

# **Biosecurity (White Spot Syndrome Virus) Amendment Regulation 2017**

Explanatory notes for SL 2017 No. 90

made under the

*Biosecurity Act 2014*

## **General Outline**

### **Short title**

*Biosecurity (White Spot Syndrome Virus) Amendment Regulation 2017*

### **Authorising law**

Sections 128, 129 and 503 of the *Biosecurity Act 2014*

### **Policy objectives and the reasons for them**

The purpose of the subordinate legislation is to reduce the risk of the spread of white spot syndrome virus (WSSV) to uninfected areas of Queensland and interstate.

WSSV is a highly contagious viral pathogen infecting all crustaceans. The virus is the causative agent of white spot disease (WSD), a devastating disease of decapod crustaceans. WSD has decimated aquaculture industries overseas as there are no effective vaccines/disease treatments. Destruction of diseased animals and preventative risk mitigation measures are the only effective options to limit impacts.

On 22 November 2016, a mortality event in a prawn farm on the Logan River occurred with subsequent laboratory tests confirming positive results for WSSV. Comprehensive measures were implemented under the *Biosecurity Act 2014* (the Act) to mitigate the risk of any potential spread. Despite these measures, the disease spread to six other prawn farms in the Alberton/Woongoolba region. WSSV was also confirmed in a small number of wild caught prawns taken from the lower reaches of the Logan River and in the southern region of Moreton Bay.

Surveillance and sampling has been ongoing in the Logan River, Pine River, Moreton Bay, and the Brisbane River since December 2016 to identify the spread of the disease. In March 2017 greasy prawns, brown tiger prawns and banana prawns taken by a commercial trawler in the northern Moreton Bay area were confirmed positive to WSSV.

There are no human health concerns from consuming crustaceans, such as prawns, with WSSV. However, the loss of disease-free status in wild-caught fisheries in south-east

Queensland has resulted in a negative market response, including a loss of domestic sales and export approvals. The further spread of WSSV in the wild would extend these impacts on wild-caught fisheries and increase the risk of infection of aquaculture farms in other areas of the State. The subordinate legislation is targeted at reducing the risk of spread to other parts of Queensland where WSSV is not thought to exist.

One of the potential pathways for human-assisted spread of WSSV is the movement of potential carriers of WSSV taken from areas where WSSV is present in the wild to uninfected areas where their use as bait potentially could introduce WSSV. Potential carriers include polychaete worms (such as blood and beach worms) and decapod crustaceans (such as prawns, yabbies, lobsters and crabs). The risks associated with spreading the disease is highest for those carriers which are most likely to be infected, such as those taken where water drains from prawn aquaculture farms where WSSV has been detected. The risk associated with spreading the disease is lower for those carriers that are high value and that are unlikely to be returned to water as bait, such as certain high value crustaceans, especially where these are subject to a minimum size limit restriction. There is a negligible risk of spread where the carriers have been cooked as this destroys the virus.

## **Achievement of policy objectives**

The subordinate legislation will achieve its objective by amending chapter 5 of the *Biosecurity Regulation 2016* (Prevention and control measures for biosecurity matter) to establish a WSSV biosecurity zone. The biosecurity zone will be directed at reducing the spread of the WSSV from currently infected to uninfected areas.

The biosecurity zone regulatory provisions will restrict movement of potential carriers from areas where WSSV may currently be present in the wild to other places in Queensland or interstate. There are exceptions to the movement restrictions for cooked carriers, carriers that are only transiting the zone in sealed containers and for blue swimmer crabs, mud crabs, spanner crabs, three-spotted crabs, bugs (*Ibacus* spp. and *Thenus* spp.), red champagne lobsters, redclaw, slipper lobster and tropical rocklobsters.

There is also an exception to the movement restrictions for parties who have entered into a compliance agreement with the chief executive. These agreements will potentially allow processors to process and repackage uncooked prawns from outside the regulated movement area under strict biosecurity protocols. These prawns will then be permitted to leave the regulated movement area. There is also some potential to also allow movement of carriers taken from the infected area which have been treated using an alternative means of rendering the virus inactive, such as by using irradiation, under a compliance agreement.

Further surveillance is ongoing to delimit the presence of WSSV in the wild. This may necessitate future changes to the area where movement restrictions apply. As a result it is necessary to enable timely adjustment to the area where movement restrictions will apply to reflect new knowledge about where WSSV is present in the wild. This will be achieved by establishing the whole State as the biosecurity zone where the restrictions apply but authorising the chief executive, under section 129(1)(c) of the Act, to provide biosecurity areas where the movement restrictions do not apply. Initially, it is proposed that the chief executive would provide that the movement restrictions would not apply to all areas outside of the known infected area of south east Queensland. This would ensure that only movements from the infected area, currently in south east Queensland, to other parts of Queensland and interstate would be restricted.

Separately, the biosecurity zone regulatory provisions will prohibit fishing within prawn aquaculture farm drainage and intake channels and within a 100 metre radius of prawn aquaculture farm outlets and water intakes. To ensure that fishers can identify where the restrictions apply, the owners of a prawn aquaculture farm will be required to erect a sign approved by the chief executive. The restrictions on fishing in drainage channels and near outlets will reduce the risk of WSSV spread by directly preventing the taking of carriers where the carriers are at greatest risk of being exposed to WSSV. The restrictions on fishing in intake channels and near water intakes will additionally reduce the risk of WSSV being re-introduced into prawn farms where WSSV has been eradicated via use of infected bait.

The restrictions on fishing will initially only apply to drainage and intake channels and within a 100 metre radius of prawn aquaculture farm outlets and water intakes of prawn farms which are, or have been infected with, WSSV. Currently, WSSV has only been found in prawn aquaculture farms on the Logan River in the Coomera State electorate area. The biosecurity zone regulatory provisions authorise the chief executive, under section 129(1)(c) of the Act, to provide biosecurity areas where the recreational fishing restrictions and signage requirements do not apply. Initially, it is proposed that the chief executive would provide that the recreational fishing restrictions and signage requirements do not apply to all areas of Queensland except the Coomera State electorate area where the prawn aquaculture farms Logan River are located.

## **Consistency with policy objectives of authorising law**

The subordinate legislation is consistent with the objectives of the *Biosecurity Act 2014*.

## **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 establishment of a biosecurity zone is the most feasible approach to reduce the risk of spread of WSSV to uninfected areas.

Doing nothing to reduce the spread of WSSV to other areas of Queensland and Australia and simply mitigating the impacts of WSSV on industry is not supported. WSSV is not considered endemic in Australia at this time.

Several variations on the proposed restrictions were considered.

The Movement Control Order under the Act, which will be replaced by this subordinate legislation, does not include an exception to the movement restrictions for certain high value crustaceans. This was a precautionary measure until the assessment of the risk of spread of WSSV by these carrier could be considered further. Further analysis of the risk suggested that the resulting disruption to the affected industry supply chain was not justified. These species are typically kept alive until being cooked for immediate consumption.

Establishing the biosecurity zone only in the part of southeast Queensland where WSSV has been detected was not supported because it would reduce flexibility in adjusting to future information about the spread of WSSV in the wild.

## **Benefits and costs of implementation**

The biosecurity zone will help protect the future viability of the seafood industry in Queensland and interstate, and jobs in that industry.

The loss of disease-free status beyond south east Queensland would impact on sales and export approvals for commercial prawn and crab fisheries including the lucrative live crab export trade. Fishers in the affected region have already experienced a fall in market price and a negative demand shift for their product.

Spread of WSSV in the wild beyond south east Queensland would also increase the risk of infection of prawn aquaculture farms in other parts of Queensland and interstate.

There will be an initial cost to Government broadly estimated at \$50,000 for communication about the biosecurity zone and signage associated with land-based aquaculture drainage and intake channels, drainage outlets and water intakes. There will also be some ongoing costs for communication and related to re-directing existing monitoring and enforcement capability within the Department to ensure compliance with the subordinate legislation.

## **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*.

The regulatory provisions place restrictions on the movement of specified WSSV carriers and on fishing in certain areas that apply to all persons and therefore, have the ability to impact on the ordinary activities of commercial and recreational fishers and others dealing with seafood products. This is a potential breach of the principle that legislation should not, without sufficient justification, unduly restrict ordinary activity (*Legislative Standards Act 1992* section 4(2)(a)).

The restrictions on movement are justified, however, because of the risk of further spread of the WSSV and the impact this could cause to the industry through loss of sales and exports as well as mortality on infected prawn farms. The regulation attempts to limit the impact on the rights and liberties of individuals by targeting only those WSSV carriers that pose the greatest risk of spreading WSSV. It also provides exceptions to the movement of specified WSSV carriers that are cooked or passing through the regulated areas in the biosecurity zone in sealed containers.

The restrictions on fishing within 100 metres of land-based aquaculture drainage outlets and water intakes and within drainage and intake channels are also justified because of the risk of further spread of the WSSV and the impact this could cause to the industry through loss of sales and exports as well as mortality on infected prawn farms. Provision for the chief executive to, by notice, establish biosecurity areas where lesser restrictions apply will enable the restriction to be flexibly applied only to small areas where aquaculture farms that are, or have been, infected with WSSV exist.

## Consultation

To guide the initial response, the Department of Agriculture and Fisheries commissioned an expert panel to work through the long term options for management of WSSV. The independent Scenario Planning Advisory Panel completed a report that outlined the feasibility of three response options outlined in the Australian Aquatic Veterinary Emergency Plan. Following confirmation that WSSV was present in the northern area of Moreton Bay, option '2(b): Containment, control and zoning to prevent spread to uninfected areas, is guiding the Government's current response approach and has formed the basis of the subordinate legislation.

The subordinate legislation will replace a Movement Control Order made by the chief executive under the Act on 16 March 2017. The Movement Control Order expires on 16 June 2017 but will be revoked on commencement of the subordinate legislation. The most significant differences between the Movement Control Order and the subordinate legislation are: the exception to movement restrictions for certain high value carriers; the restrictions on fishing in drainage and intake channels and within 100 metres of drainage outlets and water intakes; and the omission of some redundant inspector's powers and notification requirements. There has been extensive stakeholder feedback on the Movement Control Order and consultation on how its impacts could be addressed.

Several sectors of the commercial fishing industry and its supply chains have advised that the restrictions, imposed by the Movement Control Order, on movement of carriers out of an area of south east Queensland are significantly impacting their businesses. In particular, there is a very limited market for cooked greasy prawns for human consumption and the order prevents these prawns being sold outside the area for bait. Similarly, there is a very limited market for cooked mud crabs and the order prevents these crabs being sold live including via the major interstate fish markets. High value live worms are also primarily sold interstate for bait. Also a small number of commercial fishers are no longer able to collect certain aquarium species from Moreton Bay and sell them interstate.

In most cases it is not possible to reduce these impacts without allowing movements of carriers that pose a significant risk of spreading WSSV. However, the subordinate legislation will allow the movement of mud crabs and certain other high value crustaceans as there is a low risk that these will be used as bait and thus introduce WSSV to waters in currently uninfected parts of the State or interstate.

Industry has also raised concerns about the risk of physical carriers, such as containers and boats, spreading WSSV. Their concerns relate to a perceived lack of quarantine and decontamination protocols. However, it is not necessary to legislate specific measures to be taken in relation to these as the Act imposes a general biosecurity obligation on all persons to take all reasonable and practical measures to prevent or minimise biosecurity risk. Advice on appropriate measures for minimising the risk of spread by physical carriers should be sufficient to inform relevant persons about how to meet their obligations to address the risk.

The Queensland Seafood Industry Association (QSIA), The Fishermen's Portal Inc, Australian Prawn Farmers Association (APFA), North Queensland Trawlers and SunFish were consulted about the proposed subordinate legislation, including the differences from the Movement Control Order.

Several industry stakeholders that were consulted raised concerns about the exemptions to the movement restrictions representing an increase in the risk of WSSV spread. They highlighted that allowing import of green prawns from countries where WSSV is endemic may have been considered 'low risk' but was a possible cause of the current issues. They wanted

a 'no risk' approach to further spread. However, such an approach cannot be justified and would be prohibitively expensive to enforce.

Nevertheless, consulted stakeholders were generally supportive of the proposed regulation. QSIA highlighted that they did not represent all commercial fishermen and could not provide feedback on behalf of all commercial fishermen.

The Office of Best Practice Regulation (OBPR) in the Queensland Productivity Commission was consulted regarding the need for a Regulatory Impact Statement. The OBPR has advised that no further analysis is required under the *Queensland Guide to Better Regulation* as the subordinate legislation is for matters that require an immediate legislative response to prevent damage to property or injury to persons.