

Queensland



Explanatory Notes for SL 1999 No. 54

Fisheries Act 1994

FISHERIES (FRESHWATER) MANAGEMENT PLAN 1999

Short Title

Fisheries (Freshwater) Management Plan 1999.

Authorising Law

The proposed legislation is to be made under the provisions of the *Fisheries Act 1994* (“the Act”) particularly section 32.

Policy objectives of the regulation and the reasons for them

The policy objectives that are to—

- (a) manage the taking of freshwater fish in a way that ensures—
 - their sustainability and maintains or improves their conservation status;
 - fair division of access to freshwater fish among commercial, recreational and Aboriginal and Torres Strait Islander fishers;
- (b) manage the freshwater fishery to give optimal, but sustainable community benefit; and
- (c) minimise the risk of detrimental changes to freshwater fish and their dependant ecosystems from nonindigenous and noxious

fisheries resources.

These objectives have been adopted to assist the Queensland Fisheries Management Authority (QFMA) in delivering fisheries management consistent with the principles of ecologically sustainable development. Section 25(4) of the Act defines this as development—

- (a) carried out in a way that maintains biodiversity and the ecological processes on which fisheries resources depend; and
- (b) that maintains and improves the total quality of present and future life.

Ways in which the objectives are to be achieved by the regulation and why this way is reasonable and appropriate

The policy objectives will be achieved by the management plan by continuing certain provisions that are presently in the *Fisheries Regulation 1995* (“the Regulation”) such as the following—

- (a) regulated fish declarations;
- (b) certain prescribed fishing apparatus; and
- (c) management arrangements for the commercial eel fishery such as closures, minimum legal fish sizes and fishing apparatus.

These arrangements are considered to be reasonable and appropriate ways of achieving the plan’s objectives.

Consistency of the management plan with the policy objectives of the authorising law

The proposed legislation provides a range of management measures to ensure the sustainability of Queensland’s freshwater fisheries resources. It has been developed through a clearly defined process involving an expertise based QFMA, a community expertise based management advisory committee and through public consultation.

Through this process the following objectives of the Act will be met—

- (a) sustainability of fisheries resources, through the application of management measures available under the plan and current fisheries legislation;

- (b) achieving optimum community, economic and other benefits by ensuring the interests of all stakeholders are reflected in the plan; and
- (c) equity in access to fisheries resources through the selective application of input and output controls and the introduction of a user-pays system for particular stocked impoundments.

Consistency with other legislation

The proposed legislation is not inconsistent with the policy objectives of other legislation.

Alternatives

Possible alternatives for achieving the policy objectives are—

- (a) no regulation (ie status quo);
- (b) self regulation; or
- (c) alternative regulation.

These alternatives are not considered to be effective in meeting the policy objectives of the management plan for a number of reasons.

These reasons are explained in detail in the regulatory impact statement.

Assessment of the benefits and costs of implementation

Extensive consideration is given to the benefits and costs of implementing the plan in the regulatory impact statement.

Fundamental legislative principles

The management plan is consistent with fundamental legislative principles as set out in the *Legislative Standards Act 1992*.

The proposed legislation does not extinguish the rights of Aborigines and Torres Strait Islanders to take, use or keep fisheries resources in accordance with Aboriginal tradition or under Island custom.

Consultation

There has been significant consultation in relation to the management plan including the release of a regulatory impact statement that allowed the public to make submissions on a draft management plan.

There has also been extensive consultation in relation to the proposed management plan through the fisheries management planning process. This involves extensive consultation with all stakeholders through a clearly defined process involving an expert based QFMA and its community and industry based Freshwater Fishery Management Advisory Committee. These stakeholders include commercial fishers; recreational fishers (including Sunfish and Freshwater Fishing and Stocking Association of Queensland); indigenous fishers; conservationists (including Northern Queensland Conservation Council and The Environmental Protection Authority); charter operators; fish hatchery operators; aquarium fish hobbyists; and scientists.

Results of consultation

In the main, there is agreement from a number of key stakeholder groups in relation to the plan.

Sunfish, which is the peak organisation representing recreational fishers in Queensland, supports the proposed amendments including the introduction of a fishing permit scheme for particular stocked impoundments in order to raise funds to purchase fish fingerlings to maintain stocks in the impoundments.

The Freshwater Fishing and Stocking Association of Queensland, which represents fish stocking groups in Queensland, supports the proposed amendments including the introduction of a fishing permit scheme for particular stocked impoundments in order to raise funds to purchase fish fingerlings to maintain stocks in the impoundments.

During consultation with the then Department of Environment and Heritage (now within the Environment Protection Agency), as well as with other sectors, concerns were raised regarding the lack of bag limits on native freshwater aquarium fish collection. This issue has been considered and bag limits have been proposed.

The Queensland Commercial Fishermen's Organisation supports the

plan.

The commercial adult eel-fishing sector made a limited (positive or negative) response to the draft plan. As there is no industry body to consult with, consultation occurred with the individual eel fishers.

Also the QFMA, Department of Primary Industries and the Department of Natural Resources support the plan.

The major changes to the plan as a result of consultation on the Draft Plan are—

- ***Objectives***

Objective (d) in the draft management plan was removed as the plan does not provide measures to achieve this objective. This objective will be met by conditions on general fisheries permits issued by the QFMA.

- ***Australian bass***

Fred Haigh Dam, Lake Clarendon and Lake Dyer are included in the list of impoundments for which the closed season for Australian bass (from 1 June to 31 August) does not apply, as these are stocked impoundments.

The state-wide bag limit for Australian bass remained at two and was not increased to five in stocked impoundments. There was overwhelming opposition from recreational fishers and fish stocking groups to an increase in the bag limit for Australian Bass in stocked impoundments.

- ***Sooty grunter***

The size limit for sooty grunter was reduced from 30cm to 28cm. The reduction in size limit more accurately reflects the size at which this species first spawns.

- ***Northern saratoga and southern saratoga***

The size limit for northern and southern saratoga was increased from 45 cm and 40 cm respectively, to 50cm throughout Queensland to reflect the size at which these species first spawn.

- ***Eel tailed catfish***

It was determined that the proposed management arrangements

for eel-tailed catfish (bag limit of 10 and size limit of 35 cm) would not provide adequate protection of the resource. It was determined that the following would provide protection to ensure the sustainability:

- *Tandanus tandanus* - 35 cm size limit State-wide;
- *Tandanus sp* and *Neosilurus sp.* – composite bag limit of 10 (except in the Murray-Darling drainage division); and
- *Tandanus sp* and *Neosilurus sp* – composite bag limit of 5 in the Murray-Darling Drainage Division.

- ***Mary River cod***

It was determined that Lake Clarendon in the Lockyer River system be included on the list of impoundments from which no more than 1 Mary River cod of a size greater than 50 cm can be taken. This impoundment is located outside of the Mary River catchment and is being stocked by the DPI to create a recreational fishery.

- ***Native aquarium fish***

It was determined that the proposal for no bag limits on native aquarium fish was considered inadequate and that measures to ensure the sustainability of these fisheries resources was required. It was determined that rainbow fish (*Melanotaenia splendida*, *splendida inornata*, *maccullochi*, *eachamensi*, *nigrans*, *trifaciata*, *buboulayi*, *fluviatilis*, *tatei*) have a composite bag limit of 50 per person and a bag limit of 20 per species for a range of other aquarium fish.

- ***Closed waters***

Closed waters for the following weirs and dams were amended as the original closure distances were seen as excessive. The new closure distances provide for the protection of fisheries resources congregating downstream and upstream of the dam or weir whilst allowing for fisher access to these resources.

- Goondiwindi weir
- Bonshaw weir

- Mungindi weir
- Jack Taylor weir
- Beardmore dam

The following new closed waters were included to provide for the protection of fisheries resources congregating downstream and upstream of the weir—

- Surat weir
 - Moura Weir
 - Theodore Weir
 - Orange Creek Weir
 - Gylanda Weir
 - Glebe Weir
- ***Fishing Apparatus for use by Recreational Fishers***

The following changes were made to the management arrangements for fishing apparatus used by recreational fishers—

- a definition specifying that a lure equals one hook
 - “set lines” must be attached e.g. to the bank/tree and not free-floating
 - a fisher must be “in attendance” at set lines. “In attendance” is defined in such a way that the owner is not more than 200m from the furthestmost line
 - plastic milk bottles are permitted for use as a float in freshwater
- ***Noxious And Non-Indigenous Fish***

The climbing perch (*Anabas testudies*) is included in the schedule of noxious fish. This species is found in the waters of southern Papua New Guinea and could be considered a threat to Australian waters.

No further changes to the plan were considered appropriate (other than minor changes made as a result of legislative drafting and editing).

NOTES ON PROVISIONS

Section 1 sets out the short title of the management plan.

Section 2 provides for commencement of Part 7 of the plan on 17 October 1999. Part 7 deals with permits to fish in stocked impoundments. The commencement of this part is delayed in order for appropriate fees to be implemented for the permits, to ensure that the public is made fully aware of the new provisions and to establish the necessary administrative mechanisms for the issue of the permits.

Section 3 describes the fishery to which the plan applies by reference to schedule 1.

Section 4 sets out the objectives of the plan and by reference to schedule 2 outlines how the objectives will be achieved and how the achievement of the objectives is to be measured.

Section 5 provides that aids to interpretation and definitions of words used throughout the plan, are found in schedule 8.

Section 6 declares the period from 1 June to 31 August every year as a closed season for Australian bass to safeguard natural self-sustaining stocks of natural riverine stocks. The closure does not apply to the taking of bass in identified dams as these bass are stocked fish.

Section 7 provides the closed seasons for barramundi in the freshwater parts of waterways flowing into the Gulf of Carpentaria. The closed seasons for barramundi coincide with its spawning season.

Section 8 provides for the closed seasons for barramundi in freshwater elsewhere in the state with an exemption for a recreational fisher in Lake Tinaroo and Awoonga as these are stocked fish and cannot breed in Lake Tinaroo or contribute to a natural spawning population.

Section 9 prohibits the taking of freshwater fish during a closed season or the possession of freshwater fish taken during a closed season.

Section 10 provides certain exemptions for the possession of barramundi during a closed season.

Closed season provisions attract the operation of section 77 of the Act which makes it an offence for a person to unlawfully contravene a closed season declaration.

Section 11 provides for closed waters, every year all year, for areas mentioned in Schedule 3.

Section 12 provides the periods for which certain waters are closed waters for Murray cod.

Section 13 provides that a person must not possess or take fish from closed waters.

Section 14 provides for a closure of all waters for a 4 kilometre distance downstream from the wall of Baroon Packet dam for the protection of the endangered Mary River cod. This is an area of critical habitat containing remnant populations of Mary River cod.

Section 15 provides that a person may not possess or use certain fishing apparatus to take fish in the closed waters.

Section 16 provides certain exemptions for the taking of fish in closed waters.

Closed water provisions attract the operation of section 77 of the Act which makes it an offence for a person to unlawfully contravene a closed water declaration.

Section 17 provides that a freshwater fish is a regulated fish if it has been taken from closed waters and prohibits the possession of such a fish.

Section 18 provides that freshwater fish listed in schedule 4 are fish regulated by number.

Section 19 provides that freshwater fish in this division (sections 19 to 22) are regulated by number and area and that taking or possessing more than the allowed number of fish from the areas mentioned is prohibited.

Section 20 establishes combined bag limits for certain catfish for both within and outside the Murray-Darling Drainage Division.

Section 21 establishes a bag limit for Murray cod in the Murray-Darling Drainage Division.

Section 22 establishes a bag limit for redclaw in waters listed in the section.

Section 23 lists freshwater fish regulated by size. Taking or possessing regulated fish is prohibited.

Section 24 provides exemptions for a recreational fisher from the

maximum size limit on barramundi under section 23 for Lake Tinaroo and Lake Awoonga as barramundi in these lake are stocked and cannot contribute to any wild spawning stocks.

Section 25 provides that Murray cod are regulated by size in the Murray-Darling Drainage Division and that taking or possessing these fish is prohibited.

Section 26 provides that Lungfish and Mary River cod are regulated fish, and that taking or possessing these fish is prohibited, except in the listed dams.

Section 27 provides that berried female redclaw crayfish are regulated fish in waters listed in the section, and that taking or possessing these crayfish is prohibited.

The regulated fish provisions, sections 17 to 27, attract the operation of section 78 of the Act which makes it an offence to take, possess or sell regulated fish, or to attempt to disguise that a fish is a regulated fish.

Section 28 provides that a person holding a general fisheries permit to release nonindigenous fisheries resources into waters in the freshwater fishery is prohibited from releasing nonindigenous fisheries resources into waters mentioned in schedule 5.

Section 29 provides restrictions on the release of aquaculture fisheries resources into privately owned waters in the freshwater fishery.

Section 30 limits the use of freshwater fish mentioned in schedule 7 as live bait.

Section 31 provides that part 6 (sections 31 to 43) applies only to recreational fishers.

Section 32 provides that only certain fishing apparatus – “recreational fishing apparatus” may be possessed and used by recreational fishers.

Section 33 provides that any freshwater fish may be taken with recreational fishing apparatus.

Section 34 provides that recreational fishing apparatus may be used in the fishery’s waters if it is used in compliance with sections 35 to 43.

Section 35 provides the definition of a trap.

Section 36 describes a canister trap.

Section 37 describes a collapsible trap.

Section 38 describes a dilly.

Section 39 describes a funnel trap.

Section 40 describes a scoop or dip net.

Section 41 describes fishing lines and set lines that may be used in waters other than privately owned waters.

Section 42 provides the maximum number of traps that may be used or possessed by a recreational fisher.

Section 43 describes the requirements for marking recreational fishing lines and traps.

Section 44 provides that QFMA may issue permits to take fish from stocked impoundments using fishing lines and set lines.

Section 45 prohibits fishing in certain stocked impoundments using a fishing line or set line without a permit to do so. The stocked impoundments in question are listed in section 9 of schedule 8 of the plan.

Section 46 provides the meaning of an eel authority.

Section 47 provides that a person may take or possess eels for trade or commerce only if the person holds an eel authority.

Section 48 provides the manner in which eels may be taken.

Section 49 provides for the waters from which a person may take eels for trade or commerce.

Section 50 provides the circumstances in which the holder of an eel authority may sell eels.

Section 51 outlines certain restrictions applying to the writing of the 'E' fishery symbol on authorities by the QFMA.

Section 52 provides for the issue of an authority in circumstances where an authority holder is temporarily incapacitated or otherwise temporarily can not fish for eels or take or possess eels.

Section 53 provides that an eel authority is not transferable.

Section 54 provides the definition of trap.

Section 55 describes a trap.

Section 56 describes the mesh size of a trap.

Section 57 provides the requirements for the frame of a trap.

Section 58 provides the requirements for a trap float.

Section 59 describes the marking of a trap and trap float.

Section 60 describes the pocket of a trap.

Section 61 describes the requirements of a pocket float.

Section 62 describes the pocket frames.

Section 63 describes the dimensions of an eel trap.

Section 64 describes the dimensions of a round trap.

Section 65 provides the restrictions on eel trapping times.

Section 66 provides the number of traps that may be used under an eel authority.

Section 67 provides the requirements for checking of a trap.

Section 68 provides that the plan does not limit Aboriginal or Torres Strait Islander rights to take, use or keep freshwater fish.

Section 69 provides that the QFMA must conduct a review of the plan and provides for the timing of QFMA's review of the plan.

Section 70 sets out the mandatory consultation procedures for a review of the plan.

Section 71 describes the process that must be followed in order to amend or repeal the plan.

Section 72 lists certain offences related to the fishery that are considered to be serious fisheries offences for the purposes of the Act. For offences that have been declared serious, the QFMA may, under section 67(1)(b) of the Act, consider suspension or cancellation of authorities held by persons convicted of such offences.

Section 73 provides for certain criteria to apply to the suspension of authorities held by persons convicted of serious fisheries offences, including various periods of suspension associated with the holder's first, second and third or subsequent convictions.

Section 74 lists freshwater fish that are noxious fisheries resources.

Section 89 of the Act provides that certain activities relating to noxious fisheries resources are offences.

Section 75 makes provision for the continuation of authorities in force prior to the commencement of the plan.

Section 76 provides for the early expiry of sections 75 and 76 of the plan.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Primary Industries.