

Sustainable Fisheries Strategy

2017–2027

Discussion paper: Proposed amendments to modernise the *Fisheries Act 1994*

Why amend the *Fisheries Act 1994*?

In June 2017, the Queensland Government released the *Queensland Sustainable Fisheries Strategy 2017–2027* (the strategy) paving the way for a world-class fisheries management system for Queensland. To deliver upon the commitments made under the strategy, changes to Queensland's fisheries legislation will be required.

To give effect to the Sustainable Fisheries Strategy, it is proposed to amend the *Fisheries Act 1994* (the Fisheries Act) to:

1. Modernise the objectives and recognise the interests of key stakeholder groups.
2. Clarify the roles of the Minister responsible for fisheries and the chief executive in the management of the State's fisheries and to allow for more responsive decision making through the use of harvest strategies.
3. Strengthen the enforcement powers of fisheries inspectors and penalties under the Fisheries Act to address serious fisheries offences such as black marketing.
4. Make a number of administrative amendments to the Fisheries Act to reduce complexity and remove redundant provisions.

It should be noted that the proposed changes will not impact upon the majority of recreational, commercial, charter or indigenous fishers. Persons convicted of repeated offences under the Fisheries Act or black marketing will face stiffer penalties, however, this is unlikely to affect the majority of people fishing in Queensland.

This discussion paper is intended to provide an opportunity to comment on the proposed changes to the Fisheries Act. Consequential amendments will be required to the Fisheries Regulation 2008 (the Fisheries Regulation) (e.g. to its structure and to incorporate the trawl management plan). A more detailed review of the Fisheries Regulation will commence later in 2018. This will include management changes to major fisheries to deliver the reforms outlined in the strategy and recommended by working groups. There will be a further opportunity to comment on these changes in 2018 and 2019.

Modernising the objectives of the Fisheries Act

The Fisheries Act was drafted in the early 1990s and its objectives reflect the approach used to manage Queensland's fisheries at that time. While many of these objectives remain relevant today, changes are needed to reflect the commitments outlined in the strategy and move to more modern fisheries management principles.

Proposed amendments

1. **Modernise the objectives of the Fisheries Act** and ensure they will support implementation of the strategy by:
 - **Recognising the interests of the commercial, charter, recreational and indigenous fishing sectors** who access Queensland's fisheries resources.
 - Committing to managing Queensland's fisheries resources in a manner that balances the principles of Ecological Sustainable Development while maximising the potential **economic, social and cultural benefits** these resources can provide the Queensland community.
 - Committing to employing a **modern, responsive and consultative approach** to fisheries management that ensures fishing is a low risk to Queensland's aquatic resources.

Clarify the roles of the Minister responsible for fisheries and the chief executive and allow for more responsive decision making

The Fisheries Act was originally written to support the operations of the former Queensland Fisheries Management Authority (QFMA), which was the statutory body then responsible for the management of the state's fisheries resources. Following the dissolution of the QFMA, the Fisheries Act was amended to pass the powers and functions of the QFMA Board to the chief executive of the Department of Agriculture and Fisheries (the chief executive). However, this process did not clearly define the role or responsibilities of the Minister responsible for fisheries in the ongoing management of the state's fisheries.

The strategy has established that the future role of the Minister responsible for fisheries will be to set the strategic direction for fisheries management on behalf of the community. The chief executive will be responsible for the day-to-day fisheries management decisions in line with strategic direction provided by the Minister. Establishing and clarifying these roles, responsibilities and powers will require amendments to the Fisheries Act.

Proposed amendments

2. It is proposed that the **Minister will have responsibility for endorsing harvest strategies prepared by the chief executive**. Harvest strategies will specify pre-determined management actions for a defined species necessary to achieve the agreed ecological, economic and/or social objectives. They will be developed in consultation with the fishery working groups and fishery stakeholders before being presented to the Minister for endorsement. Once endorsed by the Minister, the chief executive will be responsible for the day-to-day management of Queensland's fisheries in line with the performance of the fishery against the harvest strategies reference points (e.g. increasing or decreasing quota and bag limits based on the status of the fish stock).

3. **Remove provisions about powers and functions which are redundant or confusing.** When the Fisheries Act was amended to dissolve the QFMA in 2000, the chief executive inherited the powers of the QFMA. However, the chief executive already has most of the powers and functions outlined in the Fisheries Act. As such the unnecessary provisions in the Fisheries Act will be removed to reduce confusion around roles of the Minister and chief executive in managing Queensland's fisheries.
4. **Restructure the Fisheries Act to remove references to fisheries management plans.** This will also clarify that the Regulation and declarations will be the statutory instruments used to implement management actions and govern Queensland's fisheries into the future. These arrangements are already partly in place for the setting of coral trout quota and are working well. The trawl management plan will be rolled back into the Regulation.
5. **Restructure the Fisheries Act to manage fisheries using harvest strategies.** Harvest strategies will set out the pre-determined actions to be taken depending on the performance of the stock and will give stakeholders more certainty and predictability about fisheries management decisions. To reflect the Strategy's commitment to adopt harvest strategies to managing the State's fisheries, it is proposed to: define harvest strategies in the Fisheries Act, outline the Minister's role in endorsing harvest strategies and clarify the chief executive's role in managing fisheries under a harvest strategy.
6. **Clarify declarations made by the chief executive and provide the chief executive the ability to implement a temporary fisheries closure.** Fisheries management arrangements are currently made through legislative instruments called 'declarations'. These declarations can be made either in the Regulation or as a standalone instrument, such as a quota declaration. To reduce confusion between these mechanisms, it is proposed that all declarations be made through a standalone instrument. This will also ensure a consistent approach is applied to all declarations.

It is also proposed that the chief executive be given the power to implement a temporary fisheries closure through a declaration. This will allow a temporary fishing closure to be put in place for particular circumstances in a fishery. For example it could be used to reduce the potential for interactions with protected species by temporarily closing an area to fishing or prevent people from fishing in areas where an incident, such as a chemical spill, has occurred and there is a risk to the fishing activity and/or public safety from fisheries resources.
7. **Provide the chief executive the power to make an urgent fisheries order that temporarily overrides a restriction.** This power will allow the chief executive to amend a restriction in a fishery or on a type of fishing where there is an urgent need. For example it could be used to provide relief to commercial fishers who are unable to fish due an unforeseen event, like a flood, and it is ecologically sustainable for them to temporarily fish in another area or another way. There will be limits to the length of time this order could be in place to reflect the temporary nature it is intended to be for.
8. **Clarify terminology, like quota, within the legislation to better align with the new management approaches.** The strategy identifies quota as the preferred approach to management Queensland's fisheries. To aid the implementation of such management systems amendments are required to clarify the nature of quota as an authority issued under the Fisheries Act.

Strengthen the enforcement powers of fisheries inspectors and penalties under the Fisheries Act to address serious offences such as black-marketing.

In Queensland, licensed commercial fishers are the only people who can legally sell the product they catch. Selling fish without an authority is called 'black marketing'.

There is some evidence that illegal fishing operations are becoming more sophisticated and organised, particularly in high-value low volume fisheries such as mud crab, shark fin, coral trout, Spanish mackerel and tropical rock lobster. Unlike the more opportunistic activities, these organised activities have the potential to involve collusion between recreational fishers, commercial fishers and/or the seafood buyer.

Black marketing has the potential to:

- undermine the viability of commercial fishing and deter job-creating investment in commercial fishing
- impact on the competitiveness of legitimate seafood processors and buyers
- affect Queensland's reputation as a producer of high quality seafood
- lead to unsustainable fishing practices detrimental to commercial and recreational fishers and the resource.

Feedback received through a number of reviews of Queensland's fisheries, including public consultation processes, have consistently identified concerns over the impact of black marketing on fisheries resources and the fishing industry.

Proposed amendments

To address black marketing of seafood in Queensland it is proposed to amend the Fisheries Act to:

9. Create an **indictable offence for 'trafficking' in 'priority fisheries resources'**. It is proposed that similar legislative provisions to South Australia, Tasmania, Victoria, Northern Territory and New South Wales be adopted in Queensland with persons convicted of trafficking priority fisheries resources, such as: mud crab, shark fin, coral trout, Spanish mackerel and tropical rock lobster potentially facing a penalty of up to 3000 penalty units (currently \$378,450) and up to three (3) years imprisonment.
10. Provide the ability to **charge for general deficiencies in information requirements** provided to the chief executive e.g. where it has been proven a fisher sold more/less fish over a period of time than reported in logbooks. This provision will capture large discrepancies in catch that cannot be lawfully justified.
11. **Increased penalties for failing to comply with vessel tracking requirements** to support the roll out of vessel tracking across all commercial and charter fishing boats by 2020. It is proposed that a new higher-level offence apply to those who fail to comply with vessel tracking requirements in the future. Under current legislative arrangements, the maximum penalty for such an offence is 100 penalty units (currently \$12,615) however it is proposed that this be increased to a maximum of 1000 penalty units (currently \$126,150) in recognition of the importance of this system to the future management of Queensland fisheries. Magistrates will still determine the penalty for such offences within the maximum available.
12. **Establish an exclusion zone around shark control program equipment.** The equipment used in Queensland's shark control program, helps to ensure that swimmers remain safe whilst

swimming at our popular beaches. To ensure ongoing swimmer safety, it is proposed that an exclusion zone of 20 metres be established around shark control program equipment. The exclusion zone will minimise interference with equipment from people getting too close and putting themselves and others at risk of injury from equipment, shark attack, injury by other trapped animals or drowning. Unlawful and intentional interference with equipment may render it ineffective placing public safety at risk.

13. **Provide Magistrates alternatives to fines to deter repeat offenders.** A range of tools are used to maximise voluntary compliance with fisheries legislation and to create effective deterrents against the committing of offences. However, a small minority of offenders repeatedly show disregard for fisheries laws despite being prosecuted and fined by the courts. It is proposed that a magistrate may make an order that is reasonably necessary to prevent a person committing further offences against the Fisheries Act. In addition to these orders, the court may also order the payment of reasonable costs of an investigation incurred by the chief executive. This would only apply if a person is convicted of an offence and be reserved for out of the ordinary expenses e.g. DNA testing.

In addition to these sentencing options, it is proposed to clarify that the chief executive may:

- cancel an authority where the authority holder has been convicted of a number of serious offences under the Fisheries Act over a period of time
- suspend an authority where the holder has been convicted of obstructing an inspector.

To ensure that fisheries inspectors have the powers needed to combat illegal fishing and black marketing of seafood in Queensland, changes to the Fisheries Act are required to **enhance the powers of inspectors to effectively investigate black marketing**. The changes proposed include:

14. **Providing inspectors additional powers of entry to places and vehicles.** It is proposed that inspectors will be provided extended powers of entry. These changes will provide fisheries inspector's access to commercial businesses handling seafood products without a warrant. These powers are necessary to allow inspectors to identify the illegal trade of fisheries products. Inspectors will still be required to obtain a warrant in order to access residential premises (including tents) or any parts of a commercial premises used for residential purposes.

Inspectors will also be given extended powers in relation to vehicles to allow inspections where there is evidence the vehicle is carrying fish or fishing apparatus.

15. **Provide for extra-territorial jurisdiction to allow inspectors to investigate fisheries offences in other states (subject to agreement with that state).** The investigation of some fisheries offences may require an inspector to undertake an investigation in another state. There is currently no power for fisheries inspectors to undertake such investigation. It is therefore proposed that the Fisheries Act be amended to provide for extra-territorial jurisdiction. This will allow inspectors to investigate fisheries offences in another state subject to an agreement being reached with the jurisdiction in which the investigation is to occur.

16. **Information sharing between Queensland Government agencies.** Currently there is no provision to allow the chief executive or fisheries inspectors to obtain information from another Government entity where the information is required to assess the suitability of a person to hold an authority or to assess the risk to safety of inspectors. It is proposed that this capacity be established in the Fisheries Act.

17. **Allow an inspector to require a person to recover or bring onto a boat or land, fishing apparatus in the course of an investigation.** In order to ensure compliance with the Fisheries Act the inspection of fishing gear may be required. Although there is a power for an inspector to request a person to give reasonable help, a specific power to request retrieval of the fishing apparatus is needed where an inspector suspects it is being used unlawfully.
18. **Allow inspectors to perform certain duties without having to overtly identify themselves as an inspector and provide an appropriate level of protection from criminal liability.** The Fisheries Act currently requires inspectors to produce or have visible their identification before exercising a power. This can interfere with inspectors undertaking some investigations such as the illegal sale of fisheries products. As such, it is proposed that the Fisheries Act be amended to allow inspectors to enter a place open to the public and observe, take photographs, film activities that relate to fishing resources without producing their identity card. Inspectors will still be required to produce identification where they exercise a power in relation to a person.
19. **Modernise compliance processes outlined in the Fisheries Act.** To ensure Queensland's fisheries legislation reflects the advances that have been made in technology since the 1990s a general modernisation of the Fisheries Act is required. These changes will:
- allow for the production and seizure of electronic documents
 - allow applications for warrants to be made and issued electronically
 - provide that other forms and documents required under the Fisheries Act can be issued electronically
 - allow for the use of electronic logbooks
 - allow for the use of body worn cameras and recording of information
 - remove appeal rights provided for under the Fisheries Act where fisheries resources have been returned to the water alive
 - clarify what constitutes 'interference with fishing apparatus'
 - allow for the issuing of a certificate stating that a decision or a development approval made, given or issued under the *Planning Act 2016* is evidence of the matter
 - allow for the suspension of a portion of quota accounts where there is evidence of misreporting.

Administrative amendments to the Fisheries Act to reduce complexity and remove redundant provisions.

The management of Queensland's fisheries has evolved over the last two decades and certain parts of the Fisheries Act have become redundant or no longer deliver the intended purpose. To address these issues it is proposed that a number of changes be made to the Fisheries Act to remove redundant provisions or amend existing provisions to ensure they deliver their intended purpose.

Proposed amendments

20. **Clarify when compensation is payable under the Fisheries Act.** With the move to harvest strategies it is proposed to provide additional clarity around when compensation is and is not payable under the Fisheries Act. To remove any doubt, compensation is not payable where changes are made under a harvest strategy (e.g. changes to a fishery's quota etc.).

21. **Remove redundant sections pertaining to the 'Fisheries Research Fund' from the Fisheries Act.** To ensure the Fisheries Act reflects current government financial practices, the provisions of the Fisheries Act relating to references to the Fisheries Research Fund are to be removed. Provisions stating that regulated funds and fees are to be used for fisheries management purposes will be retained.
22. **Sections pertaining to the 'codes of practice' from the Fisheries Act.** Formal codes of practice, such as those described in the Fisheries Act, are no longer a preferred instrument for fisheries management agencies. It is therefore proposed that the Fisheries Act will be amended to limit the potential scope of codes of practice to the management of fish habitat areas.
23. **Make provisions relating to internal review and Queensland Civil and Administrative Tribunal appeals consistent with other Queensland legislation.** The Fisheries Act currently allows people affected a decision made by the chief executive to appeal to the Queensland Civil and Administrative Tribunal (QCAT). This will be retained, however it is intended to update these provisions and insert internal review provisions consistent with other Queensland legislation. This will allow a decision reviewed by the Department of Agriculture and Fisheries, as an internal review, to try and resolve the matter before an application to QCAT is required. This will simplify the review process for all parties, but retain the right of an individual to have an appeal heard more formally through QCAT.
24. **Amend the Fisheries Act to give fisheries inspectors powers under the *Biosecurity Act 2014*.** Fisheries inspectors currently play a role in investigating and enforcing biosecurity legislation on matters relating to fish. It is proposed that these functions be recognised in the Fisheries Act.
25. **Amend the definition of 'waterway' in the Fisheries Act.** The definition of 'watercourse' in the *Water Act 2000* specifically excludes 'drainage features'. However, sometimes waterway barriers are constructed on drainage features and this impacts on the ability to take enforcement action in an area occupied by the drainage feature. To address this issue, it is proposed that the definition of 'waterway' in the Fisheries Act be amended to include a 'drainage feature' which is already a defined term under the *Water Act 2000*.
26. **Amend the Fisheries Act to clarify that the authority which allows for the holder to do a prescribed act must not be a suspended authority.** The Fisheries Act is to be amended to clarify that a suspended authority does not allow the holder to undertake the activities that the authority would ordinarily allow while it is suspended.
27. **Update provisions to align with current practices for handling confidential information.** It is proposed that the Fisheries Act be updated to align with current Queensland Government practices and requirements for the handling of confidential information.
28. **Amend the non-indigenous fish provisions to reflect current policy and better align with the *Biosecurity Act*.** Minor changes the Fisheries Act are required to ensure that those provisions relating to the non-indigenous fisheries resources are consistent with current policy relating to these animals. These changes will help the Fisheries Act align with Queensland's biosecurity legislation.
29. **Registration of temporary transfers of authorities.** Informal lease agreements are common in the commercial fishing industry however, these agreements do not absolve an authority holder from their responsibilities under the Fisheries Act. An authority holder can lease an authority to another party however; in order to transfer all responsibilities to that party they **must register a temporary transfer with Fisheries Queensland**. Failure to register a lease arrangement with

Fisheries Queensland through a temporary transfer could mean that the holder of an authority could be prosecuted if the lessee fails to comply with the conditions of the authority.

How to provide feedback

This discussion paper is designed to provide all stakeholders with the opportunity to have a say about the proposed amendments to the Fisheries Act. Once feedback has been received, Fisheries Queensland will collate all responses for consideration by the government.

You can provide feedback by completing the consultation survey or downloading the response form and submitting it by email or post:

Online: daf.qld.gov.au/sustainablefisheriesstrategy

Email: fisheriesmanagers@daf.qld.gov.au

Mail: Proposed amendments to the Fisheries Act
Department of Agriculture and Fisheries
GPO Box 46
Brisbane Qld 4001

Submission of feedback closes 5pm, Sunday 20 May 2018.

How to keep up to date?

To keep up to date on implementation of the Sustainable Fisheries Strategy, visit daf.qld.gov.au, follow Fisheries Queensland on Facebook and sign-up for *Catch news* for the latest information and opportunities to get involved.

For more information, visit daf.qld.gov.au/fisheries or call 13 25 23.