



Australian Government

Australian Fisheries Management Authority

18 March 2020

REF: DOC20/5658

Mr Chris Smyth

Email: foi+request-5240-b6824b0e@righttoknow.org.au

By Email via Right to Know website

Dear Mr Smyth,

**NOTICE OF DECISION
FREEDOM OF INFORMATION APPLICATION**

1. I refer to your request made under the *Freedom of Information Act 1982* (the FOI Act) on 25 February 2019 for documents held by the Australian Fisheries Management Authority (AFMA) relating to various aspects concerning foreign fishing vessels as outlined below.
2. I again offer my apologies for the long delay in finalising your application.
3. The specific details that you have sought access to are reproduced in **Attachment A**.

Authority

4. Pursuant to section 23 of the FOI Act, I as the principal officer of AFMA may make a decision in respect of a request made under the FOI Act to AFMA.

Time frame

5. On 1 February 2019 AFMA received your request. On 22 February 2019 AFMA consulted with you to clarify the scope of your request. On 25 February 2019 you responded, clarifying the scope of your request and AFMA formally acknowledged your request as a valid request on that date.
6. Pursuant to paragraph 15(5)(b) of the FOI Act, AFMA is required to notify you of a decision on your request at the end of the period of 30 days after the day on which the request was received by AFMA. This means AFMA was required to notify you of its decision on 27 March 2019. The notification of the decision on your request was not issued by that date and pursuant to subsection 15AC(3) of the FOI Act, I as the principal officer of AFMA was taken to have made and notified you of a decision to personally refuse to give access to the documents on 27 March 2019.
7. As explained to you in my letter of 2 December 2019, this was completely unintentional, and AFMA's lack of action within the specified timeframe was due to a series of issues largely unrelated to the request.
8. On 20 December 2019 I applied to the Information Commissioner for further time to deal with your request. On 13 January 2020 the Information Commissioner advised me that the application for further time was unlikely to be granted. The Information Commissioner further advised that where an access refusal decision is deemed to have made before a substantive decision is made, AFMA continues to have an obligation to provide a statement of reasons on your request. The obligation to provide a statement of reasons continues until any Information Commissioner review of the deemed decision is finalised. Based on these factors, I withdrew the request for further time and now issue this statement of reasons.

Material Taken into Account

9. In making my decision I had regard to:
- You request dated 25 February 2019;
 - The content of the documents in scope as set out in Schedule 1 - Schedule of Documents;
 - Relevant provisions of the FOI Act;
 - FOI Guidelines published by the Office of the Australian Information Commissioner; and
 - Comments provided by the then Department of Agriculture and Water Resources (now the Department of Agriculture, Water and Environment).

Documents in Scope

10. AFMA staff initially identified 106 documents as being potentially relevant to your request. Following a detailed review, there are 34 documents that are within the scope of your request. A schedule of those documents is set out in Schedule 1.
11. The main reasons that the remaining 72 documents are considered to be out of scope included that some documents were:
- already publicly available;
 - duplicative – especially in the case of e-mail traffic where multiple individual e-mails were initially identified, but where a single string was available that included all of them; or
 - outside the parameters of the request, such as relating to dates before the request period, or subject matter that did not fall within the specifics of the request as reproduced in Attachment A.

Decision on Access

12. I make the decision as follows:
- Not to release documents numbered 1-8, 11, 13-16, and 22-24.
 - To release in part documents numbered 0, 9, 10, 12, 17-21, and 25-33. These documents with redactions are at **Attachment B**.

Reasons for Decision

13. The schedule of documents at Schedule 1 sets out the decision on access and relevant sections of the FOI Act pertaining to the access decision. My reasoning in relation to the application of each of the sections to the respective document is set out below. Copy of the relevant sections of the FOI Act is at **Attachment C**.

A. Not to release – conditionally exempt and exempt documents

Section 47C: Deliberative process documents

14. Section 47C of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would disclose matter (*deliberative matter*) in the nature of, or relation to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place in the course of, or for the purpose of, the deliberative processes involved in the functions of an agency.

Documents numbered 1-4, 13, 14, 16 and 22 and 24

15. Documents numbered 1-4, 13, 14, 16, and 22-24 as per Schedule 1 contain deliberative matters which are conditionally exempt under section 47C of the FOI Act. The documents are in the nature of or relation to opinions, advice, and recommendations obtained, prepared or recorded in the course of deliberative process associated with the development of the foreign fishing policy. The documents also contain various versions of the draft foreign fishing policy that were prepared in the course of that deliberative process.
16. These documents do not fall under the exceptions set out in subsections 47C(2) and (3) in that they are not operational information, or purely factual material; or reports of scientific or technical experts, reports prescribed by the regulations, or the record of a final decision given in the exercise of a power or of an adjudicative function.
17. However, pursuant to subsection 11A(5) of the FOI Act I must give you access to the documents unless access to the documents would, at this time, on balance, be contrary to the public interest. Below are the factors favouring access prescribed by subsection 11B(3), which I must consider:
 - a. promote the objects of the FOI Act;
 - b. inform debate on a matter of public importance;
 - c. promote effective oversight of public expenditure; and
 - d. allow a person to access his or her personal information.
18. I am of the view that disclosure would promote the objects of the FOI Act, specifically to give the Australian community access to information held by the government. However, I do not consider the disclosure of these documents would satisfy the remaining factors. The advice, opinions and recommendations relating to the foreign fishing policy which is yet to be published for public consultation is unlikely to inform debate on a matter of public importance as they are not a finalised policy adopted by the government. The other two factors are not relevant for consideration because the issue does not relate to public expenditure or access to personal information.
19. The factors against disclosure are not prescribed in the FOI Act but the FOI Guidelines provide a non-exhaustive list of factors against disclosure¹. I form the view that disclosure of these documents in particular when the draft policy is not yet ready for public consultation could reasonably be expected to create uncertainty within the fishing industry about government's intention and direction on foreign vessels fishing in the Australia Fishing Zone and this in turn could reasonably be expected to negatively affect the behaviour (including consultation and information sharing between industry and Government) and commercial decision making of the fishing industry.
20. Further, disclosure of these documents could reasonably be expected to inhibit frankness and candour in the provision of advice, opinions and recommendations; and consultation between the then Department of Agriculture and Water Resources (the **Department**) and other departments/agencies within the Commonwealth government with respect to deliberative process concerning the Department's functions and activities.
21. The issues raised in paragraphs 19 and 20 would prejudice the management and regulatory functions that AFMA discharges.
22. Having considered these factors, on balance, I have decided that the disclosure of these documents would be contrary to the public interest and therefore have decided not to disclose these documents.

¹ Paragraph 6.22 of FOI Guidelines.

23. I have not taken into account irrelevant factors set out in subsection 11B(4) of the FOI Act in coming to this decision.

Documents numbered 5-7 and 15

24. Documents numbered 5-7, and 15 contain deliberative material which is conditionally exempt under section 47C. The documents have copies of a ministerial brief from the Department to the Assistant Minister, providing recommendations and advice in relation to the deliberative process associated with the adoption of the foreign fishing policy. In reviewing these documents, I have considered the same factors favouring disclosure and against disclosure as set out above in paragraphs 17 and 19. For the same reasons as discussed above in paragraphs 15 to 23 and, on balance, I form the view that disclosure of these documents would be contrary to the public interest and have decided not to give you access to these documents.

Section 42: legal professional privilege

25. Document number 8 is exempt under section 42 of the FOI Act because the document contains legal advice that is subject to legal professional privilege and the legal privilege has not been waived. Accordingly, I have decided to not provide you with access to this document.

Section 45: documents containing information obtained in confidence

26. Document numbered 11 contains information exempt under section 45 of the FOI Act because it refers to confidential discussions held with a third party, and the disclosure of that material may be found in breach of confidence. Therefore, having consulted the author of that document (the Department), I have decided not to give access to this document.

B. To release in part

Section 22(1): information that is irrelevant to the FOI request

27. The effect of subsection 22(1) of the FOI Act is that where the granting of access to a document would disclose information that is not within the scope of the request and it is possible to provide a copy with information deleted, I can do so unless it is evident that you do not wish to be provided with access to such a copy.

Documents numbered 10 and 18

28. Documents numbered 10 and 18 contains details of junior staff that do not fall within the scope of your FOI request. I consider that providing you with full access to these documents would disclose information that does not fall within the scope of your FOI request.
29. The details of the junior staff have been deleted pursuant to section 22(1) of the FOI and I give you access to the above documents with staff's details redacted at **Attachment B**.

Document numbered 33

30. Document numbered 33 was specifically generated in response to your request for a list of declared boats over the past five years. Some of the information that you requested in the list is commercial in nature.
31. The information of commercial nature is conditionally exempt under section 47G of the FOI Act. Having taken into account the factors favouring and against disclosure, I have decided not to provide you with access to that information because it would disclose information concerning the business and commercial affairs of an organisation that would or could reasonably be expected, to unreasonably affect that organisation in respect of its business and commercial affairs.
32. With respect to information that fall outside the period of request as outlined above in paragraph 31, I have decided to redact that information under subsection 22(1) of the FOI Act. Accordingly, I give you

access to document 33 with the commercial nature information and irrelevant information redacted at **Attachment B**.

Section 47C: Deliberative process documents

Documents numbered 0, 9, 12, 17, 19-21, and 25- 32

33. I consider that some information contained in documents numbered 0, 9, 12, 17, 19-21, and 25- 32 is conditionally exempt based on the same grounds as outlined above in paragraphs 15 to 17. However, I must give you access to the information unless, on balance, it would be contrary to the public interest. Having considered the factors favouring disclosure listed under subsection 11B(3) and factors against disclosure as suggested in the FOI Guidelines, on balance, for the same reasons as discussed above in paragraph 15 to 23, I am of the view that giving access to the information at this time would be contrary to the public interest. Accordingly, I have made the decision not to give you access to the conditionally exempt information within these documents.
34. The conditionally exempt information has been deleted pursuant to section 22(1) of the FOI and I give you access to the above documents with the conditionally exempt information redacted at **Attachment B**.

Review Rights

35. If you are dissatisfied with my decision, you can make an application to the Information Commissioner for a review within 60 days after receiving my decision. You can also make a complaint to the Office of the Australian Information Commissioner (OAIC).
36. Below is the link to the internet page on the OAIC website that contains information about your rights and procedure for exercising those rights.
- <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>
37. If you want to make a complaint, below is the link to the internet page on the OAIC website that contains information about how to make a complaint.

<https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint/>

Important Information

38. It is important for you to note that disclosure of any of the documents released (now or possibly in the future) to you under the FOI Act does not, for the purpose of the law of defamation or copyright, constitute an authorisation or approval to republish the documents or to do an act comprised within the copyright in the document (s 91(2) of the FOI Act). That is, if you disseminate defamatory or copyright material in any document received following an FOI Act request you will have no FOI Act protection against an action for defamation or breach of copyright.

Publication of information in the FOI disclosure log

39. Information released under the FOI Act may be published in a disclosure log on the AFMA's website at <http://www.afma.gov.au/about/afma-disclosure-log/>. Section 11C of the FOI Act requires this publication, subject to certain exceptions, including where publication of personal, business, professional or commercial information would be unreasonable.

Contacts

40. Should you require further information please do not hesitate to contact Summer Nguyen-Aulmann on (02) 6225 5317 or via email at FOI-mailbox@afma.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to be 'W. Norris', with a stylized flourish extending from the bottom left.

Wez Norris
Chief Executive Officer
Australian Fisheries Management Authority

Attachment A – Details of FOI Request

- a. Letters, email communications and minutes of meetings between the CEO and/or staff of the Australian Fisheries Management Authority and the CEO and/or members of Tuna Australia pertaining to:
 - i. the entry and use of foreign fishing vessels into the Australian Fishing Zone under Sections 34–37 of the Fisheries Management Act 1991 either through importation, deeming, joint ventures or under bilateral agreements or treaties over the past five years;
 - ii. possible changes to Sections 34–37 of the Fisheries Management Act with respect of changes to entry of and/or operational requirements on foreign fishing vessels (deemed or otherwise) in the Australian Fishing Zone;
 - iii. any references to the operation of foreign or deemed vessels and the proposed changes to Commonwealth marine park management plans, particularly in the Coral Sea Marine Park, Temperate East Marine Region, South West Marine Region and the North West Marine Region.
- b. Letters, email communications and minutes of meetings between the CEO and/or staff of the Australian Fisheries Management Authority and individual owners/operators of Australian tuna fishing vessels pertaining to:
 - i. the entry and use of foreign fishing vessels into the Australian Fishing Zone under Sections 34–37 of the Fisheries Management Act 1991 either through importation, deeming, joint ventures or under bilateral agreements or treaties over the past five years;
 - ii. possible changes to Sections 34–37 of the Fisheries Management Act with respect of changes to entry of and/or operational requirements on foreign fishing vessels (deemed or otherwise) in the Australian Fishing Zone;
 - iii. any references to the operation of foreign or deemed vessels and the proposed changes to Commonwealth marine park management plans, particularly in the Coral Sea Marine Park, Temperate East Marine Region, South West Marine Region and the North West Marine Region.
- c. Letters, email communications and minutes of meetings between the CEO and/or staff of the Australian Fisheries Management Authority and individual owners/operators of fishing vessels used in the Small Pelagics Fishery pertaining to:
 - i. the entry and use of foreign fishing vessels into the Australian Fishing Zone under Sections 34–37 of the Fisheries Management Act 1991 either through importation, deeming and joint ventures or under bilateral agreements or treaties over the past five years;
 - ii. possible changes to Sections 34–37 of the Fisheries Management Act with respect of changes to entry of and/or operational requirements on foreign fishing vessels (deemed or otherwise) in the Australian Fishing Zone;
 - iii. any references to the operation of foreign or deemed vessels and the proposed changes to Commonwealth marine park management plans, particularly in the Coral Sea Marine Park, Temperate East Marine Region, South West Marine Region and the North West Marine Region.
- d. Emails, letters, briefing papers or notes prepared by the Australian Fisheries Management Authority for the federal Minister or Assistant Minister for Agriculture and Water Resources, pertaining to:

- i. the entry and use of foreign fishing vessels into the Australian Fishing Zone under Sections 34–37 of the Fisheries Management Act 1991 either through importation, deeming, joint ventures or under bilateral agreements or treaties over the past five years;
 - ii. possible changes to Sections 34–37 of the Fisheries Management Act with respect of changes to entry of and/or operational requirements on foreign fishing vessels (deemed or otherwise) in the Australian Fishing Zone;
 - iii. any references to the operation of foreign or deemed vessels and the proposed changes to Commonwealth marine park management plans, particularly in the Coral Sea Marine Park, Temperate East Marine Region, South West Marine Region and the North West Marine Region.
- e. Letters, emails and minutes of meetings between Australian Fisheries Management Authority officers and the Department of Agriculture and Waters Resources managers of tuna fisheries and the Small Pelagics Fishery pertaining to:
 - i. the entry and use of foreign fishing vessels into the Australian Fishing Zone under Sections 34–37 of the Fisheries Management Act 1991 either through importation, deeming, joint ventures or under bilateral agreements or treaties over the past five years;
 - ii. possible changes to Sections 34–37 of the Fisheries Management Act with respect of changes to entry of and/or operational requirements on foreign fishing vessels (deemed or otherwise) in the Australian Fishing Zone;
 - iii. any references to the operation of foreign or deemed vessels and the proposed changes to Commonwealth marine park management plans, particularly in the Coral Sea Marine Park, Temperate East Marine Region, South West Marine Region and the North West Marine Region.
- f. A list of the foreign fishing vessels that have entered the Australian Fishing Zone through importation, deeming and joint ventures or under bilateral agreements or treaties over the past five years, the names of their owners (including the new owners for those vessels imported) and the fishery in which they have been used over the past five years.
- g. A list of current applications under Sections 34–37 of the Fisheries Management Act for the entry into and operation of foreign fishing vessels in the Australian Fishing Zone either through importation, deeming, joint ventures or under bilateral agreements or treaties, including the names of the vessels, the names of their owners (including the new owners for those vessels imported) and the fishery in which each vessel is proposed to be used.
- h. A list of foreign vessels that have become “Australian boats’ under the Australian Fisheries Management Act 1991 and nominated to Commonwealth concessions harvesting fish from the Australian Fishing Zone over the past five years, including the names of their owners, the concession owners and the fishery in which they have been used over the past five years.
- i. Briefing notes prepared for or by the CEO of the Australian Fisheries Management Authority for his presentation at the Senate Rural and Regional Affairs and Transport Legislation Committee Estimates on 24 October 2017.
- j. The analyses conducted or commissioned by the Australian Fisheries Management Authority that determined that tuna stocks within the Australian Fishing Zone were ‘underutilised’.
- k. The assessments carried out or commissioned by the Australian Fisheries Management Authority, and the criteria used, to determine that the tuna fisheries and the Small Pelagic Fishery in the Australian Fishing Zone were ecologically sustainable.
- l. The analyses used to define a ‘super trawler’ in terms of the length of a vessel.

SCHEDULE 1 – SHEDULE OF DOCUMENTS

Doc No.	Date of Document	Number of pages	Description of Document	Author	Document Type	Decision on Access
0	08/02/2018	2	AFMA internal e-mail containing e-mail from DAWR to AFMA and DFAT – Japanese access	AFMA	email	Conditionally exempt - contains deliberative material under section 47C of the FOI Act
1	28/06/2018	2	AFMA to DAWR - response to query on foreign fishing vessel	AFMA	email	Conditionally exempt - contains deliberative material under section 47C of the FOI Act
2	18/04/2018	10	DAWR to AFMA - editorial changes to draft foreign fishing policy	DAWR	email	Conditionally exempt - contains deliberative material under section 47C of the FOI Act
3	6/04/2018	12	DAWR to AFMA - response to response on draft guidelines	DAWR	email	Conditionally exempt - contains deliberative material under section 47C of the FOI Act
4	6/04/2018	6	DAWR to AFMA - draft guidelines for declaring boats	DAWR	email	Conditionally exempt - contains deliberative material under section 47C of the FOI Act
5	13/03/2018	9	DAWR to AFMA - re draft foreign fishing policy	DAWR	email	Conditionally exempt - contains deliberative material under section 47C of FOI Act

6	7/03/2018	17	AFMA to DAWR - AFMA comments on foreign fishing briefing	AFMA	email	Conditionally exempt - contains deliberative material under section 47C of FOI Act
7	5/03/2018	16	DAWR to AFMA - Brief on foreign fishing	DAWR	email	Conditionally exempt - contains material under section 47C of FOI Act
8	2/03/2018	19	DAWR to AFMA - legal advice	DAWR	email	Exempt under section 42(1) of FOI Act - contains information subject to legal professional privilege
9	24/01/2018	13	AFMA to DAWR - AFMA comments on foreign fishing policy	AFMA	email	Release in part - contains conditionally exempt deliberative material under section 47C of FOI Act - redaction made under section 22 of FOI Act
10	23/11/2017	39	DAWR email to AFMA - seeking information on tuna statutory fishing right conditions	DAWR	email	Release in part - redaction of junior staff's names under section 22 of FOI Act
11	24/04/2017	2	DAWR to AFMA - Detail of discussions between DAWR and a third party	DAWR	email	Exempt under section 45 of FOI Act - contains material obtained in confidence

12	6/07/2016	97	DAWR to AFMA - request for comments on Foreign Fishing Policy review	DAWR	email	Release in part - contains exempt deliberative material under section 47C of FOI Act - redaction made under section 22 of FOI Act
13	5/01/2018	13	DAWR to AFMA - draft Foreign Fishing policy for comment	DAWR	email	Conditional exempt - contains deliberative material under section 47C of FOI Act
14	18/04/2018	10	DAWR to AFMA - advising updates on editorial changes to foreign fishing policy	DAWR	email	Conditionally exempt - contains deliberative material under section 47C of FOI Act
15	13/03/2018	9	DAWR to AFMA -re ministerial brief from DAWR on foreign fishing policy	DAWR	email	Conditionally exempt - contains deliberative material under section 47C of FOI Act
16	5/03/2018	16	DAWR to AFMA - re ministerial brief from DAWR on foreign fishing policy	DAWR	email	Conditionally exempt - contains deliberative material under section 47C of FOI Act
17	1/02/2018	16	DAWR to AFMA - agenda for meeting and draft foreign fishing policy	DAWR	email	Release in part - contains exempt deliberative material under section 47C of FOI Act - redaction made under section 22 of FOI Act

18	31/01/2018	1	DAWR to AFMA - request for details relating to the operations of the fishing vessel Rahua	DAWR	email	Release in full - redaction of junior staff's names under section 22 of FOI Act
19	18/01/2018	15	DAWR to AFMA - request for comment on draft foreign fishing policy	DAWR	email	Release in part - contains exempt deliberative material under section 47C of FOI Act - redaction made under section 22 of FOI Act
20	8/11/2017	3	DAWR to AFMA -request for meeting on foreign fishing policy	DAWR	email	Release in part - contains exempt deliberative material under section 47C of FOI Act - redaction made under section 22 of FOI Act
21	6/09/2017	2	DAWR to AFMA -request for meeting on foreign fishing policy	DAWR	email	Release in part - contains exempt deliberative material under section 47C of FOI Act - redaction made under section 22 of FOI Act
22	25/08/2017	2	DAWR to AFMA - high level principles of a foreign fishing policy	DAWR	email	Conditionally exempt - contains deliberative material under section 47C of FOI Act
23	2/05/2017	5	DAWR to AFMA - meeting agenda and discussion paper on foreign fishing policy and fishing in the Western Tuna and Billfish Fishery	DAWR	email	Conditionally exempt - contains deliberative material under section

						47C of FOI Act
24	1/09/2016	6	DAWR to AFMA - request for comment of foreign fishing review	DAWR	email	Conditionally exempt - contains deliberative material under section 47C of FOI Act
25	3/09/2015	5	AFMA to DAWR - confirming attendance at foreign fishing policy review workshop	DAWR	email	Release in part - contains exempt deliberative material under section 47C of FOI Act - redaction made under section 22 of FOI Act
26	25/05/2017	4	DAWR to AFMA - comments on draft letter from AFMA CEO to DAWR	DAWR	email	Release in part - contains exempt deliberative material under section 47C of FOI Act - redaction made under section 22 of FOI Act
27	30/10/2015	19	AFMA to DAWR - comments on foreign fishing policy review	DAWR	email	Release in part - contains exempt deliberative material under section 47C of FOI Act - redaction made under section 22 of FOI Act

28	2/08/2016	68	AFMA to DAWR - comments on foreign fishing policy review	DAWR	email	Release in part - contains exempt deliberative material under section 47C of FOI Act - redaction made under section 22 of FOI Act
29	17/05/2019	3	AFMA to DAWR - request for comments on draft letter from AFMA CEO to DAWR	DAWR	email	Release in part - contains exempt deliberative material under section 47C of FOI Act - redaction made under section 22 of FOI Act
30	2/02/2018	7	AFMA to DAWR - exchange of text on guidelines to foreign fishing policy	DAWR	email	Release in part - contains exempt deliberative material under section 47C of FOI Act - redaction made under section 22 of FOI Act
31	29/05/2017	5	AFMA to DAWR - request for comments on draft letter from AFMA CEO to DAWR	AFMA	email	Release in part - contains exempt deliberative material under section 47C of FOI Act - redaction made under section 22 of FOI Act

32	24/01/2018	13	AFMA to DAWR - comments on draft foreign fishing policy	AFMA	email	Release in part - contains exempt deliberative material under section 47C of FOI Act - redaction made under section 22 of FOI Act
33	26/03/2019	1	Copy of boats declared to be Australian from 2013 - 2019	AFMA	excel spreadsheet	Release in part - contains conditionally exempt commercial nature information section 47G of FOI Act - redaction of irrelevant information under section 22 of FOI Act