

Fisheries Amendment Regulation (No. 1) 2014

Explanatory Notes for SL 2014 No. 282

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries Amendment Regulation (No. 1) 2014

Authorising law

Sections 3A and 223 of the *Fisheries Act 1994* (the Act).

Policy objectives and the reasons for them

The objective of the subordinate legislation is to implement recommendations arising from a review of freshwater fishery management arrangements to ensure a sustainable recreational freshwater fishery which does not adversely impact on non-target species.

The majority of Australian freshwater fish species are under threat due to human activities such as clearing of vegetation around water courses, siltation associated with land management practices, removal of natural debris (snags) from rivers, overfishing, stopping or changing the flow of water through dams and weirs and introduction of diseases and non-native fish.

A review of freshwater fishery management arrangements commenced in 2011 with the establishment of a stakeholder based Freshwater Working Group (the working group). Their review identified key problems facing the freshwater fishery in Queensland namely, the ongoing sustainability of freshwater fishing is under threat and current fishing practices are having adverse impacts on non-target species.

The review identified the following issues which are required to be addressed in order to rectify the problems currently facing the freshwater fishery:

- inadequate protection of fish, including endangered and vulnerable fish, from fishing;
- the potential introduction and spread of disease through the use of baits from outside of the relevant catchment area;
- overfishing of aggregating fish at waterway barriers;

- set lines killing and injuring non-target species; and
- funnel traps killing and injuring protected and non-target species.

The working group recommended a range of options to Fisheries Queensland, within the Department of Agriculture, Fisheries and Forestry. These options were analysed in light of new information about the activities, impacts and risks associated with recreational fishing in freshwater. The amendments the subject of the subordinate legislation, implement the majority of the review's outcomes and represent those which impose little or no impact on stakeholders.

Achievement of policy objectives

The subordinate legislation achieves its objectives by the following:

- Introducing a three month prohibition during the spawning season on taking and possessing Mary River cod in waters upstream of and within specific dams and the extension of closed waters to the taking of this species in additional waters where their breeding range has been extended.
- Expanding the three month spawning closure on the taking and possessing of Murray cod to include all Queensland non-tidal waters.
- Reducing the take and possession limit for silver perch from five to two either separately or in combination with other species.
- Prohibiting the take and possession of Edgbaston hardyhead in the Thompson River catchments.
- Prohibiting the take and possession of fish of the Sicydiinae family.
- Prohibiting the take and possession of more than 20 freshwater mullet and imposing a size limit of 30cm.
- Prohibiting the take and possession of gulf grunter of a size less than 28cm.
- Introducing a general take and possession limit of no more than 20 for any unlisted freshwater fish species.
- Prohibiting the take and possession of more than five catfish including the *Anodontiglanis* genus.
- Introducing a prohibition on the use of baits from marine environments in non-tidal waters unless the bait has been frozen, cooked or preserved.
- Introducing a prohibition on the taking and possessing of fish in waters upstream and downstream of four additional dams where fish are found to aggregate.
- Introducing a prohibition on the use of set lines by recreational fishers in non-tidal waters.
- Reducing the distance a recreational fisher is required to be from a fishing line from 200 metres to 50 metres.
- Amending the material for construction and size of openings of funnel traps and providing that they are used in catchments where they pose reduced risk of interaction with species of conservation interest, such as platypus.
- Introducing an open top pyramid trap as a new type of freshwater trap which may be used.
- Changing the marking requirements for traps.

Consistency with policy objectives of authorising law

The subordinate legislation is consistent with the objectives of the authorising law which is to generally provide for the use, conservation and enhancement of the community's fisheries

resources and fish habitats whilst applying and promoting the principles of ecologically sustainable development.

Inconsistency with policy objectives of other legislation

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

Alternative ways of achieving policy objectives

Two alternative options to the proposed subordinate legislation were considered: a non-regulatory approach and maintaining the status quo.

The non-regulatory option would not achieve the Government's policy of ensuring a sustainable recreational fishery. While there is some scope for increased self-regulation by individual fishers, in the form of best practice codes of conduct and best practice design of equipment, the non-regulatory option is inconsistent with the interests of all sectors of the community. No other jurisdiction in Australia attempts to manage freshwater fisheries resources through non-regulatory means. There is a considerable risk that a non-regulatory approach could lead to undesirable fishing practices with detrimental consequences for freshwater fish resources, the broader habitat and vulnerable and endangered species.

Maintaining the status quo is not viable in the longer term as it fails to meet the stated objective of ensuring a sustainable recreational fishery that does not adversely impact on non-target species. If the status quo remains, there may be a reduction in community based freshwater stocking groups which could threaten existing contributions to regional economies and will limit the options for economic growth based on freshwater fishing. Additionally, the increase in the number of anglers fishing in freshwater has potentially significant implications for fish populations and other aquatic animals. Animals such as platypus, turtles and birds will continue to be killed and injured through the unintended capture of these animals in apparatus if left unchanged. As a consequence, retaining the existing management arrangements is not considered an acceptable approach for the future management of the fishery.

Benefits and costs of implementation

There are no direct financial costs or benefits to Government.

Impacts on competition are not applicable as the subordinate legislation relates to recreational activities. As the subordinate legislation will achieve the objectives for the future management and sustainability of this fishery, existing businesses relying on recreational fishing in non-tidal waters can expect ongoing sales to recreational fishers into the future. Some aquarium businesses may be affected by new levels of protection on a small number of species and limiting the use of certain bait types may reduce the range of bait able to be sold for fishing in non-tidal waters. There may also be a reduction in sale of certain funnel traps as the area they can be used in is reduced, however this will be offset by the sale of newly permitted trap designs.

The subordinate legislation will have minimal impact on the community. Recreational fishers who fish in non-tidal waters make up a small component of the community and of those only

a limited number will be potentially impacted by the changes. A small number of individuals may have to purchase different types of bait or traps for future fishing activity and there will also be some very minor restrictions on fishing in a limited number of locations.

Consistency with fundamental legislative principles

The amendments may give rise to a fundamental legislative principle issue, in that they could be interpreted to affect the rights and liberties of individuals as per section 4(3)(g) of the *Legislative Standards Act 1992*. Specifically, the amendments will restrict the types of baits that may be sold, affect the sale of some traps and in some instances limit the availability of fish species for aquarium businesses. Furthermore, the amendments will impose additional restrictions on the fish species that may be taken, the type of apparatus that can be used and the location from which fish can be taken. These changes will predominantly affect recreational fishers.

These impacts are considered to be relatively minor and are justified given the need to ensure that Queensland's freshwater fishery remains sustainable, including the protection of vulnerable or endangered species. It is also necessary to make the amendments to ensure that freshwater fishing activities, such as trapping, have a minimum impact on non-target species such as platypus. It is also noted that a working group was established to consult with affected stakeholders on the proposed amendments, and this group has indicated support for the changes.

Consultation

Consultation occurred with a broad range of stakeholders through the Freshwater Working Group which comprised representatives from recreational fishers and aquarium collectors, commercial eel fishers, water storage managers, fish hatchery operators, fishing competition organisers, bait and tackle store owners and conservation agencies. The freshwater working group is supportive of the amendments in the subordinate legislation.

The Office of Best Practice Regulation (OBPR) within the Queensland Competition Authority was consulted with regard to regulatory impact statement (RIS) requirements. The OBPR advised that the subordinate legislation is considered not likely to result in significant adverse impacts and therefore, a RIS is not required.