



Queensland

Fisheries Legislation Amendment Regulation (No. 1) 2008

Explanatory Notes for SL 2008 No. 431

made under the

Fisheries Act 1994

General outline

1 Short title

Fisheries Legislation Amendment Regulation (No. 1) 2008

2 Authorising law

Section 223 of the *Fisheries Act 1994*.

3 Objectives of the legislation

The objective of this legislation is to provide for the use, conservation and enhancement of the community's fisheries resources in a way that seeks to promote ecologically sustainable development. Fisheries resources are finite, and technology enables them to be depleted faster than they can regenerate. As there is considerable economic incentive to exploit these resources government intervention is essential for them to be protected from destruction and to ensure they continue to provide benefits to the community and to those exploiting them. The objective is also to promote profitable and economically viable commercial fisheries. Some fishers, including some of those in the East Coast Trawl Fishery, are currently

struggling to maintain profits against increasing fuel prices and low demand for catch.

The *Fisheries Legislation Amendment Regulation (No. 1) 2008* (the **amendment regulation**) amends a number of fisheries management arrangements, which are in accordance with the objectives of the *Fisheries Act 1994*.

Specifically, the amendment regulation includes provisions for—

- better management of the scallop and prawn stocks in the Central Queensland region
- better defining compulsory Turtle Excluder Devices (TED) in the trawl fishery
- protecting the sustainability of Eastern King Prawn (EKP)
- ensuring the continued supply of broodstock to the aquaculture sector
- protecting the sustainability of Tropical Rock Lobster (TRL)
- reducing the impacts of crab apparatus on non-target species
- introducing new stocked impoundments in freshwater.

The specific interventions contained in the amendment regulation take into account the need for efficient and cost effective management methods, the best available scientific estimates of sustainable catch levels and the impacts of different fishing gear and practices. Those interventions have been determined following detailed consideration of each of the relevant fisheries and the biological, social and economic factors affecting it.

4 Consistency with authorising law

The amendment regulation covers important matters that are necessary for the sustainable and responsible management of Queensland's trawl, crab, line and harvest fisheries, in order to deliver an ecologically sustainable management framework that is consistent with the main purpose of the *Fisheries Act 1994*.

5 Consistency with other legislation

The amendment regulation is consistent with the policy objectives of other legislation.

6 Alternatives to the legislation

Four alternatives in regard to amending the regulation and management plans have been considered—

Option 1—No regulation

Experience worldwide has shown that where access to fisheries resources is unregulated, there is little incentive for individuals harvesting the resource to use fish stocks responsibly and this often leads to overfishing and depletion of community owned resources. The viability of both the recreational and commercial fishing industries, and industries which rely on them, would therefore be jeopardised.

The option of ‘no regulation’ was not endorsed through the consultation process and would not be an expected option acceptable to the industry, community or government.

Option 2—Retain the existing regulation

It is recognised that an alternative option is to retain the existing regulation thereby allowing the current status quo; however, this is not commensurate with the objectives of the Fisheries legislation. It could be argued that many of the issues identified have existed for a long time and therefore they should not be altered. The main objective of the Fisheries Act is 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 (ESD) and promote ESD. This includes taking a precautionary approach to avoid irreversible environmental damage, even in the face of uncertainty.

The option of retaining the existing regulation is, therefore, considered inconsistent with the objectives of the Act and will eventually lead to imposing an appreciable cost to the community in terms of resource conflict and/or resource depletion.

There is also an expectation from stakeholders that fisheries management respond to emerging issues in a timely fashion to minimise the risks to target and non-target species.

Option 3—Codes of practice

Another alternative proposed for some of the options was to develop a Code of Practice. Some industry members commenced drafting a Code of Practice for consideration, however, did not complete it due to the difficulty in gaining agreement from all fishers who were likely to fish in the areas, both in Queensland and interstate. In addition, it was recognised that voluntary Codes of Practice are not enforceable and it would be difficult to maintain compliance. Therefore, this option was not considered achievable.

Option 4—Amend the current regulation

This alternative proposes that the current legislation be amended to incorporate suggested changes for the various issues that have been identified. The amendments will make changes to administrative and operational processes for fishers. This option will ensure that the objectives of the Fisheries Act are maintained, which will reduce potential overexploitation and continuity of sustainability for the fishery sectors in Queensland and nationally.

This is the preferred option.

7 Estimated costs for government implementation

The proposed legislation will impose minor costs on government to implement. The majority of these costs are associated with the promotion of new rules to stakeholders and administration of the tropical rock lobster quota. All costs will be accommodated within existing budgets.

8 Consistency with fundamental legislative principles

The regulatory amendments have sufficient regard to the rights and liberties of individuals and the institution of Parliament, and are consistent with the fundamental legislative principles provided for under the *Legislative Standards Act 1992*.

9 Consultation

Community

The Department of Primary Industries and Fisheries (DPI&F) has engaged stakeholders, through various forums, on the proposed amendments. Many of the issues were originally raised through port meetings held for the Licensing and Fees review and the review of the East Coast Inshore Fin Fish Fishery.

Formal consultation has also been undertaken through the release of the Combined Fisheries Management Regulatory Impact Statement and draft Public Benefit Test in July 2008.

To gather feedback on the proposed changes, DPI&F held 7 public meetings at key ports along the east coast, with over 160 stakeholders attending. In addition, 230 written responses were received to the RIS.

Following the close of the formal comment period, DPI&F undertook targeted consultation with a number of its Management Advisory Committees (MACs), including the trawl, reef, crab and freshwater MACs.

Consultation has also been undertaken with key stakeholder bodies such as the Queensland Seafood Industry Association and Queensland Sunfish.

Government

Government agencies have been consulted during development of the proposals, including the Australian Government Department of the Environment, Water, Heritage and the Arts, the Environmental Protection Agency, Queensland Treasury and the Department of the Premier and Cabinet.

10 Results of consultation

Community

A small number of changes were made to the proposals following the public consultation process where additional issues were identified or where an issue had not been fully resolved.

Government

There is support from all elements of the Queensland Government for the amendment regulation. The new fishery management arrangements have been discussed with the Commonwealth Government to ensure they meet strict sustainability guidelines under the *Environment Protection and Biodiversity Conservation Act 1999*.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 provides that the short title of the regulation is the *Fisheries Legislation Amendment Regulation (No. 1) 2008*.

Commencement

Clause 2 provides for the commencement of specific provisions. The provision which provides an exception to the prohibition to allow the use of trawl nets to take scallops in the Swain Reefs and Hydrographers Passage under a T1 fishery symbol during the regulated period, will commence on 2 January 2009. The requirements for recognised TEDs will commence at midday on 16 December 2009. The provision which amends the minimum mesh sizes for trawl nets that may be used in the eastern king prawn fishery will commence on 1 November 2010. The provision which provides for three new stocked impoundments in the stocked impoundment scheme commences on 2 April 2009. The provisions which omit inverted dillies as crab apparatus that recreational and commercial fishers can use, will commence on 2 April 2010. The staggered commencement dates for these provisions will generally provide industry time to adjust their fishing operations to take account of equipment modifications.

fishery symbol in the Southern Trawl Fishery Area regulated waters for more than 24 days during May, June and July. However, a boat with a T1 or a T2 fishery symbol written on its licence can be used under another fishery symbol in these waters during this period, if that fishery symbol is also written on the licence. The provision further prescribes the relevant period to be from 1 January to 31 March.

Amendment of s 150 (Maximum net length)

Clause 7 amends section 150(3) to also restrict the length of trawl nets that may be used in the Etty Bay fishing area waters to 39m. This provision is designed to ensure that fishing pressure on black tiger prawn stocks (an important species used as aquaculture broodstock and prevalent in the Etty Bay area) is minimised.

Amendment of s 151 (Minimum and maximum net mesh size)

Clause 8 amends section 151(3) to prescribe that until 31 October 2010, the minimum and maximum mesh size for nets that may be used in waters north of Cape Gloucester, is between 45mm and 60mm. The maximum and minimum mesh size for nets that may be used in waters south of Cape Gloucester is between 38mm and 60mm.

Clause 8 also inserts a new section 151(4) to prescribe that from 1 November 2010, the minimum and maximum mesh sizes for nets that may be used in all other waters of the Trawl fishery other than those prescribed in subsections (1) or (2), is between 43mm and 60mm.

This amendment is designed to enable a greater percentage of small prawns to escape and thereby reduce fishing pressure, principally on eastern king prawn stocks.

Replacement of s 164 (Minimum and maximum net mesh size)

Clause 9 omits section 164 and inserts a new provision which prescribes the minimum and maximum mesh size for nets that may be used for the primary purpose of taking permitted fish, other than scallops, is between 38mm and 60mm until 31 October 2010, and between 43m and 60mm from 1 November 2010. A net used for the primary purpose of taking scallops must have a mesh size of at least 75mm.

Insertion of new s 58AA

Clause 15 inserts a new section to provide for the creation of regulated taking and regulated possession periods of saucer scallops for the Swain Reefs and Hydrographers Passage regulated waters. The regulated period during which the taking of saucer scallops in these regulated waters is prohibited, is from midday on 1 November to midday on 3 January. The regulated period for possession of saucer scallops in these regulated waters is from 6p.m. on 1 November to midday on 3 January. The regulated possession period commences 6 hours after the commencement of the regulated taking period to enable fishers who have taken saucer scallops sufficient time to steam to port to unload their product prior to the regulated possession period taking effect.

Amendment of s 185A (Crab apparatus)

Clause 16 amends this provision by omitting inverted dillies as a type of crab apparatus which a recreational fisher may possess in Queensland waters. This omission is designed to limit the interaction with and incidental entanglement of protected marine animals, such as turtles, which are prone to occur with this type of apparatus.

Amendment of s 188 (Using crab apparatus)

Clause 17 amends this provision to omit inverted dillies as a type of crab apparatus which a recreational fisher may use in Queensland waters.

Amendment of s 596 (Permitted ways of taking crabs)

Clause 18 amends this provision to omit inverted dillies as a type of crab apparatus which a commercial fisher may use under a licence on which is written a 'C1' fishery symbol for the commercial crab fishery.

Insertion of new s 605A

Clause 19 inserts a new provision which provides that an annual quota of 195000 units of product may be taken by commercial fishers under a licence on which is written an 'R' fishery symbol for the commercial crayfish and rock lobster fishery. The provision also provides that one unit equates to one kilogram of fish.

Amendment of s 630 (Carrying fish taken for trade or commerce)

Clause 20 inserts a new paragraph in section 630 to provide that a person is not required to hold a carrier licence or other authority mentioned under section 630(1) to use a boat (or allow a boat to be used) to carry tropical spiny rock lobster, on a commercial fishing boat identified in a licence with an 'R' fishery symbol.

Amendment of sch 1 (Regulated waters)

Clause 21 amends schedule 1 to insert the description of Swain Reefs and Hydrographers Passage in the correct geographical order within the schedule after the entry for Shoalwater Bay (dugong protection area).

Amendment of sch 9 (Other fees)

Clause 22 amends the entry in the fee schedule for the 'R' fishery symbol to prescribe the fee per unit for the financial years 2008–2009, 2009–2010 and 2010–2011 and any later financial year.

Amendment of sch 11 (Dictionary)

Clause 23 amends the dictionary to omit the definition of 'inverted dilly', and also omit 'inverted dilly' from the definition of 'recreational fishing apparatus'.

ENDNOTES

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