

*Criminal Investigation
(Covert Powers) Act 2012*

Annual Report
1 July 2022 - 30 June 2023
Fisheries

15 September 2023

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EXECUTIVE SUMMARY

- [1] The *Criminal Investigation (Covert Powers) Act 2012* (the CICP Act) Part 2 facilitates criminal investigation and intelligence-gathering in relation to criminal activity by providing for the authorisation, conduct and monitoring of covert law enforcement controlled operations.
- [2] Controlled operations are law enforcement operations that involve or may involve controlled conduct to target criminal activity. Controlled conduct is conduct for which a person would be criminally responsible if the person was not protected by a controlled operation authority.
- [3] The CICP Act allows authorities to conduct controlled operations to be granted to the Department of Primary Industries and Regional Development (Fisheries).¹ The CICP Act also provides civil indemnification when certain criteria are met.
- [4] The Corruption and Crime Commission (Commission) is required to inspect the records of Fisheries at least once every 12 months to determine the extent of compliance with Part 2 of the CICP Act by the agency and law enforcement officers of the agency.²
- [5] This report specifies the results of the Commission's inspections of Fisheries' controlled operation records. It provides details as to the work and activities of Fisheries in relation to controlled operations during the period 1 July 2022 to 30 June 2023.
- [6] During this reporting period, Fisheries completed one controlled operation.
- [7] Fisheries were compliant with the CICP Act.
- [8] The Commission and Fisheries continue to have a positive working relationship concerning the requirements of the CICP Act and controlled operations.

¹ The department that principally assists in the administration of the *Fish Resources Management Act 1994* (CICP Act s 3). Prior to 1 July 2017, the relevant department was the Department of Fisheries. As of 1 July 2017, the relevant department became the Department of Primary Industries and Regional Development.

² CICP Act s 41(1).

CHAPTER ONE

LEGISLATIVE REQUIREMENTS

- [9] The CICIP Act requires the Commission to prepare a report of the work and activities of relevant law enforcement agencies with respect to controlled operations for the preceding 12 months as soon as practicable after 30 June each year.³
- [10] The Commission is required to provide the Minister and the Chief Officer of each law enforcement agency with a copy of the report.⁴
- [11] The report must not disclose any information that identifies any suspect or participant in an authorised operation or that is likely to lead to such a person being identified.⁵
- [12] The report must include, for each law enforcement agency concerned, comments by the Commission on the comprehensiveness and adequacy of the Chief Officer reports which are required to be submitted to the Commission twice a year.⁶
- [13] The Chief Officer of each agency must advise the Minister of any information in the Commission's Annual Report that, in the Chief Officer's opinion, should be excluded before the report is laid before each House of Parliament because the information, if made public, could reasonably be expected to:⁷
- endanger a person's safety; or
 - prejudice an investigation or prosecution; or
 - compromise any law enforcement agency's operational activities or methodologies.
- [14] If the Minister is satisfied as to the grounds for exclusion of material from the report, the Minister must exclude the information and insert a statement to the effect that information has been excluded from the report.⁸

³ CICIP Act s 38(1). In order to comply with its functions, it is necessary for the Commission to inspect all Principal Law Enforcement Officer (PLEO) reports for completed controlled operations and to await provision of the agency's Chief Officer s 37 report post 30 June. This impacts upon when the Commission is able to complete its Annual Report.

⁴ CICIP Act s 38(1).

⁵ CICIP Act s 38(6).

⁶ CICIP Act s 38(5).

⁷ CICIP Act s 38(2).

⁸ CICIP Act s 38(3).

- [15] The Minister is to cause a copy of the report to be laid before each House of Parliament within 15 sitting days of receipt of the report.⁹
- [16] A copy of this report was provided to the Office of the Minister for Fisheries on 15 September 2023.

⁹ CACP Act s 38(4).

CHAPTER TWO

FISHERIES' CONTROLLED OPERATIONS

2.1 Summary of work and activities of Fisheries with respect to controlled operations

[17] During this reporting period of 1 July 2022 to 30 June 2023:

- 3 formal authorities for local controlled operations were granted;
- 0 variations of authority were granted;
- 0 applications for a controlled operation were refused authority; and
- 1 controlled operation was completed.

2.2 Controlled operations completed during this reporting period

[18] During this reporting period one local controlled operation was completed.

[19] No applications were made or granted for an urgent authority.

[20] No applications were made or granted for a retrospective authority.

[21] One controlled operation authority was cancelled prior to expiration.

[22] No controlled operation authority expired.

[23] Table 1 overleaf shows the number of controlled operations completed over the past five years and the number of variations granted to those controlled operation authorities.

Table 1 Comparison of completed controlled operations and variations to completed controlled operation authorities over the past five years					
	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
Controlled Operations Completed	2	1	2	3	1
Variations of Authorities	3	2	1	1	0

[24] During the reporting period, controlled conduct was engaged in during one completed controlled operation.¹⁰

[25] Controlled operation authorities generally provide authority to a number of law enforcement participants. The authority for the completed controlled operation authorised 10 law enforcement participants to engage in controlled conduct.

[26] The nature of the criminal activity targeted by Fisheries in the controlled operation completed during this reporting period was the unlawful obtaining, possession of and dealing in rock lobster and other fish.

2.3 Record keeping by Fisheries

[27] The CICP Act sets out record keeping requirements for agencies.¹¹ The files relating to completed controlled operations were inspected to ensure they contained:

- each application;
- each authority;
- each variation application and variation of authority;
- each order cancelling an authority;

¹⁰ Not all of the participants authorised to engage in controlled conduct did so during the course of the controlled operation.

¹¹ CICP Act s 39.

- each retrospective authority granted under CACP Act s 25; and
- each report of a Principal Law Enforcement Officer (PLEO) under CACP Act ss 33(1) and 36.

[28] Fisheries complied with the record keeping requirements.

2.4 Result of operations

Arrests and charges

[29] A decision in respect of criminal charges is pending in relation to the completed controlled operation.

Seizures

[30] Seizures of illicit goods were made as a direct result of controlled conduct in one completed controlled operation.¹²

[31] The total amount of illicit goods seized are shown in Table 2.¹³

Table 2 Quantities of illicit goods seized as a direct result of controlled conduct		
Illicit good seized	Quantity (number)	Quantity (kilograms)
Western Rock Lobster	1	0.56 kg

[32] A controlled operation is generally only one aspect of the wider investigative strategy. It is evident that many operations which include a controlled operation also result in considerable seizures and charges as part of the wider Fisheries investigative strategy and not as a direct result of controlled conduct. For example, intelligence gathered during a controlled operation may lead to the execution of search warrants which may result in additional seizures and charges.

[33] Intelligence gathered through the wider Fisheries operation and unconnected to the controlled operation may also result in charges and seizures.

¹² For the purposes of this report, a seizure pertains to illicit goods removed from the community.

¹³ The possession and dealing of Western Rock Lobster in contravention of the *West Coast Rock Lobster Managed Fishery Management Plan 2012* constitutes an offence and therefore possession of Western Rock Lobster in such circumstances constitutes possession of an 'illicit good' as defined in CACP Act s 5.

2.5 Chief Officer reports

[34] Pursuant to the CICP Act the Chief Officer of the Fisheries is required to submit a report to the Commission as soon as practicable after 30 June and 31 December each year¹⁴ setting out the following details in relation to controlled operations conducted on behalf of the agency during the previous 6 months:¹⁵

- the number of formal and urgent authorities granted or varied by the Authorising Officer for the agency;
- the number of formal and urgent applications for the granting or variation of authorities that have been refused by the Authorising Officer for the agency;
- the number of authorities cancelled by the Authorising Officer for the agency, or that have expired;
- the nature of the criminal activities against which the authorised operations were directed;
- the nature of the controlled conduct engaged in for the purposes of the authorised operations;
- if any of the authorised operations involved illicit goods, the nature and quantity of the illicit goods and the route through which the illicit goods passed;
- any loss or serious damage to property or any personal injuries occurring in the course of or as a direct result of the authorised operations;
- any seizure, arrest and prosecution arising from the authorised operations; and
- the operations must be classified into cross-border controlled operations and local controlled operations.

[35] The Chief Officer report must not disclose any information that identifies any suspect or participant in an authorised operation or that is likely to lead to such a person being identified.¹⁶

¹⁴ CICP Act s 37(1).

¹⁵ In order to comply with its reporting requirements, it is necessary for Fisheries to await completion of the PLEO reports in respect of completed controlled operations during the relevant period, prior to provision of the Chief Officer's report to the Commission.

¹⁶ CICP Act s 37(5).

- [36] The Commission received the Chief Officer's reports from Fisheries on 14 March 2023 and 31 August 2023 in relation to Fisheries' controlled operations.
- [37] In accordance with the CICP Act the Commission must comment on the comprehensiveness and adequacy of the reports provided by the Chief Officer of each law enforcement agency.¹⁷
- [38] The Chief Officer reports from Fisheries were in compliance with the CICP Act and were comprehensive.

¹⁷ CICP Act s 38(5).

CHAPTER THREE

OUTCOME OF INSPECTIONS

- [39] The Commission inspected all completed controlled operation documents including: the application; the form of authority; applications and authorities to vary an authority; and the PLEO report.
- [40] Table 3 demonstrates compliance by Fisheries with various sections of the CICP Act.

Table 3 Compliance with the <i>Criminal Investigation (Covert Powers) Act 2012</i>							
Controlled operation number	Application complied with s 10 or 19 criteria	Authorising Officer considered s 12 criteria	Authorising Officer considered s 13 or 14 criteria	Authority/Variation of authority complied with s 15 or 21 criteria	PLEO report submitted within two months (s 36(1))	PLEO report complied with s 36(2) criteria	General register complied with s 40 criteria
DPIRDCO 2201-00	✓	✓	✓	✓	✓	✓	✓

3.1 Applications to conduct a controlled operation

- [41] The CICP Act enables the Commissioner of Police, Chief Executive Officer or delegate of a prescribed law enforcement agency to authorise the conduct of a controlled operation for a relevant offence, being:¹⁸

- (a) *an offence against the law of this jurisdiction punishable by imprisonment for 3 years or more; or*
- (b) *an offence not covered by paragraph (a) that is prescribed for the purposes of this definition, being an offence under any of the following Acts -*
 - (i) *the Classification (Publications, Films and Computer Games) Enforcement Act 1996;*
 - (ii) *The Criminal Code;*

¹⁸ Definition of "relevant offence": CICP Act s 5.

- (iii) *the Firearms Act 1973;*
- (iv) *the Fish Resources Management Act 1994;*
- (v) *the Misuse of Drugs Act 1981;*
- (vi) *the Prostitution Act 2000; and*
- (vii) *the Weapons Act 1999.*

- [42] For the purposes of the CICP Act, the Authorising Officer for the Fisheries department is the Commissioner of Police,¹⁹ but the function is fulfilled by delegated officers of the WA Police Force.²⁰ All Fisheries controlled operation applications for authority and applications for variation to an authority are therefore considered by an Authorising Officer from the WA Police Force.
- [43] The Commission inspected each application to ensure it met the criteria set out in the CICP Act, including:²¹
- whether it was a formal or urgent application;
 - whether it provided sufficient information on which the application could be granted;
 - whether there had been any previous applications for an authority or variation to the authority in respect of the same criminal activity; and
 - that the applicant was a law enforcement officer and the application was made to an Authorising Officer.
- [44] Applications to vary an authority were also inspected to ensure they met the criteria as set out in the CICP Act.²²
- [45] The Authorising Officer may require the applicant to furnish such additional information concerning the proposed controlled operation as is necessary for the Authorising Officer's proper consideration of the application.²³
- [46] Therefore, in addition to the inspection of an application, the Commission considers any additional information on which the application could be granted by the Authorising Officer.

¹⁹ CICP Act s 3.

²⁰ CICP Act s 43.

²¹ CICP Act s 10.

²² CICP Act s 19.

²³ CICP Act s 10(8).

- [47] The Fisheries' application to conduct a controlled operation inspected by the Commission was detailed and provided sufficient information on which the application could be granted by the Authorising Officer.

3.2 Authority to conduct a controlled operation

[48] The following flowchart depicts the authorisation process.

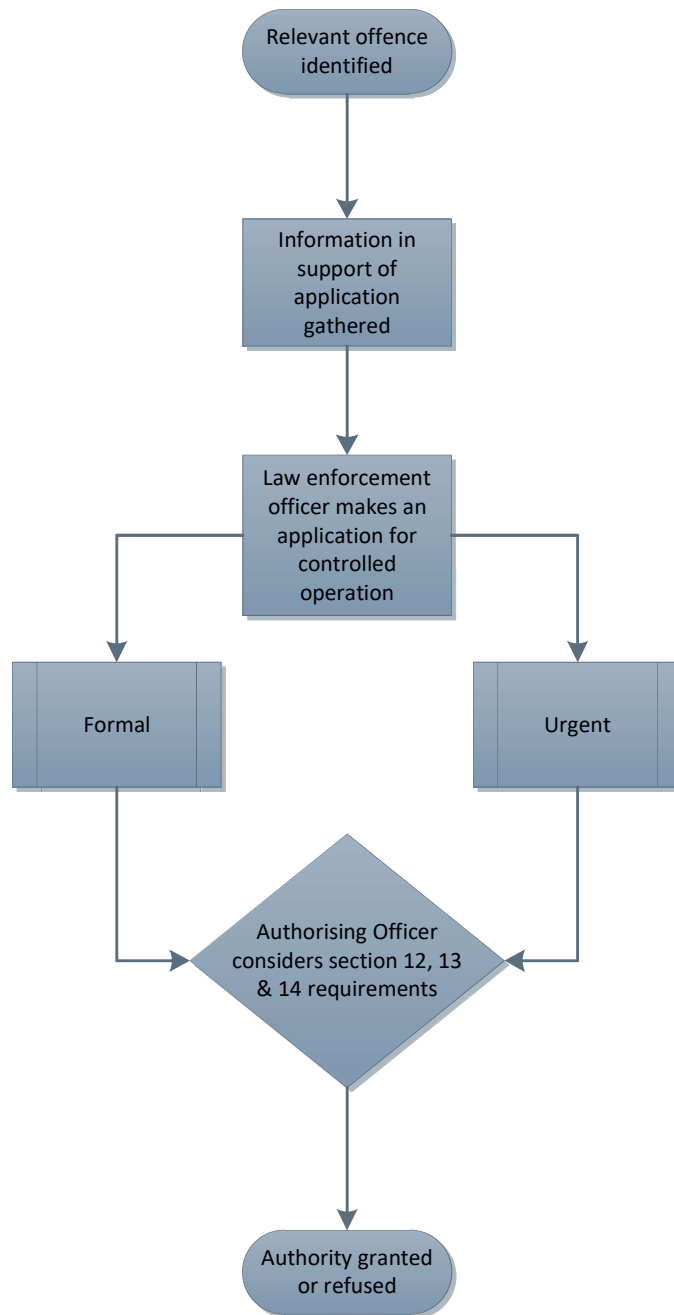


Figure 1: Controlled operation authorisation process

[49] Stringent considerations set out in the CICP Act must be considered by the Authorising Officer prior to granting any authorisation.²⁴ The Authorising Officer must be satisfied that the nature and extent of the suspected criminal activity is such as to justify the conduct of a controlled operation. The Commission carefully assesses the information provided in the controlled operation documents when considering the decision determined by the Authorising Officer.

[50] The CICP Act requires that the Authorising Officer must not grant authority to conduct a controlled operation unless satisfied on reasonable grounds that:²⁵

- a relevant offence has been, is being or is likely to be committed;
- the authority is within the administrative responsibility of the law enforcement agency;
- any unlawful conduct involved in conducting the operation will be limited to the maximum extent consistent with conducting an effective controlled operation;
- the operation will be conducted in a way that will minimise the risk of more illicit goods being under the control of persons, other than law enforcement officers, at the end of the operation than are reasonably necessary to enable the officers to achieve the purpose of the controlled operation;
- the proposed controlled conduct will be capable of being accounted for in a way that will enable reporting requirements of Division 4 to be complied with;
- the operation does not involve any participant inducing or encouraging another person to engage in criminal activity of a kind that the other person could not reasonably have been expected to engage in unless so induced or encouraged; and
- any conduct involved in the operation will not seriously endanger the health or safety of any person, cause the death of, or serious injury to, any person, involve the commission of a sexual offence against any person or result in unlawful loss of or serious damage to property (other than illicit goods).

²⁴ CICP Act ss 12-14.

²⁵ CICP Act s 12(1).

- [51] A person must not be authorised to participate in a controlled operation unless the Authorising Officer is satisfied that the person has the appropriate skills or training to participate in the operation.²⁶
- [52] A civilian participant must not be authorised to participate in any aspect of a controlled operation unless the Authorising Officer is satisfied that it is wholly impracticable for a law enforcement participant to participate in that aspect of the operation, and must not be authorised to engage in controlled conduct unless the Authorising Officer is satisfied that it is wholly impracticable for the civilian participant to participate in the aspect of the controlled operation referred to without engaging in that conduct.
- [53] The CICP Act states that an authority must:²⁷
- state the name, and rank or position, of the person granting the authority;
 - identify the PLEO and, if the PLEO is not the applicant for the authority, the name of the applicant;
 - state whether the authority is for a cross-border or local controlled operation;
 - for a cross-border controlled operation, state whether it is to be, or is likely to be, conducted in this jurisdiction and in one or more participating jurisdictions or in one or more participating jurisdictions;
 - state whether it is a formal or urgent authority;
 - identify each person who may engage in controlled conduct for the purposes of the controlled operation;
 - identify the nature of the criminal activity (including the suspected relevant offences) in respect of which the controlled conduct is to be engaged in;
 - identify, with respect to the law enforcement participants, the nature of the controlled conduct that they may engage in and, with respect to the civilian participants, the particular controlled conduct, if any, that each civilian participant may engage in;
 - identify (to the extent known) any suspect;

²⁶ CICP Act s 12(2).

²⁷ CICP Act s 15(6).

- specify the period of validity of the authority, being a period not exceeding 6 months for a formal authority or 7 days for an urgent authority;
- specify any conditions to which the conduct of the operation is subject;
- state the date and time when the authority is granted; and
- identify (to the extent known) the nature and quantity of any illicit goods that will be involved in the operation and the route through which those goods will pass in the course of the operation.

The Commission examined the authority to conduct a controlled operation to ensure compliance with these requirements.

3.3 Variation of authorities

[54] Stringent considerations set out in the CACP Act also apply to applications to vary an authority.²⁸ A variation of an authority can be made at any time on the Authorising Officer's own initiative or on application of the PLEO or a law enforcement officer on the PLEO's behalf.²⁹

[55] A variation of an authority can be granted for the following purposes, namely to:³⁰

- extend the period of validity of the authority;
- authorise additional or alternative persons to engage in controlled conduct;
- authorise participants to engage in additional or alternative controlled conduct;
- identify additional suspects (to the extent known); or
- identify a new PLEO.

[56] The Authorising Officer may vary an authority for any one or more of these purposes. More than one application for a variation can be made in respect of the same authority, but no single variation can extend the period of validity of an authority for more than 6 months at a time. A variation of an authority cannot extend the period of validity of an urgent authority. A variation of an authority must not be granted unless the Authorising Officer is satisfied on reasonable grounds that the variation

²⁸ CACP Act s 20(2).

²⁹ CACP Act ss 17(1)(a) and 18 and CACP Act ss 17(1)(b) and 19(1), respectively.

³⁰ CACP Act ss 18 and 19(1).

will not authorise a significant alteration of the nature of the authorised operation.³¹

[57] If one or more of the purposes for which an authority may be varied arise, a variation must be sought to the original authority to protect any conduct which would be outside the scope of the authority if left unvaried.

[58] As no variations were granted in respect of the DPIRDCO 2201, no variation of authority was examined.

3.4 Retrospective authority

[59] If a participant in an authorised operation engages in unlawful conduct (other than controlled conduct) in the course of a local controlled operation, the PLEO for the operation may, within 24 hours (or any longer period that the Authorising Officer may, in exceptional circumstances, allow) after the participant engages in that conduct, apply to the Authorising Officer for retrospective authority for the conduct.³²

[60] No retrospective authorities were applied for or granted by an Authorising Officer.

3.5 Protection from criminal responsibility for controlled conduct during authorised operations

[61] The CICP Act provides that a participant in an authorised operation who engages in conduct in the course of, and for the purposes of, the operation is not, if engaging in that conduct is an offence, criminally responsible for the offence if:³³

- the conduct is authorised by, and is engaged in accordance with, the authority for the operation; and
- the conduct does not involve the participant inducing or encouraging another person to engage in criminal activity of a kind that the other person could not reasonably be expected to engage in unless so induced or encouraged; and
- the conduct does not involve the participant engaging in any conduct that is likely to cause the death of, or serious injury to, any person, or involve the commission of a sexual offence against any person; and

³¹ CICP Act s 20(3).

³² CICP Act s 25(2).

³³ CICP Act s 27.

- if the participant is a civilian participant, he or she acts in accordance with the instructions of a law enforcement officer.

[62] The CICP Act provides participants with indemnification against civil liability if criteria similar to that stipulated in paragraph 61 above are met.³⁴

3.6 Protection from criminal responsibility for certain ancillary conduct

[63] The CICP Act provides protection from criminal responsibility for certain ancillary conduct such as aiding and abetting the commission of an offence for which a person may be criminally responsible because it involves conduct engaged in by another person that is conduct for which the other person would (but for s 27) be criminally responsible.³⁵

3.7 Cross-border controlled operations

[64] The CICP Act allows for controlled operations to be authorised in Western Australia which may be conducted in this jurisdiction and in one or more participating jurisdictions, or in one or more participating jurisdictions.³⁶

[65] Fisheries did not conduct any cross-border controlled operations.

3.8 Cancellation of authorities

[66] The Authorising Officer may, by order in writing given to the PLEO for an authorised operation, cancel the authority at any time and for any reason.³⁷

[67] The Authorising Officer may cancel an authority for an authorised operation at any time at the request of the PLEO for the operation.

[68] The order must specify the reasons for the cancellation of the authority.

[69] As a result of a request by the PLEO, one controlled operation authority was subject to cancellation by the Authorising Officer. No controlled operation authority expired.

³⁴ CICP Act s 28.

³⁵ CICP Act s 31.

³⁶ CICP Act s 6.

³⁷ CICP Act s 22(1).

3.9 PLEO reports

[70] Within two months after the completion of an authorised operation the PLEO is required to submit a report to the Chief Officer of the agency.³⁸ The CICP Act states the report must include all of the following details:³⁹

- dates and times when the authorised operation began and was completed;
- whether the operation was a cross-border controlled operation or a local controlled operation;
- the nature of the controlled conduct engaged in for the purposes of the operation;
- details of the outcome of the operation;
- if the operation involved illicit goods, a statement (to the extent known) of:
 - the nature and quantity of the illicit goods; and
 - the route through which the illicit goods passed in the course of the operation;
- details of any loss of or serious damage to property, or any personal injuries, occurring in the course of or as a direct result of the operation;
- details (to the extent known) of any loss of or serious damage to property, or any personal injuries, occurring as an indirect result of the operation;
- information as to whether:
 - in the course of the operation, any participant engaged in unlawful conduct (other than controlled conduct that the participant was authorised to engage in for the purposes of the operation); and
 - any unlawful conduct (other than controlled conduct) was engaged in during the operation; and
 - any person is, because of section 31, not criminally responsible for ancillary conduct (as defined in that section); and

³⁸ CICP Act s 36(1).

³⁹ CICP Act s 36(2).

- any variations were made to an authority for the operation; and
- any of those variations were to extend the period of validity of the authority; and
- any retrospective authority was granted in respect of the operation; and
- any urgent authority was granted in respect of the operation; and
- any conditions of an authority for the operation were breached.

[71] The PLEO report was inspected to ensure it was submitted within two months of completion of the operation and met the requirements of the CICP Act.⁴⁰

[72] The PLEO report was in compliance with the CICP Act.

3.10 Agency general register

[73] Law enforcement agencies are required under the CICP Act to keep a general register.⁴¹ The CICP Act specifies the details the general register is to contain in respect of each application made under CICP Act Part 2, each authority granted and each variation of authority.⁴²

[74] The general register was inspected to ensure it conformed with the CICP Act and was found to contain all required information as specified in CICP Act s 40(2).

⁴⁰ CICP Act s 36.

⁴¹ CICP Act s 40(1).

⁴² CICP Act s 40(2).

CHAPTER FOUR

RECOMMENDATIONS

4.1 Recommendations in this Annual Report

- [75] The Commission has not made any recommendations in this Annual Report.

4.2 Comment on recommendations made in previous Annual Report

- [76] The Commission did not make any recommendations in the 2021 - 2022 Fisheries Annual Report.

APPENDIX A

FISHERIES' COMPLETED CONTROLLED OPERATIONS 2022 - 2023

Controlled operation number	Nature of criminal activity targeted	Controlled conduct engaged in under authority	Charges	Seizures
DPIRDCO 2201-00	Unlawful obtaining, possession of, and dealing in demersal scalefish, rock lobster and other fish	Yes	Decision as to charges pending	Yes