

Queensland



Explanatory Notes for SL 2000 No. 8

Fisheries Act 1994

FISHERIES AMENDMENT REGULATION (No. 1) 2000

GENERAL OUTLINE

Short Title

Fisheries Amendment Regulation (No. 1) 2000.

Authorising Law

The Regulation is made under sections 13, 43 and 48 of the *Fisheries Act 1994*.

Objectives and reasons for the regulation

The objective of the regulation is to—

- (a) reallocate finfish resources in Trinity Inlet and waterways joining it, upstream of a line between Stafford Point and the southern landward end of Marlin Jetty at the entrance to the inlet (“Trinity Inlet”) for the exclusive use of the recreational fishing sector;
- (b) preclude licensed commercial fishers and holders of commercial fishing boat licences, not having demonstrated significant dependence and commercial net fishing history in Trinity Bay and waterways joining it, other than Trinity Inlet, between a line from Stafford Point to the southern landward end of Marlin Jetty at the

entrance to Trinity Inlet and a line from False Cape to Taylor Point (“Trinity Bay and the Barron River”), from fishing in that area;

- (c) allow licensed commercial fishers, and holders of commercial fishing boat licences with demonstrated significant dependence and commercial net fishing history in Trinity Inlet, Trinity Bay and the Barron River (“the Trinity Bay region”), to continue to use some nets in some areas of the Trinity Bay and the Barron River until such a time that the holder of the commercial fishing boat licence transfers his/her licence or otherwise leaves the industry.

The reason for the regulation is to provide recreational fishers with greater access to the Trinity Bay region fisheries resource.

Ways in which the objectives are to be achieved in the regulation

The policy objectives will be achieved in the following way—

- (a) prohibition of the use of commercial fishing nets in the Trinity Bay region;
- (b) allowing licensed commercial fishers with demonstrated significant dependence and commercial net fishing history in the Trinity Bay region to continue to take fish under licences with the Fishery symbols N1, N2, N 6 or N7 in Trinity Bay and the Barron River until such time as the holder of the commercial fishing boat licence transfers his/her licence, or otherwise leaves the commercial fishing industry.

The policy objective is appropriate because the regulation will ensure fairer access to the Trinity Bay region fisheries resource and also provide for a certain sunset arrangement for existing fishers in the Trinity Bay region.

Consistency with the objectives of the authorising law

The Regulation is consistent with the authorising law in that it proposes to optimise community and other benefits obtainable from fisheries resources and ensures access to fisheries resources is fair. These are both objectives of the *Fisheries Act 1994*. Fair access occurs by allowing licensed fishers with demonstrated significant dependence on and

commercial net fishing history in the region to continue fishing until transfer of their commercial fishing boat licences/they leave the commercial fishing industry.

Alternatives to the regulation

There are three possible alternatives.

- (a) maintenance of current regulations;
- (b) self regulation; or
- (c) alternative regulation.

Maintenance of current regulations

It is not possible to reallocate access to finfish resources in the Trinity Bay region exclusively to the recreational fishing sector without prohibiting commercial net fishing or placing restrictions or limitations on commercial net fishing in the region. It is inevitable that the considerable conflict that exists in the Trinity Bay region between commercial fishers and most other users of fisheries resources in the region will be maintained if commercial net fishing is not restricted. This conflict has the potential to escalate further should commercial net fishers utilising the Trinity Bay region increase their fishing effort or fishers not currently utilising the Trinity Bay region decide to fish in the region. Current management arrangements in the fishery are not considered sufficient to maximise the community benefits which may be derived from fisheries resources in the Trinity Bay region. The reason for the Regulation is that it is recognised that the current arrangements are not adequate to stop further commercial fishing effort entering the region.

Self Regulation

The reallocation of access to finfish resources in the Trinity Bay region exclusively to the recreational fishing sector is highly unlikely to occur under self-regulation. There is no direct benefit to commercial fishers and subsequently no likelihood of commercial net fishers voluntarily not operating in particular areas using particular netting apparatus for the exclusive benefit of the recreational fishing sector.

In an overall sense, self regulation in any aspect of fisheries management that restricts access to fisheries resources is unlikely to succeed and has been rejected by all governments in Australia and overseas. User groups do, however, promote various self regulation management interventions from time to time. The prohibition of the use of commercial fishing nets in the Trinity Bay region is unlikely to fall into that category.

Alternative type of regulation

The alternative proposal for regulation to reallocate access to finfish resources in the Trinity Bay region exclusively to the recreational fishing sector is to prohibit the use of commercial fishing nets in the Trinity Bay region, without any consideration for the continued use of nets by licensed commercial fishers with demonstrated significant dependence and commercial net fishing history in the region. Such a proposed regulation would immediately satisfy the major objective of the proposed regulation but would not take into consideration immediate and long term impacts to the local industries and economies based on various commercial netting activities in the Trinity Bay region. The Regulation will provide a period of adjustment prior to the total exclusion of commercial net fishers and provide those affected fishers the opportunity to continue to operate in the region, excluding the waters of Trinity Inlet, until the time of their retirement from the industry.

Assessment of the benefits and costs of implementation

Few costs and benefits can be quantified in dollar terms. It is impossible for benefits to be accurately predicted without making numerous assumptions as to future events. The commercial net fishery in the Trinity Bay region presently has an annual catch of approximately twenty tonnes. This is harvested by about ten commercial net fishers, however this number varies from year to year. Costs and benefits for the different sectors are as follows—

Government

Costs of establishment include administration, consultation and the provision of funds for adjustment packages and licence/fishery symbol

purchases. These cannot be precisely quantified at this point, but the total cost to the Government is expected to be around \$500,000.

Benefits include enhanced ability to meet responsibilities set out in the *Fisheries Act 1994*, particularly the provision of social and economic benefits. Increased tourist numbers will benefit through better recreational fishing prospects. Conflicts between fishing sectors will be significantly reduced thus reducing the need for the Queensland Boating and Fisheries Patrol to intervene.

Commercial Fishing Industry

Commercial fishers displaced from Trinity Inlet will have reduced access to fishing grounds.

Trinity Inlet is one of the few protected waterways in the Cairns area. It offers commercial fishers some protection from prevailing weather conditions and their exclusion from it may restrict fishing during bad weather. Fishers may consequently be forced to upgrade to larger and more sea worthy vessels or to fish elsewhere.

Commercial fishers affected by the closure will be given appropriate adjustment assistance and access to a licence and fishery symbol buy-back scheme which will enable them to leave the net fishery or the fishing industry if they wish. A small number of commercial net fishers may be displaced, however it is expected that they would continue to operate from their present base.

Recreational Fishing Industry and Fishing Guides

There will be better fishing opportunities for recreational fishers in the Trinity Bay region due to reduced competition for available fish.

There will be increased income for commercial fishing guides and enhancement of the tourism experience for those using their services.

Community

The closure reflects the wishes of the Cairns community and local government.

There will be reduced conflict between user groups.

No appreciable costs to society are foreseen. Fish that were caught within the Trinity Bay region for sale to the community will continue to be available from those fishers remaining in the area and from fishers operating outside the area. No significant reduction in regional employment is expected, as commercial net fishers with commercial net fishing history in the area will continue to have access to the Trinity Bay region.

Significant benefits will accrue to society through reduced conflict over the resource and increased amenity value placed on the area through the reduction of commercial fishing activity. Community confidence in the ability of management agencies and resource users to manage Trinity Bay region fish stocks will be enhanced. The proposed management measures will provide immediate benefits to society through the immediate cessation of commercial fishing in Trinity Inlet, with continuing effect as commercial fisher numbers in the Trinity Bay region reduce to nil over time. Removal of commercial fishing effort will also benefit and enhance any associated traditional and cultural rights of indigenous people.

Consistency with fundamental legislative principles

The proposed regulation raises the fundamental legislative principle that the regulation is to be consistent with the principles of natural justice. The proposed subordinate legislation will deprive commercial fishers of their right to fish in Trinity Bay region other than those commercial fishers who have demonstrated significant fishing history in the region. These commercial fishers, identified in the Regulation, will continue to have limited fishing rights in Trinity Bay and the Barron River. However all adversely affected fishers have been afforded natural justice prior to the regulation being made.

Consultation

A State Government Inquiry into Recreational Fishing was held in 1992. Since the inquiry, more detailed discussions have been held with 10 commercial net fishers who were identified as having fished in the region in recent years. These discussions identified percentages of catch and effort that each commercial net fisher had demonstrated in the region. The

Queensland Commercial Fishermen's Organisation has also been consulted.

Consultation with the net fishing sector has occurred via correspondence notifying all holders of commercial fishing boat licences with net fishing symbols (approximately 1800) that commercial net fishing is to be prohibited in the region.

The correspondence invited any commercial fisher who has derived a substantial part of his or her income from net fishing in the region to make an application for permission to continue various net fishing activities and / or an ex gratia payment in respect of loss of income.

Any commercial fisher who has derived a substantial part of his or her income from net fishing in the Trinity Inlet region also had the option of applying to surrender their entire commercial fishing boat licence package for a fair market price.

Adversely affected fishers were further consulted on their potential eligibility under the Adjustment Assistance scheme.

A Regulatory Impact Statement (RIS) was prepared and public consultation carried out in accordance with the *Statutory Instruments Act 1992*.

The Queensland Fisheries Management Authority has been involved in the consultation process.

Results of consultation

The Queensland Fisheries Management Authority received three responses to the RIS. One fully supported the initiative, while another, from an affected commercial fisher, did not support the proposal because of the effect of displacing effort. A detailed response from SUNFISH did not support the initiative on the basis that—

- (a) the proposal did not guarantee an immediate cessation of commercial netting (fishers will have the option of continuing under sunset provisions);
- (b) the proposal only referred to netting, while line fishing and crabbing will still be allowed; and

- (c) SUNFISH believe there should be an immediate cessation of commercial fishing in the Barron River.

It is thought that the limited response is probably indicative of a general public acceptance of the proposal. This issue has been discussed for many years in the Cairns region and was a recommendation of the 1992 State Government Inquiry into Recreational Fishing.

As a result of the Consultation, no significant changes have been made to the policy objectives of the regulation.

NOTES ON PROVISIONS

Clause 1 states that the short title of the regulation is *Fisheries Amendment Regulation (No. ...) 2000*.

Clause 2 provides that the regulation amends the *Fisheries Regulation 1995*, [the “Regulation”].

Clause 3 provides that sections 130 and 242 of Schedule 2 of the Regulation, which currently define the waters that constitute “Trinity Bay” and “Trinity Inlet”, respectively, are omitted and replaced with a new definition of the term “Trinity Inlet” which defines the waters as the waters of Trinity Inlet and waterways joining it, upstream of a line between Stafford Point and the southern landward end of Marlin Jetty at the entrance to the inlet.

In addition, *Clause 3* provides for a new Part 6 to be included into Schedule 2 of the Regulation. The new Part will relate to the use of nets in Trinity Bay and waterways joining Trinity Bay. The provisions of the Part will prohibit the use of a net to take fish, possession of a net and fish taken in contravention of the Part in Trinity Bay and waterways joining it, other than Trinity Inlet, between a line from Stafford Point to the southern landward end of Marlin Jetty at the entrance to Trinity Inlet and a line from False Cape to Taylor Point.

Importantly, *Clause 3* will also provide a list of seven names, and accompanying commercial fisher licence numbers, of fishers who are to be exempted from application of Part 6. This will allow these fishers to continue limited fishing in Trinity Bay and the Barron River despite the general prohibition on the use of nets provided for by Part 6.

ENDNOTES

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