

Fact Sheet - Fisheries Compliance

Fisheries investigations and decision making — offences under the *Fisheries Management Act 1994*

February 2018

NSW DPI Fisheries Compliance Unit conducts education and enforcement activities to reduce the risk of loss of fish stocks and aquatic habitats across NSW, including in marine protected areas. This fact sheet provides the information you need to understand how investigations are conducted and the decision making process for responding to alleged fisheries offences.

1. Investigations

An investigation is a fact finding process – a search for, gathering and examination of information in order to establish facts. An investigation is one step in a decision-making process which starts with an issue and ends with a decision. The purpose of an investigation by a fisheries officer is to establish and document relevant facts, reach appropriate conclusions based on the available evidence, and determine a suitable enforcement response. The nature and scope of the investigation required in response to an alleged offence will depend on the circumstances of each case and any relevant statutory requirements that may apply.

Where alleged fisheries offending is detected, or suspected, fisheries officers may need to conduct an investigation. The length and complexity of an investigation is directly proportionate to the seriousness of the offending.

Some field investigations may take a short time and may require a fisher to provide their name and address. Fisheries officers may seize fish or fishing gear for even a minor fisheries offence.

Other field investigations may take a number of hours to complete, where, evidence is gathered, including photographs and video, fish and fishing gear are seized and persons suspected of being involved are interviewed.

High level offending, such as trafficking in fish or serious commercial fishing offences, such as

quota-evasion, may take a longer period of time to complete. This is due to the complexity of the offences and the required legal processes. These investigations may include recorded interviews of suspected offenders and witnesses, the execution of search warrants for gathering information and seizing fish/fishing gear and documenting the evidence required for the matter to be prosecuted.

Note: We appreciate that an investigation process could cause people to feel uncertain or anxious and we will do everything we can to reduce stress and ensure procedural fairness applies.

2. Procedural fairness

Procedural fairness is an important issue in investigations which could result in an outcome that affects the rights, interests or reputation of an individual. Any decision affecting an individual that has been made without affording procedural fairness is liable to be challenged and set aside.

Procedural fairness may require an investigator to:

- inform people of the substance of any allegations against them
- provide a reasonable opportunity for the person to put their case forward, whether in writing, at a hearing or otherwise
- make reasonable inquiries and consider any submissions or other evidence before making a decision

3. Interviews

Fisheries officers may request a person suspected of committing a fisheries offence to participate in a record of interview. Generally, these interviews occur at the time the alleged offence was detected; however, there may be reason to conduct an interview at a later time.

With the exception of an interview conducted in accordance with Part 9 of the *Fisheries*

Management Act 1994, interviews are voluntary and no one is obliged to participate. If an officer requires a person to participate in an interview, the officer will tell the person that they are required to provide information. Refusing to provide the information required would constitute an offence. This advice will be provided before the interview commences.

Where an interview is conducted at a later date, after the offending was detected, fisheries officers will send a written invitation to the person who they wish to interview.

This written invitation will include:

- A short summary of the incident
- An invitation to participate in a record of interview
- That a friend, family member or legal representative may be present
- The location of the interview (to avoid any hardship on the person being interviewed)
- Notice that a copy of a transcript will be made available
- The date by which the person must respond, and
- The contact details for the officer requesting the interview and information on whether any other officers will be present.

A written invitation will be issued even if the person verbally agrees to be interviewed at a later time and place.

4. Decision making

Decision-making for all fisheries offences is done to ensure an appropriate and proportionate response a particular offence. An indicative decision-making tree is attached at Figure 1.

This decision-making process delivers certainty to fishers and the community that fisheries officers respond to offending consistency across NSW. The decision making process also guides what matters require prosecution or should be dealt with in other ways.

The level of response varies depending on the severity of the offending and may include:

- Warnings
- Seizures of fish and fishing gear
- Penalty notices
- Remediation and stop work orders
- Arrest of serious or recidivist offenders

- Seizure of boats and vehicles
- Prosecution

Where a matter is determined as serious and warrants prosecution, an informed review process is undertaken. This review includes an independent review of the facts and applies a public interest test. Legal advice may also be sought on the matter where necessary.

5. Regulatory policy

NSW DPI Fisheries aims to be a model litigant using [Regulatory Policy and Prosecution Guidelines](#).

6. Obtaining assistance

If you are asked (or required) to participate in an interview and do not understand what that means, you should seek independent legal advice to have it explained to you.

You can get help:

- with legal information or referral to legal advice from LawAccess NSW, a free service on 1300 888 529 or visit www.lawaccess.nsw.gov.au.
- if you are under 18 call the Legal Aid Youth Hotline on 1800 101 810.
- if you are Aboriginal or Torres Strait Islander call the Aboriginal Legal Service NSW / ACT 1800 765 767.

7. Other Information

Information on fisheries compliance can be found at www.dpi.nsw.gov.au/fishing/compliance including facts sheets on:

- [Having your fisheries penalty notice decided at court](#)
- [Having your recreational fishing fee penalty notice decided at court](#)

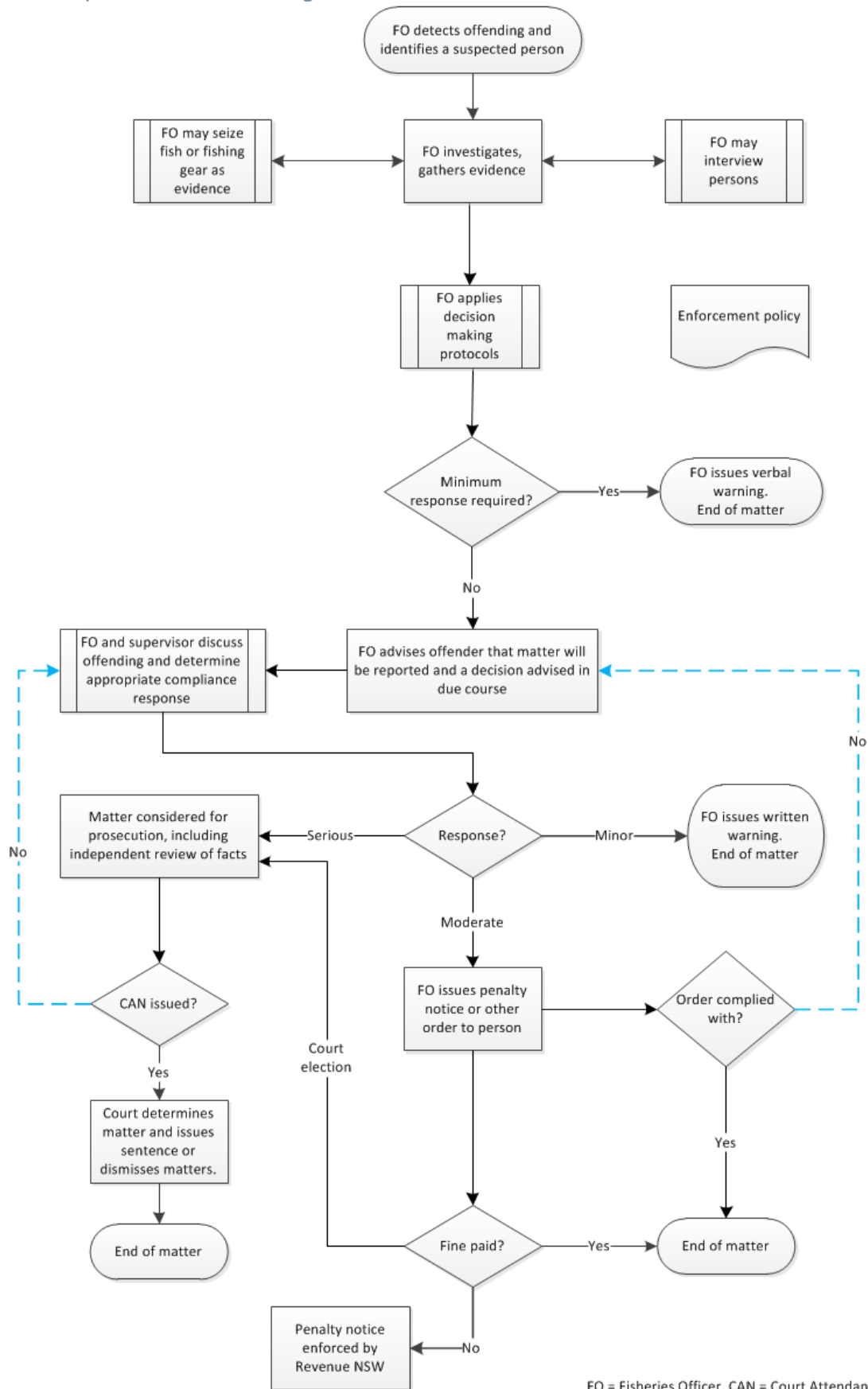
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Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (February 2018). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the Department of Primary Industries or the user's independent adviser.

CM9 Reference: PUB18/25

Fisheries Compliance Decision Making



FO = Fisheries Officer, CAN = Court Attendance Notice