

Fisheries (General) (Vessel Tracking) Amendment Regulation 2019

Erratum to Explanatory Notes for SL 2019 No. 180

made under the

Fisheries Act 1994

Title of Subordinate Legislation

Fisheries (General) (Vessel Tracking) Amendment Regulation 2019

Reason for Erratum

To correct an error in the reasoning as to why the reforms implemented in the Fisheries (General) (Vessel Tracking) Amendment Regulation 2019 were exempt from undergoing further regulatory impact analysis. In addition, to correct three references to the *Fisheries Act 1994* where it has been incorrectly referred to as the '*Fisheries Act 2014*'.

Action

Replace the last paragraph on page 7 with the following words:

“In early 2019, the Department of Agriculture and Fisheries held preliminary discussions with the Office of Best Practice Regulation (OBPR) about proposed fisheries reforms and the consultation process. Some of the proposed reforms are implemented in the Amendment Regulation. OBPR advised that some of the reforms in the *Proposed amendments to the Fisheries Regulation 2008* were likely to be assessed as having ‘significant adverse’ impacts under the *Queensland Guide to Better Regulation* and therefore would require further regulatory impact analysis. However, Cabinet decided to exempt the reforms from further impact analysis given the comprehensive public consultation process over the last two years and the clear Government policy direction for fisheries reforms under the Sustainable Fisheries Strategy 2017-2027.”

Replace the term *Fisheries Act 2014* on page 2, page 4 and page 5 with “*Fisheries Act 1994*”.

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General Outline

Short title

Fisheries (General) (Vessel Tracking) Amendment Regulation 2019

Authorising law

Sections 80 and 223 of the *Fisheries Act 1994*

Policy objectives and the reasons for them

The *Queensland Sustainable Fisheries Strategy 2017-2027* (the Strategy) was released in June 2017 and sets out clear targets to be achieved and a range of actions to deliver on these targets. This includes the implementation of vessel tracking across all commercial boats by 2020 to support more responsive, evidence-based approach to fisheries management.

The purpose of vessel tracking is to enable real-time monitoring of the commercial fishing fleet. Information from vessel tracking is used to:

- monitor use of quota in near real time;
- monitor compliance with fishing rules, area and seasonal closures;
- provide intelligence and evidence for investigations;
- assist with validating logbook information on where and when fishing occurred;
- provide more accurate information on fishing effort that is used in stock assessments to estimate the biomass of a fish stock; and
- help inform future fishery management arrangements.

The first stage of implementing vessel tracking requirements was delivered through the *Fisheries (Vessel Tracking) Amendment Regulation 2018*. It implemented vessel tracking in the line, net and crab fisheries from 1 January 2019.

The *Fisheries (General) (Vessel Tracking) Amendment Regulation 2019* (Amendment Regulation) now extends vessel tracking to all remaining commercial fishing boats,

excluding charter. The main policy objective of the Amendment Regulation is to continue the implementation of vessel tracking requirements in line with the commitments made under the Strategy.

Achievement of policy objectives

The Amendment Regulation achieves its objectives by amending the *Fisheries (General) Regulation 2019* in the following ways.

- *Requiring that all commercial fishing vessels install and use vessel tracking requirements from 1 January 2020*

The Amendment Regulation amends section 81 of the *Fisheries (General) Regulation 2019* to prescribe that vessel tracking requirements apply to authorities with A1, A2, B1, J1, D, M2, R, T5, T6, T7, T8, T9 symbols written on them.

- *Applying vessel tracking requirements to a tender boat whenever its primary boat is being used*

The Amendment Regulation amends section 85 to prescribe that the period that a tender boat is being used, and hence when vessel tracking equipment on the tender must be working properly under section 80(2) of the *Fisheries Act 1994*, is the period when the tender boat's primary boat is being used.

- *Clarifying the requirements for when vessel tracking equipment in primary and tender boats malfunction*

The relevant provision is being clarified as the unintended effect was that fishing might occur, for example, when the vessel tracking system on a boat was only working intermittently which could undermine the achievement of the purposes for which vessel tracking is required. Previously, the same requirements applied when a vessel tracking unit malfunctioned on a primary or tender boat.

The Amendment Regulation provides that when a vessel tracking unit malfunctions on a boat that is not a tender boat and it is taken to be a landing place, fishing can resume from the boat only if the chief executive is satisfied that the vessel tracking system is in a condition that allows it to work properly. It does this by replacing section 86(2)(b) with a requirement, if the relevant boat is not a tender boat, to comply with amended requirements in subdivision 3 of chapter 4, part 1, division 3.

The Amendment Regulation also provides that when a vessel tracking unit malfunctions on a tender boat during a trip, the person in charge of the boat must stop using fishing apparatus, attach the tender boat to the primary boat and ensure that the tender boat is not used for fishing for the remainder of the trip unless the chief executive notifies that the equipment is in a condition to work properly. It does this by replacing section 86(2)(b) with a requirement, if the relevant boat is a tender boat, to comply with requirements in new subdivision 4 in chapter 4, part 1, division 3.

Having different requirements for tender and primary boats recognises that tender boats are smaller and usually used to assist the primary boat. Requiring tender boats to return

to a landing location due to a malfunctioning unit, is not operationally viable or safe. Additionally, tender boats do not carry appropriate equipment to allow them to manually report positional information meaning they would not be able to comply with the existing requirement.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main objectives of the *Fisheries Act 1994* which is to provide for the use, conservation and enhancement of the community's fisheries resources and fish habitats in a way that seeks to:

- apply and balance the principles of ecologically sustainable development; and
- promote ecologically sustainable development.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There were no viable alternative ways to achieve the policy objectives.

Fisheries resources are common property resources managed by the Queensland Government on behalf of the broader community. In order to ensure these resources do not become over-exploited, modern technologies such as vessel tracking are integral to identifying commercial fishing activity which may, if not appropriately regulated, severely impact on the future sustainability of fisheries.

There are significant risks for the ecological, social and economic sustainability of our fisheries if there are not consistent vessel tracking requirements in place for all fisheries because vessel tracking provides information to allow for more informed and responsive fisheries decisions. Implementing vessel tracking is essential to delivering more responsive, evidence-based fisheries management in Queensland.

Benefits and costs of implementation

The use of vessel tracking will help modernise fisheries management in Queensland, leading to more informed and responsive decision-making to protect our fish stocks. The requirement for commercial fishing vessels to be fitted with vessel tracking equipment will impose costs on fishing businesses.

To offset the costs the Queensland Government, in partnership with the Great Barrier Reef Marine Park Authority, has provided \$3 million for a Vessel Tracking Rebate Scheme which is administered through the Queensland Rural and Industry Development Authority. Rebates are available to help industry with the initial purchase and installation costs of vessel tracking units. The rebate scheme has been designed so that the majority of fishers should not be out of pocket for the unit purchase or installation costs.

Once installed, commercial fishers will be required to pay for the ongoing polling (reporting) costs associated with the vessel tracking. These costs are estimated around \$30-55 a month depending on the vessel tracking unit and fishery it is operating in.

The Queensland Government has previously committed to providing the State Development, Natural Resources and Agricultural Industry Development Committee with an update on the implementation of vessel tracking 18 months after the *Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018* receives assent. The Bill received assent on 7 March 2019 and the update is due in September 2020.

Consistency with fundamental legislative principles

The Amendment Regulation has been drafted with regard to the fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* (LSA). Potential breaches of the FLPs are addressed below.

Legislation should not, without sufficient justification, unduly restrict ordinary activity including the right to conduct business without interference– LSA s4(2)(a)

- Clause 4 - Amendment of section 83 (Authorities and boats in relating to which requirements apply)
- Clause 5 – Amendment of section 85 (Periods during which equipment must be working properly)
- Clause 10 - Amendment of section 96 (Further requirement if relevant boat taken to landing place)
- Clause 11 - Insertion of new chapter 4, part 1, division 3, subdivision 4

The potential breach of FLP associated with these provisions is whether the legislation unduly restricts ordinary activity without sufficient justification, including the right to conduct business without interference.

The purpose of vessel tracking is to enable real-time monitoring of the commercial fishing fleet to support more accurate fisheries information and improve compliance. The consequences of unmanaged access to fisheries resources, without vessel tracking, is less accurate information, the need for more precautionary management which may further restrict commercial fishing and potentially severely impact the future sustainability of fisheries resources, and a risk to maintaining Commonwealth wildlife trade operation accreditations, under the *Environment Protection Biodiversity Conservation Act 1999*, for commercial fisheries are the justification for the restrictions on commercial fishers.

Clause 4 amends section 83 to extend vessel tracking requirements to all commercial fishing boats. Clause 5 amends section 85 to prescribe that the period that a tender boat is being used, and hence when vessel tracking equipment on the tender must be working properly under section 80(2) of the *Fisheries Act 1994*, is the period when the tender boat's primary boat is being used. The approach is justified because vessel tracking is of vital importance to the future management of all fisheries. Vessel tracking will ensure commercial fishing does not pose a threat to the sustainability of fisheries.

Clause 10 removes section 96(2)(b) which allows a boat to be used for fishing if an approved person has given the chief executive or an inspector notice that the vessel tracking equipment is in a condition that allows it to work properly. The removal of the exception is justified because an approved person is defined as 'a person who is identified as an approved person for installing approved vessel tracking equipment on a boat in the vessel tracking standard'. The approved person may not necessarily be or remain at the landing place to confirm that the vessel tracking equipment is working properly. This may result in permitting the vessel to be used to take fish despite the vessel tracking equipment not working or working intermittently. These circumstances will undermine the purpose and effectiveness of vessel tracking equipment which justifies the potential breach of the FLP.

Clause 11 inserts requirements for when vessel tracking equipment malfunctions on a tender boat. It requires that the tender boat must remain attached to the primary boat and the tender boat must not be used for fishing. The restriction on fishing on a tender boat on which the vessel tracking equipment is not working even though it is attached to the primary boat is justified because vessel tracking provides important information on the level of effort in a commercial fishery for assessment stock sustainability, management improvements, and aids compliance with fishing rules such as spatial closures and catch limits that are intended to ensure the long-term sustainability of the State's fisheries resources. Allowing fishing activity to occur from a vessel without an operational vessel tracking unit would undermine purpose and effectiveness of vessel tracking equipment which further justifies the potential breach of the FLP.

Legislation should have sufficient regard to rights and liberties of individuals – LSA section - LSA s4(2)(a)

Clause 4 - Amendment of section 83 (Authorities and boats in relation to which requirements apply) extends vessel tracking requirements to additional authorities which potentially impacts privacy and confidentiality.

While there may be a concern about the collection of private information, the implementation of vessel tracking is justified because it forms an integral part of contemporary fisheries management and compliance.

There are also appropriate safeguards to protect fishers from misuse of their information. In particular, section 217B of the *Fisheries Act 1994* provides an offence for disclosing confidential information obtained in the administration or performance of a function under that Act, unless the performance of a function or exercise of a power under the Act is with the consent of the person to whom the information relates, or otherwise required or permitted by law. Section 217A of the Act provides that the chief executive may enter into an information-sharing arrangement with a prescribed government entity for the purpose of sharing or exchanging information. Section 217A(2) provides the information-sharing arrangement may only relate to information that helps the chief executive or an inspector perform functions under the Act; or the prescribed government entity or an employee of the entity to perform functions under their legislation. For example, the collection of information from logbooks and other sources for sustainable fisheries management and research purposes. The offence safeguards a person's confidential information.

Further, there are additional protections against the use of personal information provided for in the *Information Privacy Act 2009*.

Consultation

In 2016, the Government released the *Green Paper on fisheries management reform in Queensland* for consultation. The overwhelming message of the response was that all stakeholders wanted the management of fisheries to be reformed. Most stakeholders agreed that doing nothing was not an option. This feedback was used to inform the Strategy, which was released by the Government in June 2017, and outlined the commitment to implement vessel tracking on all commercial fishing boat by 2020.

Draft *Vessel Tracking Guidelines* (the Guidelines) were released for public consultation in early January 2018. The consultation process undertaken by the Department of Agriculture and Fisheries (the Department) used public meetings, online surveys and written submissions to gauge support for the proposed Guidelines. The Department met with over 280 fishers at 143 meetings across the State and received close to 130 written and online responses.

Consultation identified concerns within industry regarding the purchase and installation costs of vessel tracking units. To offset the costs, the Queensland Government, in partnership with the Great Barrier Reef Marine Park Authority, has provided \$3 million for a Vessel Tracking Rebate Scheme. Rebates are available to help industry with the initial purchase and installation costs of vessel tracking units. Some fishers indicated their preference for the Queensland Government to cover the ongoing data costs rather than the upfront purchase and installation costs. Instead, to minimise costs, vessels operating with an engine of less than 3kW are exempt from vessel tracking unless that vessel is a primary vessel or is carrying commercially caught fisheries resources.

Based on the feedback provided, manual reporting was also changed from one to four hourly for operational safety. Also, the Department engaged Price Waterhouse Coopers to review the safeguards in place to protect confidential information. In June 2019, a *Discussion Paper on proposed changes to the Fisheries Regulation 2008* and Supporting Impact Statement was released for consultation for four weeks, closing on 19 July 2019, seeking feedback from all stakeholders on proposed regulatory changes to implement the fisheries reforms. It included proposals to continue the implementation of vessel tracking on all remaining commercial fishing vessels from 1 January 2020 and charter from 1 July 2020. The Department received 37 online responses and 8 written responses in relation to the next stage of vessel tracking implementation for 1 January 2020.

The main concerns raised mirror those received in 2018 when the Department was consulting on the Guidelines. Respondents were primarily concerned with the increased costs and reporting requirements associated with vessel tracking. There were also a small number of responses raising mobile phone reception issues and technology ability issues. The Department has already addressed the reception and manual reporting frequency issues, by adjusting the manual reporting requirement from hourly to once every four hours. To support ongoing implementation of vessel tracking, and general improvements to catch reporting, the Department is developing a commercial smartphone application that would allow fishers to manually report positions while being out of phone reception.

To offset the costs of purchasing and installing vessel tracking equipment a reimbursement is available through the Vessel Tracking Rebate Scheme. The majority of fishers should not be out of pocket for the unit or installation costs. It also allows fishers to claim a rebate for an

additional spare unit, depending on the type of licence and symbols, to minimise risks to fishing businesses from having to remain in port if a vessel tracking unit fails. However, the rebate scheme does not extend to covering ongoing data costs because it would be more difficult to administer and could lead to an unrealistic expectation that data costs would be subsidised indefinitely. For remaining out of pocket expenses (i.e. for monthly data costs), the Government considered that the costs of vessel tracking should be shared between government and industry, given benefits the commercial fishing industry accrues from access to fisheries resources.

In early 2019, the Department of Agriculture and Fisheries held preliminary discussions with the Office of Best Practice Regulation (OBPR) about proposed fisheries reforms and the consultation process. Some of the proposed reforms are implemented in the Amendment Regulation. OBPR advised that some of the reforms in the *Proposed amendments to the Fisheries Regulation 2008* were likely to be assessed as having 'significant adverse' impacts under the *Queensland Guide to Better Regulation* and therefore would require further regulatory impact analysis. However, Cabinet decided to exempt the reforms from further impact analysis given the comprehensive public consultation process over the last two years and the clear Government policy direction for fisheries reforms under the Sustainable Fisheries Strategy 2017-2027.