

Fisheries and Other Legislation (Structural Reform) Amendment Regulation 2023

Explanatory Notes for SL 2023 No. 194

made under the

Fisheries Act 1994

Rural and Regional Adjustment Act 1994

General Outline

Short title

Fisheries and Other Legislation (Structural Reform) Amendment Regulation 2023.

Authorising law

Sections 7, 37, 52, 62, 82, 118, 218 and 223 of the *Fisheries Act 1994* (the Fisheries Act)

Sections 11 and 44 of the *Rural and Regional Adjustment Act 1994* (the RRA Act)

Policy objectives and the reasons for them

On 28 November 2022, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the International Union for the Conservation of Nature (IUCN) released a report on the reactive monitoring mission to the Great Barrier Reef (GBR). The report recommended the GBR be listed as ‘in Danger’ on the World Heritage List. The report included 18 recommendations. A priority recommendation was to “phase out destructive gill net fishing through appropriate mechanisms, including purchasing, and/or retiring all remaining industrial gill-net licences; retiring of other gill-net fisheries and the establishment of net-free sub-zones in areas of high conservation value for protected species”.

On 5 June 2023, the Honourable Tanya Plibersek MP, Commonwealth Minister for the Environment and Water; Senator Nita Green, Special Envoy for the GBR and Senator for Queensland; the Honourable Mark Furner MP, Queensland Minister for Agricultural Industry, Development and Fisheries and Minister for Rural Communities; and the Honourable Leanne Linard MP, Queensland Minister for the Environment and the Great Barrier Reef, Minister for Science and Minister for Multicultural Affairs, released a joint media release announcing that over \$160 million will be delivered to significantly reduce net fishing and other high risk fishing activities impacting the GBR. This includes ensuring the GBR is gillnet free by mid-2027. As part of these reforms, Queensland Government was asked to declare threatened hammerhead sharks a no-take species for commercial fishers.

Concurrently, the Queensland Government finalised the review of the zoning plan for the Great Sandy Marine Park (GSMP). The final zoning plan will increase the area of the marine park in green and yellow zones; remove commercial large mesh gillnets and ring nets from the area of the existing yellow zones within Baffle Creek, Elliott River, Burrum River system and the Great Sandy Strait and Tin Can Inlet; and introduce measures to increase protection of threatened species, cultural heritage and amenity values.

Key species caught in fisheries using gillnet in the GBR include barramundi, king threadfin, grey mackerel, other mackerel and shark. These are managed through individual transferable quota (ITQ) or competitive total allowable commercial catch limits that restrict how much each species can be harvested. The east coast inshore fin fish fishery (including southern Queensland) is estimated to have a gross state product (direct and flow-on) of \$36.9 million, with a net economic return of -\$1.3 million. There are 311 full time equivalent jobs associated with the fishery (direct and flow-on), and 92 per cent of the fishery product is caught in nets.

On the 17 July 2023, the Queensland Government announced the establishment of the independent Future Fishing Taskforce (the Taskforce) to provide expert advice to government on the best approach, design and implementation of a structural adjustment package for the GBR. The Taskforce was also required to consider, as part of its deliberations on the GBR, the mitigation package to address impacts to commercial fishing in the GSMP that will result from the zoning plan review given the interrelatedness of the two marine areas and to ensure alignment of mitigation responses (<https://www.daf.qld.gov.au/business-priorities/fisheries/commercial/future-fishing>).

The Taskforce sought input from subject matter experts, stakeholders and peak bodies and the Great Barrier Reef Marine Park Authority. The results of targeted consultation with affected commercial fishers and processors was also provided for consideration.

The Taskforce recommended, among other things:

- providing support and structural adjustment for commercial fishers displaced by increased protections. The Taskforce made detailed recommendations on financial assistance for authority holders, depending on the market value of the particular authority and the extent of impact from the reforms;
- improving the conservation of threatened, endangered and protected species in the GBR, including prohibiting the commercial take of hammerhead sharks and further restrictions on netting within Dugong Protection Areas;
- supporting the transition toward sustainable fisheries practices in the GBR, including the removal of N1, N2, and N4 fishery symbols that allow gillnet fishing on the east coast;
- undertaking fisheries reform in the GSMP, to reflect the expansion of zones closed to commercial fishing; and
- consultation be undertaken on potential gillnet free zones in the Gulf of Carpentaria.

On 25 October 2023, the Queensland Government approved the recommendations of the Taskforce and the associated indicative budget allocations in relation to a \$100 million Fisheries Structural Adjustment Package to phase out large mesh commercial gillnet fishing on the GBR and a \$25 million impact mitigation package for changes to the GSMP Zoning Plan.

The establishment of an interdepartmental governance committee (IDC), led by the Department of the Premier and Cabinet (DPC), was also approved to support the timely and effective delivery of all recommendations in the Report.

Implementation of the structural adjustment package needs to be progressed urgently, with key reforms in place for 1 January 2024. By 1 February 2024, the Australian and Queensland Governments are due to report back on progress towards implementation of commitments to protect the Reef to inform World Heritage Committee considerations at its meeting in 2024.

On 16 November 2023, the Queensland Government announced a structural adjustment package, which adopts all the recommendations made by the Taskforce. Key components of this package include:

- Around \$90 million to financially assist eligible fishers and supply-chain businesses, including payments for licence packages, relevant symbols, relevant individual transferable quota (ITQ), nets and their disposal, boat refits, payments acknowledging loss of future income, and support for seeking independent advice;
- \$1.5 million in grants and support for reskilling and retraining;
- \$2.25 million to support employees such as deckhands and skippers;
- \$15 million to develop a whole-of-government strategy to accelerate and adopt innovative best-practice sustainable aquaculture in Queensland;
- \$4.5 million, with matching Australian Government funding from the Fisheries Research Development Corporation, to support an evidence-based approach to developing and trialling sustainable alternative commercial fishing gear;
- \$2.95 million for developing and growing sustainable regional jobs, tourism opportunities and supporting master fishers training and threatened species protection; and
- \$1.5 million to support making hammerhead shark a no-take species for commercial fishers.

Delivery of the assistance package recommended by the Taskforce is to commence as soon as the legislation is amended, however the initial focus will be on holders of affected fishing symbols and quotas.

Achievement of policy objectives

Financial assistance scheme for holders of fishing authorities that are to be removed from the legislation

The policy objective of providing a financial assistance scheme will be achieved by amending the *Rural and Regional Adjustment Regulation 2011* to establish an assistance scheme as an approved scheme under the RRA Act. This enables the Queensland Rural and Industry Development Authority (QRIDA) to administer the scheme, as QRIDA can only provide financial assistance under an approved assistance scheme prescribed by regulation under the RRA Act.

The Amendment Regulation will prescribe a new schedule which will set out the scheme in detail for holders of fishing authorities that are to be removed by the Amendment Regulation. This will enable QRIDA to administer the financial assistance scheme.

Holders of eligible fishing authorities (licences, fishery symbols and eligible ITQ units) will be able to apply for:

- from \$5,000 to \$150,000 per fishery symbol, for the value of eligible fishery symbols;
- from \$17 to \$25 per unit, for the value of eligible quota units;
- payments representing three years probable lost income, to eligible licence holders; and
- \$3,000 to eligible licence holders for financial and legal advice.

Removal of fishing authorities that impact upon the Great Barrier GBR and GSMP

The policy objective of reducing impacts on threatened, endangered and protected species within the GBR and GSMP will be achieved by consequential amendments to the:

- *Fisheries (General) Regulation 2019,*
- *Fisheries (Commercial Fisheries) Regulation 2019,*
- *Fisheries Declaration 2019, and*
- *Fisheries Quota Declaration 2019.*

These amendments will remove the fishing authorities associated with commercial gillnet fishing within the GBR and specific areas within the GSMP and, prohibit the commercial take of hammerhead sharks in Queensland.

The Department of Agriculture and Fisheries (the Department) is responsible for managing commercial fisheries, which entails implementing limits on specific fisheries, parts of fisheries, or individual species.

The relevant fishing authorities consist of a Queensland primary commercial fishing licence (PCFL) and various fishery symbols. For fish regulated by ITQ, relevant authorities may include ITQ units.

A PCFL allows a nominated primary boat and its associated tender boats to be operated for commercial fishing, in accordance with the fishery symbols appearing on that PCFL. Fishery symbols authorise the PCFL holder to operate in a particular fishery or fisheries according to the provisions in Schedule 4, Part 2 of the Commercial Regulation.

ITQ units are used in fisheries where participants hold quota authorities, entitling them to a portion of the declared total quota entitlement for a specific species or group of species during a fishing season. The total quota entitlement can be adjusted based on the status of the fish stocks, and the catch amount per-unit may fluctuate accordingly. This system promotes efficient and sustainable harvesting by allocating specific catch limits to individual fishers.

Removal of gillnet fishery symbols within the GBR

The N2 fishery symbol (Net fishery (east coast no. 2)) will be removed entirely. The N2 fishery symbol is for set mesh gillnetting in inshore rivers and creeks, which primarily target barramundi.

The N4 fishery symbol (Net fishery (east coast no. 3)) will be removed entirely. The N4 fishery symbol is for offshore waters gillnetting over 20m in depth, which primarily target grey mackerel and shark.

The S fishery symbol (Commercial shark and ray fishery) will also be removed, given it will be rendered unviable by the other amendments. Sharks and rays will still be able to be taken under various other net and line fishery symbols that will remain.

The N1 fishery symbol (Net fishery (east coast no. 1)) for general netting will cease to exist in its current form. The N1 targets barramundi, king threadfin, grey mackerel, other mackerel, and shark along the East coast of Queensland in Management Regions 1-5.

The N1 fishery symbol will be replaced with a 'N15' fishery symbol, which is a modified N1 symbol confined only to Management Region 5 in South East Queensland. Similar to longstanding arrangements for N1, the N15 fishery will also be accessible to holders of N10 fishery symbols (tunnel netting) and K1-8 fishery symbols (beach netting) as an as-of-right component, without an N15 being written onto the licence. The N15 symbol will allow take of the same regulated fish as the N1 symbol, with the addition of barramundi, but with the exception of hammerhead shark that will be closed to all commercial take.

To prevent bait nets being used as a substitute for general netting, amendments will be made to the fishery symbols that may be used to take various regulated fish. The take of species listed as 'Tier 1' and 'Tier 2' in the East coast inshore harvest strategy will be prohibited under the N11 fishery symbol (Net fishery (no. 11)) for bait netting in the eastern N11 area, with the exception of whiting in Management Region 5, sea mullet, and 'other shark and ray' within the east coast inshore fishery. No changes will be made to species that can be taken under N11 in the Gulf N11 area.

Temporary NX fishery symbol to allow continuation of seafood supply and for trial of lower-impact net fishing in the GBR

The purpose of the NX fishery symbol is to maintain seafood supply to some degree while allowing for a pathway towards alternative, more sustainable gear. However, gillnetting will be among the types of gear permitted hence the NX fishery symbol must expire on 30 June 2027 to meet the UNESCO requirements to ban all gillnetting by 30 June 2027.

Provision will be made for a program for the trial, implementation and evaluation of innovative and alternate low impact fishing gear to maintain seafood supply and offer an alternative and sustainable transition beyond gillnet fishing.

A temporary 'NX' fishery symbol will be introduced, to operate only between 1 January 2024 and 30 June 2027. The fishery symbol will allow for the trial of alternative, more sustainable equipment or types of fishing in Management Regions 2-4, which is the area covered by the GBR excluding the new Net Free North. Applications for NX fishery symbols will be assessed and written onto a licence on an individual basis, taking into account the particular circumstances. Detailed conditions will be added to the NX fishery symbol holder's primary commercial fishing licence on an individual basis, therefore these fishery symbols will not be transferable.

Fees for the new fishery symbols will be the subject of a future submission to the Queensland Government.

Expanding the list of regulated fish that may be taken under line fishery symbols

To allow for diversification of fishing gear away from gillnets, the L2 and L3 fishery symbols (Line fishery (Reef)) will now be able to take barramundi, except within the existing net-free fishing zones at Trinity Bay (Cairns), St Helens Beach – Cape Hillsborough (north of Mackay) and Capricorn coast (Yeppoon, Keppel Bay, Fitzroy River and Rockhampton).

Expanding the list of regulated fish that may be taken by nets in South East Queensland

To support continued seafood supply, the K1-K8 fishery symbols (Net fishery (general netting and ocean beach)), N10 fishery symbol (Net fishery (east coast no. 4)) and N15 fishery symbol (Net fishery (east coast no. 15)) will now be able to take barramundi.

Removal of quota authorities for key fish species in the GBR

Management of certain regulated fish in the East coast net and line (ENL) fisheries by means of ITQ is no longer practical when large areas of the East coast will be effectively closed to netting. Therefore, certain regulated fish will no longer be managed via ITQ. Instead, they will be managed via a total allowable commercial catch or 'prescribed commercial catch' (PCC) specific to each management region. Once the PCC limit is reached, the species becomes regulated, prohibiting the take or possession of the species by a commercial fisher for the remainder of the season.

Regulated fish that will no longer be managed via ITQ are:

- barramundi, East coast inshore Management Region 1-5
- king threadfin, East coast inshore Management Region 1-5
- grey mackerel, East coast inshore Management Region 1-4.

The harvest that could be taken annually for each of these ITQ units will instead be applied as a PCC, at 85 per cent of current quota levels. Total allowable commercial catch will be reviewed within 12 months, taking into account the level of harvest under the new NX symbols.

Introducing a new Net Free North

Creation of a new 'Net Free North' (NFN) is a Government commitment in response to concerns raised by UNESCO about the effects of fishing within the GBR. A new NFN will be established from Cape Bedford to the tip of Cape York, including rivers and creeks within this range. The NFN will be closed to all forms of commercial net fishing, except trawling, taking fish with bait nets if not for sale, and harvest fisheries.

The NFN will not affect trawl fishing. Provision will be made to allow fishers in non-net fisheries (e.g. holders of fishery symbols for the crab and line fisheries) to obtain their own bait within the NFN using N11 bait nets, in recognition of the remoteness of the location and need to access bait fish to support line and crab fishing operations. However, as per existing provisions, any fish taken this way cannot be sold. The use of bait nets under the N11 fishery symbol (i.e. for sale of fish) will not be permitted within the NFN.

Cape Bedford is slightly south of the northern boundary of Management Region 2. For operational simplicity it is intended to redefine the northern boundary of Management Region 2 so that it aligns exactly with Cape Bedford. This means the NFN will be located entirely within Management Region 1.

Netting restrictions in dugong protected areas

The new NX fishery symbol will be prohibited from accessing Dugong Protection Area A regions. This does not apply to the existing Hervey Bay-Tin Can Bay Dugong Protection Area A, as it is outside the NX fishery area. NX fishery symbols will not be permitted to access embayments within Dugong Protection Area B regions, but will be able to access the rivers and creeks component of each Dugong Protection Area B region.

Prohibiting the take of all hammerhead sharks

The legislation will be amended to prohibit the commercial take of hammerhead sharks, noting that recreational take of hammerhead sharks is already prohibited. In addition, the definition of hammerhead sharks will be expanded to include all species within the Family Sphyrnidae to ensure the required level of protection.

The expanded definition of hammerhead shark will have a slight impact on recreational fishers also because hammerhead sharks are currently closed to recreational take. However, responsible recreational fishers would be avoiding sharks with morphology very similar to the type species, which includes all sharks within the Family Sphyrnidae.

Consistency with policy objectives of authorising law

The subordinate legislation is consistent with the objectives of the RRA Act, which establishes QRIDA to administer assistance schemes that foster the development of a more productive and sustainable rural and regional sector in Queensland.

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

This subordinate legislation is not inconsistent with the policy objectives of any other legislation.

The subordinate legislation has been prepared in consideration of the GSMP Zoning Plan Review Outcomes.

Alternative ways of achieving policy objectives

An alternative way to achieve the policy objective of reducing impacts on threatened and endangered species within the GBR and GSMP would be to maintain the status quo. However, this would be inadequate to address the significant issues in the World Heritage Area of the GBR and would be insufficient to prevent an 'in danger' listing for the GBR.

Status quo

The status quo consists of measures prescribed in legislation to manage commercial harvest in the East coast inshore fishery, including limits on the total number of fishing authorities, quota limits on the take of key species, restrictions on gear and fishing methods, closed waters, and closed seasons. In addition, the 'East coast inshore harvest strategy' ensures a consistent and responsive approach to setting harvest limits, supported by regular assessments of stock sustainability. The 'East coast inshore protected species management strategy' identifies risks to non-target species and outlines a plan of ongoing improvements to reduce these risks.

The East coast inshore fin fish fishery is considered sustainable in terms of the health of key fish stocks. The primary ecological concern in this fishery is interaction with non-target species, including threatened, endangered and protected species, due to the relatively unselective nature of gillnets.

The UNESCO report took into account all existing management measures, however, their recommendation was major reform to significantly reduce gillnet fishing and other high-risk fishing activities impacting the GBR.

Variations to the structural adjustment package

The Taskforce provided recommendations to the Queensland Government on the best approach, design and implementation of structural adjustment for those impacted by changed fishing access in the GBR World Heritage Area and ensure alignment with the GSMP rezoning mitigation package.

Factors taken into account by the Taskforce included:

- statutory provisions for compensation, which are based on 'loss of 3 years probable taxable income' as evidenced by Australian Taxation Office records (see section 48C of the Fisheries Act)
- the methodology previously employed in other fishery structural adjustment schemes – key learnings from previous structural adjustment programs in Queensland and elsewhere
- the fact that many Queensland industry participants have a strong sense of identity as commercial fishers and their sense of value in the community is through their contribution to a local commercial fishing community
- the economic reliance on different commercial fishing businesses across small towns in Queensland and the associated supporting businesses, including meeting demand for providing communities with locally caught fresh wild seafood
- the complexity and range of environment the net fishery worked across, in relation to creeks and rivers, foreshores/nearshore areas and offshore waters
- the importance of providing certainty for industry members, particularly younger members. With the recent Sustainable Fisheries Strategy reforms commencing in 2021, many in the industry invested in what they thought was a sustainable and certain future. The future vision needs to be articulated and supported
- support for trialling alternative low-impact fishing gear to ensure capacity as commercial apparatus

- licence holders should be able to exit totally from the industry, with all associated licences and individual transferable quota (ITQ) and apparatus purchased
- net fishery access during the transitional period (between 1 January 2024 and 30 June 2027) needs to remain economically viable and similar access to that which currently exists
- the risk of displacement of fishing effort as a result of phasing out gillnet fishing in the GBR. Of particular concern was a shift into the east coast crab fishery, areas of the GSMP that remain open to fishing, fisheries south of the GBR (including Moreton Bay) and Gulf of Carpentaria fisheries
- the potential risks of gillnets being sold to non-commercial fishers and used illegally (noting it is an offence for non-licence holders to be in possession of commercial nets); and
- the importance of ensuring consistency and alignment with the mitigation package for the GSMP rezoning.

Taskforce considerations for achieving the UNESCO objectives for the GBR World Heritage Area include:

- multiple recovery programs and peer reviewed publications highlight gillnet fishing as a key threat
- many threatened species are in decline and the loss of even a small number of individuals can set a population back decades and lead to long-term decline
- hammerhead sharks are nationally classified as 'conservation dependent' and are currently under reassessment for uplifting their status to vulnerable/endangered
- there is already a complex network of zones and management areas within the GBR, consisting of marine park zoning, Dugong Protection Areas A and B, and recreational-only fishing areas
- the GBR is home to six species of turtle (all of which are classified as endangered or vulnerable) and dugong, humpback and snubfin dolphins (all also classified as vulnerable)
- any new fishery apparatus or technology would need to be appropriately and rigorously trialled before being supported as an alternative for commercial fishing; and
- effort shift to the recreational sector would need to be managed and recreational monitoring would need further focus in coming years.

Additional options for assistance for those affected by structural adjustment included:

- other types of compensation for lost income, such as using a proxy such as logbook catch history as an indicator of current income levels
- support payments for employees, such as skippers, crew
- asset buyback including purchase of nets from licence holders, noting nets will become stranded assets and have the potential to be used illegally
- support for downstream businesses; and
- grants for retraining.

A three week consultation period was provided during August 2023 and as a result of the feedback and submissions received, further refinements were made.

Additional types of assistance may be considered as separate processes.

Alternatives for providing financial assistance

An alternative way to achieve the policy objective of providing a financial assistance scheme would be to have an entity other than QRIDA provide the assistance. However, QRIDA was established to provide assistance and support to the State's economy and has significant experience and expertise in administering grants funding. Given QRIDA's expertise, QRIDA is the most appropriate entity to administer the grants scheme.

Benefits and costs of implementation

Holdings of relevant fisheries authorities will be impacted. Of the 242 available gillnet licences with N1, N2 and N4 fishery symbols that can fish in the GBR, only 97 have reported harvest since the major fishery reform commenced in September 2021. Analysis suggests that 98 per cent of the higher value quota species are caught by around 65 licences endorsed with fishery symbols that allow gillnetting. The Taskforce carefully considered a range of issues when recommending the provision of a number of temporary 'NX' fishery symbols being issued to support the transition out of gillnetting until mid-2027.

Net fisheries are closed to new entrants, so the only way to obtain a fishery symbol is to purchase one from an existing holder. This gives fishery symbols a market value which varies among fishing sectors and over time. Symbol holders will be eligible to be paid market value (relevant to market values prior to the structural adjustment announcement) to mitigate the loss of value associated with affected fishery symbols. For symbols that will continue to retain some value after structural adjustment, symbol holders will be eligible for an appropriate proportion of the symbol's market value.

Management via ITQ provides increased security of access for individual fishers, reduces the likelihood of over-harvesting, and avoids a competitive, inefficient race-to-fish, which is consistent with the ecologically sustainable use and management of the fishery. Converting the management of key species from ITQ to competitive PCC will result in a loss of some of these benefits. Typically, management via PCC promotes a 'race-to-fish' where participants in a fishery are in direct competition with one another which may result in unequal distribution of fishing effort.

However, these ITQ species are primarily caught by gillnets and the symbols used to take most of these species are being removed. This will significantly reduce the fishing pressure on those species and thus significantly reduce the need for ITQ-based management. In addition, holders of ITQ will be eligible to be paid market value for their units, thus reducing the direct economic loss associated with the value of the ITQ units.

Investment and Increased Effort Warning notifications for all Queensland commercial fisheries have been in place since 6 March 2014, when the major review of Queensland fisheries management commenced. These warnings let potential investors, current fishers and boat owners know that any increases in fishing effort, catch or investment in a fishery made after the release of an investment warning may not be recognised in any future management arrangements for that fishery. Persons not already involved in these fisheries must note this Investment and Increased Effort Warning Notification when contemplating entering into these fisheries and are encouraged to seek their own independent advice prior to making any investment decisions (<https://www.business.qld.gov.au/industries/farms-fishing-forestry/fisheries/warnings>).

To mitigate the impact on supply of local fresh seafood, provision will be made for general netting to continue in southern regions outside the GBR (the new N15 fishery symbol), and on a limited, temporary basis elsewhere (the new NX fishery symbol). Provision will also be made to take barramundi using line fishery symbols, which previously were unable to take this species.

However, it is highly likely harvest levels of Queensland wild-caught seafood in the GBR will not return to pre-structural adjustment levels. At present, the current licences endorsed with N1, N2 and N4 fishery symbols in the GBR harvest approximately 325 tonnes of wild-caught seafood per annum. Cumulatively, the proposed removal of existing N1, N2 and N4 fishery symbols, the restrictions on Dugong Protection Areas and allowing a number of new NX fishery symbols to continue to fish in the available areas is expected to result in a total reduction of 159 tonnes per annum or approximately 49 per cent of current harvest levels.

The outcomes of the GSMP zoning plan review will result in the commercial gillnet fishery losing access to significant areas of productive gillnet fishing grounds, in addition to more minor impacts to crab, line and trawl fisheries within the marine park.

In recognition of these impacts, the Queensland Government has allocated around \$90 million to the financial assistance scheme which is designed to help eligible authority holders mitigate some of the loss of value in their fishing authorities, as well as some of their loss of income. Eligible authority holders can apply for:

- from \$5,000 to \$150,000 per fishery symbol, for the value of eligible fishery symbols,
- from \$17 to \$25 per unit, for the value of eligible quota units,
- payments representing three years probable lost income, to eligible licence holders, and
- \$3,000 to eligible licence holders for financial and legal advice.

Applicants will have the option to sell nominated affected symbols or an entire licence package including fishery symbols that are not affected by the structural adjustment, as well as the PCFL itself. This will help to address the issue of effort shift from the East coast inshore fishery to other sectors (such as crabbing) and other locations (such as the Gulf).

Payments will be available to impacted net fishers in the GBR and to net, crab, trawl and line fishers directly impacted by changes to the GSMP zoning plan. These payments will be based on catch data records during the relevant period provided as part of commercial fisher's reporting requirements under the Fisheries Act. Daily logbooks record estimated weight and daily fishing locations, and end-of-trip weight notices provide accurate weights for the entire trip across multiple locations. Daily weight information for the calculations below will be based on the most accurate records available.

Calculations are determined as follows.

1. The weight of fish per day (kg) caught between 1 September 2021 and 30 June 2023 is provided for each fishery grid square.
2. A total weight per day is calculated:
 - a. Where fishing history is in the GBR region:
 - i. the weight of all grid squares is combined into a single total per day; OR
 - b. Where fishing history is within the Great Sandy region:

- i. the weight from each grid square is multiplied by the prescribed percentage contribution from each grid square (see **“Fisheries Structural Adjustment Tables” document on the Department of Agriculture and Fisheries (DAF) website**)
 - ii. these weights are then combined into a single total per day.
3. The data in Step 2 is used to extrapolate an estimation of fish caught per day in a complete two-year period from 1 July 2021 and 30 July 2023.

(The extrapolation consists of data for the period 1 September 2021 to 30 June 2023, plus July 2022 and August 2022 are counted twice and used to substitute the missing months. It is important to ensure July and August aren't under-represented to address the fact that fish catch fluctuates with seasonality.)

4. The total weight of catch for two years is then divided by 2 to estimate a 'representative average year' catch (kg/annum).
5. The amount from Step 4 is multiplied by a price multiplier (see **“Fisheries Structural Adjustment Tables” document on the DAF website**).

(The price multiplier consists of the industry average beach price per year as determined by BDO Econosearch*, further adjusted for the Consumer Price Index to create projected prices for 2024, 2025 and 2026, which are then combined into a single total.)

6. The amount to be paid is:
 - a. if the result from Step 5 is less than \$1,000 – the payment is \$1,000;
 - b. if the result from Step 5 is between \$1,000 and \$4,999 – the payment is \$5,000;
 - c. if the result from Step 5 is between \$5,000 and \$9,999 – the payment is \$10,000;
or
 - d. if the result from Step 5 is over \$10,000 – the payment is the exact amount calculated in Step 5.

**BDO Econosearch were engaged to undertake economic and social data analysis on fisheries for Fisheries Queensland (<https://www.daf.qld.gov.au/business-priorities/fisheries/monitoring-research/data/economic-and-social-data>). Where a species had not been valued by BDO, a suitable substitute was used.*

Catch recorded in the N11 fishery will be included in the payment calculations for areas impacted by regulatory changes. The percentage impact for net fishing will be applied to N11 catch. N11 catch cannot be reliably and consistently separated from the broader Net catch.

Provision will also be made for eligible applicants who did not catch any fish in at least six consecutive months during the relevant period if special circumstances can be shown to apply, such as illness or injury to the applicant or their dependents or a natural disaster. In those circumstances, the applicant's average catch for the remainder of the eligible period will be used to substitute the months for which zero catch was recorded.

Other categories of impact from the reforms have also been identified, including:

- stranded assets such as commercial gillnets, which will no longer have resale value;
- boats previously used for gillnetting, which will need refitting to operate in other sectors;

- impacts to harvest fisheries within the GSMP as a result of the zoning plan review;
- employees of fishing authority holders, such as skippers and deckhands, who will need retraining to access other sectors; and
- seafood processors who may have been heavily reliant on products from gillnet fishing.

These impacts will be considered as part of a separate process.

The subordinate legislation amendments will help to reduce impacts on the GBR. Prior to COVID-19, the GBR supported 64,000 jobs and contributed \$6.4 billion annually to the Australian economy.

In addition, the financial assistance scheme will encourage authority holders who wish to exit the fishing industry to surrender their authorities in all fishing sectors, whether affected by the structural adjustment or not. Those who wish to exit the industry will receive a fair market price for their investments. Those who remain in the industry will face less competition for fishery resources. Eligible authority holders may apply for up to \$3,000 for legal and financial advice to assist them to decide how to restructure their business.

QRIDA has extensive experience in administering grant, loan and rebate and payment schemes for government and is well placed to administer the schemes.

Consistency with fundamental legislative principles

The drafting instructions have been developed with regard to fundamental legislative principles (FLPs) as defined by section 4 of the *Legislative Standards Act 1992* (LSA).

Legislation has sufficient regard to rights and liberties of individuals – LSA 4(3)

Legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons—LSA – 4(3)(c)

Chief executive to make decisions about applications for new symbol types

Clause 7 provides for the chief executive of the Department to write the new types of fishery symbols onto primary commercial fishing licences. The N15 symbol may be written onto a licence up until 1 July 2024, at which point the N15 fishery will revert to a limited entry fishery as per the majority of other fisheries. The NX symbol will end on 30 June 2027.

The new fishery symbols will be assessed and issued on an individual basis by the chief executive of the Department or delegate. This is analogous to the existing situation for several fishing authorities. The chief executive or delegate is responsible for the assessment and issue, or refusal, of other authority types under the Fisheries Act such as Charter Fishing Licences and general fisheries permits.

In addition to the decision of the chief executive or delegate to write new NX and N15 fishery symbols onto a licence, there is a potential breach of FLPs in that the chief executive is provided the power to prescribe the majority of the detail under which the holder of a new NX fishery symbol will operate, by way of a condition on the licence to which the fishery symbol is attached. The power of the chief executive in this instance may be considered an unauthorised subdelegation of power as section 52 of the Fisheries Act provides that it is an authority which authorises the holder of the authority to do the things permitted under a regulation or declaration or stated in the authority. The provision of power to the chief executive to issue conditions would be considered to not be in keeping with the structure and intent of the Fisheries Act

Enabling the chief executive or delegate to prescribe fishery provisions solely as a condition of licence, could be considered an inappropriate extension of power and may also be regarded as not having sufficient regard to the institution of Parliament, as the fishery provisions prescribed by condition will not be subject to scrutiny or disallowance as they would be if they were prescribed in subordinate legislation.

However, the potential breaches of FLPs in this circumstance are mitigated by the fact that the new NX fishery symbol is temporary and will only allow net fishing between 1 January 2024 and 30 June 2027 at which time the fishery symbol will be removed from legislation. This allows for a transitional phase prior to the eventual cessation of fishing employing gillnets in the GBR. The fishery symbol will allow for the trial of alternative, more sustainable equipment or types of fishing in Management Regions 2-4, which is the area covered by the GBR excluding the new Net Free North area. The potential breach is further mitigated by the fact that the NX fishery symbol attached to the holder's primary commercial fishing licence, including the associated licence conditions, will not be transferable.

In addition, some details regarding the types of gear that can be used and the fish that may be taken will be prescribed in the Regulation. Conditions on an individual licence will provide additional restrictions where relevant.

Enabling the chief executive or delegate to impose the majority of the NX fishery symbol provisions by a condition on licence, can be justified given the conditions will afford licence holders the opportunity to trial alternative methods and gear for commercially catching fish which are less destructive and more sustainable. As such, not all alternative methods or apparatus are known at this stage and it would be inappropriate to attempt to include this detail in subordinate legislation, particularly given its intended short legislative tenure.

Legislation should provide for the compulsory acquisition of property only with fair compensation — LSA s4(3)(i)

Removal of fishing authorities associated with use of gillnets in the GBR

Clauses 12 and 19 remove fishery symbols that use gillnets within the GBR. Fish may no longer be taken under those symbols.

Clause 20 removes ITQ units for regulated fish that can no longer be taken using fishery symbols that use gillnets. These fish will no longer be managed via ITQ. The fish may still be taken commercially, under certain symbols, until the Prescribed Commercial Catch (PCC) limit for the particular management region is reached. However, quota holders will no longer have the certainty of their own individual share of the PCC in the form of ITQ.

These restrictions are effectively a reallocation of access to fisheries resources from one sector (the commercial fishing sector) to another (conservation), for the primary purpose of protecting threatened, endangered and protected species in the GBR. A potential FLP issue is whether the reallocation decision may result in an adjustment of property rights that may be akin to compulsory acquisition of property.

The potential FLP breach will be addressed by ensuring adequate compensatory payments and financial assistance is provided to holders of affected fishing authorities.

Part 5 Division 2 of the Fisheries Act provides for compensation to be made available to a commercial fishing authority holder in the case of certain legislation amendments, if an entitlement to take fisheries resources that the person had immediately before the relevant amendment commences is lost or reduced. Compensation is payable if the amendment involved a decision to reallocate access to fisheries resources in a fishery from one fishing sector to another, or to protect a thing that is not fish.

The Fisheries Act compensation provisions were designed to address small regional closures (such as recreational only fishing zones, or for threatened species protection) and did not anticipate the closure of an entire fishery sector. Compensation provisions limit the compensation payable to the loss of the value of the commercial fishing entitlement, plus up to three years of “probable taxable income”.

In view of this, a financial assistance scheme is being offered to commercial fishers at a more generous rate than that provided by the Fisheries Act. The Taskforce noted that the structural adjustment payments being proposed went above and beyond those provided for in the Fisheries Act compensation provisions, and that the payments were warranted and justified in these circumstances and to assist with mitigating the period of uncertainty and disruption.

Importantly, applying for assistance under the financial assistance scheme does not prevent a holder of a fishing authority from also applying for compensation under section 43 of the Fisheries Act. Payments made under the financial assistance scheme will not necessarily remove individuals’ rights to apply for statutory compensation under the Fisheries Act, should they wish to do so. However, any compensation decision about the loss of particular fishing authorities will obviously take account of payments already made under the financial assistance scheme to compensate fishers for those same fishing authorities, so the same person would not be compensated twice for the same impact.

Clauses 14 and 32 remove some of the regulated fish species that were previously able to be taken with an N11 fishery symbol in the eastern N11 area. The purpose of this restriction is to prevent inappropriate use of bait nets to catch fish previously caught in the N1 fishery. For this reason the amendment may be considered a fisheries management decision for the purpose of ensuring stock sustainability in line with the East coast inshore harvest strategy, rather than a reallocation of access from one sector to another.

Legislation should have sufficient regard to Aboriginal tradition and Island custom—LSA - 4(3)(j)

- Includes - **Consultation on proposed legislation**

Consultation on structural adjustment

Cultural Rights of Aboriginal peoples and Torres Strait Islander peoples protect the distinct cultural rights held by Aboriginal peoples and Torres Strait Islander peoples. This includes cultural heritage, practices, and observances, traditional language and expression, kinship ties, and distinctive relationship with the land, territories, waters, coastal seas and other resources. Aboriginal peoples and Torres Strait Islander peoples have had limited engagement and input into the proposals. The proposals will limit cultural rights – Aboriginal peoples and Torres Strait Islander peoples to the extent the proposals are inconsistent with an Aboriginal person’s or Torres Strait Islanders person’s beliefs, traditional knowledge system, connections and distinctive relationships with the land, territories, waters, coastal seas and other resources.

There was insufficient time for the Taskforce to consult in a respectful way with Reef Traditional Owners and other First Nations peoples. This is recommended to occur subsequently to the making of the Regulation and with reference to the aspirations already outlined by Reef Traditional Owners in the Reef 2050 Traditional Owner Implementation Plan.

The limited timeframe for the Taskforce report impacted the ability to undertake consultation with First Nations peoples, resulting in a recommendation to ensure future engagement and partnership with GBR Traditional Owners as the reforms are implemented.

FLPs that are not in the LSA

Abrogation of common law rights must be justified

- Includes - **Common law property rights**

Removal of gillnet fishing authorities within the GBR

Clauses 12 and 19 provides for the removal of the N1, N2, N4 and S fishery symbols from the GBR. Clause 20 removes ITQ units for regulated fish that can no longer be taken using fishery symbols that allow gillnetting.

This restriction engages property rights because the symbols endorsed on a PCFL have property-like characteristics for the licence holder. Net fisheries are closed to new entrants, so the only way to obtain a fishery symbol is to purchase one from an existing holder. The market value of fishery symbols varies.

ITQ units grant the holder an individual share of the total allowable catch for a particular ITQ species. Therefore, ITQ unit holdings are akin to property rights. ITQ units may be transferred and their market value varies.

The purpose of limiting a licence holder’s property rights by removing the existing fishery symbols that use gillnets is to protect the GBR through significantly reducing destructive gillnet fishing and other high risk fishing activities. The ITQ units are being removed because they are primarily associated with species taken by gillnets, so they essentially become redundant if those fishery symbols no longer exist. The limitation on property rights is, therefore, reasonable and justified in the circumstance.

There are no less restrictive and reasonably available alternative ways to achieve the purposes of the removal. The pressing need to protect the GBR from gillnet fishing is considered to outweigh the impact on licence holders of the proposal. UNESCO have advised that the removal of gillnet fishing from the GBR is a key factor in deciding whether to assign an 'in danger' listing to the GBR World Heritage Area.

While symbol holders will no longer be able to fish under N1, N2, N4 and S fishery symbols on the GBR, they along with affected fishers in the Gulf and GSMP will receive remuneration and other structural adjustment support (see above description of compensation options).

In addition, a temporary NX fishery symbol will be introduced (clause 17). The purpose of this symbol is to allow for a transition phase prior to the eventual cessation of gillnets in the GBR, i.e. Management Regions 2-4. The fishery symbol will allow for the trial of alternative, more sustainable equipment or types of fishing.

Ordinary activities should not be unduly restricted

- Includes - **Right to conduct business without interference**

Prohibition on commercial take of hammerhead shark

Clauses 15, 16, 30, 32, and 33 prohibit the commercial take of hammerhead sharks.

The fishery symbols that interact the most with hammerhead sharks (N1, N2, N4, S) are being removed from the fishery, which should minimise the overall numbers of commercial fishers who are impacted as a sector.

However, for the holders of N15 and NX fishery symbols, as well as potentially other fishery sectors, the prohibition will impact upon the right of commercial fishers to conduct business without interference. However, the fishery is currently operating according to the 'East coast inshore protected species management strategy', which identifies risks to non-target species and outlines a plan of ongoing improvements to reduce these risks. Hammerhead sharks have been previously identified as an issue for which increased measures will be required.

The Taskforce noted that several hammerhead species have undergone varying levels of reduction in abundance worldwide, and hammerhead shark is listed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Appendix II includes species not necessarily threatened with extinction, but for which trade must be controlled to avoid utilisation incompatible with their survival.

Affected commercial fishers will be provided a payment for this loss of entitlement. For the GBR and GSMP regions, these costs have been provisioned in other parts of the structural adjustment. The remaining licences have been provided for in a specific payment schedule.

Prohibiting the take of Tier 1 and Tier 2 species under N11 in the eastern N11 area

Clause 14 and 32 will remove regulated fish species (listed as 'Tier 1' and 'Tier 2' in the East coast fishery harvest strategy) that could previously be taken under an N11 fishery symbol in the eastern N11 area.

Bait nets are not usually used to target Tier 1 and Tier 2 species, so in practice there should be no change to existing use of bait nets. However, in theory this amendment impacts on the right of commercial fishers to conduct business without interference. This restriction is necessary to prevent bait nets being used as a substitute for general netting, which is a possible unwanted outcome of the removal of gillnet symbols.

Abrogation of rights and liberties from any source must be justified

- Includes - **Privacy and confidentiality rights**

Requirements for financial assistance schemes

Part 6 of the Amendment Regulation provides for a new financial assistance scheme.

The subordinate legislation requires that applicants must give QRIDA any further documents or information it reasonably requires to decide the application for assistance. The use of this power could potentially affect the privacy and confidentiality rights of individuals if it is used to request information that would otherwise be confidential, such as bank statements. This power is a potential breach of section 4(2)(a) of the *Legislative Standards Act 1992*, as the legislation could be seen not to have sufficient regard to the rights and liberties of these individuals.

The potential inconsistency is justified, however, as this power can only be exercised in circumstances where it is reasonably necessary to obtain further information to decide the application. The exercise of this power will therefore be limited to circumstances where there are evidentiary deficiencies present in the information provided by the applicant that prevents QRIDA from properly assessing the application.

Legislation should have sufficient regard to the institution of Parliament - LSA 4(4) and 4(5) - Subordinate legislation should allow the subdelegation of a power delegated by an Act only—(a) in appropriate cases and to appropriate persons; and(b) if authorised by an Act—LSA - 4(5)(e)

Part 6 of the Amendment Regulation refers to a document called 'Fisheries structural adjustment tables', version 0.1, comprising tables and maps, which is hosted on the Department's website, to provide details for calculating payments based on probable future income.

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 figures to be used in the calculation of financial assistance payments.

The potential inconsistency is justified, because it would be impractical to include the details of lengthy tables and detailed maps in legislation. The external document is defined according to date and version number, so any changes that are made to the external document would require a further amendment to the Regulation.

Consultation

Community

On the 17 July 2023, the Queensland Government announced the establishment of the independent Taskforce to provide expert advice to government on the best approach, design and implementation of a structural adjustment package for the GBR.

Key stakeholders, including representatives from the commercial and recreational fishing sector, academia and the conservation sector, were invited by the Taskforce to present at various meetings to aid deliberations. Affected commercial fishers and interested members of the community were also invited to make submissions to the Taskforce via the DAF eHub. The consultation eHub was open for almost four weeks and closed on 28 August 2023.

Stakeholders who met with the Taskforce presented a wide range of views. All sectors identified problems associated with fishery and geographical effort shift as being of central concern, urging that steps be taken to minimise perverse outcomes.

More than 100 submissions were received through the eHub from commercial fishers, recreational fishers, conservation organisations and First Nations peoples. Seventy-four per cent of submissions were received from commercial fishers. Concerns raised included:

- direct loss of income to their fishing business (over 30per cent of respondents);
- the need to buy back various commercial fishing assets, including equipment such as nets, quota, fishery symbols, vessels and other ancillary equipment used for fishing (over 30 per cent of respondents);
- flow-on impacts to seafood related businesses (23 per cent of respondents); and
- effort shift into other fisheries or species of recreational importance (19 per cent of all respondents).

In general, there has been broad support from community.

There was insufficient time for the Taskforce to consult in a respectful way with Reef Traditional Owners and other First Nations peoples. This is recommended to occur subsequently and with reference to the aspirations already outlined by Reef Traditional Owners in the Reef 2050 Traditional Owner Implementation Plan.

Members of the Reef 2050 Advisory Committee (an external stakeholder and partner-based committee) and Expert Panel were previously consulted on additional actions that could be undertaken to implement the Reef 2050 Plan and address the concerns of the WHC. They were also invited to meet with the IUCN and UNESCO during the Reactive Monitoring Mission in 2022.

Government

The Department of the Premier and Cabinet (DPC), Queensland Treasury (QT), the Great Barrier Reef Marine Park Authority and QRIDA were consulted and provided advice to the Taskforce.

DPC and QT supported the amendment regulation pending several clarifications to the text.

Previously, the Great Barrier Reef Interdepartmental Committee considered a range of actions to protect the GBR to respond to the concerns of the UNESCO. Chaired by the Department of Environment and Science, it included representatives from DAF, DPC, QT, Department of Regional Development, Manufacturing and Water, Department of Resources, Department of State Development, Infrastructure, Local Government and Planning, and Department of Transport and Main Roads.

Regulatory Impact Analysis

It is acknowledged that the amendments contained in the Amendment Regulation are significant. A Summary Impact Analysis Statement (IAS) has been prepared and approved by the Director-General, DAF and the Minister for Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities. The IAS notes an exemption from Regulatory Impact Statement (now IAS) was approved for amendments to fisheries regulations to give effect to GBR related commitments to UNESCO regarding the phasing out of gillnet fishing. The approval acknowledged the importance of stakeholder consultation and engagement in the absence of a formal RIS and DAF was requested to continue to engage with the fishing industry and relevant stakeholders on the policy changes.

While an exemption from a regulatory impact analysis was approved, ongoing stakeholder consultation is an important part of the process. Both the Taskforce and DAF have sought, and will continue to seek, stakeholder feedback to inform the policy response and implementation of these changes. Stakeholder feedback was taken into account during refinement of policy options.