

Queensland



Regulatory Impact Statement for SL 1995 No. 325

Fisheries Act 1994

FISHERIES REGULATION 1995

GENERAL OUTLINE

Authorising law

1. This regulation is made under the various provisions of the Fisheries Act 1994 and, in particular section 223.

Policy objectives

2.(1) To provide for the management of the fisheries resources in order to ensure the sustainability of the resources, the maximisation of community benefits from the resources and equity in access to resources among various users in the community

(2) To provide for flexibility in any regulatory regime by allowing for subsequent changes to management, if necessary, through management plans for particular fisheries.

Means of achieving objectives

3.(1) Because fisheries resources are not privately owned, but are a community resource with “**open access**” by individuals, it is necessary for governments to intervene to ensure their management, to ensure they are not overfished and, further, that competing groups have a share of access to the fisheries.

(2) To achieve this a range of measures are provided for by regulation as follows—

- (a) a clear identification of the relevant legal jurisdictions and associated regulations for fisheries management, both between areas of Queensland and Commonwealth law and, within Queensland, between responsibilities of the Queensland Fisheries Management Authority (QFMA) and the Queensland Department of Primary Industries;
- (b) a number of policy and management advisory committees (including zonal committees) to ensure widespread community input into decision making;
- (c) appropriate controls on the amount of effort exerted on the fishery by commercial, recreational and, where appropriate, indigenous fishers; this is achieved by a range of licensing arrangements, closures to fishing, protected fish species, area and apparatus controls as well as quota limits on fish taken. These measures may be separately provided for or may collectively be included in a Management Plan for particular fisheries;
- (d) protection of the environment through the declaration of Fish Habitat Areas and the protection of marine plants;
- (e) providing for appropriate fees to assist in management of the industry.

Consistency of objectives

4.(1) The regulation provides a wide range of management and intervention mechanisms to ensure the sustainability of the fisheries resources. Further, it together with the Act, provides a clearly defined process for determining the particular management mechanisms which should be used in different situations to meet the objectives of the Fisheries Act 1994.

(2) This process involves an “**expertise based**” Queensland Fisheries Management Authority, community and industry based advisory committees and a defined process of public consultation in the drafting of management plans for fisheries.

(3) Through this process the following objectives of the Act will be met, namely—

- (a) sustainability of the resource, through the concerted actions of all interested parties employing the management tools available under regulation;
- (b) maximising benefits to the community, through the commercial interests and recreational interests furthering respectively the economic goals of the supply of fish to the community and the sport and recreation goals of fishing in the community; substantial flow-on benefits occur in the community from these activities as well as related research, non-exploitative uses and other community-based activities dependent upon fisheries. The interests of indigenous groups may be provided for through particular regulatory regimes;
- (c) equity in access through the selective application of licensing powers, area, time and species based fishing closures, apparatus controls and quota restrictions etc. Further, equity involves consideration of all members of the community in their desires to use the fishery viz, indigenous users, commercial, recreational, scientific users etc.

Alternatives for achieving the stated objectives

5.(1) The alternatives for achieving the stated objectives are—

- (a) no regulation; or
- (b) self regulation.

(2) Although no regulation may be considered as an alternative management mechanism, it raises serious difficulties. The need for government involvement in fisheries management stems primarily from the “open access” nature of fisheries resources. Experience worldwide has shown that where there is “open access” to fisheries resources, there is little incentive for individuals harvesting the resource to conserve fishery stocks. This arises because there is no direct ownership of the resources and little incentive to protect these for the future. As these stocks become fully utilised, competition between fishers often leads to resource depletion. Left unmanaged, the resulting increase in fishing effort is reflected in lower

individual catches in the recreational fishing sector and overcapitalisation and reduced financial returns in the commercial fishing industry, and can place at risk the satisfaction of custom and tradition by indigenous groups.

(3) The role of governments, as custodians of the resource is to ensure that fisheries resources are used in an ecologically sustainable manner and as efficiently as possible. In doing so, governments have the responsibility of ensuring that the basis for sharing the resource among all users is clearly defined and is accepted as equitable. Ensuring that the allocation of fisheries resources and their level of utilisation is consistent with the needs of present and future generations, has been shown world-wide to require effective regulation.

(4) Self regulation by user groups would be unlikely to resolve the fundamental conflict about competition for access to the resource. This is particularly so when there is no private ownership and no way for individuals in the various groups to “capture” the benefit of their good management, unless all parties are compelled to do the “right” thing.

(5) In fact fisheries management currently involves heightened debate and indeed legal action, about the respective legal “rights” of commercial, recreational and indigenous users and their access to, or share of, the resource.

(6) In this situation, self-regulation is unlikely to succeed and has been rejected by all governments in Australia and overseas. However, the actual extent of, and form of, regulatory intervention does vary from place to place.

(7) This is not to say that user groups do not promote various self-regulation management interventions. This is commonly the case with many current management arrangements having been proposed by various fishing groups. However, to give effect to these requires an appropriate regulatory framework.

Consistency with fundamental legislative principles

6. The proposed regulations are consistent with Fundamental Legislative Principles.

National competition policy

7.(1) The Trade Practices Act (TPA) now applies to the States insofar as they “**carry on a business**”, however, certain activities of a State do not amount to carrying on a business and, hence remain outside the scope of the Act, including granting, refusing to grant, revoking, suspending or varying licences (whether or not they are subject to conditions) and imposing or collecting licensing fees. It is proposed in the regulation that aquaculture licences would be issued by the department and hence such arrangements would not come within the scope of the TPA.

(2) However, other licensing arrangements set out in the regulations, primarily for the catching (commercial and recreational) and the marketing sector will be issued by the Queensland Fisheries Management Authority. The Authority does not represent the State and hence, the activities of the Authority, including its licensing activities, will be subject to the Trade Practices Act.

(3) There is provision, however, for activities that are specifically authorised by a State Act, or in regulations made under a State Act, to be excluded from scrutiny under that part of the TPA dealing with **restrictive trade practices** (Part IV of the Act). There have been some changes made to the scope of this exclusion provision by the Competition Reform Act such that it will be necessary to **examine the Fisheries Act** to ascertain whether the wording of that Act in relation to **licensing** activities of the **Authority** is sufficient to continue the exclusion of these activities from Part IV of the TPA.

(4) In terms of National Competition Policy, each State is required to develop a timetable by June 1996 to review, and where appropriate to reform all legislation that restricts competition by the year 2000. The protocols for this review process are currently being determined.

(5) Once the review methodology is in place, the Fisheries Act and the proposed Fisheries Regulation (once made) will be examined to ascertain whether there are grounds for their inclusion in the review process.

(6) The Competition Principles Agreement, a key part of National Competition Policy, requires as a guiding principle that legislation (including regulations) should not restrict competition unless it can be demonstrated that—

- (a) the benefits of the restriction to the community as a whole outweigh the costs; and
- (b) the objectives of the legislation can only be achieved by restricting competition.

(7) In this regard, an assessment of the fisheries legislation shows that its purpose is to balance the competing needs of the community in its requirements for the supply of fish for consumption and trade and the development of the economy against the need of the community to ensure the fishery remains sustainable and environmentally sound. To achieve this the legislation contains a wide range of management measures designed to achieve this balance without unduly restricting competition and peoples freedoms.

(8) The alternative to this approach has been demonstrated in a number of fisheries around the world and this involves completely “open access” with few if any intervention measures for management purposes. This “open access” inevitably leads to increased competition amongst those harvesting the fishery and this inevitably leads to a collapse of the fishery to the extent that its very sustainability is put at risk. In such cases, where it is feasible, this has led to demands upon the government for massive injection of funds for the restocking or reseeded of the natural fisheries through aquaculture. For these reasons, together with the inevitable overcapitalisation that occurs in harvesting capacity, this approach has been rejected.

(9) There are three sectors of the fishing industry which are subject to management interventions - the catching sector (both commercial and recreational catching), the marketing sector (principally targeted at the wholesale or processing aspects) and the aquaculture sector.

(10) In the catching sector, there have been limitations on the total number of licences issued for most commercial fisheries over some years now although they are transferable. Whilst this does involve restrictions its purpose is to protect the public interest in ensuring that the fishery remains stable and sustainable whilst allowing sufficient development through the use of the fishery resources to provide jobs and income throughout the economy. In some cases such licences also involve restrictions on the apparatus that may be used, the areas that may be fished and the quantity of fish that may be caught.

(11) In the case of the marketing sector, whilst it is a requirement for persons engaging in the purchase of fishery products at the wholesale level to hold a licence, there is no limit on the number of these licences that may be issued and they are also freely tradeable. Again the purpose for the licence is to provide management information at the marketing, wholesale, and processing levels to supplement data available from the catching sector itself for use in management.

(12) The aquaculture sector also requires licensing but again this is to protect the public interest to ensure that such activities comply with necessary environmental standards and that there are no adverse consequences on the associated environment or no unnecessary restrictions on the community's use of public waters areas where aquaculture is being conducted. These licences are also freely tradeable.

(13) From the above it can be seen that it is necessary to impose restrictions in order to protect and manage the fishery from over-exploitation. The public interest is served however, in ensuring a sustainable resource for future generations whilst also allowing sufficient harvesting levels to provide necessary food supplies, generate income, generate economic development and well being of the economy. Arguably, the proposed management regimes are not anti-competitive in their intent but do involve necessary restrictions in order to protect the resource.

(14) Nevertheless, it is accepted that fisheries legislation will need 'to be considered as part of the proposed NCP legislative review programme to commence by June 1996 following agreement on the protocols for the review process.

Benefits and costs of proposed regulation

8.(1) Set out below are the benefits and costs of implementing the proposed regulation. This is done in a qualitative manner for the major legislative mechanisms proposed in the regulation, and this is followed by a quantitative assessment, as far as this is practical.

(2) The obvious difficulty with quantification here is common to all areas involving environmental considerations, together with use and protection of natural resources. It is relatively easy to quantify some of the costs involved (though not all costs), but much more difficult to quantify the benefits eg—

- what is the cost of the extinction of a species?
- what is the value of the benefit of having a renewable fisheries resource for community use into the future?

Nevertheless, where practical, measures of costs and benefits are provided.

Issue 1—Commonwealth/State management of fisheries: rationalisation of jurisdiction between State and Commonwealth laws for particular fisheries

Benefits to government

- consistency in approach to fisheries management
- simplification of legislation (application of single law)
- clear identification of management costs and benefits
- better enforcement of laws

Costs to government

- additional enforcement and research costs to Queensland
- increase in administration and management costs to Queensland

Benefits to industry

- benefits to Government also apply to industry
- greater involvement in decision making
- greater certainty in financial planning
- expansion of area available for fishing under State law
- higher degree of economic efficiency through clear laws

Costs to industry

- increased contribution to costs of management

Benefits to society

- improved management of the resource
- improved protection of the resource
- reduced contribution by society to costs of management

Costs to society

Nil

Issue 2—Advisory committees: provision for the establishment of management advisory committees and zonal/regional advisory committees

Benefits to government

- more efficient system for information gathering
- provision for wider representation, including at regional level -
- confidence in quality and accuracy of advice on management issues

Costs to government

- small increase in administrative costs

Benefits to industry

- direct involvement in management advice
- wider representation
- ability to manage on a total fishery basis
- enhanced ability to consider regional issues

Costs to industry

- increased funding contribution
- increased demands on time of representatives

Benefits to society

- enhanced input into decision making process
- enhanced capacity for the incorporation of social objectives into decision making process

Costs to society

- increased demands on time of representatives

Issue 3—Queensland Fishing Industry Policy Council: provision for the establishment of a body responsible for advising the Minister on strategic issues

Benefits to government

- appropriate forum for advice
- wide representation of user groups
- greater clarity in policy setting

Costs to government

- funding of Council
- secretariat/administrative support

Benefits to industry

- representatives have direct communication
- direct input into formulation of strategic policy
- greater clarity in policy direction

Costs to industry

- increased demands on time of representatives

Benefits to society

- facility for input into strategic policy formulation
- enhanced decision making process

Costs to society

- increased demands on time of representatives

Issue 4—Licences/permits—provision for the issue of a range of licences and/or permits as a means of managing fisheries

This mainly involves—

- a change in the structure of licensing—rationalisation to fewer licences
- catching and marketing sector licensing.

Benefits to government

- mechanism for management and protection of the resource
- control over terms and conditions of access for fisheries
- provides knowledge of and information on participants

Costs to government

- costs of administration

Benefits to industry

- orderly management of fisheries
- limitations on numbers and activities of participants

- reduction in licence numbers
- provides knowledge of participants and activities

Costs to industry

- small increase in licence fees
- limitation on operations of individuals
- new licence fees in some areas

Benefits to society

- effective management controls
- reduced costs to society for fisheries management

Costs to society

- some limitation on operations of individuals

Issue 5—Aquaculture licensing—provision for management of all of the aquaculture industry under 1 system

This represents a change in the structure of licensing—rationalisation to fewer licences.

Benefits to government

- amalgamation and simplification of licensing procedures
- more orderly development of the aquaculture industry
- aquaculture managed by a single agency

Costs to government

- increase in resources required for Environmental Impact Assessment of aquaculture proposals

Benefits to industry

- simplification of licensing procedures
- reduction in time between application and final approval for aquaculture proposals
- greater clarity in the roles of management agencies
- enhanced development opportunity

Costs to industry

- small increase in cost of some licences

- costs associated with meeting enhanced environmental protection requirements

Benefits to society

- enhanced protection of the environment
- enhanced availability of fish for consumption

Costs to society

- cost in responding to aquaculture development proposals.

Issue 6—Management plans—provision for the formulation of management plans to provide greater flexibility in fishery resource management.

This represents a new mechanism for fisheries management by grouping existing powers into a single plan and increasing the flexibility of application of powers.

Benefits to government

- enhanced capacity to reflect ecologically sustainable development principles in fishery management
- enhanced capacity for management to be more responsive to needs of the resource
- enhanced capacity for management on a species, time and regional basis
- a more precise instrument for the application of management to the needs of industry and other fishery resource users
- provides for co-management of fishery resources for indigenous users

Costs to government

- cost of developing and reviewing management plans as regulations
- community education and consultation associated with developing and reviewing management
- increased research costs

Benefits to industry

- greater certainty in the long-term sustainability of fishery resources
- enhanced ability for management arrangements to respond to industry needs
- increased clarity to industry of management requirements

- enhanced capacity for financial and strategic planning by operators

Costs to industry

- some limitations on operations by industry for
- expectation that industry contribute to research and enforcement costs
- publication/education costs.

Benefits to society

- increase community confidence in ability of management agencies and resource users to manage fishery resources
- greater clarity and understanding of management requirements

Costs to society

- some limitations on community uses of fishery resources for sustainability needs

Issue 7—Fishery management controls—powers for such controls as closed seasons/areas, bag limits, minimum sizes, non-commercial species, recreational fishing areas and gear restrictions**Benefits to government**

- provides mechanisms to incorporate requirements of ecologically sustainable development into fishery resource management
- enhanced ability for management on species, time and regional basis
- a greater range of management mechanisms to ensure long-term objectives of resource management are met

Costs to government

- increased research and enforcement costs

Benefits to industry

- greater certainty in the long-term sustainability of fishery resources
- enhanced capacity for management arrangements to meet industry requirements
- enhanced clarity of management requirements
- enhanced capacity for financial and strategic planning by operators

Costs to industry

- some limitation on industry operations

- expectation that industry contribute to research and enforcement
- publication/education costs

Benefits to society

- increased community confidence in the ability of management agencies to provide appropriate resource management
- greater clarity and understanding of management agency and industry requirements

Costs to society

- some limitations on community uses of fishery resources

Issue 8—Noxious and nonindigenous fish controls—powers to control the introduction and spread of noxious and nonindigenous fish**Benefits to government**

- control over the introduction of undesirable species and diseases
- limits potential for genetic contamination of natural fishery stocks through translocation
- provides higher degree of protection for ecological systems
- maintains integrity of natural species diversity

Costs to government

- education and information dissemination
- additional research

Benefits to industry

- certainty in maintaining healthy natural fishery stocks
- enhanced productive capacity from natural fishery resources
- reduces potential for environmental damage caused by exotic species

Costs to industry

- limitations on fish species that can be kept

Benefits to society

- reduced potential for adverse and irreversible environmental damage to natural systems

Costs to society

- limitations on fish species that can be kept

Issue 9—Declaration of fish habitat areas: provision for the establishment of fish habitat areas to protect the environment; may be applied to freshwater areas as well as marine areas

Benefits to government

- enhanced protection of habitat critical to the maintenance of fishery resources
- enhanced sustainability of natural aquatic systems
- greater knowledge of linkages between support systems and fishery resources
- simplification of statutory instruments/approvals

Costs to government

- cost of identification, gazettal and administration

Benefits to industry

- enhanced sustainability and productive capacity of fishery resources
- wider application of reserves to fresh water areas
- maintenance of economic viability of commercial fisheries

Costs to industry

- limitations on development opportunities

Benefits to society

- enhanced perception of conservation needs
- enhanced capacity for enjoyment and appreciation of natural environment
- continued viability of species

Costs to society

- limitations on development opportunities

Issue 10—Protection of marine plants: provision for the protection of mangroves, seagrasses and other marine plants - disturbances by permit only

Benefits to government

- enhanced control over environmental degradation
- enhanced compliance with permit requirements through a bond system

- simplified “whole of government” approval system for permits to disturb marine plants

Costs to government

- administration of permit system
- consultation with competing lobby groups

Benefits to industry

- sustainable production from fisheries resources
- greater knowledge of natural system and relationship to production
- clarity in planning

Costs to industry

- EIS requirements on developers
- compliance with permit conditions

Benefits to society

- maintenance of natural systems
- enhanced knowledge of natural systems

Costs to society

- limitations on development opportunities

QUANTIFICATION OF BENEFITS AND COSTS

In discussing these it should be recognised that the achievement of enhanced procedures and more simplified systems requires an initial investment of funds prior to the attainment of real savings. Therefore a time perspective needs to be considered as part of the analysis. Furthermore, in drafting the regulation, a number of government decisions were required to be implemented following a review of recreational fishing in Queensland. These are identified as appropriate.

Issue 1—Commonwealth/State jurisdiction of fisheries

Increased administration costs (estimated at \$80 000) together with limited

enforcement and research costs (as agreed with industry) will be offset by future increases in industry contributions; benefits will additionally be gained by clarification of management rules of one agency only and greater certainty in licensing arrangements. On balance benefits will be significant and industry will be contributing additional funds.

Issues 2 and 3—Advisory committees and Policy Council

These will result in increased annual costs of approximately \$300 000 which will be met from industry contributions ie. increases in commercial and recreational fees as already approved by government. The benefits lie in the ability of a wide range of community interest groups to contribute to decision making. These have not been valued but will result in improved management arrangements.

Issues 4 and 5—Licences and permits and aquaculture

There will be a substantial reduction in the number of different types of licences required under the regulation eg. in aquaculture, licence types will decrease from 8 to 1 type; in marketing, the reduction will be from 5 to 2 types with endorsements. This will result in savings in administration of \$120 00 p.a. over the longer term, but will require additional expenditure of \$80 000 in the short-term to effect these changes.

Industry will benefit from less paperwork and clearer statements of policy and management arrangements. Some commercial fishing licences will no longer be required eg. assistant fishers licences in some cases, and the real benefit is the time saved by industry in obtaining licences for each crew member and saving of lost fishing time.

Some new licences will be introduced as agreed by government eg. professional fishing tours, while other licence fees will increase eg. private pleasure vessel fees and commercial fisher fees (expected to raise approximately \$1.5M annually). These have previously been agreed by government following the Recreational Fishing Inquiry.

Issue 6—Management plans

While there will be increases in costs of developing management plans, these will occur in the future and not as part of the current regulation.

Provision has been made for these costs in the fee increases mentioned above. The current cost of providing for these in the future is the extra cost involved in drafting the regulation in an entirely new manner. This is estimated at \$100 000.

Issue 7—Fishery management controls

The additional costs of research, enforcement and management to give effect to the new controls already agreed by government has been met by the abovementioned increases in commercial and recreational fees. Any costs outside of this revenue will be subject of particular government and industry negotiation as they arise eg. creation of “recreational only” fishing areas.

The benefits lie in greater protection for the fishery from over-exploitation, and greater confidence in planning industry investment.

Issue 8—Noxious and nonindigenous fish controls

The benefits of these provisions lie in better protection of the resource from introduced species. There will be a need for increased education/information and dissemination costs and additional research, but these are provided for in the additional industry fees mentioned above.

Issues 9 and 10—Fish habitat areas/marine plants

The declaration of additional fish habitat areas will result in increased costs of approximately \$80 000 per year, while the benefit will be larger areas of fish habitat protected within reserves.

Greater use will be made of environmental impact assessments which will be privately funded, while bonds may be placed on particular developers to ensure that approved developments are undertaken according to permit conditions. These have not been quantified.

Extra costs will be incurred in inspections and administration of a permit system and, while partially borne by the proponent, will result in increased costs of approximately \$120 000 p.a. to government. This will be met by a reallocation of funds from areas of savings in licence administration mentioned above.

DISCUSSION

9.(1) The regulation, while being significantly redrafted in format, does not represent any significant change in the fundamental methods of fisheries management from the previous regulations which they will replace ie—the *Fishing Industry Organisation and Marketing Regulations 1991* and the *Fisheries Regulations 1977*. They do, however, provide for greater community and industry consultation, for more flexible ways of management for the future and for greater simplicity in presentation. As such they continue to represent the agreed approach to management as endorsed by Government and industry during the development of the *Fisheries Act 1994*.

(2) In broad terms, the extra costs of implementing the new regulation will be at least \$1.5M per year and possibly up to \$2.3M. Of this, industry will provide approximately \$1.7M while the remainder will be met by redeploying savings, changes in priorities and user group fees under the new legislation where provision has already been made.

(3) The benefits lie with a simplification of licensing regimes, less administration. more protection for the fisheries resources through improved and more flexible management methods, greater community involvement in management decisions and faster “turn-around” times for licensing and management implementation. By this, the value of the commercial fishing industry (of some \$300 million dollars p.a. for Queensland as a primary wholesale figure), recreational fishing activities and the related tourist activities and the importance of tradition and culture among indigenous people, will be protected and enhanced for both current and future generations.

(4) The benefits to commercial operators involving not only commercial fishers, but related small businesses, tour guides, charter fishing operations and gear and tackle suppliers will be enhanced where the resource can be protected and its sustainability ensured into the future. Community expenditure directed towards recreational and tourist activities based upon fishing experiences is at least as significant as that for the commercial sector. The submissions to the Government Inquiry into Recreational Fishing concentrated significantly on the need to maintain the resource in order to ensure the viability of small business operators, regional economic activity and regional communities dependent in part on fishing.

(5) Support for the basic structure of the regulation has been determined following the consultation which occurred during the development of the *Fisheries Act 1994*. Such consultation has been on-going during the development of the regulation.

(6) It has been estimated that the cost of management under the current framework for Queensland is of the order of \$15 million per year which includes direct management costs, research, enforcement and related environmental management impacting directly on the fishing industry. These costs are currently significantly borne directly by government with some contributions made principally from the commercial and recreational fishing sectors of the order of \$3.5 million dollars.

(7) These industry contributions have recently increased by \$1.5M following government decisions to increase the fees for private pleasure vessels and commercial fishers. These funds will be used to pay for the extra costs of implementation of elements of the new regulation. In addition to this, further increases in industry contributions have been foreshadowed by the government; while additional special funding has been sought from government for rationalisation of commercial fishing effort in particular areas. This demonstrates that in many situations a cost to one sector may result in a benefit to another sector, but the quantification of these will always be difficult and transfers between sectors are also difficult. These are matters for future government consideration.

CONCLUSION

10.(1) The main thrust of the regulation is one of simplification of licensing arrangements, greater flexibility in responding to management issues, enhanced tools of management and greater clarity in jurisdictional arrangements. If these changes result in a small increase in total costs across government and industry, they will not significantly increase total costs of management as a percentage of gross value. For example, the management costs are 2% of the value of the commercial sector, and perhaps half that figure for the recreational sector (if valued conservatively also at \$300M).

(2) Of course, if the alternative of “no regulation or self-regulation” was considered, the costs of management would fall by perhaps half from \$15M to \$7M leaving only costs of research, education, communication and some management processes. However, the risk to the future sustainability of the fishery would increase enormously and threaten the value of the commercial industry, in addition to the recreational and indigenous sectors.

(3) This would be an unacceptable risk for the government as custodians of the fishery for current and future generations. Such an approach has not received any support from government, industry or the community.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Primary Industries.