

Fisheries Legislation Amendment Regulation 2021

Explanatory Notes for SL 2021 No. 29

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries Legislation Amendment Regulation 2021

Authorising law

Sections 33, 34, 35, 36, 49, 52, 62, 118 and 223 of the *Fisheries Act 1994*

Policy objectives and the reasons for them

Background:

The Queensland Sustainable Fisheries Strategy 2017 – 2027 (the Strategy) committed to the implementation of reforms in a number of Queensland's fisheries, and the implementation of best practice management principles more generally for managing Queensland's fisheries resources. A number of regulatory changes, predominantly for commercial fisheries, were established through the *Fisheries Legislation Amendment Regulation 2020* (FLAR). These complemented other changes already implemented in 2019.

The Strategy, which was released by the Government in June 2017, outlines the vision for the future management of Queensland's fisheries and includes specific principles to be met and timed actions to review fishing rules and access; set sustainable catch limits; manage ecological risks from fishing activities; and implement harvest strategies to manage our priority fisheries.

In June 2019, the Government released a *Discussion Paper on proposed changes to the Fisheries Regulation 2008* (the Discussion Paper) which outlined 102 proposed amendments. The *Fisheries (General) Regulation 2019* (the General Fisheries Regulation), *Fisheries (Commercial Fisheries) Regulation 2019* (the Commercial Fisheries Regulation) and *Fisheries Amendment Declaration 2019*, which commenced on 1 September 2019, together implemented 39 of the 102 proposals outlined in the Discussion Paper.

Before the remainder of the proposed changes in the Discussion Paper could be fully considered for implementation, the novel Coronavirus (COVID-19) pandemic occurred, which affected the viability of the fishing industry. The commercial fishing industry was one of the first industries to be impacted by COVID-19, initially with the loss of key export markets early in 2020. Subsequently, Australia imposed domestic restrictions in response to COVID-19, further affecting Queensland's commercial fishing industry through the loss of domestic markets.

Consequently, the implementation of the remaining proposals outlined in the Discussion Paper were prioritised in the FLAR based on those changes that:

- supported the commercial fishing industry's economic recovery from COVID-19 by reducing red tape and streamlining requirements through a range of fishing rule changes;
- were necessary to implement harvest strategies and meet the conditions of the Commonwealth Wildlife Trade Operation (WTO) approvals under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act); and
- clarified existing fishing rules to support ongoing fishing efficiency and compliance.

While a number of provisions have already commenced as part of its staged implementation, a significant number of provisions within the FLAR instrument do not commence until 1 September 2021. However, since notification of that instrument, a number of minor, technical or administrative errors have been identified that relate to both commenced and un-commenced provisions. The policy objectives of the *Fisheries Legislation Amendment 2021* (the Amendment Regulation) are to correct these errors and make other minor, routine, and non-significant changes to fisheries subordinate legislation.

Policy objectives:

The policy objectives of the Amendment Regulation that relate to correcting minor errors in, or as a result of, the FLAR are to:

- Correct the net fishery ply ratings and mesh size in the commercial net fisheries, to provide for consistency across all net apparatus in all commercial fisheries

The FLAR amended the mesh size and monofilament diameters for certain nets used in certain commercial net fisheries. The intent was that the maximum mesh size for nearshore and river-set mesh nets should be reduced from 8 inches, with no maximum ply rating, and that the maximum mesh size for offshore waters should remain at 6 ½ inches, with a maximum ply rating of line 50 (which equates to a monofilament dimension of 1.25mm).

Instead, the FLAR incorrectly imposed a mesh size of 1.78mm for some nets, and maximum monofilament dimensions of 0.5mm, which is too light to retain the target species and achieve the original policy intent of providing a gear-based reduction for threatened and endangered species, while simultaneously enabling commercial net fishing to continue.

- Correct the form requirements for Spanish mackerel in the Spanish mackerel commercial fishery (SM), to address increased compliance risks associated with identifying filleted product

An objective of the FLAR was to clarify existing fishing rules to support ongoing fishing efficiency and compliance, which was achieved, in part, by introducing a requirement for a filleting permit for SM licences. Doing so aligned the SM licence requirements with the requirements for Coral reef fin fish fishery (RQ) licences, given RQ species are commonly caught on the same fishing trips as Spanish mackerel.

Following implementation, an issue was identified with the lack of supporting form requirements for Spanish mackerel in Schedule 2 of the *Fisheries Declaration 2019* (the Fisheries Declaration). This oversight meant that there was no legal requirement for commercial fishers to obtain a permit to fillet Spanish mackerel.

- Clarify the effort unit conversion factor (EUCF) for particular vessels within the east coast trawl fishery, to maintain the EUCF that currently applies to those vessels

The east coast trawl fishery uses an effort unit management system whereby the size of the vessel being used determines the rate at which effort units are drawn down from the quota account based on an EUCF. Currently, the maximum EUCF for a vessel is capped at 62 effort units per night of fishing for a vessel that has 70 or more hull units.

Multiple policy and regulatory changes over the last decade have resulted in there being a number of vessels operating in the east coast trawl fishery that are greater than 70 hull units. On 1 September 2021, provisions in the FLAR will commence that have the effect of proportionately increasing the EUCF for vessels above 70 hull units, to a maximum of 120 hull units, which carries an EUCF of 93. This will result in historical vessels that currently have more than 70 hull units needing to acquire more effort units to continue operating as they always have, which is inconsistent with the policy intent. The intent is that existing vessels in the east coast trawl fishery, with hull units in excess of 70, will have an EUCF that is capped at 62 per night of fishing.

- Remove redundant references to 'assistant fishers' throughout the commercial hand-harvest fisheries, where only one fisher is permitted to take fish

The FLAR established a single licensing framework for all commercial fisheries. The introduction of this framework inadvertently resulted in assistant fishers also being able to take fish in some harvest fisheries under the licence, where historically only one person was permitted to take fisheries resources under the licence.

- Remove provisions that incorrectly allow for the movement of product between commercial vessels in certain Queensland waters without a carrier boat licence or where transshipment is not permitted

The FLAR included a number of new rules surrounding the movement of harvested product between commercial vessels; reporting requirements; and an expansion of transshipment provisions for some quota managed species, to remove the need for a separate carrier boat licence. Amongst other things, the intent of these provisions was to make clear the instances in which the transshipment of product is allowed. However, schedule 1 of the General Fisheries Regulation incorrectly permitted the carrying

(transshipment) of product in certain circumstances where the intent is that it is not permitted under the relevant licence.

- Correct the 'catch eligibility date' within the quota allocation provisions for the commercial net fisheries and commercial crab fisheries, to ensure there is sufficient time for affected licence holders to be able to 'substitute' catch years to create a better catch history

The FLAR established the process for allocating quota for certain fisheries resources. The amount of quota allocated to affected licence holders is based on catch history at a specified date. This date was drafted in the FLAR as 31 May 2021. However, because affected licence holders are able to 'substitute' data for one catch year with another, a legislated date of 31 May 2021 does not allow sufficient time for the substitution to occur prior to the quota allocation occurring.

- Insert an 'eligible person date' within the quota allocation process for parts of the east coast trawl fishery and establish a T1 and T2 (trawl fishery) effort unit transfer freeze, to ensure quota is reallocated to the correct persons

The T1 and T2 fisheries are existing effort-based quota managed fisheries. The FLAR established the process for converting T1 and T2 effort units into effort units for a trawl region, based on effort usage history in the fishery. However, to be able to effectively reallocate the effort units, it is necessary to establish a baseline at a specified date, and provide that the amount of effort units used to calculate the reallocation amounts will be based on effort as at that date. Similarly, the intent is that once the reallocation process commences, licence holders will not be able to transfer effort units between licences for the period of the reallocation. Both of these measures are necessary to reduce the risk of error occurring, such as existing effort units being calculated incorrectly or being inadvertently reallocated to the wrong person, due to a late or in-progress effort unit transfer, and being unintentionally missed in the FLAR.

- Correct the allocation of extra fishing days within the quota allocation process to ensure that extra fishing days are allocated based on the number of eligible licences held

The FLAR established the process for allocating quota for certain fisheries resources. The amount of quota allocated to affected licence holders is based on catch history at a specified date. For the issue of quota (effort units) for the Moreton Bay trawl region specifically, the maximum amount of quota to be issued is greater than the existing catch history of all licence holders. Consequently, additional quota is available for allocation. The General Fisheries Regulation, as amended by the FLAR, incorrectly provided that this additional quota is to be allocated to eligible persons. However, the intent is that the additional quota is allocated based on eligible licences, to reflect that a person may hold more than one licence and is, therefore, entitled to more additional quota.

- Correct to whom the adjustment of effort units applies as part of the quota allocation process, where a person is issued more effort units than his or her original T1 holding

The T1 and T2 fisheries are existing effort-based quota managed fisheries. The FLAR established the process for converting T1 and T2 effort units into effort units for a trawl region. However, the General Fisheries Regulation, as amended by the FLAR, incorrectly

provided that, if, as part of the reallocation, the number of effort units issued to an 'eligible person' would be more than the number of T1 effort units originally held by the person, the number of new effort units must be capped at the original number of effort units. Rather than applying to all 'eligible persons', the intent is that this only applies to eligible persons who hold an M1 (Moreton Bay Trawl) licence.

- Correct the 'Hervey Bay crab area' to accurately reflect the intended fishery area

In the FLAR, the 'Hervey Bay crab area' is incorrectly described in such a way that it does not match the intended area.

- Clarify the commercial fishing reporting requirements, for better alignment with future electronic reporting options

An objective of the FLAR was to impose a single reporting system for all commercial fisheries through approved logbooks and a requirement to provide certain notices. The approved logbook and notices may be electronic or paper based. The Department of Agriculture and Fisheries is currently developing a digital reporting application which, upon completion, can be used by commercial fishers to meet their logbook and notice reporting obligations. In developing the application, the department has determined that a number of small clarifications to these reporting requirements are necessary, to assist with implementation prior to commencement on 1 September 2021. The changes relate to clarifying the specific requirements of transshipment, catch disposal records and digital logbooks and clarifying the definition of a 'landing place'.

- Exclude the aquarium fish fishery (A1 symbol) from the 'net free zone' provisions to allow for the continued collection of fish using small barrier nets below the surface

Net free fishing zones were imposed in 2015 to prohibit commercial fisher licence holders from using large nets to take fish for trade or commerce. Historically, commercial harvest fishers did not operate under a commercial fisher licence and, therefore, had been excluded from the net use prohibition. However, on 1 January 2021, new regulatory provisions commenced which capture all commercial fishers (including commercial harvest fishers) under a single licensing framework that requires all commercial fishers to hold a commercial fisher licence. The effect of this change is that commercial harvest fishers are now captured under the net use prohibition, which was not the policy intent. An amendment is required to exclude the aquarium fish fishery from the prohibition on using nets in net free zones, to maintain the current harvesting practice for ornamental trade in the fishery.

- Clarify that licences with only harvest fishery symbols are unable to take fish to use as bait within the N11 fishery, to reflect historical fishery management arrangements

Under the Commercial Fisheries Regulation, all commercial fishers can use their primary and tender vessels to take fish to be used as bait within the N11 fishery, without having to have an N11 fishery symbol on the relevant primary commercial fishing licence. Historically, this has not applied to the harvest fisheries, because participants in the fishery fished under commercial harvest fishery licences. However, since moving to a single licensing framework in early 2021, where all participants in commercial fisheries fish under a commercial fisher licence, harvest fisheries have been inadvertently captured under this

provision. The intent is to uphold historical fishing practices and exclude commercial fishers, fishing exclusively in harvest fisheries, from being able to take fish for bait in the N11 fishery, without having an N11 fishery symbol on the relevant primary commercial fishing licence.

- Clarify how escape vents in crab pots can be installed to ensure escape vents operate as intended

An objective of the FLAR was to impose requirements about including and installing escape vents in items of crab apparatus used in the commercial crab fishery. However, the requirements for installing the escape vents have been determined to be inadequate and, consequently, if the escape vent is installed in the way described, the escape vent may not operate as intended to provide a means for bycatch to escape.

- Clarify when a fishing trip starts and ends for the commercial worm and marine yabby fisheries, to reflect historical fishing practices, whereby a single boat is used to transport multiple worm and yabby fisher licence holders to and from local fishing grounds

An objective of the FLAR was to impose a single reporting system for all commercial fisheries through approved logbooks and a requirement to provide certain notices. To enable this, certain definitions, such as a definition for when a fishing operation starts and ends, were required. The intent is to clarify when a fishing operation starts and ends for the commercial worm and yabby fisheries, as fishing practices are unique in these fisheries, and are not reflected within the definition prescribed in the FLAR.

- Remove redundant references to tender boat lengths in the sea cucumber and trochus fisheries, where the general tender boat size limit applies

The management arrangements for the commercial harvest fisheries were modernised in the FLAR and an attempt was made to align the rules for harvest fisheries with the existing rules that applied in other commercial fisheries. One of these alignments related to imposing a general limit of 10m on the length of tender boats in all commercial fisheries. However, in the sea cucumber and trochus harvest fisheries, conditions relating to tender boat length limits remain, which is not the intent.

- Clarify the conditions of the juvenile eel fishery to align the conditions with historical and long-standing licence conditions about to whom product can be sold

The management arrangements for the commercial harvest fisheries were modernised in the FLAR and historical, long-standing licence conditions will be incorporated into the Commercial Fisheries Regulation when the remaining provisions of the FLAR commence on 1 September 2021. When the licence condition relating to the sale of juvenile eels was incorporated into legislation, the condition was altered in a way that has limited to whom licence holders can sell juvenile eel, which was not the intent. Clarification is required to maintain historical conditions that apply in the fishery about to whom product can be sold.

The remaining policy objectives are to:

- Exclude the aquarium fish fishery (A1 symbol) from the south-east gastropod closures to allow for the continued collection of invertebrates for ornamental purposes

Updated management arrangements were imposed in early 2020 to protect gastropod and bivalve molluscs from excessive harvesting by recreational fishers in Moreton Bay. However, these arrangements also inadvertently applied to the commercial aquarium fish fishery. An amendment is necessary to exclude the aquarium fish fishery from the prohibition on the taking of gastropod and bivalve molluscs in Moreton Bay to maintain the current harvesting practice for ornamental trade in the fishery.

- Clarify the southern offshore trawl region trawling hours to permit efficient fishing in areas where risks to scallop populations are considered extremely low

Recently, amendments were made to the Fisheries Declaration to restrict trawl fishing hours in the southern offshore trawl region to between 6pm and 8am only. The intent of these amendments was to minimise fishing effort on scallops. Previously, trawling was allowed in these waters 24 hours per day. The southern offshore trawl region is a large region with varying fishing operations that predominantly target the eastern king prawn fishery. There are some parts of this trawl region where scallops do not occur, but were nonetheless unnecessarily captured by this amendment, which was not the intent.

- Clarify that commercial fisher licences do not continue after the holder's death, to reflect that these licences are issued on an individual basis

Prior to the Amendment Regulation, the General Fisheries Regulation unintentionally provided that all licences are authorities that continue after the holder's death. Historically, commercial fisher licences have been excluded from this rule on the basis that these licences are issued to an individual based on his or her application to obtain the licence.

- Clarify the regulated fish general possession limit to ensure that the correct fish are captured in this limit

Almost all Queensland fish are considered 'regulated fish' and if not regulated individually as a species or species group, they are regulated by a general possession limit. The general regulated fish possession limit was worded in a such a way that excluded any fish listed within the table of regulated fish declarations. This meant that a fish regulated by size or form, not possession limit, is incidentally excluded from the general possession limit.

In addition, worms were also incorrectly captured by the general possession limit, which is undesirable because commercial worms typically break up upon capture into smaller sizes. The intent is that the take of worms is unlimited both commercially and recreationally.

- Remove the maximum size limit for cover nets for trawl cod ends to enable industry to self-regulate upper cover net dimensions

Previously maximum limits for cover nets for trawl cod ends were imposed in the M1, M2, T1, T2, T5, T6, T7, T8 and T9 fisheries. Specifically, the Commercial Fisheries Regulation provided that a covering net mesh size must be at least 38mm, but no more than 60mm. Given the covering net is only installed to prevent damage to the cod ends of trawl nets from chaffing or shark interactions, the intent is to remove the upper limit for the net mesh size to provide more flexibility for fishers.

- Clarify the names used to describe lobster for the recreational fishing sector to align the language with accepted common names and consequently clarify fishing rules

Historically, fisheries legislation has not use accepted common names for species in the lobster family *Palinuridae*. This creates confusion in the recreational fishing sector about what fishing rules apply, which can be alleviated by altering the names of lobster species to better reflect the accepted common names.

- Clarify the period in which a net must not be used in the Gulf net fisheries (N12 and N13 fisheries)

The Commercial Fisheries Regulation previously defined when fish may be taken in the N12 and N13 net fisheries in the Gulf of Carpentaria with reference to the '*barramundi (Gulf) regulated period*'. The '*barramundi (Gulf) regulated period*' refers to a closed season that applies to both commercial and recreational take of barramundi from 1 October to 31 January throughout the Gulf of Carpentaria. However, the N12 and N13 fisheries do not access barramundi, which makes the reference to '*barramundi*' in the '*barramundi (Gulf) regulated period*' problematic because these fisheries fish areas where barramundi is not found. The intent is to remove the reference to '*barramundi*' to make it clear that the closures are not for the purpose of protecting barramundi, but merely to align the closure with the existing closure for the protection of barramundi in the Gulf.

- Clarify the fisheries in which the number of tender boats must be identified on licence

When the General Fisheries Regulation commenced in 2019, standardised licence tender limits were imposed that resulted in unintended changes whereby the chief executive was required to state the number of authorised tender boats on the licence. Historically, only the reef line fisheries (L, RQ and SM symbols) and tropical rock lobster (TRL) fishery (R symbol) had tender boats identified on their licences in brackets. The intent is to correct this error and only require the chief executive to state the authorised number of tender boats on L1, L2, L3, L4, R, RQ and SM licences.

- Clarify the definition of 'trunked' in relation to shark and ray form requirements

Recently, new shark and ray form requirements were imposed to prohibit the filleting and removal of shark and ray fins to assist in the identification of harvested shark and ray species. This included changing requirements to allow commercial fishers to undertake limited processing of sharks and rays at sea and, thereby, possess these fish in 'trunked' form. However, the General Fisheries Regulation included a definition of 'trunked' that inadvertently allowed for the removal of shark and ray fins.

- Clarify when tender boats are able to be used as primary boats

In some limited circumstances, a primary commercial fishing licence will not have a primary boat identified on the licence. Where this applies, the intent is that a tender boat can be used as if it were a primary boat, as long as the licence is kept on the tender boat while it is being used.

- Clarify when empty mollusc shells may be taken, to prevent the taking of empty trumpet shells and helmet shells, which are both no take species under the Fisheries Declaration

Helmet shell and trumpet shell are listed as no take species in the Fisheries Declaration. Both shells are part of the mollusc family and are, therefore, also captured under the regulated fish declaration exception for the collection of empty (dead) mollusc shells. In essence, the regulated fish declaration exception for the collection of empty mollusc shells provides that a person may take an empty mollusc shell if he or she is not taking the shell for trade or commerce. Where a species is included in the Fisheries Declaration as a no take species, the intent is that the species cannot be taken either dead or alive and therefore helmet shell and trumpet shell should not be included in the 'shell collecting' exemption.

Achievement of policy objectives

Achievement of policy objectives that relate to correcting minor errors in, or as a result of, the FLAR:

Sections 32, 33 and 34 of the Amendment Regulation achieve the policy objective of correcting the net fishery ply ratings and mesh size in the commercial net fisheries by:

- amending sections 161, 162, and 163 of the FLAR, which amend schedule 4 of the Commercial Fisheries Regulation, to provide that the monofilament of certain nets can be no more than 1.25mm in diameter; and
- amending section 162 of the FLAR, which amends schedule 4 of the Commercial Fisheries Regulation, to maintain a mesh size of 215mm.

Section 15 of the Amendment Regulation achieves the policy objective of correcting the form requirements for Spanish mackerel in the Spanish mackerel commercial fishery by amending schedule 2, part 2, entry for Spanish mackerel of the Fisheries Declaration to provide that the fish must be kept in whole or gilled and gutted form, unless the fish has been filleted under a filleting permit.

Section 30 of the Amendment Regulation achieves the policy objective of clarifying the EUCF for particular vessels within the east coast trawl fishery by inserting a transitional provision into the FLAR that provides if an existing vessel has an EUCF of 62 immediately before commencement, the EUCF remains at 62 despite the amendment of schedule 10 in the Commercial Fisheries Regulation by the FLAR.

Section 36 of the Amendment Regulation achieves the policy objective of removing redundant references to 'assistant fishers' throughout the commercial hand-harvest fisheries by amending section 169 of the FLAR, which amends schedule 7A of the Commercial Fisheries Regulation to remove those references. For example, new section 127 in schedule 7A of the Commercial Fisheries Regulation, as amended by section 169 of the FLAR, now provides that only a commercial fisher may take beachworms under the licence.

Section 39 of the Amendment Regulation achieves the policy objective of moving provisions that incorrectly allow for the movement of product between commercial vessels in certain Queensland waters, without a carrier boat licence or where transhipment is not

permitted, by inserting a new section 193A into the FLAR, which removes the entry for 'carrying fish for trade or commerce' from schedule 1 of the General Fisheries Regulation.

Sections 23 and 24 of the Amendment Regulation achieve the policy objective of correcting the 'catch eligibility date' within the quota allocation process for the commercial net fisheries and commercial crab fisheries by amending schedules 2B and 2C of the General Fisheries Regulation to change the date from '31 May 2021' to '21 July 2021'.

Section 22 of the Amendment Regulation achieves the policy objective of inserting an 'eligible person date' within the quota allocation process for parts of the east coast trawl fishery by amending schedule 2A of the General Fisheries Regulation to provide that the part only applies in relation to T1 effort units or T2 effort units held by a holder on 22 April 2021.

Section 5 of the Amendment Regulation achieves the policy objective of establishing a transfer freeze for T1 and T2 effort units by amending section 117 of the Commercial Fisheries Regulation to provide that T1 and T2 effort units cannot be transferred during the period of 22 April and 31 August 2021.

Section 22 of the Amendment Regulation achieves the policy objective of allocating extra fishing days, based on the number of eligible licences held, by amending schedule 2A section 14 to provide that the extra fishing days are to be allocated to eligible persons in proportion to the number of relevant licences the person holds.

Section 22 of the Amendment Regulation achieves the policy objective of correcting to whom the adjustment of effort units applies by amending schedule 2A section 16 of the General Fisheries Regulation to provide that the adjustment only applies to M1 licences.

Section 8 of the Amendment Regulation achieves the policy objective of correcting the 'Hervey Bay crab area' by amending schedule 7, section 6(4) of the Commercial Fisheries Regulation to replace the reference to 'north' with 'south' and 'east of' with 'west of'.

Section 29 of the Amendment Regulation achieves the policy objective of clarifying the commercial fishing reporting requirements by:

- amending section 156 of the FLAR, which inserts a new section 124 into the Commercial Fisheries Regulation, to clarify when a person 'holds' an approved logbook;
- amending section 156 of the FLAR, which inserts new sections 129 and 133 into the Commercial Fisheries Regulation, to provide that an original logbook entry (i.e. not only a copy) may be given to the chief executive;
- amending section 156 of the FLAR, which inserts new sections 130 and 134 into the Commercial Fisheries Regulation, to provide that the relevant licence holder must only give the relevant part of the logbook to the chief executive if the original was not given to the chief executive under section 129;
- amending section 156 of the FLAR, which inserts a new section 154(1)(a) into the Commercial Fisheries Regulation, to provide that a transshipment notice is required for fish taken under D, R, RQ, SM and T1 licences, hammerhead sharks taken under L4, N3, N12 and N13 licences, and black jewfish taken under N3, N12 and N13 licences;
- amending section 156 of the FLAR, which inserts a new section 155 into the Commercial Fisheries Regulation, to provide that transferred fish taken under L4, N3, N12 and N13 licences must also be kept separate;

- amending section 156 of the FLAR, which inserts a new section 158 into the Commercial Fisheries Regulation, to provide fish can also be unloaded if a transshipment notice has been given to the chief executive under section 154;
- amending section 156 of the FLAR, which inserts a new section 163 into the Commercial Fisheries Regulation, to provide that a catch disposal record is also required for fish taken using a trawl net, other than fish taken under T5, T6, T7, T8 and T9 licences;
- amending section 156 of the FLAR, which inserts a new section 162A into the Commercial Fisheries Regulation, to provide primary commercial fishing licence holders may apply to the chief executive for approval of a catch disposal record for recording information under section 163, and making other consequential amendments to sections 163 and 164 of the Commercial Fisheries Regulation; and
- amending section 186 of the FLAR, which inserts a new section 15C into the General Fisheries Regulation, to provide that a landing place is a place at which the boat may be landed, including, for example, a marina, berth, mooring or wharf.

Section 11 of the Amendment Regulation achieves the policy objective of excluding the aquarium fish fishery from the 'net free zone' provisions by amending section 65 of the Fisheries Declaration to provide that the net free zone prohibition does not apply to a commercial fisher using a relevant net under an A1 licence.

Section 3 of the Amendment Regulation achieves the policy objective of clarifying that licences with only harvest fishery symbols are unable to take fish to use as bait within the N11 fishery by amending section 32 of the Commercial Fisheries Regulation to provide that fish for bait cannot be taken in the N11 fishery if a licence has only harvest symbols written on it.

Section 35 of the Amendment Regulation achieves the policy objective of clarifying how escape vents in crab pots can be installed by amending section 168 of the FLAR, which amends schedule 7 section 5 of the Commercial Fisheries Regulation, to provide that crab apparatus used to take mud crabs must be constructed in a way so that an escape vent cannot collapse and is not impeded by another part of crab apparatus.

Section 38 of the Amendment Regulation achieves the policy objective of maintaining historical fishing practices in the commercial worm and marine yabby fisheries by amending section 186 of the FLAR, which inserts a new section 15A into the General Fisheries Regulation, to provide that for the commercial worm (W1 and W2 symbols) and marine yabby (Y symbol) fisheries, a fishing operation starts when the fisher arrives at the place from which fish are to be taken, and ends when the commercial fisher stops taking fish and leaves the place.

Section 6 of the Amendment Regulation achieves the policy objective of removing redundant references to tender boat lengths in the sea cucumber and trochus fisheries by amending schedule 1, part 2, division 3, and schedule 1, part 8, division 3 of the Commercial Fisheries Regulation to remove the conditions relating to tender boat lengths.

Section 36 of the Amendment Regulation achieves the policy objective of clarifying long-standing licence conditions in the juvenile eel fishery by amending section 169 of the FLAR, which inserts a new schedule 7A section 85(2) into the Commercial Fisheries Regulation to provide that an approved aquaculture facility includes a facility used for aquaculture in another State. Ultimately, new schedule 7A section 85 provides that a

person who takes juvenile eels commercially may sell the eels only for aquaculture in an approved aquaculture facility.

Achievement of other non-significant policy objectives

Section 15 of the Amendment Regulation achieves the policy objective of excluding the aquarium fish fishery from the south-east gastropod closures by amending schedule 2, part 2, entry for bivalve mollusc or gastropod, other than pipi, of the Fisheries Declaration to provide that it does not apply to persons taking the fish under an A1 licence.

Section 12 of the Amendment Regulation achieves the policy objective of clarifying the southern offshore trawl region hours by amending section 86AA of the Fisheries Declaration to provide that a person must not use a trawl net in the southern offshore trawl region in a regulated period, other than in waters south of the eastern tip of Point Cartwright.

Section 19 of the Amendment Regulation achieves the policy objective of clarifying that commercial fisher licences do not continue after the holder's death by amending section 75 of the General Fisheries Regulation to provide that a commercial fisher licence is not an authority that continues after the holder's death.

Section 15 of the Amendment Regulation achieves the policy objective of clarifying the regulated general possession limit by amending schedule 2, part 2, last entry, of the Fisheries Declaration to list the following species as the only species that are not subject to the general possession limit, because they are regulated by number elsewhere in schedule 2 part 2, or are mentioned in schedule 2, part 3, column 1: Australian anchovy; Australian sardine; common hardyhead; freshwater prawn; herring; marine yabby, silver biddy; soldier crabs; or worms.

Section 31 of the Amendment Regulation achieves the policy objective of removing the maximum size limit for cover nets for trawl cod ends by amending section 159 of the FLAR, which amends schedule 2 sections 14, 27, 40, 62, 81 and 91 of the Commercial Fisheries Regulation, to remove the maximum size limit of 60mm for cover nets for trawl cod ends.

Sections 14, 15 and 25 of the Amendment Regulation achieve the policy objective of clarifying the names used to describe lobster for the recreational fishing sector by:

- replacing references to 'painted crayfish' with 'ornate crayfish' throughout the General Fisheries Regulation and Fisheries Declaration; and
- amending the entry for 'red champagne lobster' to ensure the common names for this species group is used to explain both the form and take requirements more clearly in schedule 2, part 2 of the Fisheries Declaration; and
- omitting the entry for 'painted crayfish' in schedule 2, part 2 of the Fisheries Declaration and inserting a new entry for 'ornate crayfish'.

Sections 7 and 9 of the Amendment Regulation achieve the policy objective of clarifying the period in which a net must not be used in the Gulf net fisheries by amending schedule 4 and schedule 11 of the Commercial Fisheries Regulation to replace the references to 'barramundi (Gulf) regulated period' with 'from 7 October to 31 January' and removing the reference to 'barramundi (Gulf) regulated period' in the dictionary of the Commercial Fisheries Regulation. To clarify, the 'barramundi (Gulf) regulated period' is a period from 7 October to 31 January, so there has been no meaningful change to when a net must not be used in the Gulf net fisheries.

Section 18 of the Amendment Regulation achieves the policy objective of clarifying the fisheries in which the number of tender boats must be written on the licence by amending section 32 of the General Fisheries Regulation to provide that the chief executive must state the authorised number of tender boats on the licence for the fishery symbols L1, L2, L3, L4, RQ, SM and R.

Section 26 of the Amendment Regulation achieves the policy objective of clarifying the definition of 'trunked' in relation to shark and ray form requirements by amending the definition of 'trunked' in schedule 11 of the General Fisheries Regulation to provide that for a shark or ray, trunked means the shark or ray has had its head only removed.

Sections 3, 4, 17, and 37 of the Amendment Regulation achieves the policy objective of clarifying when tender boats are able to be used as primary boats by:

- amending section 32 of the Commercial Fisheries Regulation to provide that a commercial fisher is able to use a tender boat as a primary boat if there is no primary boat identified on the licence or the primary boat is not already being used to take fish for trade or commerce in a commercial fishery, if the primary commercial fishing licence is kept on the tender boat while it is being used;
- amending section 37 of the Commercial Fisheries Regulation to provide that a tender boat may also be used in a commercial fishery if there is no primary boat identified on the licence, the primary boat is not being used in another commercial fishery and the tender boat's length is no more than 10m;
- amending section 13 of the General Fisheries Regulation to provide that if a tender boat is being used as if it were a primary boat, a reference to a primary boat is taken to be a reference to the tender boat; and
- making consequential amendments to the definition of 'authorised boat' in schedule 11 of the Commercial Fisheries Regulation, as inserted by section 174 of the FLAR

Section 13 of the Amendment Regulation achieves the policy objective of clarifying when empty mollusc shells may be taken by amending section 121 of the Fisheries Declaration to provide that a person can take or possess empty mollusc shells, other than an empty helmet shell or trumpet shell.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main purposes of the *Fisheries Act 1994* 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 Amendment Regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

Given the Amendment Regulation primarily relates to correcting existing legislative errors, for the majority of amendments, no alternative ways of achieving the policy objectives were considered.

For some of the proposals, alternative drafting approaches were considered. In each case, the department elected to pursue the simplest and most intuitive approach. For example, when clarifying the definition of 'trunked' in relation to shark and ray form requirements, the department considered using an alternative term to 'trunked', such as beheaded or decapitated, to more accurately describe the processed form of the shark or ray. However, this approach was rejected on the basis that 'trunked' is a term well understood by industry, including in relation to sharks and rays.

When correcting form requirements for Spanish mackerel, alternative ways to allow for fishing businesses to partially process catch at sea were considered. However, due to the synergies between the Spanish mackerel fishery and the coral reef finfish fishery, where form requirements are already imposed for harvested product, any approach that differed from that already in place was rejected in order to maintain a consistent approach throughout the line fisheries, and support fishing businesses that operate in both fisheries on the same trip.

Benefits and costs of implementation

The main benefit of the Amendment Regulation is that it provides certainty to industry by correcting small errors through fisheries subordinate legislation and in doing so, continues to support the economic recovery of the fishing sector.

No additional costs to the state government are expected in implementation and supporting the Amendment Regulation. All of the amendments are non-significant in nature and only provide clarification of previous regulatory reforms. This clarification strengthens current fisheries legislation and increases transparency and, therefore, reduces compliance costs, by providing certainty about how the legislation is intended to operate.

Consistency with fundamental legislative principles

The subordinate legislation is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Legislation should have sufficient regard to the rights and liberties of individuals - *Legislative Standards Act 1992 (LSA), section 4(3)(b)*

Legislation should not, without sufficient justification, unduly restrict ordinary activities

General possession limit:

Schedule 2, part 2 of the Fisheries Declaration is the regulated fish declarations, and provides for the way in which fish are regulated (e.g. form, gender, number, size, weight) and the persons who, and/or activities during which, the fish may be taken. Section 16 of the Amendment Regulation amends the last entry to clarify the general possession limit for other species not already mentioned in part 2.

The last entry potentially breaches the fundamental legislative principle that legislation should not, without sufficient justification, unduly restrict ordinary activities, because the entry restricts the number of fish that may be taken by recreational fishers to 20 fish, for all fish species not mentioned in part 2. However, this potential breach is justified on the basis that, to protect the long-term sustainability of Queensland's fisheries resources, it is essential that restrictions about the number of fish that can be taken are imposed.

Taking empty mollusc shells:

Section 13 of the Amendment Regulation amends section 121 of the Fisheries Declaration to provide that a person can take or possess empty mollusc shells, other than an empty helmet shell or trumpet shell. Section 13 potentially breaches the fundamental legislative principle that legislation should not, without sufficient justification, unduly restrict ordinary activities, because it limits the types of empty mollusc shells that can be taken.

Elsewhere in the Fisheries Declaration (schedule 2, part 2, entries for helmet shell and trumpet shell), helmet shell and trumpet shell are listed as 'no take' species (i.e. species that cannot be taken in any number). However, both of these shells are part of the mollusc family and are therefore also included in the regulated fish declaration exceptions for the collection of empty mollusc shells in section 121 of the Fisheries Declaration. This ultimately provides that a person may take an empty mollusc shell if he or she is not taking the shell for trade or commerce.

The intention of declared 'no take' species applies whether the species is dead (i.e. empty) or alive. Helmet shells and trumpet shells are high-value, popular species and are susceptible to black-marketing. Section 13 of the Amendment Regulation merely clarifies that empty helmet shells and empty trumpet shells are 'no take' species. The potential breach of the fundamental legislative principle that legislation should not unduly restrict ordinary activity is therefore justified on the basis that section 13 merely corrects an existing restriction on the taking of mollusc shells and goes towards preventing a black-market for helmet shells and trumpet shells.

Legislation should not, without sufficient justification, unduly restrict ordinary activity including the right to conduct business without interference

Form requirements for Spanish mackerel:

The entry for Spanish mackerel in schedule 2, part 2 of the Fisheries Declaration, as amended by section 15 of the Amendment Regulation, provides that Spanish mackerel, in the Spanish mackerel commercial fishery, be kept in whole or gilled and gutted form, unless the fish has been filleted under a filleting permit. The entry for Spanish mackerel potentially breaches the fundamental legislative principle that legislation should not, without sufficient justification, unduly restrict ordinary activity including the right to conduct business without interference, because it restricts the way in which product taken in the commercial fishery can be kept. However, this potential breach is justified on the basis that without such restrictions, the likelihood of black-marketing high value product is increased. It is significantly easier to identify a species of fish if the fish is kept in whole form or merely gilled and gutted.

Restriction on the transfer of T1 and T2 effort units:

Section 5 of the Amendment Regulation provides that during the period of 22 April 2021 to 31 August 2021, a person cannot transfer T1 or T2 effort units. This section potentially breaches the fundamental legislative principle that legislation should not, without sufficient justification, unduly restrict ordinary activity including the right to conduct business without interference because it places restrictions on when persons can permanently transfer effort units.

The purpose of this section is to ensure that during the period that effort units are reallocated to trawl regions within the east coast trawl fishery, there is a freeze on the transfer of effort units, to decrease the risk that effort units are allocated to the wrong person. For example, if an effort unit transfer occurs mid-way through the allocation, but the allocation has been calculated on the assumption that the effort units have not moved, there is an increased likelihood that the effort units will be allocated to the original holder, which is no longer correct. The transfer of T1 and T2 effort units will continue to be permitted at all other times, and licence holders are still able to lease their effort units to other licence holders during this period, so that fishers can continue to run their business as they deem necessary.

This potential breach is therefore justified on the basis that it is crucial to have certainty during the period of reallocation and to prevent an error from occurring. Further, the transfer of T1 and T2 effort units are permitted at all other times, and licence holders can continue to lease their effort units to other licence holders during the period from 22 April 2021 to 31 August 2021.

Restriction on the use of trawl nets in the southern offshore trawl region:

Section 86AA of the Fisheries Declaration, as amended by section 12 of the Amendment Regulation, provides that a person must not use a trawl net in the southern offshore trawl region in a regulated period, other than in waters south of the eastern tip of Point Cartwright. This section potentially breaches the fundamental legislative principle that legislation should not, without sufficient justification, unduly restrict ordinary activity including the right to conduct business without interference, because it places restrictions upon when trawl nets can be used in the southern offshore trawl region. The purpose of this section is to protect vulnerable scallop populations and the long-term sustainability of the species, by preventing the use of trawl nets between 8am – 6pm in the regulated period.

However, section 12 of the Amendment Regulation merely clarifies that the restriction does not apply in waters south of the eastern tip of Point Cartwright. There are no significant scallop populations in the waters south of the eastern tip of Point Cartwright. Therefore, the existing restriction on the use of trawl nets in the area is unnecessary. Consequently, this amendment goes towards minimising the impact of the restriction on the use of trawl nets in the southern offshore trawl region and does not unduly restrict the right to conduct business without interference.

Cover nets for trawl cod ends:

Section 31 of the Amendment Regulation amends section 159 of the FLAR, which amends schedule 2 sections 14, 27, 40, 62, 81 and 91 of the Commercial Fisheries Regulation to remove the maximum size limit of 60mm for cover nets for trawl cod ends. These amendments could be seen to breach the fundamental legislative principle that legislation should not, without sufficient justification, unduly restrict ordinary activity including the right to conduct business without interference, because it relates to requirements for gear/equipment used in the east coast trawl fishery. However, these amendments remove the maximum size limit for cover nets for trawl cod ends, to enable industry to self-regulate this aspect of their gear, and therefore do not unduly restrict the right to conduct business without interference.

Escape vents for crab apparatus:

Section 35 of the Amendment Regulation amends section 168 of the FLAR, which amends schedule 7 section 5 of the Commercial Fisheries Regulation, to provide that crab apparatus used to take mud crabs must be constructed in a way so that an escape vent cannot collapse and is not impeded by another part of crab apparatus. This amendment potentially breaches the fundamental legislative principle that legislation should not, without

sufficient justification, unduly restrict ordinary activity including the right to conduct business without interference, because it prescribes the way in which escape vents must be constructed.

Escape vents in crab apparatus are essential to reduce the amount of bycatch and consequently protect vulnerable species such as turtles. By imposing requirements about how escape vents can be constructed, it ensures that escape vents are effective in reducing bycatch and consequently justifies the potential breach of the fundamental legislative principle.

Sale of juvenile eels:

Section 36 of the Amendment Regulation amends section 169 of the FLAR, which inserts a new schedule 7A section 85(2) into the Commercial Fisheries Regulation, to provide that an approved aquaculture facility includes a facility used for aquaculture in another State. Ultimately, new schedule 7A, section 85 provides that a person who takes juvenile eels commercially may sell the eels only for aquaculture in an approved aquaculture facility. Section 36 may be seen to potentially breach the fundamental legislative principle that legislation should not, without sufficient justification, unduly restrict ordinary activity including the right to conduct business without interference because it places restrictions on who juvenile eel may be sold to.

Historically, juvenile eel taken commercially have been able to be sold for aquaculture in an approved aquaculture facility in any State of Australia. This requirement was imposed as a licence condition on each licence authorised to commercially fish for juvenile eels, but was inadvertently restricted in the FLAR, which only allowed for the sale of juvenile eel to approved aquaculture facilities in Queensland. Section 36 of the Amendment Regulation corrects schedule 7A section 85 to ensure that commercial juvenile eel fishers are able to continue selling their product interstate for aquaculture purposes. Section 36 therefore goes towards loosening the restrictions imposed on the sale of juvenile eel and does not unduly restrict the right to conduct business without interference.

Consultation

Since the release of the Strategy in 2017, extensive consultation on fisheries reforms has been undertaken via fishery-specific working groups. Three separate discussion papers released for consultation on fisheries issues, objectives and options for managing the priority fisheries, allocation approaches and proposed regulatory changes have been released since mid-2018. Throughout that time, various face-to-face meetings have been conducted on specific fishery matters.

Concerning the Spanish mackerel form requirements, additional targeted consultation with commercial fisheries was carried out in early 2021, and the clarifications were generally supported. In introducing the FLAR in 2020, commercial fishers have been advised of the changes affecting the commercial fishing sector. The Amendment Regulation is consistent with notifications provided in September 2020.

The Amendment Regulation was considered by the Department of Agriculture and Fisheries in accordance with the *Queensland Government Guide to Better Regulation* (the Guidelines). The regulatory impact analysis carried out for the Amendment Regulation was varied across the numerous proposals. In accordance with the Guidelines, the department determined that most of the proposals fell into agency-assessed exclusion categories (f) – regulatory proposals that correct technical errors or amend legislation to take account of current Queensland drafting practice, and (g) – regulatory proposals that

are of a machinery nature and were consequently excluded from further regulatory impact analysis.

For other proposals, the department consulted the Office of Best Practice Regulation (OBPR) on whether the proposals are excluded from further analysis under the Guidelines on the basis of OBRP-assessed exclusion categories (k) – regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts, and (l) – regulatory proposals that have already undergone an extensive impact assessment process. The OBPR determined that for these proposals, no further regulatory impact analysis was required. The OBPR-assessed exclusions related to the following proposals:

Proposal	OBPR-assessed category
Clarifying the southern offshore trawl region hours	(k)
Excluding the A1 fishery from net free zone provisions	(k)
Excluding the A1 fishery from south-east gastropod closures	(k)
Clarifying the EUCF for particular vessels in the east coast trawl fishery	(l)
Clarifying the escape vent construction requirements for crab pots	(l)

For the Spanish mackerel form requirement amendments and the freeze on the transfer of T1 and T2 effort units, the department consulted with OBPR on a Preliminary Impact Assessment. The OBPR provided advice that no further assessment is required under the Guidelines. OBPR's conclusion was ultimately that the proposals do not appear to result in significant adverse impacts.