

Impact Analysis Statement template

A Summary Impact Analysis Statement (IAS) must be completed for all regulatory proposals. A Full IAS must also be completed and attached for proposals that have significant impacts. Once completed, the IAS must be published.

Summary IAS

Details

Lead department	Department of Agriculture and Fisheries
Name of the proposal	Amendment of <i>Fisheries Act 1994</i>
Submission type (Summary IAS / Consultation IAS / Decision IAS)	Summary IAS
Title of related legislative or regulatory instrument	<i>Fisheries Act 1994</i>
Date	October 2023

For proposals noted in table below

Proposal type	Details
Minor and machinery in nature	<p>The following proposals are machinery in nature, they make minor and administrative changes to the <i>Fisheries Act 1994</i> (the Act), and do not result in a substantive change to regulatory policy or impose new impacts on business, government, or the community. The Department of Agriculture and Fisheries (the department) proposes to amend the Act:</p> <ul style="list-style-type: none"> to specify references to thing or seized thing includes references to a boat or vehicle and provide a consolidated seizure power applying to the seizure of items considered evidence of an offence, or items used in the commission of an offence against the Act. The amendment is not intended to modify the operation of the provisions. to specify that the Act does not limit a police officer's powers as authorised under the <i>Police Powers and Responsibilities Act 2000</i>. to clarify definitions of 'fisheries offence' and 'offence against this Act' to include reference to the <i>Biosecurity Act 2014</i> so far as it relates to fisheries resources or fish habitat. to provide additional specificity in the definition of waterway barrier works, aligning it more closely with the department's published interpretation of the term. to clarify definitions of fish and repeal provisions stating protected animals under the <i>Nature Conservation Act 1992</i> are not fish. to remove the inference that bonds are required to be paid in cash to the department. No bond currently with the department has been



	<p>paid in cash, and the department does not anticipate any material impacts from the amendment.</p> <ul style="list-style-type: none"> • and the <i>Fisheries (General) Regulation 2019</i> to replace the term 'Aborigines' and 'Torres Strait Islanders' with 'Aboriginal peoples' and 'Torres Strait Islander peoples' and use more respectful and culturally appropriate language. • to remove references to and the definition of 'dead marine wood'. • to remove references to and the definition of 'fish movement exemption notices'.
<p>Regulatory proposals where no RIA is required</p>	<p>The following proposals relate to public sector management. No regulatory impact analysis is required under the Better Regulation Policy. The Department of Agriculture and Fisheries (the department) proposes to amend the Act:</p> <ul style="list-style-type: none"> • to remove the requirement to complete a seizure receipt where fish taken unlawfully are directly returned to the wild or otherwise disposed of due to their condition. The department advises that persons from whom items are seized can freely request a copy of the inspector's recording of the seizure and disposal of the fish if they require further detail of the interaction. • to remove the right to appeal the seizure of unlawfully taken fish disposed of due to their condition as the Court is not able to order their return or compensation for their seizure. • to state it is not necessary to prove the appointment of delegate positions for information requirement offences. The department advises the amendment will reduce the burden of prosecutions on former delegates, the department and courts, while not imposing any new burdens on defendants. • to institute 'aquaculture authorities', conditioning aquaculture development's operations and management, separate to land use planning approvals. Changes to conditions will not require a change in the associated development approval, reducing burdens on both the department and industry, while other burdens will remain unchanged. • to specify that exclusion zones only apply to shark control apparatus which pose a risk to public safety, such as nets, lines, buoys, floats and sinkers. • to broaden the definition of 'obstruct' to include 'abuse' and 'intimidate'. The proposed definition will be consistent with the way obstruction is defined in similar legislation such as <i>the Transport Security (Counter-Terrorism) Act 2008</i>. • to provide that authorities will automatically be suspended when fees are not paid by the due date, if non-payment is not due to a dishonoured noncash payment. For a commercial fisher and charter fishing licences, the authority will be cancelled if the fee is not paid within 30 days after the relevant due date. For all other authorities, the suspension will continue until the fee is paid. • to specify the basis for the chief executive to refuse an authority holder's amendment application and require that applicants must be given an information notice for the refusal. The issue of the information notice will enliven the existing provisions for review of a decision under the Act. This amendment confers a benefit on fishers and reduces regulatory burden. Any costs borne by the fishers are

	voluntary (e.g. QCAT application fee). For this reason, there are no compliance costs.
Cabinet exemptions	<p>The department proposes to amend the Act to include conditions relating to independent onboard monitoring on high-risk vessels. This includes the use of onboard-cameras and observers.</p> <p>The independent onboard monitoring proposal was exempted from further impact analysis due to an exemption obtained from the Premier. The department has committed to completing a Post Implementation IAS.</p>

*Refer to *The Queensland Government Better Regulation Policy* for regulatory proposals not requiring regulatory impact analysis (for example, public sector management, changes to existing criminal laws, taxation).

For all other proposals

<p>What is the nature, size and scope of the problem? What are the objectives of government action?</p>
<p>Repeated non-compliance with a threatened species</p> <p>Currently, the chief executive has power to refuse the issue or renewal of an authority and suspend or cancel an existing authority if satisfied that such action is ‘necessary or desirable for the best management, use, development or protection of fisheries resources or fish habitats’.</p> <p>Protected species are already protected from fishing interactions to a degree under existing environmental legislation such as the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cwth) and the <i>Nature Conservation Act 1992</i>. Additionally, species that are not listed as protected species may be declared no-take under the Act and there are other provisions relevant for protected species such as the ability for the chief executive to make urgent declarations.</p> <p>Further, the Act enables the chief executive to refuse the issue or renewal of an authority and suspend or cancel an existing authority if satisfied that such action is “necessary or desirable for the best management, use, development or protection of fisheries resources or fish habitats”.</p> <p>However, the current fisheries legislation does not support an individual management approach and there is limited scope to partially restrict a licence holder’s fishing activities (e.g., reducing the total length of commercial nets used in an individual’s fishing operation rather than outright suspending their licence) or require them to develop a mitigation plan in response to repeated interactions with protected species.</p> <p>In line with the objectives of the Act, the <i>Sustainable Fisheries Strategy 2017-2027</i> and the <i>Protected Species Management Strategy for the East Coast Inshore Fishery</i>, issuing a direction to a person who has demonstrated a pattern of repeated non-compliance regarding interactions with protected species will allow Fisheries Queensland to better manage fisheries resources and comply with relevant state and Federal environmental legislation. Analysis of self-reported interactions with protected species by fishers indicates an average of 44 interactions per annum between 2018 and 2022.</p> <p>Licence holders that may have a history of non-compliance with fisheries legislation, or repeated interactions with protected species in Queensland waters, can reflect poorly on the industry as a whole. Without individual management intervention, these licence holders can jeopardise:</p> <ul style="list-style-type: none"> the survival of threatened, endangered and protected species,

- a fishery's overall social licence to operate,
- opportunities for self-regulation,
- flexibility in existing management arrangements; and
- the ability to meet environmental legislation and accreditation, including wildlife trade operation accreditation.

What options were considered?

The proposed amendments would also enable the chief executive to issue a written notice of a condition of authority to require licence holders found to have repeated interactions with protected species or repeated fisheries offences to develop an individual mitigation plan or complete further remedial actions, including preventing them from fishing until remedial action is taken. Failure to comply with directions will incur a maximum penalty of 1,000 penalty units.

An individual mitigation plan is a plan that details actions to minimise interactions with protected species, for example:

- fishing practices (e.g. setting of gear relative to tide)
- gear setup (e.g. any changes or modifications to gear from previous seasons); and
- mitigation devices (e.g. any mitigation or modifications).

The mitigation plan will focus on standard measures to minimise interactions such as fishing practices, gear setup and mitigation devices.

All reasonable options are included in this amendment, as the mitigation plan should be flexible. It is not practical to follow a set of rigid principles for each case. Fishing operations are impacted by different environmental factors. Movements and behaviour of protected species may also evolve. Therefore, triggers for issuing a direction notice and its conditions need to be open-ended to adjust to the dynamic natural environment. For example, with advancements in technology the mitigation devices may improve as a result there may not be a need to change the gear set up.

This approach would more closely align with the Federal approach to fisheries management. The Australian Fisheries Management Authority is authorised (under the *Fisheries Management Act 1992* (Cwth)) to, by way of a written notice, vary or revoke a condition of a fishing permit or to specify a condition or further condition to which the permit is subject. These powers are exercised through management frameworks such as the *Gillnet Dolphin Mitigation Strategy*, which sets out requirements for individual fishing operators including developing mitigation plans, additional reporting requirements and remedial actions in response to interactions with dolphins.

What are the impacts?

The intention of this reform is to reduce offending through involving the authority holder. This will then mitigate interactions with threatened, endangered and protected species to ensure their survival, as well as maintain export approvals for various fisheries under international trade agreements.

The ability to direct a person who has demonstrated a pattern of repeated non-compliance regarding protected species interactions, enables the use of an individual responsibility management approach and incentivises licence holders and operators to be responsible, innovate and adopt best practices. Under an individual responsibility approach, licence holders are responsible for the operation of their licences, meeting defined performance criteria and taking actions to minimise non-compliance and protected species interactions. This approach is preferred over a broad scale management approach (e.g., fishery closures), which is not able to discriminate between compliant and non-compliant licence holders and



provides little incentive for individuals to develop their own strategies to minimise harmful interactions with protected species and to improve compliance with fishing rules.

Mitigation plans are developed by the licence holder, providing them the opportunity to minimise costs of actions to reach compliance. Further, safeguards in place to protect people affected by decisions made under the Fisheries Act include: the ability to seek a review of decision under Part 10 which provides that people affected by a decision may appeal it: first, through internal review, and then through external review via QCAT. A written notice of a condition of authority will therefore be equivalent to an information notice under the Fisheries Act in terms of review rights; an end date for the condition imposed and review of the conditions within this period; and the ability to apply for a review whenever the licence is transferred (both temporarily and permanently). This will ensure that:

- a licence holder’s access is not permanently restricted
- there is ample opportunity to reverse or relax the conditions if the original decision was unjust or the licence holder has demonstrated an acceptable level of remediation/rehabilitation; and
- the rights of licence transferees and the original owners are not unduly limited due to the actions of a previous licence holder.

As the amendment proposed is for people who persistently non-comply, this is not an added burden to those fishers who are compliant.

In terms of potential marginal increase in compliance action required under this provision, analysis of self-reported interactions with threatened, endangered and protected species by licence holders indicates on average 44 fishers having more than one interaction per annum over the last five years (2018 to 2022) with a minimum of 34 and maximum of 57. The 10 year average (2013 to 2022) is 36 fishers having more than one interaction per year with a minimum of 15 fishers and maximum of 57. As these interactions are self-reported, the increased interactions in recent years can also be attributed to increasing awareness of reporting obligations by fishers.

There will be an additional burden on Fisheries Queensland to train officers and enforce this new rule.

Who was consulted?

- Department of Agriculture and Fisheries
- Department of Justice and Attorney-General (DJAG)
- East Coast Inshore Fin Fish Working Group and Sustainable Fisheries Expert Panel. Feedback has been sought through these consultative and advisory bodies as well as with fishers and the community on the harvest strategy for the fishery and a draft east coast inshore fishery protected species management strategy.

What is the recommended option and why?

The department proposes to amend the Act so the chief executive may issue a time-limited direction to a primary commercial fishing licence holder for repeated interactions with protected species. Directions could include, but are not limited to, a requirement to develop a mitigation plan, restricting effort or gear, reporting requirements, or a temporary suspension from particular fishing activities.



Impact assessment

Repeated Non-Compliance with a threatened species:

	First full year	First 10 years**
Direct costs – Compliance costs*	<p>Fishers that are compliant with legislation will not bear any cost as the provision only relates to non-compliance.</p> <p>Impacted fishers will need to invest time and funds to develop a mitigation plan as well as new or modifications to gear and equipment if required.</p>	
Direct costs – Government costs	<p>Current interactions rates are self-reported by fishers and requires validation for accuracy. Once the proposed independent onboard monitoring amendment is implemented, the department will have access to data to ascertain this. Until data is available, the department estimates a unit cost of around \$2,000 for each mitigation plan required (e.g. production of direction to require mitigation plan, enforcement, evaluation of mitigation plan and review of conditions). The total costs are expected to decrease over time as mitigation actions take effect and fishers become more efficient in mitigating interactions.</p>	

Signed

Director-General

Date: 26 October 2023

Minister

Date: 26 October 2023