

Queensland



Regulatory Impact Statement for SL 2000 No. 8

Fisheries Act 1994

FISHERIES AMENDMENT REGULATION (No. 1) 2000

PROPOSED PROHIBITION ON USE OF COMMERCIAL FISHING NETS IN TRINITY INLET, THE BARRON RIVER AND TRINITY BAY

Title

Proposed amendments to the *Fisheries Regulation 1995* (the Regulation) in relation to the prohibition of the use of commercial fishing nets in Trinity Inlet, the Barron River and Trinity Bay.

Authorising law

The proposed legislation is to be made under the provisions of the *Fisheries Act 1994* (the Act), in particular section 43(3).

Policy objectives

The policy objectives that are intended to be achieved through the implementation of the proposed legislation are—

- (a) to reallocate finfish resources in the Trinity Inlet region for the exclusive use of the recreational fishing sector;
- (b) to preclude licensed commercial fishers and holders of commercial fishing boat licences, not having demonstrated

significant dependence and commercial net fishing history in the Trinity Inlet region, from gaining such dependence or fishing history;

- (c) to allow licensed commercial fishers, and holders of commercial fishing boat licences with demonstrated significant dependence and commercial net fishing history in the Trinity Inlet region, to continue to use some nets in some areas of the Trinity Inlet region until such a time that the holder of the commercial fishing boat licence transfers his/her licence. Commercial net fishers will have the opportunity to provide their official log books to establish their catch history in the region.

Legislative intent

The policy objectives mentioned above are to be achieved by the introduction of the proposed legislation in the following way—

- (a) to prohibit the use of commercial fishing nets in Trinity Inlet, the Barron River and Trinity Bay;
- (b) to allow licensed commercial fishers with demonstrated significant dependence and commercial net fishing history using baitnets¹ in Trinity Inlet and waterways flowing into it, west and south of a line between Stafford Point and the southern landward end of the Marlin Jetty at the entrance to the Inlet, to continue to use baitnets in the above mentioned waters until such a time that the holder of the commercial fishing boat licence transfers his/her licence;
- (c) to allow licensed commercial fishers with demonstrated significant dependence and commercial net fishing history using nets in all waters west of a line between False Cape and Taylor Point, but excluding those waters and waterways flowing into Trinity Inlet, west and south of a line between Stafford Point and the southern landward end of the Marlin Jetty at the entrance to

¹ Baitnets—those nets as described in schedule 13, part 1, section 7(3) being a mesh or seine net used in rivers and creeks, not longer than 200 m and has a mesh size of at least 25 mm but not more than 45mm.

the Inlet, to continue to use nets in the above mentioned waters until such a time that the holder of the commercial fishing boat licence transfers his/her licence.

Consistency with the authorising law

The proposed amendments to the Regulation relating to the prohibition of the use of commercial nets in Trinity Inlet, the Barron River and Trinity Bay are consistent with the authorising law in that they optimise community and other benefits obtainable from fisheries resources. The proposed amendments also ensure access to fisheries resources is fair. Fair access occurs by providing ex gratia payments to and certainty for licensed commercial fishers with demonstrated significant dependence on and commercial net fishing history in the region.

Consistency with other legislation

The proposed amendments to legislation are not inconsistent with the policy objectives of other legislation.

Alternatives

Possible alternatives for achieving the policy objectives are as follows—

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

These alternatives are discussed below.

Maintenance of current regulations

It will not be possible to reallocate access to finfish resources in the Trinity Inlet 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 Inlet 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 Inlet region increase their fishing effort or fishers not currently utilising the Trinity Inlet 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 Inlet region. The reason for the proposed legislation 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 Inlet 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 Inlet 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 Inlet region exclusively to the recreational fishing sector is to prohibit the use of commercial fishing nets in the Trinity Inlet 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 Inlet region. The proposed 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 until the time of their retirement from the industry.

National Competition Policy

The Competition Principles Agreement, a key part of the National Competition Policy (NCP), 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.

The following is an analysis of the potential NCP issues associated with this proposal—

Issues and objectives

The issue being addressed by this proposal is set out above in the title section. The policy objectives associated with the proposal are also set out above.

Current measures v proposed measures

The likely benefits and costs associated with the proposal are also set out below. This analysis details the anticipated impacts both positive and negative to government, industry and community, of the proposal preceding.

The current management measures within the fishery are not adequate to address the policy objectives. The prohibition on the use of commercial fishing nets in the Trinity Inlet region with allowance for the continued use of baitnets and other nets in some areas of the region by fishers with demonstrated significant dependence and commercial net fishing history in the Trinity Inlet region will adequately address the policy objectives.

The possible alternatives to achieving the policy objectives are no regulation, self regulation or an alternative regulation. Discussion of those alternatives is set out above. (See “Alternatives”).

Consultation

This proposal has been the subject of discussions between the Minister for Primary Industries, representatives of the Department of Primary Industries Fisheries Group and the Queensland Fisheries Management Authority, the Queensland Commercial Fishermen’s Organisation, SUNFISH and individual net fishers operating in the Trinity Inlet area. Considerable media coverage has been given to the proposed regulation in the Cairns area.

Consultation with the Queensland commercial fishing industry has occurred with letters notifying all holders of commercial fishing boat licences with net fishing symbols that commercial net fishing is to be prohibited in the Trinity Inlet region. The letters invited any commercial fisher who has derived a substantial part of his or her income from net fishing in the Trinity Inlet region to make an application for permission to continue various net fishing activities and / or an ex gratia payment. Any commercial fisher who has derived a substantial part of his or her income from net fishing in the Trinity Inlet region also has the option of surrendering their entire commercial fishing boat licence package for fair market price or surrendering their various netting symbols for fixed prices.

Restrictive impacts of proposed measures and resource management considerations

Currently, all boats licensed to operate in various commercial net fisheries on the Queensland East Coast are entitled to operate in any area within Queensland jurisdictional waters, including the Trinity Inlet region, subject to certain restrictions such as closures (spatial and temporal), gear and vessel sizes. This proposal will restrict the use of commercial nets in the entire Trinity Inlet region to holders of commercial fishing boat licences with demonstrated significant dependence and commercial net fishing history in the Trinity Inlet region. A restriction on access would apply to all Queensland commercial net fishers in terms of prohibiting the use of nets in Trinity Inlet and waterways flowing into it, west and south of a line between

Stafford Point and the southern landward end of the Marlin Jetty at the entrance to the Inlet, with allowance for the continued use of baitnets by holders of commercial fishing boat licences with demonstrated significant dependence and commercial net fishing history in the Trinity Inlet region.

From a competition viewpoint, all holders of commercial fishing boat licences with the appropriate symbols have, up until the present time, had the opportunity to use commercial fishing nets in the Trinity Inlet region. Consideration of those holders of commercial fishing boat licences with demonstrated significant dependence and commercial net fishing history in the Trinity Inlet region has been given by allowing such persons to continue to use some commercial nets in the region under existing arrangements until their licence is transferred.

Other jurisdictions

Management arrangements allocating the exclusive access of fisheries resources to a particular user sector are not unique to Queensland and are indeed used throughout Australia and overseas on a regular basis. As is proposed in this situation, it is common for such regulations to mitigate the effects of proposed management arrangements by providing *ex gratia* payments for fishers, funds to purchase commercial fishing licences where effort may otherwise be displaced into other areas and allow the continuation of some fishing in accordance with historical practices.

Sunset/Review of arrangements

Under the provisions of the *Statutory Instruments Act 1982*, the proposed new subordinate legislation will be subject to sunset arrangements which will mean that it automatically expires ten years after it is made.

Cost-benefit assessment

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 Inlet 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 ex gratia payments and licence / fishery symbol purchases. These cannot be precisely quantified at this point, since their magnitude will depend on decisions made by the individual fishers affected, but the total cost to the Government is expected to be under \$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 in the form of ex gratia payments 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. The number of commercial net fishers eligible for ex gratia payments is unknown until applications are received but is expected to be in the order of ten.

Recreational Fishing Industry and Fishing Guides

There will be better fishing opportunities for recreational fishers in the Inlet and surrounding areas 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.

There will be increased trade by bait and tackle outlets servicing the area.

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 Inlet 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. Bait supplied from the Inlet will still be available. No 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 Inlet 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 Inlet fish stocks will be enhanced.

The proposed management measures will provide immediate benefits to society with continuing effect as commercial fisher numbers reduce to nil over time. Removal of commercial fishing effort will also benefit and enhance any associated traditional and cultural rights of indigenous people.

Fundamental legislative principles

The proposed amendment to the Regulation is consistent with fundamental legislative principles.

The proposed legislation does not extinguish the right of Aborigines and Torres Strait Islanders to take, use or keep fisheries resources under Aboriginal tradition or Island custom.

ENDNOTES

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