

EXPLANATORY STATEMENT

Select Legislative Instrument No. 153, 2014

Issued by the Authority of the Minister for Environment

Great Barrier Reef Marine Park Act 1975

Great Barrier Reef Marine Park Amendment (Bait Netting) Regulation 2014

Subsection 66(1) of the *Great Barrier Reef Marine Park Act 1975* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act or with a zoning plan, prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act establishes the Great Barrier Reef Marine Park Authority (the Authority) and makes provision for and in relation to the establishment, control, care and development of a Marine Park in the Great Barrier Reef Region.

Issues

The Regulation amends the *Great Barrier Reef Marine Park Regulations 1983* (the Principal Regulations) to close a perceived loophole in the legislation that allows bream, whiting and flathead to be targeted lawfully when conducting commercial bait netting operations in the Commonwealth and Queensland Conservation Park Zones (CPZ). While commercial bait netting is allowed in CPZ without a relevant permission from the Authority and/or Queensland Government, it was never intended that it extend to the taking of these demersal species, which are key recreational food fish and not bait species. These amendments will complement similar provisions enacted by Queensland in 2012 for the Great Barrier Reef Coast Marine Park and other State Marine Parks.

These changes increase the Authority's ability to take enforcement action against commercial fishers in the Marine Park who take or possess non-bait fish taken while using commercial bait net(s) while in the Conservation Park Zone. The changes also act as a deterrent to prevent future acts of this type in the Marine Park. The amendments will not affect other users of the Marine Park such as recreational fishers.

Consultation

Extensive consultation has occurred dating back to May 2008. In 2008 the Authority recommended that the former East Coast Inshore Fin Fish Management Advisory Committee (a group established by the Queensland government consisting of members of the fishing industry) approve of a proposal which, among other things, included the proposed amendments to the *Great Barrier Reef Marine Park Regulations 1983*. The Committee was generally supportive of the proposal.

The Queensland Government conducted extensive consultation with commercial and recreational fishers in 2011 before implementing the changes to its legislation. As part of this consultation a discussion paper and other information was released which mentioned that the Authority had been consulted on the amendments and may consider implementing complementary arrangements in the future. The Authority was informed by the Queensland government that the majority of submissions received in response to the discussion paper were generally supportive of the proposed amendments.

The Regulation has been prepared in consultation with the Criminal Justice Division of the Department of Justice and Attorney-General and the Commonwealth Director of Public Prosecutions. From a prosecution and enforcement perspective, those organisations took no issue with the Regulation.

The Regulation is outlined in more detail in Attachment A.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Authority: Subsection 66(1) of the
*Great Barrier Reef Marine
Park Act 1975*

Details of the proposed Great Barrier Reef Marine Park Amendment (Bait Netting) Regulation 2014

Regulation 1 – Name of Regulation

This regulation provides that the title of the Regulation is the *Great Barrier Reef Marine Park Amendment (Bait Netting) Regulation 2014*.

Regulation 2 – Commencement

This regulation sets out the timetable for the commencement of the provisions of the Regulation. The Regulation commences on the day after it is registered on the Federal Register of Legal Instruments (FRILI).

Regulation 3 – Authority

This regulation provides that the Regulation is made under the *Great Barrier Reef Marine Park Act 1975*.

Regulation 4 – Amendment of the Great Barrier Reef Marine Park Regulations 1983

This regulation provides that the Principal Regulations are amended as set out in Schedule 1.

Schedule 1 – Amendments

Item 1 of the Schedule repeals existing regulation 13 and replaces it with a new regulation. The new regulation 13 is substantially the same as the existing regulation, but makes amendments to close a perceived loophole in the legislation that allows bream, whiting and flathead to be targeted lawfully when conducting commercial bait netting operations in the Commonwealth and Queensland Conservation Park Zones. The changes made to the current Regulation are described below.

Subregulation 13(1)

This amends regulation 13(1) for clarity in light of other amendments. It describes the purpose of the proposed regulation.

Subregulation 13(2)

Regulation 13(2) is a technical amendment to bring the regulation up to date in terms of cross referencing.

Paragraphs 13(3)(a)-(b)

Regulations 13(3)(a)-(b) amend existing regulations 13(3)(a)-(b) for clarity in light of other amendments.

Paragraph 13(3)(c)

Regulation 13(3)(c) prohibits a commercial fisher from:

- i) taking a non-bait fish using a proscribed net while in the Zone; or
- ii) possessing a non-bait fish anywhere in the Marine Park if that fish has been caught in the Conservation Park Zone using a proscribed net.

Subregulation 13(4)

Regulation 13(4) identifies the circumstances in which a commercial fisher is not considered to have taken or to be in possession of non-bait fish. Regulation 13(4) provides that a commercial fisher does not breach regulation 13(3)(c) where the fish is taken unintentionally and the fisher removes the fish from the net and immediately releases the fish into water deep enough to allow it to escape. This will prevent commercial fishers from committing an offence where they have inadvertently caught non-bait fish.

Subregulation 13(5)

Regulation 13(5) adds definitions for “‘N11’ fish”, “non-bait fish” and “possess”.

ATTACHMENT B**Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Great Barrier Reef Marine Park Amendment (Bait Netting) Regulation 2014

The Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Regulation

The purpose of the Regulation is to amend the *Great Barrier Reef Marine Park Regulations 1983* (the Principal Regulations) to close a perceived loophole in the legislation that allows bream, whiting and flathead to be targeted lawfully when conducting bait netting operations in the Commonwealth and Queensland Conservation Park Zones (CPZ). While commercial bait netting is allowed in CPZ without a relevant permission from the Authority and/or Queensland Government, it was never intended that it extend to the taking of these demersal species, which are key recreational food fish and not bait species.

These changes will increase the Authority's ability to take enforcement action against users of the Marine Park who take or possess non-bait fish taken while using commercial bait net(s) while in the Conservation Park Zone. The changes will also act as a deterrent to prevent future acts of this type in the Marine Park. There is no retrospective application of the offence provisions.

The amendments effectively expand the nature of the existing offence provisions. They do this by broadening in what circumstances an offence will occur.

Human rights implications

The offence provisions of the Principal Regulations are expanded to apply to the taking and/or possession of non-bait fish while using commercial bait net(s). The provisions do not apply where non-bait fish are taken unintentionally.

It is justifiable to expect individuals who voluntarily participate in regulated activity in the Marine Park to be deemed to have accepted certain conditions and to show why they are not at fault for infringements.

Conclusion

The Regulation is compatible with human rights to the extent that it limits human rights because those limitations are reasonable, necessary and proportionate.