To protect the sustainability of WA's natural resources, we have laws that limit the quantity of fish that can be taken from our oceans and waters. Once a quota is established for a fishery, it can be difficult for new people to secure commercial access rights – they must arrange for an existing industry member to sell their entitlement. This means that commercial fishers often stay in the industry for a long time, sometimes for multiple generations. This amplifies the risk of familiarity between the Department and the fishing industry.

The Department recognises integrity and reputation as key issues in its Strategic Risk Register, including the potential consequence of compromised decision-making. It also has structural separation between its research, policy, and compliance and enforcement areas. However, there is no explicit recognition or demonstrated understanding of the inherent risk that industry capture may tangibly impair regulatory effectiveness, or that its dual roles lead to the risk of industry capture. In March 2022, the Perth Casino Royal Commission (PCRC) recommended that there be formal written guidance about the regulatory posture that the casino regulator would adopt and about how it will address the risk of regulatory capture.¹⁵ Regulatory capture is a risk for all regulators, and the PCRC's views bear consideration by the Department's in its regulation of commercial fishing.

There is limited corporate guidance to help fisheries officers recognise and manage integrity risks

Specific integrity risks relating to fisheries enforcement are not considered in the Department's integrity framework. The framework includes policies, procedures and guidance material outlining behaviour expectations for all staff. The framework covers key integrity matters such as a code of conduct, conflicts of interest, receiving gifts and managing secondary employment. It also provides mechanisms to report and respond to issues. In addition, fisheries officers use body worn cameras to record their law enforcement interactions with industry. But the framework should provide clearer guidance about the specific integrity risks for fisheries officers. For example:

- The Conduct Guide notes that gifts should be declined by those with discretionary authority but it defines discretion only in relation to purchasing authority. It overlooks

¹⁵ Perth Casino Royal Commission, *Perth Casino Royal Commission Final Report*, PCRC, Perth, 2022, p. 618.

the risk of influence in other types of decision-making, such as use of fishing law enforcement powers.

- The Department does not have a policy on rotation of officers through regional locations despite risk that long-term tenure can lead to over familiarity between fisheries officers and industry.
- The Department's *Fisheries Compliance Strategy 2018*¹⁶ acknowledges several relevant reputational risks in relation to fisheries officer integrity but does not specify any strategies to mitigate them.

There is also a lack of guidance for fisheries officers on managing conflicts of interest in regional areas where officers may enjoy social relationships with the people they need to monitor for compliance and potentially sanction or prosecute. The risk is high in regional areas because communities are often small and there is an increased likelihood of familiarity over time. The Department does not have a maximum tenure for regional positions or rotate its staff through regional posts to manage this risk.

One regional office had implemented its own controls. In Albany, a supervisor advised that the fisheries officers swap patrol partners every six weeks to minimise the risk of collusion. Officers are also not allowed to participate in enforcement work involving relatives in the industry. These control measures are not required by policy. The Department advises the same arrangement is practiced in all districts where there is more than one fisheries officer, but we did not see evidence during the audit. With clearer policies and better guidance, the Department can better manage these integrity risks.

The Department does not require fisheries officers to have regular integrity checks

Despite their significant law enforcement powers, fisheries officers are not subject to any ongoing integrity checks except as a requirement to meet a third-party obligation to access sensitive information held by other entities. Under its Employee Screening policy, the Department conducts national police clearance certificate checks before prospective employees start, to help identify if they have backgrounds that may put the Department, employees or clients at risk. However, there is no requirement for ongoing checks to be done after appointment, with two exceptions:

- some fisheries officers require access to the Department of Transport's licensing system and the Department of Transport provides this on the condition of up-to-date criminal records checks
- some fisheries officers have extraordinary legislative powers relating to covert surveillance. These officers undergo negative vetting and ongoing psychological monitoring.

By introducing its own universal requirement for periodic national police clearance checks, the Department could better protect the public and have greater assurance that its fisheries officers are not an integrity risk.

Complaints about conduct are not required to be handled independently and the process is not robust

The Department's complaints policy and procedure does not require that complaints about officer conduct are handled independently of the officer or their local management. Instead, it states that all complaints will be directed to the business area responsible for the service.

¹⁶ Department of Primary Industries and Regional Development, [Fisheries compliance strategy](#), DPIRD, Perth, 2018.

While this is a reasonable approach for complaints about service quality, complaints about conduct could involve or reveal integrity issues. These complaints need to be assessed and investigated independently of the particular officer and their line management to protect the complainant and ensure confidence in the integrity of the process and its outcomes.

When we consulted fishing industry members, some told us they have concerns about negative consequences and even retribution from the Department for making complaints. They lacked confidence about confidentiality of the Department's complaints process. Other entities with law enforcement powers, such as the Western Australian Police Force, have transparent mechanisms in place to ensure that complaints about officer conduct are directed to an independent area of the organisation.

Appendix 1: Bioregions of WA

Map showing the boundaries of the bioregions and Integrated Marine and Coastal Regionalisation of Australia ecosystems.



Source: DPIRD¹⁷

¹⁷ Department of Primary Industries and Regional Development, '[Status reports of the fisheries and aquatic resources of Western Australia 2020/21](#)', *State of the Fisheries report*, 17 March 2022, accessed 17 November 2022.

Appendix 2: Licensing

The *Fish Resources Management Act 1994* (FRMA) provides the authority to the Department to issue licences and authorisations that provide access or the right to fish either commercially or recreationally. Fees are charged for access so that anyone who wishes to access the State resource is required to pay for the privilege. The FRMA is further supported by the Fish Resources Management Regulations 1995 (FRMR) and fishery management plans which outline the types of fees and rates applicable to each licence and fishery.

There are numerous types of licences and fees within the commercial fishing industry. Some of the types of licences that attract fees include a commercial fishing licence (CFL), fishing boat licence (FBL) and managed fishery licence (MFL). Multiple licences may be required for the right to fish and the access to the fishery.

Commercial fishing licence

CFLs are required by everyone engaged in commercial fishing and are intended to ensure 'fit and proper' people have equitable access to the State's fish stock. They allow the Department to vet people engaging in commercial fishing and bar access to those who do not meet the 'fit and proper' criteria, such as people who have a history of illegally fishing.

The CFL is renewed annually and if someone is caught fishing commercially without a licence, an infringement may be issued.

Fishing boat licence

FBLs are required for all commercial fishing boats. These licences ensure that the boats are safe and specify the type of equipment allowed on board.

The FBL allows the Department to identify and track the boats used within the commercial fishing industry. To fish commercially a person or entity must be in possession of or have access to an FBL. The FBL is transferable. An FBL holder can either temporarily lease or permanently sell their licence to another person/entity in a free market.

Managed fishery licence

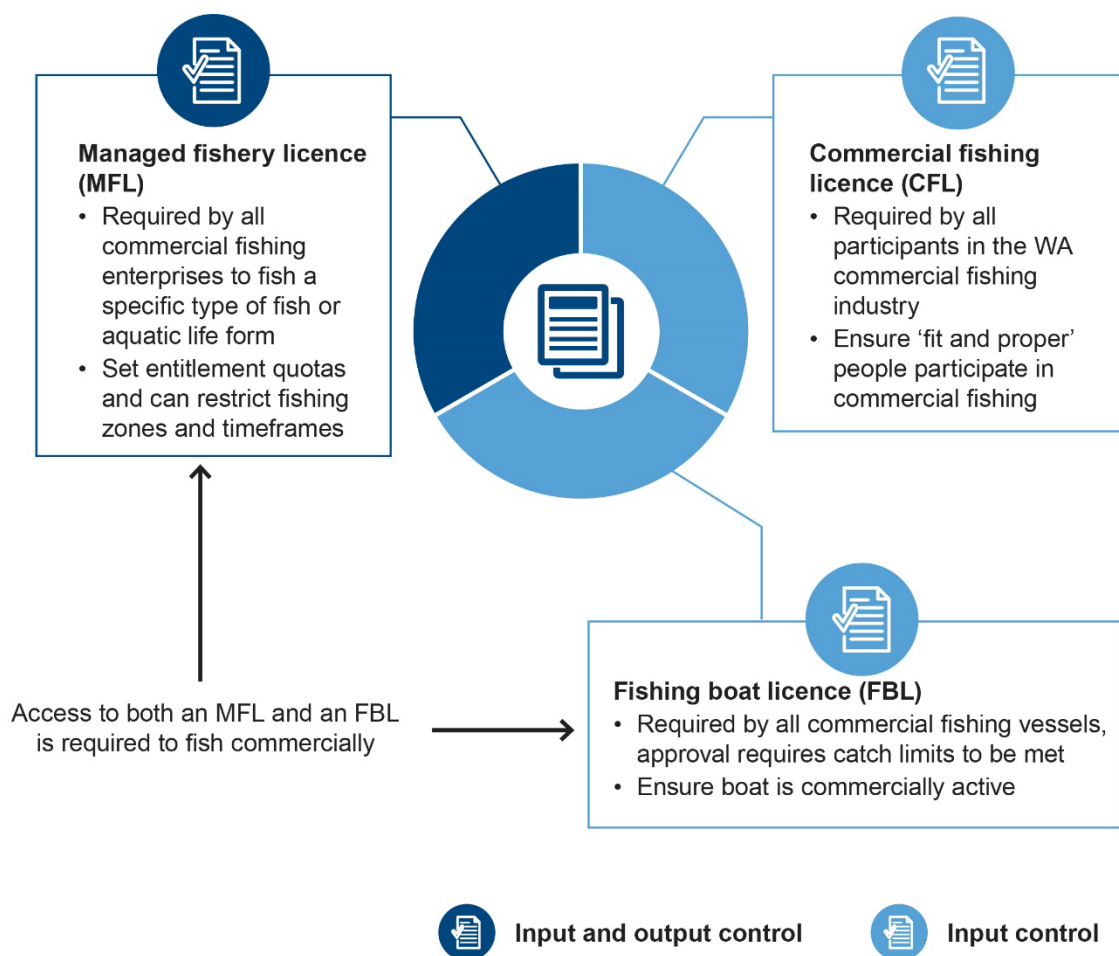
The MFL controls access to the State's fish stock. A holder has the right to fish in the nominated fishery as per their approved entitlement (for example, to catch a certain type and quantity of fish).

This type of licence is used to manage the risk of overfishing by imposing input and output controls. Input controls include:

- controlling boat access to a size and type of fish
- types of fishing gear used
- the length of the fishing season
- boundary locations for fishers, which are monitored by the Department.

Output controls include the maximum quantity of fish (quota) allowed to be caught.

Commercial fishing licensing structure in WA



Source: OAG based on DPIRD information

Number of commercial and recreational fishing licences held at 30 June 2021

Commercial licences	Total	Recreational activities	Total
MFL	1,428	Recreational FBL	132,508
Interim MFL	127	WRL	56,362
Other	4,667	Abalone	18,448
Total	6,222	Marron	10,539
Aquaculture licences	422	Net	14,410
Aquaculture leases	14	South West fresh water angling	9,473
Total	436	Total	241,740
		Approximately 162,000 recreational licences issued	

Source: OAG adapted from DPIRD's annual report 2020-21 page 247

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Auditor General's 2022-23 reports

Number	Title	Date tabled
9	Management of Long Stay Patients in Public Hospitals	16 November 2022
8	Forensic Audit Results 2022	16 November 2022
7	Opinion on Ministerial Notification – Tom Price Hospital Redevelopment and Meekatharra Health Centre Business Cases	2 November 2022
6	Compliance Frameworks for Anti-Money Laundering and Counter-Terrorism Financing Obligations	19 October 2022
5	Financial Audit Results – Local Government 2020-21	17 August 2022
4	Payments to Subcontractors Working on State Government Construction Projects	11 August 2022
3	Public Trustee's Administration of Trusts and Deceased Estates	10 August 2022
2	Financial Audit Results – Universities and TAFEs 2021	21 July 2022
1	Opinion on Ministerial Notification – Wooroloo Bushfire Inquiry	18 July 2022

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