

# **Fisheries (Sustainable Fisheries Strategy) Amendment Regulation 2019**

Explanatory notes for SL 2019 No. 71

made under the

*Biosecurity Act 2014*

*Coastal Protection and Management Act 1995*

*Fisheries Act 1994*

*Marine Parks Act 2004*

*Nature Conservation Act 1992*

*Planning Act 2016*

*Rural and Regional Adjustment Act 1994*

*State Penalties Enforcement Act 1999*

*Transport Operations (Marine Pollution) Act 1995*

## **General Outline**

### **Short title**

*Fisheries (Sustainable Fisheries Strategy) Amendment Regulation 2019*

### **Authorising law**

Section 503 of the *Biosecurity Act 2014*

Section 167 of the *Coastal Protection and Management Act 1995*

Section 223 of the *Fisheries Act 1994*

Section 284 of the *Planning Act 2016*

Section 150 of the *Marine Parks Act 2004*

Section 157 of the *Nature Conservation Act 1992*

Section 44 of the *Rural and Regional Adjustment Act 1994*

Section 165 of the *State Penalties Enforcement Act 1999*

Section 133 of the *Transport Operations (Marine Pollution) Act 1995*

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

*Amendment of the Fisheries Regulation 2008 (Fisheries Regulation)*

The Queensland Government released the *Sustainable Fisheries Strategy 2017-2027* (the Strategy) in June 2017. The Strategy committed to delivering a more responsive,

evidence-based approach to fisheries management and strengthening compliance powers to better align with the approaches used in other Australian jurisdictions.

The *Fisheries (Sustainable Fisheries Strategy) Amendment Act 2019* (the Amendment Act) was the first significant step in fulfilling the principles and commitments outlined in the Strategy by establishing the legislative framework for the fisheries management reforms.

The Explanatory Notes for the Amendment Act provided details about the policy objectives of the amendments it makes to the *Fisheries Act 1994* (Fisheries Act) and the reasons for them.

Amendment of the Fisheries Regulation is required to support the fisheries management framework established by the Amendment Act, and hence the implementation of the Strategy.

The policy objectives for the amendment of the Fisheries Regulation are:

- to remove references to management plans in the Regulation and to consolidate relevant provisions of the *Fisheries (East Coast Trawl) Management Plan 2010* (the Trawl Plan) into the Fisheries Regulation. This is necessary as the Amendment Act omits provisions for making management plans. It is also consistent with the Queensland Government's commitment under the Strategy to 'reduce the volume of fisheries regulation';
- to support the implementation of the Strategy by prescribing matters provided for in the Amendment Act including types of quota authorities; vessel tracking installation and use requirements; commercial quantities of commercial fish for the new trafficking offence; and the release of some species of non-indigenous fisheries resources into particular Queensland waters;
- to omit provisions of the Fisheries Regulation that could be prescribed in a fisheries declaration or quota declaration made by the Chief Executive so they can be more easily amended as required under a harvest strategy; and
- to adopt the new terminology introduced by the Amendment Act and adjust any relevant references.

#### State Penalties Enforcement Regulation 2014

A second policy objective is to provide for timely and effective enforcement of new offences relating to vessel tracking and the new shark control exclusion zone by providing for the imposition of an immediate fine.

#### Consequential amendments to other subordinate legislation

Another objective of the subordinate legislation is to reflect new terminology introduced by the Amendment Act and update relevant references in other Queensland subordinate legislation.

## **Achievement of policy objectives**

#### Fisheries Regulation 2008

The subordinate legislation achieves the objectives by:

- repealing the Trawl Plan and incorporating relevant provisions from the Trawl Plan into the Fisheries Regulation;

- omitting fisheries declarations prescribed in the Fisheries Regulation, as these will now be prescribed in a separate fisheries declaration instrument to be made by the Chief Executive;
- updating section references that have altered as a result of the Amendment Act including, for example, 'section 119' to 'section 125A' of the Fisheries Act in the definition of 'fish habitat area code of practice' in section 621(4) of the Fisheries Regulation;
- clarifying, for section 77A of the Fisheries Act, inserted by the Amendment Act, the meaning of when a regulated fishing apparatus is 'stowed and secured' on a boat in a way it will not contravene a regulated fishing apparatus declaration;
- replacing provisions and headings in chapter 5 and chapter 11 that relate to quota authorities including quota entitlements;
- amending provisions that prescribe the nature and entitlement of Spanish Mackerel (SM) units, line units, Individual Transferable Quota (ITQ) units, and Trawl fishery (fin fish) (T4) ITQ units to replace 'quota' with 'quota entitlement' to reflect the new terminology;
- replacing section 625, which prescribes serious fisheries offences, so that it includes a range of offences being included in the Fisheries Act by the Amendment Act;
- inserting new Chapter 13, Part 1B, to provide for vessel tracking requirements and omitting existing sections that relate to Vessel Monitor System (VMS) requirements as they are now redundant;
- inserting new chapter 13, part 2A, to prescribe the commercial quantities of priority fish in schedule 4 for the purposes of the new trafficking of commercial fish offence;
- replacing chapter 15, part 2, to update the provisions that prescribe entities that the Chief Executive may delegate the Chief Executive's functions under section 21 of the Fisheries Act, as amended by the Amendment Act;
- amending section 711 and schedule 9 to restructure the provisions in accordance with contemporary drafting styles;
- omitting redundant definitions and inserting new definitions consistent with the Fisheries Act, as amended by the Amendment Act; and
- correcting typographical errors.

#### State Penalties Enforcement Regulation 2014

The subordinate legislation achieves the objective of providing for timely and effective enforcement by prescribing the following new offences in the Fisheries Act, as amended by the Amendment Act, as infringement notice offences under the *State Penalties Enforcement Act 1999*:

- section 31(1) which provides that a person must not, without reasonable excuse, be in the exclusion zone for a shark control apparatus;
- section 80(2) which provides that the holder, or another person acting under an authority, must ensure that each relevant boat used under the authority has approved vessel tracking equipment installed, and that the equipment is working properly in the prescribed way and during the prescribed periods; and
- section 80(3) which provides that a person must not interfere with the operation of the approved vessel tracking equipment installed on a relevant boat.

A penalty infringement notice (PIN) provides an alternative to prosecution through the court system by allowing inspectors to swiftly impose a penalty in the form of an immediate fine for people found committing the new offences.

### Other subordinate legislation

The subordinate legislation will achieve its policy objective reflecting new terminology and updated references through consequential amendments to the:

- *Biosecurity Regulation 2016*;
- *Coastal Protection and Management Regulation 2017*;
- *Fisheries Regulation 2008*;
- *Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004*;
- *Marine Parks (Great Sandy) Zoning Plan 2017*;
- *Marine Parks (Moreton Bay) Zoning Plan 2008*;
- *Nature Conservation (Wildlife Management) Regulation 2006*;
- *Planning Regulation 2017*;
- *Rural and Regional Adjustment Regulation 2011*; and
- *Transport Operations (Marine Pollution) Regulation 2018*.

For example, references to the 'schedule' of the Fisheries Act will be replaced with 'schedule 1' in the *Biosecurity Regulation 2016*, *Coastal Protection and Management Regulation 2017*, and the *Planning Regulation 2017*.

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

The subordinate legislation is consistent with the main purpose of the Fisheries Act to provide 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; and
- promote ecologically sustainable development.

## **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**

Amending legislation is the only way to achieve the policy objectives.

Commencing the uncommenced provisions of the Amendment Act without the amendments included in the subordinate legislation would seriously compromise fisheries management in Queensland. For example, without this subordinate legislation there would be no legislated management arrangements for the east coast trawl fishery as a result of the head of power for the Trawl Plan being omitted by the Amendment Act to implement the move to harvest strategies in the future. Non-legislative options for fisheries management would not be able to effectively regulate fisheries and, as a result, would risk the sustainability of Queensland's fisheries.

## Benefits and costs of implementation

The modernisation of the fisheries management, including the development of effective harvest strategies and the establishment of supporting administrative and compliance systems and processes, requires funding. The Queensland Government provided an additional \$20.883 million over three years to support implementation of the Strategy. This funding was allocated primarily towards additional monitoring, enhanced compliance (including 20 new compliance officers and subsidising the cost of vessel tracking) and improved engagement with stakeholders.

Amendment of the Fisheries Regulation was required to support the fisheries management framework established by the Amendment Act and, hence, the implementation of the Strategy. In line with the commitments outlined in the Strategy, the subordinate legislation will assist in providing for a more responsive, evidence-based approach to fisheries management.

The subordinate legislation is part of the Government's election commitment to "Review the *Fisheries Act 1994* and Fisheries Regulation 2008 to create a legislative framework for recreational and commercial fishers that is contemporary, simple to understand and reflective of community expectations".

The subordinate legislation makes a number of structural changes and prescribes matters such as types of quota authorities; vessel tracking installation and use requirements; commercial quantities of commercial fish for the new trafficking offence; and the release of some species of non-indigenous fisheries resources into particular Queensland waters. The majority of people fishing in Queensland who do not engage in illegal activities would not be affected by these changes.

No new fees are included in the amendments to subordinate legislation. The Strategy commits to "developing a resourcing strategy based on a beneficiary pays system by 2020 to fund the management of the State's fisheries in the longer term". This will be subject to separate Government consideration in 2019-20.

## Consistency with fundamental legislative principles

The subordinate legislation has been drafted with regard to the fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* (LSA). Potential FLPs are addressed below.

### Legislation has sufficient regard to rights and liberties of individuals

### Legislation does not reverse the onus of proof in criminal proceedings without adequate justification – LSA s4(3)(d)

#### Clause 23- New offences

Section 392BU(3) (Location detected or reported)

Section 292BV(3) (Location not detected or reported)

Section 392BU provides that detection by vessel tracking equipment or manual reporting of a boat identified in a Trawl fishery 'T1' or 'T2' licence at any time during a day in a prescribed area is evidence that the licence holder has used the boat for a whole fishing or steaming day and will result in a deduction of effort units.

Section 392BV provides for a deduction of effort units if there has not been any detection by vessel tracking equipment or manual reporting of a boat identified in a 'T1' or 'T2' licence at any time during a day as required by section 80 of the Act.

The offence provisions in sections 392BU(3) and 392BV(3) provide that the deduction of effort units will not apply if the licence holder satisfies the Chief Executive the boat was not used on the relevant day.

The potential FLP issue is that the licence holder would bear the onus of proof to show the Chief Executive that the boat was not used on the relevant day. The reversal of the onus of proof is justified because the offences involve matters which would be within the defendant's knowledge and/or on which evidence would be available to them.

### **Legislation should have sufficient regard to the institution of Parliament**

#### **Legislation should allow the subdelegation of a power delegated by an Act only in appropriate cases and if authorised by an Act - LSA s4(5)(d)**

##### *Clause 41– new provision (section 625G)*

Section 625G provides that the vessel tracking standard prescribes the way that approved vessel tracking equipment is installed.

The potential FLP issue is whether the legislation has sufficient regard to the institution of Parliament by allowing an external document that is not subject to Parliamentary scrutiny to prescribe an approved facility.

A standard for the way vessel tracking equipment must be installed can be an extensive, technical document dealing with various types of equipment which is more suited to a standard published by the department. It would be impractical to include the details of installation of equipment in legislation to the degree required to ensure enforceability.

It would also be overly burdensome on Parliament's time to consider changes to a vessel tracking standard each time they occur. It is, therefore, more practical and timely for the department to make and amend the vessel tracking standard based on the department's expertise and knowledge.

##### *Clause 23 – new provision (section 392CD(4))*

Chapter 7A, part 7, division 4, subdivision 1 prescribes evidentiary provisions for when a whole fishing or steaming day has been used for a boat under a 'T1' or 'T2' licence if detected by vessel tracking equipment or manually reported at any time in particular fishing areas. Part 7, division 2, subdivision 2, prescribes exceptions to the reduction in fishing or steaming days if particular conditions have been met and the boat has been detected by vessel tracking or manually reported. Section 392CD(4) provides that the Chief Executive may make guidelines on how to use vessel tracking equipment that ensures it is given and received instantaneously and the Chief Executive can readily access the information in the notice provided for in subsection (3)(b). Subsection (5) states that the notice is taken to have been given if the guidelines have been complied with, and days will not be counted against their quota entitlement for the period of the notice.

The potential FLP is whether the legislation has sufficient regard to the institution of Parliament by allowing the usage of quota entitlement to be dependent on a guideline that is an external document that is not subject to Parliamentary scrutiny.

It is not mandatory that the Chief Executive make guidelines, but where a guideline is made it assists others to comply with the vessel tracking notice requirements. This guideline approach is justified because it can facilitate internal and external reviews because the guidelines may be put into evidence to demonstrate how the person complied with the notice requirements.

Further, it would also be overly burdensome on Parliament's time to consider changes to the guidelines each time they occur. It is, therefore, more practical and timely for the Chief Executive to exercise administrative power to make and amend guidelines based on the Chief Executive's expertise and knowledge.

## Consultation

Extensive public consultation has been undertaken through the *Green Paper on Fisheries Management Reform in Queensland* that was released by the Queensland Government in 2016 and, more recently, through discussion papers released in 2018 on the proposed changes to Queensland's fisheries legislation needed to support the implementation of the *Sustainable Fisheries Strategy 2017-2027* (Sustainable Fisheries Strategy).

The discussion paper outlining the proposed changes to Queensland's fisheries legislation needed to support the implementation of the *Sustainable Fisheries Strategy* was released for consultation with stakeholders for 9 weeks between 16 March and 20 May 2018. A total of 240 submissions were received in response to the discussion paper with the feedback received indicating that there is widespread support among the majority of stakeholders for the proposed changes.

The Office of Best Practice Regulation (OBPR) within the Queensland Productivity Commission was consulted on the proposed amendments to the Fisheries Act and the Fisheries Regulation necessary to implement the commitments made through the Sustainable Fisheries Strategy.

In considering the consultation previously undertaken by the department and the consultation paper released by the department outlining the proposed legislative changes needed to support the implementation of the Strategy, the Commission was of the opinion that the proposed amendments did not require further regulatory impact assessment under the Queensland Government Guide to Better Regulation.