

Managing fisheries compliance in Queensland



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Contents

Introduction.....	1
Our principles.....	1
Compliance principles.....	2
Our capacity and capability.....	2
Strategic capacity.....	2
Skilled, knowledgeable and diverse workforce.....	2
Continuous improvement and best practice.....	3
Safety.....	3
Compliance planning and monitoring.....	3
Monitor and review.....	3
Compliance Risk Assessment.....	4
State Fisheries Compliance Plan.....	4
Regional fisheries operational plan.....	4
Detecting non-compliance.....	4
Achieving optimal compliance.....	4
Developing regulation.....	5
Self-regulation and co-regulation.....	5
Education.....	5
Publication of offences in the media.....	5
Enforcement.....	6
Choosing an appropriate enforcement response.....	6
Administrative action.....	6
Cautions.....	6
Penalty Infringement Notices.....	7
Court prosecution.....	7
Sample.....	7
Serious fisheries offences.....	8
Seizure.....	8
Restraining orders.....	8
Development-related offences.....	9
Reference documents.....	9

Introduction

Fishing is an important part of the Queensland culture and lifestyle. It provides significant value to local economies through leisure and tourism related spending. Commercial fisheries and aquaculture sectors also generate significant economic benefits and ensure that the whole community can enjoy seafood.

The Department of Agriculture and Fisheries (the department) is responsible for administering legislation governing the use of Queensland's fisheries resources and protection of fisheries habitats. Queensland's *Fisheries Act 1994* (the Act) sets out the department's responsibilities for the ecologically sustainable development of Queensland's fisheries resources and habitats ensuring they are managed sustainably for the future.

Fisheries Queensland, within the department, is the lead agency within the Queensland Government that develops and applies principles and procedures to ensure that the legislation is enforced in a manner that is fair, transparent, consistent and achieves an optimal level of compliance.

Maintaining sustainable fisheries is achieved by a number of means including a strong focus on compliance. Queensland's compliance is implemented and enforced by Queensland Boating and Fisheries Patrol (QBFP), an organisational unit of Fisheries Queensland.

This document provides an overview of fisheries compliance management in Queensland. Importantly it aligns with the *Australian Fisheries National Compliance Strategy 2010—2015*, which outlines the strategic objectives that Australian fisheries agencies pursue to promote voluntary compliance and create effective deterrents to illegal fishing activities.

Our principles

The primary means of achieving compliance is through community support for laws. In Queensland, this is encouraged and facilitated by good working relationships with the fishing industry and the wider community and by applying principles of 'good regulation'.

The national compliance strategy defines 'optimal compliance' as *“that which holds the level of non-compliance at an acceptable level, which can be maintained at a reasonable cost while not compromising the integrity and sustainability of the resource”*.



Compliance principles

Principle 1	Compliance with the Act and subordinate legislation is mandatory.
Principle 2	Establish partnerships with stakeholders, including other government agencies, to maximise compliance.
Principle 3	Foster community support for fisheries legislation by consulting widely when policy and legislation is developed, and through continued communication and provision of information.
Principle 4	A higher standard of compliance is expected of persons taking publicly owned resources for trade or commerce (for commercial purposes).
Principle 5	Enforcement responses undertaken in a fair, impartial, consistent, transparent, lawful and cost efficient manner. The degree and type of enforcement action taken will be commensurate with the nature and severity of the offence/s.
Principle 6	Community cooperation by way of reporting suspected violations of fisheries legislation is encouraged and promoted.

Our capacity and capability

Fisheries regulation imposes legal responsibilities in regard to the protection of fisheries resources in Queensland. It is the role of QBFP to achieve an acceptable level of compliance with those responsibilities by fishers.

QBFP works within available resources to deliver an effective and efficient compliance program, which is underpinned by strategic capacity and workforce capability. This includes a skilled, knowledgeable and diverse workforce, and a commitment to health and safety of staff and the community.

There are significant challenges in relation to the scale of QBFP activities, with 7 000 kilometres of coastline, hundreds of inland fishing areas, 250 000 recreational vessels, 639 000 recreational fishers and more than 1 400 commercial fishing vessels.

Strategic capacity

Fisheries Queensland undertakes a strategic approach to compliance. Compliance and enforcement assets and infrastructure (e.g. buildings and vessels) are managed to support a responsive and adaptable compliance function. Cross-jurisdictional partnerships with other agencies, such as the Queensland Police Service, Maritime Safety Queensland and Commonwealth and State marine park services are fostered at both the operational and management level to facilitate a strong and cost-effective approach to compliance.

Skilled, knowledgeable and diverse workforce

Fisheries Queensland recognises the need to employ and maintain a professional workforce. Candidates for QBFP positions undergo extensive pre-employment testing to ensure they possess the skills and traits required to enable them to be effective in the role.



Officers receive ongoing training in investigation procedures, legislation, practical, technical and communication skills with a strong emphasis on work health and safety. The training provides officers with the necessary competencies to perform their compliance role in a safe, professional and ethical manner. Officers involved in management or other specialist areas receive additional training specific to their role.

Continuous improvement and best practice

The regulatory environment is subject to change, particularly due to evolving technologies and changing Government policy and objectives. Fisheries Queensland’s compliance functions are adaptable to ensure the integrity of regulatory processes and subsequently, the sustainability of Queensland’s fisheries resources.

This is achieved by:

- working cohesively as an organisation
- maintaining membership and active involvement in national compliance groups (e.g. National Fisheries Compliance Committee) where there is ongoing dialogue across jurisdictional issues and information exchange on the latest compliance initiatives
- reviewing current and future technologies that enable better access to information for stakeholders, promote compliance with fisheries laws, facilitate effective fishery monitoring and enable effective delivery of the compliance function
- regularly reviewing enforcement priorities determined via a robust risk-based methodology
- regularly reviewing internal policies and procedures
- maintaining close links with partner agencies including Maritime Safety Queensland, Queensland Police Service and Commonwealth and State marine parks services.

Safety

Fisheries Queensland is committed to ensuring the health and safety of its employees, customers, visitors, volunteers and contractors at all workplaces and during all interactions including those where inspectors are exercising their regulatory powers under the Act.

Fisheries Queensland does this by:

- establishing and maintaining safe and healthy workplaces
- developing, maintaining and regularly reviewing standard operating procedures based on comprehensive work health and safety risk assessments
- providing and maintaining high-quality vessels, vehicles and equipment
- providing comprehensive training in all procedures and associated equipment including conflict management and physical skills training
- ongoing support for trained safety advisers and proactive inspections of operations and worksites
- maintaining a safety culture in the workplace.

Compliance planning and monitoring

Fisheries Queensland plans compliance activities to ensure resources are used in an effective and efficient manner and that compliance efforts focus on the highest priority risks (Figure 1).

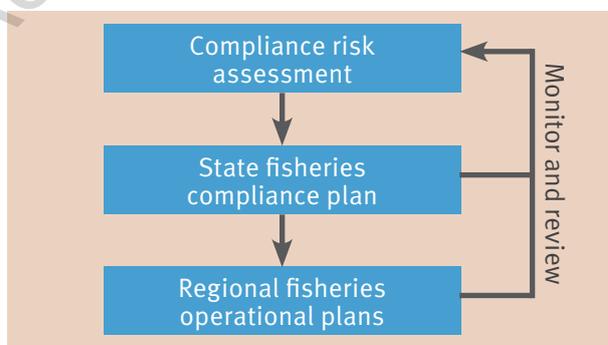


Figure 1: Fisheries Queensland compliance risk management and planning process.



Compliance Risk Assessment

A Compliance Risk Assessment (CRA) is undertaken to identify compliance priorities for the majority of Queensland's fisheries. The CRA identifies, evaluates and ranks environmental, social and economic risks to the fishery. QBFP officers and other Fisheries Queensland staff with expertise in management, monitoring, research and fisheries assessment are consulted in the development of the CRA.

Each CRA assesses the risks to:

- sustainability of target fish stocks, including by-product species
- the environment, ecology and conservation value of the fishery ecosystem, including fishery bycatch and protected species
- social and community impacts
- profitability of compliant industry participants.

For some fisheries a CRA is not undertaken due to its small size or low participation. In these circumstances, compliance priorities are still identified.

State Fisheries Compliance Plan

The State Fisheries Compliance Plan (the Plan) defines the activities to be undertaken by Fisheries Queensland to address the priority compliance risks identified through the CRA process for Queensland's fisheries, aquaculture and marine habitat.

The Plan outlines strategies that will contribute towards maximising voluntary compliance and creating effective deterrents within each of Queensland's major fisheries. It also defines how compliance will be monitored and/or detected.

Regional fisheries operational plan

QBFP local management areas plan activities to address the risks identified in the Plan taking into account local fishery characteristics and resource issues, and other QBFP commitments e.g. maritime safety.

Detecting non-compliance

Compliance monitoring is undertaken to determine whether activities are being carried out lawfully and to allow the development of a response to fisheries offences. Information obtained through monitoring is used to prioritise enforcement responses and strategies.

The key strategies adopted by QBFP for detecting and monitoring non-compliance are:

- intelligence and information gathering – maximise use of all intelligence and information from both internal and external sources e.g. patrol reports, quota and vessel monitoring reports, logbook catch and effort data, Fishwatch (a community reporting service) and information sharing agreements with compliance partners
- patrols and inspections – random and targeted, land-based and at-sea patrols and inspections of fishers, vessels, commercial landings, processors, wholesale and retail premises
- investigation and surveillance operations – specialist investigators manage and investigate complex and/or protracted breaches and QBFP's fully operational surveillance team responds to emerging compliance issues
- cooperation with other agencies – the authorisation of officers from other agencies including interstate agencies to enforce Queensland fisheries legislation effectively increases field presence and the capacity for apprehending offenders in Queensland and its border regions.

Achieving optimal compliance

Fisheries Queensland recognises that optimal compliance is fostered when a high level of community support for management arrangements exists. Fisheries Queensland uses a range of tools to maximise voluntary compliance with fisheries legislation and to create effective deterrence against the commission of offences.



Developing regulation

Fisheries regulations are developed by the Queensland Government after consultation with the community and fisheries stakeholders. Fisheries Queensland leads consultation processes on behalf of Government to ensure that key stakeholders have input into the development of fisheries policies and legislation.

Self-regulation and co-regulation

The National Compliance Strategy identifies that a partnership approach to fisheries management contributes to achieving optimal compliance. Self-regulatory and co-regulatory measures (e.g. codes of conduct and codes of practice) facilitate industry involvement in the design of fisheries management. The measures are used, where appropriate, as a means of reducing the administrative burden on government and the regulatory burden on industry. For example, the Gulf of Carpentaria Commercial Fishermen Association developed and implemented a Code of Conduct to outline how industry will work with government and other stakeholders to ensure its fisheries remain economically and ecologically sustainable. The code encourages:

- industry compliance with all fisheries regulations pertinent to the Gulf of Carpentaria
- respect for the rights and safety of others
- protection of the environment and endangered species
- industry promotion of the quality of seafood for human consumption.

Education

Stakeholder awareness of Queensland's fishing rules is important in achieving voluntary compliance in Queensland. Fisheries Queensland uses educational programs to inform fishers on rules relating to:

- size and possession limits
- apparatus restrictions
- closed waters
- other requirements.

The methods used to deliver this information include:

- direct advice to clients
- formal and informal presentations to community and industry groups and fisheries related retail businesses
- written communications including media releases and responses, fishing forums and industry publications
- government websites
- Fisheries Queensland, industry and partner agency social media channels
- 'Qld Fishing' app
- the department's Customer Service Centre.

Publication of offences in the media

Publication of offences can act as a deterrent to non-compliance. Details of compliance outcomes, significant detections, apprehensions and court results are published to maximise the deterrence effect and to reinforce key messages about sustainability and responsible fishing. The Department does not publish identifying information about offenders.



Bundaberg crab bust: Fisher fined \$13,300
April 27, 2015 at 11:44am

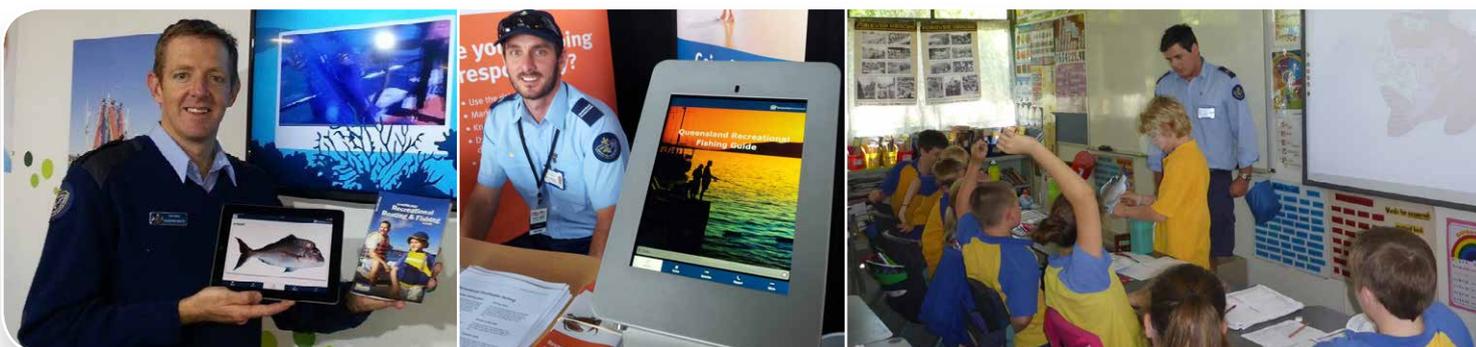
A Bundaberg fisher has been fined \$13,300 for a number of crabbing offences including too many pots.

Queensland Boating and Fisheries Patrol (QBFP) district manager Greg Bowness said the fine handed down by the Bundaberg Magistrates Court last week was for possessing female and undersized mud crabs and using excess crab pots.

"QBFP approached the crabber at a boat ramp in the Gregory River near Woodgate after seeing a quantity of crab pots stacked near his vessel," said Mr Bowness.

"The crabber had a total of 9 pots in his possession and on closer inspection, they were found to contain 40 female mud crabs and 7 undersized mud crabs."

"Officers seized the excess crab pots and the returned the crabs to the water alive."



Enforcement

Enforcement action is undertaken to ensure compliance with law or regulation. Enforcement penalties, either direct or following court prosecution, encourage compliance and potentially act as deterrents against future non-compliance.

Choosing an appropriate enforcement response

The degree and type of enforcement action taken should be commensurate with the nature and severity of non-compliance and represent value for public money.

Fisheries Queensland considers the following factors when choosing an appropriate enforcement response to an alleged offence:

- the seriousness of the damage or degree of risk of that damage to a fisheries resource caused by the alleged offence
- the benefit the alleged offender stands to gain from non-compliance (generally, the greater the benefit, the more severe the enforcement response required to create deterrence)
- the intent of the alleged offender (whether the alleged offence was deliberate) and whether the offender tried to conceal the offence
- the probability of detection of the offence (offences less likely to be detected would ordinarily warrant a greater deterrence penalty)
- whether the breach is a continuing or repeat offence
- the likely administrative costs of any enforcement action to be taken and whether a particular response is likely to be cost-effective
- the likely effectiveness of an enforcement response in achieving the desired result under the circumstances.

Administrative action

When minor non-compliance is detected, it may be possible to remedy the situation before taking formal enforcement action. The offending person may have unknowingly made a mistake and education about a person's obligations may be appropriate. For example, a person may be contacted by telephone or sent a reminder notice to draw their attention to the non-compliance.

A "show cause" notice may be issued to provide an opportunity for the person to state why enforcement action should not be taken against them for their non-compliance. For example, a person who holds an authority may be invited to "show cause" as to why their authority should not be suspended.

Cautions

A "caution" conveys to the recipient that they have done something wrong and puts them on notice that a sanction may be applied in the future. Without limitation, it may be appropriate to issue a caution or warning where it is beyond reasonable doubt that an offence has occurred and:

- the damage or potential damage is minimal
- the breach is of a minor or technical nature only
- the matter is one which can quickly and simply be put right
- a caution or warning is fair and appropriate having regard to the history and antecedents
- the alleged offender has taken corrective or mitigating action to remedy the impact of the alleged offence.



Penalty Infringement Notices

Queensland Government **Fisheries infringement notice**
State Penalties Enforcement Act 1999
Fisheries Act 1994
Fisheries Regulation 2008

F

First and final notice

Prosecution copy
Alleged offender's details

Family/business/company name Given name(s)

Residential/business address Postcode

Phone number Date of birth Male Female

Owner Driver Passenger Other

Identification details

Licence/permit authority State Number

Class Issued by Expiry date

Boat/vehicle/aircraft details

Registration number State Make Name Colour

Type of boat/vehicle/aircraft Label/certificate number Expiry date

Penalty Infringement Notices (PINs) (e.g Fisheries Infringement Notice) are an appropriate enforcement response where a breach of the law has occurred but the impacts are not serious enough, or it is not in the public interest, to prosecute through the courts. If a sanction is sought for an offence for which a PIN could apply¹, a PIN will be issued unless there are aggravating circumstances which make it an inappropriate enforcement response. For example, if the offender has previously been issued a PIN/s for the same or similar offence/s then issuing another may be considered ineffective at deterring the commission of further offences.

1 The *Fisheries Infringement Notices (FIN) Procedures Manual* sets out in detail how inspectors should administer FINs, including matters to be taken into account in deciding whether a FIN is the best response.

A PIN will be issued on the spot, or within 14 days of an incident (exceptions apply²). Payment of a PIN is not an admission of guilt and cannot be used as such against the person at a later date. Payment ends the matter and no conviction is recorded. The alleged offender has the option to contest the PIN, within 28 days from the date of issue, whereby the matter would proceed to a hearing in the Magistrates Court.

A PIN without an accompanying fine (a 'no penalty PIN') may be issued for the purpose of recording a written caution.

Court prosecution

Offences against the Act and those relating to fisheries development under the *Sustainable Planning Act 2009* may be prosecuted summarily in the Magistrates Court. Briefs of evidence are submitted to the department's legal representatives in accordance with QBFP investigation procedures. Briefs may contain recommendations as to an appropriate action and are reviewed in accordance with the department's prosecution policy. This review is undertaken by legal representatives independent of Fisheries Queensland.

The legal representatives determine whether:

- there is a prima facie case (i.e. admissible, substantial and reliable evidence that an offence known to the law has been committed by the alleged offender)
- there is a reasonable prospect of conviction on the evidence available
- it is in the public interest to prosecute³.

2 Where the legal representatives have been considering a case, and ultimately direct that a PIN be issued, issue of the PIN will likely be delayed beyond 14 days.

3 Public interest considerations are enumerated in the department's Prosecution Policy.



If there is sufficient evidence and it is in the public interest to prosecute, legal proceedings are initiated by the issuing of a complaint and summons against the alleged offender. Once a complaint and summons is issued, legal representatives manage the matter until it is determined in court.

In some matters, external counsel from the private bar or Crown Law is engaged. This typically occurs in especially complex matters where the outcome may have significant implications for Fisheries Queensland. Any matter litigated by external counsel is subject to the department's prosecution policy.

If legal representatives have determined it is not in the public interest to prosecute, Fisheries Queensland may issue a formal letter of caution, a PIN or take no further action.

Serious fisheries offences

Serious fisheries offences are those prescribed by legislation. The significance is that, in sentencing an offender for a serious fisheries offence, the court may impose a period of suspension of the authority, or the cancellation of the authority as the penalty or as part of the penalty. In deciding to impose suspension, the court must have regard to the maximum suspension periods set out in the legislation.

Factors considered when seeking suspension or cancellation include:

- whether a monetary fine will not be an effective deterrent due to the financial or other incentives associated with the offence
- the history of the offender
- the circumstances around the offence
- the prevalence of the offence
- the potential to generate deterrence against future offences

- an assessment of the risk posed to fisheries resources or habitats if the offender continues to operate
- in the case of cancellation, whether other authorities of that type are available
- the likelihood of commission of further offences.

Obstruction of an inspector (e.g. assault, hinder, resist and attempt to or threaten to obstruct) is a serious fisheries offence and may result in court prosecution.

Seizure

The Act⁴ provides the power to seize items involved in the alleged conduct of illegal activity. Specific purposes of carrying out a seizure include preventing the commission or continuation of an offence, and to collect evidence where legal proceedings are likely to follow. Seizures are not considered a form of on-the-spot punishment for a suspected offence and are not used for purposes other than those specified in the Act.

Restraining orders

The Act⁵ allows an application to be made to the District Court for a restraining order against a person to prevent that person from:

- continuing or repeating a particular activity – this order can be made only if the court is satisfied the activity would constitute an offence and may seriously harm fisheries resources or fish habitats
- committing an offence against the Act – this order can be made only if the court is satisfied that the person has been convicted of at least three offences on separate occasions against the Act.

A person who contravenes a restraining order commits a further offence.

⁴ Refer to sections 151 – 156 of the Act.

⁵ Refer to section 174 of the Act.



Development-related offences

Restoration notices

Restoration notices can be issued under the Act⁶ to ensure that disturbance to a fish habitat area is restored as far as possible to its predisturbance condition by the person to whom the notice was issued.

Enforcement notices

For all development-related offences, Fisheries Queensland, as the assessing authority,⁷ may give an enforcement notice requiring a person to refrain from or remedy the commission of an offence under the *Sustainable Planning Act 2009*⁸.

Enforcement orders

Under the *Sustainable Planning Act 2009*⁹, a person (limited to the assessing authority for some offences) may bring a proceeding in the Planning and Environment Court to issue an Enforcement Order (or Interim Enforcement Order) to remedy or restrain the commission of a development-related offence.

⁶ Refer to section 125 of the Act.

⁷ Refer to Schedule 3 of the *Sustainable Planning Act 2009* for the definition of 'assessing authority'.

⁸ Refer to Chapter 7, Part 3, Division 3 'Enforcement notices' of the *Sustainable Planning Act 2009*. Note that section 588 requires a show cause notice be given prior to the giving of an enforcement notice

⁹ Refer to Chapter 7, Part 3, Division 5 'Enforcement orders of court' of the *Sustainable Planning Act 2009*.

Your privacy

Personal information, including intelligence related information, is collected by the department for the purposes of administering and ensuring compliance with the Act, in accordance with the *Information Privacy Act 2009*.

QBFP, as a law enforcement agency¹⁰, is exempted from certain provisions of the *Information Privacy Act 2009* where required to enable the performance of functions or activities directed to the prevention, detection, investigation, prosecution or punishment of offences and other breaches of laws for which penalties or sanctions may be imposed or for the execution or implementation of an order or decision made by a court or tribunal.

Personal information will not be used or disclosed for a purpose that differs from the reason it was collected. Some exceptions apply. Please refer to the *Information Privacy Act 2009* for details. The department's privacy guide sets out how individuals can access personal information held by the department and how to lodge a privacy complaint.

Reference documents

Fisheries Act 1994

Information Privacy Act 2009

Sustainable Planning Act 2009

National Fisheries Compliance Committee (2010) *Australian Fisheries National Compliance Strategy 2010–2015*. National Fisheries Compliance Committee. 8pp.

¹⁰ Refer to Schedule 5 of the *Information Privacy Act 2009* for the definition of 'law enforcement agency'.

