

Fisheries (Commercial Fisheries) Amendment Regulation 2022

Explanatory Notes for SL 2022 No. 174

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries (Commercial Fisheries) Amendment Regulation 2022

Authorising law

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

Policy objectives and the reasons for them

In June 2017, as part of the Queensland Government's commitment to the best practice management of Queensland's fisheries resources, the Government released the *Queensland Sustainable Fisheries Strategy 2017-2027* (the Strategy).

As part of the implementation of broad reforms supported by the Strategy, regulatory changes were made on the 1 September 2021 to reduce the maximum allowable mesh size to 178 mm, and the monofilament ply size to 1.25mm for commercial nets used in the east coast no. 1 and east coast no .2 fisheries.

The objective of reducing the net mesh size was to decrease the number of large breeding stock of barramundi captured to assist in increasing barramundi egg production. This was in response to the 2019 barramundi stock assessment conducted by the Department of Agriculture and Fisheries (the department) which showed a reduced barramundi egg production in those fisheries.

The objective of reducing the maximum ply diameter was to decrease the risk of entanglement to threatened, endangered or protected species (TEPS), such as turtles and dugongs.

The feedback from industry was that nets complying with the size restrictions were not widely available, and the lighter nets were reportedly not proving efficacious for standard nearshore fishing activities.

There has also been limited empirical evidence that a lighter ply diameter has been successful in achieving a reduced entanglement rate for TEPS, and some evidence to

suggest that it may have the opposite effect, increasing entanglement risk for non-targeted species.

Due to the complexity of the issues; limited data available to support the current management arrangement; industry feedback; and advice from the East Coast Inshore Fisheries Working Group (Working Group), further data will be collected from updated stock assessments, and alternative measures will be investigated to reduce interactions with TEPS.

The policy objective of *Fisheries (Commercial Fisheries) Amendment Regulation 2022* (Amendment Regulation) is to:

- increase the maximum allowed net mesh size in the nearshore waters of the east coast no. 1 and no. 2 net fisheries to the mesh size pre-September 2021 mesh size; and
- increase the ply diameter for the nearshore waters of the east coast no. 2 net fishery to pre-September 2021 ply diameter.

Increasing the maximum mesh and ply size requirements for commercial nets used in the nearshore portion of the east coast no. 1 and no. 2 net fisheries will allow commercial fishers to use more widely available and efficacious nets; reduce the risk of entanglement to TEPS which the lighter ply nets may impose; and provide an opportunity for data to be collected to support an empirical approach to future management decisions.

Achievement of policy objectives

The Amendment Regulation achieves the objectives of reverting commercial net mesh size and ply diameter to pre-September 2021 sizes within the nearshore sectors of the east coast no. 1 and no. 2 net fisheries by amending the *Fisheries (Commercial Fisheries) Regulation 2019* by amending

- Schedule 4, part 2 (Net fishery (east coast no. 1)) to replace '1.25mm' with '1.85mm' to increase the maximum net mesh size in the nearshore waters of the N1 fishery
- Schedule 4, part 3 (Net fishery (east coast no. 2)) to replace '1.25mm' with '1.85mm' to increase the maximum net mesh size in the nearshore waters of the N2 fishery.
- Schedule 4, part 3 (Net fishery (east coast no. 2)) to replace '178mm' with '215mm' to increase the maximum monofilament ply diameter in the nearshore waters of the N2 fishery.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the main purpose 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 not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The Amendment Regulation is the only means of achieving the policy objectives in accordance with the legislative requirements.

Benefits and costs of implementation

In responding to industry concerns, the Amendment Regulation benefits industry stakeholders by:

- allowing the use of heavier nets which are more effective and fit for purpose in the nearshore waters of the fisheries; and
- providing more flexibility to fishers in the nets that they can reasonably access and purchase.

The Amendment Regulation additionally benefits the ecological viability of the fisheries by:

- removing the requirement to use lighter ply nets that may increase risk of TEPS entanglement; and
- providing an opportunity to gather appropriate empirical data on the effect of monofilament ply sizes on the fisheries before considering future management options. This is an important benefit to the industry and to Queensland as reverting back to the original sizes will allow increased and adequate monitoring and data validation to implement best practice management.

Any costs to the State government in implementation of the Amendment Regulation are expected to be negligible and met through existing budgeting.

Consistency with fundamental legislative principles

The Amendment Regulation has been drafted with regard to the fundamental legislative principles (FLP) as defined in section 4 of the *Legislative Standards Act 1992*.

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

The Amendment Regulation imposes maximum mesh size and ply diameter restrictions for commercial nets in the nearshore sectors of the east coast no. 1 and no. 2 net fisheries.

The FLP is potentially infringed because prescribing mesh and ply size restrictions has the potential to unduly restrict the manner in which commercial fishing can be conducted in those fisheries.

The restrictions are justified because they are a relaxation of the current arrangements in response to the ongoing consultation with industry stakeholders. Fishers reported that

nets complying with the size restrictions were not widely available and the lighter nets were reportedly not proving effective for nearshore fishing activities.

Input controls that regulate fishing equipment are widely used across fisheries in Queensland and are considered to be among the least restrictive options for management of the economic and environmental viability of the industry. Without management, the fisheries risk being unsustainably fished, leading to an inability to enjoy access to natural community resources in the future. In this way, the Amendment Regulation does not impose excessive restriction on the east coast no. 1 and no. 2 fisheries by prescribing a maximum net mesh size and ply diameter, and strikes an appropriate balance between providing effective ongoing fishery management and allowing industry to conduct business without interference.

Consultation

The department wrote to key stakeholders requesting feedback on the regulatory changes that were implemented on 1 September 2021. The stakeholders included Australian Marine Conservation Society, World Wide Fund for Nature, Great Barrier Reef Marine Park Authority (GBRMPA).

Three industry workshops were also held with east coast inshore commercial fishers in 2021 including with N1, N2 and N4 fishing licence holders.

A number of concerns were raised by the stakeholders which led to further consultation being undertaken with the Working Group on 7 December 2021. The majority of the Working Group recommended that ply rating in the nearshore be amended because of the feedback from industry; the complexity of the issues; the limited data to inform solutions; the concerns of increased entanglement risk of threatened and endangered species; and the broader reforms recently implemented in the fishery.

Conservation groups, GBRMPA, and some Queensland recreational fishers expressed concern regarding the impact on the threatened and endangered species and the larger 'breeding stock' for barramundi by reverting to the pre-September 2021 monofilament ply and mesh size requirements. GBRMPA requested immediate progress on best management practice; improvements to the protected species management strategy (including a more holistic review of commercial and recreational fishing gear rules); increased and adequate monitoring; and data validation. The Amendment Regulation will allow Fisheries Queensland time to review these requests.

The department consulted the Office of Best Practice Regulation (OBPR), within the Queensland Treasury, on a Preliminary Impact Assessment. The OBPR provided advice that no further assessment is required under the *Queensland Government Guide to Better Regulation*.