

Fisheries Amendment Regulation (No. 2) 2014

Explanatory Notes for SL 2014 No. 328

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries Amendment Regulation (No. 2) 2014

Authorising law

Sections 20, 44, 62 and 223 of the *Fisheries Act 1994* (the Act).

Policy objectives and the reasons for them

The purpose of the subordinate legislation is to deliver a more sustainably managed commercial fin fish trawl fishery (the fishery) with more effective catch and compliance controls which are consistent with other quota managed fisheries. The subordinate legislation also seeks to provide confidence to operators in this fishery to encourage investment in improved fishing apparatus and ensure sustainability targets for the fishery are met into the future.

The fishery has previously operated under an annual total allowable catch which is equally divided on an annual basis amongst five licences. Individual catch limits are issued as a tonnage and administratively imposed by way of licence condition.

The means to monitor catches in this fishery has, until this time, been reliant upon logbook records alone. Logbooks do not provide adequate or real-time monitoring of the progress towards individual catch limits during the fishing season and this presents a significant risk for operators to overfish their individual catch limit.

The issuing of individual catch limits by way of licence condition and general fisheries permit has resulted in fishers perceiving that they do not have long-term security in their fishery. This is because both instruments are vulnerable to administrative discretion and variation. Operators in the fishery have consequently been unwilling to invest in efficiency measures to improve their fishing activities and financial returns. Business decisions are

stifled by the fact that the tradeable authority in this fishery is the licence itself, rather than the catch amounts which can be taken under the licence.

In-possession limits for permitted species (or by-catch) which may be taken under a general fisheries permit, are inflexible and due to the highly variable catches for some of these permitted species, fishers often discard large quantities of by-catch. This is both uneconomical for fishers and ecologically unsustainable.

The subordinate legislation also seeks alignment and consistency of the regulated periods during which the taking of tropical rocklobster by both recreational and commercial fishers is prohibited. The regulated periods are designed to protect tropical rocklobster stock during their peak spawning period.

Achievement of policy objectives

The subordinate legislation achieves the policy objectives by establishing a framework for administration of the fishery within the *Fisheries Regulation 2008* (the Regulation) which is consistent with other quota managed fisheries.

The subordinate legislation provides for individual transferable quota (ITQ) units to be created and allocated for target fish species and provides that these quota units may be traded between licence holders on a permanent basis. The use of these quota units by licence holders will therefore be able to be monitored through existing prior reporting and quota monitoring systems in the Regulation which will allow real-time assessment of catches.

Transitioning arrangements for permitted species from in-possession limits under general fisheries permits to annual quotas will allow fishers to retain more fish of non-target species rather than discard significant amounts of those fish from individual catches each fishing trip.

Formal recognition of catch quota for this fishery in the Regulation and the ability to trade quota units permanently is expected to give fishers confidence to invest in highly efficient and ecologically sustainable fishing gear which will enhance profitability and business longevity.

The subordinate legislation achieves alignment and consistency of the regulated periods for the taking of tropical rocklobster by amending the regulated period for recreational fishers such that it ends at midnight on 31 December, the same as for commercial fishers. Currently the regulated period for recreational fishers closes at midnight on 31 January.

Consistency with policy objectives of authorising law

The subordinate legislation is consistent with the objects of the Act which in part provides 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.

Inconsistency with policy objectives of other legislation

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

Benefits and costs of implementation

Licence holders will incur a time cost and call costs to prior report landings of fish and submit unload notices.

The subordinate legislation will enable easier quota trading and will allow permanent trades in smaller quantities than was previously possible. The subordinate legislation provides fishers with fishing rights over the resource as it provides formal recognition of quota units as an authority. This coupled with the ability to trade quota permanently will give fishers confidence to invest in more efficient and ecologically sustainable fishing gear.

The cost to government to transition management arrangements from those authorised by way of licence and permit condition to an ITQ system in the Regulation, is approximately \$10,000 in the first year and \$5,000 annually thereafter.

However, the subordinate legislation removes the administrative burden on government to issue licences with attached conditions annually and update these each time quota is traded. The subordinate legislation will provide effective controls on quota limits through real-time reporting and will provide effective enforcement controls to mitigate the risk of overfishing.

Consistency with fundamental legislative principles

The subordinate legislation has been drafted with regard to the fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*. While the subordinate legislation is generally consistent with those principles, a potential issue has been identified concerning the imposition of reporting obligations and the consequent impact upon commercial fishers' rights or liberties.

The subordinate legislation imposes very specific reporting obligations on commercial fishers in this fishery which require notices to be provided to the chief executive on the proposed landing, unloading and retention of fish. These notices must be provided in prescribed ways and within prescribed timeframes. The prescriptive nature of these reporting obligations raises the issue that the subordinate legislation should not, without sufficient justification, unduly restrict ordinary activities.

Prior to the introduction of the subordinate legislation, fish taken in this fishery were reported to the chief executive via the completion of monthly written logbooks. The subordinate legislation by comparison imposes far greater, time imperative catch reporting obligations upon fishers. However, these obligations largely mirror and are consistent with those of individual transferable quota systems currently existing in some other Queensland fisheries.

The subordinate legislation enables adequate monitoring of landing and unloading of catches to be undertaken by enforcement and compliance officers to ensure that individual quotas are not exceeded. To this end the subordinate legislation achieves the fishery management objective underlying the reporting obligations as it ensures that catches are taken in accordance with and remain within sustainable limits.

The impost to fishers caused by additional reporting obligations is balanced by the fact that the subordinate legislation creates ITQ units. ITQ units are authorities which can be traded

and sold and therefore represent a proprietary right which did not previously exist in this fishery. Fishers in this fishery have been supportive of the move towards an ITQ unit system and acknowledge the need for adequate reporting for an ITQ unit system to operate. Therefore on balance, the subordinate legislation is justified and is an appropriate way of dealing with quota in this fishery.

Consultation

The Department of Agriculture, Fisheries and Forestry (DAFF) undertook consultation with all licence holders in the fishery who gave in-principle support to transition the management arrangements for the fishery into the Regulation.

DAFF also consulted with Sunfish, the recreational fishing peak body and the Commonwealth Department of Environment as part of the Wildlife Trade Operation (WTO) approval and reassessment process. Sunfish did not raise any major objection to the management arrangements, the subject of the subordinate legislation. The subordinate legislation addresses issues raised in public submissions received as part of the reassessment process as well as meets the current WTO conditions and recommendations for the fishery.

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 not likely to result in significant adverse impacts and therefore a RIS is not required.