

Fisheries Amendment Regulation (No. 3) 2016

Explanatory notes for SL 2016 No. 193

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries Amendment Regulation (No. 3) 2016

Authorising law

Sections 42, 49 and 223 of the *Fisheries Act 1994*

Policy objectives and the reasons for them

The policy objectives of the subordinate legislation are to provide for a number of minor amendments to the *Fisheries Regulation 2008* (Regulation) identified during the Fisheries Queensland's regular review of its legislation and the review of the freshwater fisheries which commenced in 2011. These amendments are required to clarify the original intent of fisheries policies, remove unnecessary regulatory burden, correct certain descriptions of regulated waters, correct or clarify the scientific names for certain fish species and to remove obsolete provisions.

Achievement of policy objectives

The subordinate legislation will achieve its objectives by making the following changes:

- amending section 15(2) to also include that any references to a commercial fisher in chapters 7 and 11 are a reference to a commercial fisher acting under a commercial fishing boat licence on which is written a fishery symbol for the fishery. This is to correct an oversight. Currently the provision only relates to a commercial fisher in chapters 8 to 10 but it is also relevant to authorities issued under chapters 7 and 11 for the commercial harvest, crab, spanner crab, crayfish and rocklobster, shark and ray and trawl fishery (fin fish) fisheries;
- omitting sections 40 and chapter 10, part 1, division 3, subdivision 2 which relate to SM (Flat Rock) fishery licences and the definition of SM (Flat Rock) fishery licence in schedule 11. The licences are no longer issued because the Flat Rock area is now part of the Moreton Bay Marine Park and fishing in that area is no longer permitted because it is a green zone;

- amending the references for the prescribed stocked impoundments 'Gill Weir' in section 51 and schedule 10A to the correct name of 'Gil Weir';
- amending section 125 to ensure that no permits can be issued by the chief executive for the use of nets for trade or commerce in the regulated waters that in 2015 were prescribed by section 123A as commercial net free zones;
- removing the conditions for the possession for the possession of mollusc shells that have not been taken for trade or commerce in section 175(c) that require that they must be cleaned, preserved and kept in a collection. This is an unnecessary regulatory burden on businesses, Government and the community;
- removing the requirements for a recreational fisher prescribed in section 188(4) for a 'collapsible trap' as they replicate the definition of collapsible trap in schedule 11 (Dictionary);
- omitting section 192 to disallow the use of shell dredges by recreational fishers. This is justified on the basis that the use of shell dredges has a significant impact on the benthos, their use by recreational fishers is extremely limited because people prefer to hand pick their shells to avoid damage, and harvest numbers are low because shells cannot be taken for trade or commerce and possession is limited to 50 in any case;
- amending section 197(3) to require that a person must not allow a part of fishing apparatus that contains fish to be out of the water other than to immediately remove the fish from the apparatus. This requirement should apply to all fish and not just to regulated fish and extending it to all fish will prevent the unintentional death or injury and/or unnecessary waste of fish;
- removing section 199 which prescribes the methods that a recreational fisher may use to take coral reef fin fish. There is no longer any justification for requiring coral reef fin fish to be taken any differently from any other recreationally caught fish;
- amending section 213 which specifies the purposes for which an inspector may hold an interest in an authority to include investigation and enforcement purposes. This will, for example, assist in compliance and enforcement activities by allowing, for example, the use of an apparatus to investigate complaints of interference in particular areas;
- amending section 229 to remove ambiguity in relation to the marking requirements for commercial fishing vessels by clarifying that primary boats will be required to have permanent boat marks attached to their hull, and tender boats will be permitted to have temporary boat marks visible against their hull. However only one set of temporary boat marks will be allowed to be placed or carried on the tender boat during each trip. This will remove the current ambiguity which has resulted in compliance issues;
- amending sections 253BA, 253BC and certain entries in the table in schedule 2, part 2 and omitting chapter 9 part 4AA and item 13 of Schedule 9 (Other fees) to remove references to 'N9' fishery symbol. Those symbols no longer exist having been replaced by N12 symbols during the review of the Gulf of Carpentaria Inshore Fin Fish Fishery which was completed in 2011;
- omitting sections 254(2), 254A and 254B which allow the chief executive to write, in certain circumstances, a fishery symbol on a licence allowing the use of a boat which is longer than the prescribed length for that fishery. To allow a boat longer than the prescribed length in a fishery undermines the intent and effectiveness of the vessel size limits;
- amending sections 497A(2), 498(7) and 503(4) to extend the prescribed distance that a set mesh net may be used from a jetty or a wharf to 400 metres. This will standardise the prescribed distance in all net fisheries which will remove any ambiguity for fishers and assist in the compliance and enforcement of the use of the nets;

- amending section 529(1) to exclude ‘tropical rocklobster’ from the fish that may be taken in the eastern ‘N11’ area. The intent is to limit the taking of ‘tropical rocklobster’ to fishers who hold an ‘R’ type fishery symbol and hold quota to harvest the species. Currently, fishers using the permitted commercial net fishing apparatus under the ‘N11’ fishery symbol may also be taking this species which potentially undermines the management arrangements established for this species and threatened its sustainability;
- amending sections 565, 573(2)(b), 577(3)(b)(iv), 591W, 591ZE(2)(b), 591ZH(3)(b)(iv) 614ZE(2) and 614ZG(3)(b) to change the deadline for giving a prior notice and retained fish notices from 3 hours to 1 hour for fishers unloading in areas other than the isolated areas north of Rattlesnake Point. A three hour deadline to give notices prior to unloading has been onerous for fishers operating close to their home ports because they have been required to lodge a notice before the fishing day has been completed in order to comply with the requirements. This means they have been required to provide a second notice (an amendment notice) to update the details before the catch can be unloaded.
- amending sections 566, 591X and 614X to allow prior notices or unloaded fish notices to be given to the chief executive in a way approved by the chief executive that is other than through the automated interactive voice response system (AIVR). Alternative technological methods could provide easier avenues for providing the same information, for example an electronic log book;
- amending section 596 (permitted ways of taking crabs) to include ‘collapsible trap’. While a ‘collapsible trap’ in some common usage is regarded as a ‘crab trap’, a ‘collapsible trap’ is defined separately in Schedule 11, Part 2;
- amending section 606 to increase the maximum allowable primary vessel length in the East Coast Tropical Rock Lobster Fishery from 20 metres to 25 metres. Restricting maximum primary vessel length to 20 metres unnecessarily constrains the operating duration, range, safety, comfort and live crayfish handling capacity. Sustainability of the fishery will still be managed by quota arrangements;
- amending section 655 to require that a sales docket prepared either by the seller or the buyer must be checked and signed by the seller. This removes the ambiguity about who is responsible for providing the correct details;
- amending schedule 1 to correct the coordinates for the descriptions of the regulated waters that relate to the Townsville Harbour and Cleveland Bay regulated waters , and Wide Bay Bar regulated waters;
- amending schedule 2, part 2 to include ‘Utchee Creek rainbowfish’ as a regulated species of rainbowfish to address the oversight where this species has been unintentionally excluded;
- amending the entry for Edgbaston in schedule 2 part 2 to replace ‘Thompson’ with ‘Thomson’ to correct the spelling;
- amending the entry for tropical rocklobster in schedule 2, part 2 by omitting dead tropical lobster. The requirement for recreational fishers to remove or hole-punch lobster tails was intended as a means of preventing recreational fishers selling their catch on the black market. The requirement has proven to be largely ineffective and now represents an unnecessary burden upon recreational fishers. Instead, size and in-possession limits for tropical lobster will be relied upon for enforcement purposes;
- amending ‘freshwater fish’ to ‘freshwater finfish’ in the entry in Schedule 2, part 2 for any freshwater fish species not mentioned in this part or part 3, column 1. The entry should only apply to ‘finfish’;

- amending Schedule 6, part 3 to include the scientific names for Edgbaston hardyhead (*Craterocephalus* sp.), Gulf grunter (*Scortum ogilbyi*), Myross hardyhead (*Craterocephalus* sp.) and Utchee Creek rainbowfish' (*Melanotaenia utcheensis*);
- amending the entry for manta ray in Schedule 6, part 5 to include all species of manta rays. Manta rays are listed under the Convention on International Trade in Endangered Species (CITES) so the amendment will ensure all species of manta rays are protected in line with all other jurisdictions;
- amending the definition of 'eastern non-tidal waters' in Schedule 11, Part 2 by inserting 'other than a listed impoundment'. This amendment will exclude the listed impoundments in the non-tidal waters in the Murray-Darling drainage division east of the Gore Highway which will assist in addressing the reports of platypus interacting with pyramid netting and address potential enforcement issues;
- amending the definition of 'prescribed barramundi waterway' in Schedule 11, Part 2 to include new waters. This relaxation has the potential to provide positive benefits to adjacent communities by enabling anglers to target and retain barramundi during the closed season. This will increase fishing opportunities and provide associated benefits with regional Queensland without impacting on wild fisheries.

Consistency with policy objectives of authorising law

The subordinate legislation is consistent with the objectives of the *Fisheries Act 1994*.

Inconsistency with policy objectives of other legislation

The subordinate legislation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The subordinate legislation is the only effective means of achieving the policy objectives.

Benefits and costs of implementation

The State Government will not incur any additional costs in the implementation of this subordinate legislation. Certain of the amendments may reduce costs by assisting with the enforcement of compliance.

There will be benefits to commercial and recreational fishers as some of the current restrictions will be removed and the ambiguity in relation to some of the conditions will be clarified.

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*. No fundamental legislative principle issues have been identified in the preparation of this subordinate legislation.

Consultation

Consultation in relation to the corrections to the number of freshwater fish and typographical errors relating to for Edgbaston hardyhead (*Craterocephalus* sp.), Gulf grunter (*Scortum ogilbyi*), Myross hardyhead (*Craterocephalus* sp.) and Utchee Creek rainbowfish (*Melanotaenia utcheensis*) in part 3 of schedule 6 and the inclusion of new waters as prescribed barramundi waterways was conducted with industry stakeholders and the general public as part of the freshwater fisheries review that commenced in 2011 and resulted in a Regulatory Impact Statement process in 2014. All the amendments were supported.

Industry stakeholders and the Great Barrier Reef Marine Park Authority were consulted in relation to increasing the maximum allowable primary vessel length from 20 metres to 25 metres in the East Coast tropical Rock Lobster Fishery. This amendment was also supported.

The Office of Best Practice Regulation (OBPR) within the Queensland Productivity Commission was consulted as to whether the amendments qualified for an exclusion from the Regulatory Impact Statement (RIS) system. The OBPR advised that the amendments are either excluded from the RIS system or are unlikely to result in significant impacts and therefore excluded from further assessment under the Treasurer's RIS guidelines.