

## **EXPLANATORY STATEMENT**

### *Biosecurity Act 2015*

#### *Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No. 2) 2017*

#### **Legislative Authority**

Subsection 182(1) of the *Biosecurity Act 2015* (the Act) provides that the Director of Biosecurity may determine that specified goods, or a specified class of goods, (including conditionally non-prohibited goods) must not be brought into Australian territory for a specified period that is no longer than 6 months.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

#### **Purpose**

The *Biosecurity (Suspended Goods—Uncooked Prawns) Determination 2017* (Principal Determination) prohibits uncooked prawns and uncooked prawn meat from being brought into or imported to Australian territory. The purpose of the *Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No. 2) 2017* (Amendment Determination) is to exempt from the prohibition imposed by the Principal Determination:

- uncooked prawns sourced from Australian territory other than the area to which the White Sport Syndrome Virus (WSSV) Movement Control Order relates, or uncooked prawn meat sourced from such prawns, that are brought or imported into Australian territory without first having been brought or imported into any other country;
- uncooked prawns and uncooked prawn meat intended for use as laboratory or food samples for analysis;
- uncooked prawns and uncooked prawn meat intended to be transhipped to a passenger vessel that intends to leave Australian territory from a landing place or port in Australian territory; and
- uncooked prawns and uncooked prawn meat deriving from prawns that, in accordance with the secure supply chain, were wild-caught in Australian territory other than the area to which the WSSV Movement Control Order relates, and exported to Thailand, either in the form of uncooked prawns or uncooked prawn meat, for processing in Thai Union Group Public Company Limited, 79/233 Moo 7, Sethakit 1 Road, Tambon Tarsai, Amphur Muang, Samutsakorn 74000, Thailand.

The Amendment Determination also makes amendments to existing exceptions to clarify that they only apply to uncooked prawns and uncooked prawn meat sourced from the exclusive economic zone or New Caledonia if they are brought or imported into Australian territory without first having been brought or imported into any other country.

## **Background**

On 6 January 2017 the Director of Biosecurity made the Principal Determination to prohibit uncooked prawns and uncooked prawn meat from being brought into or imported to Australian territory for a period of 6 months. The purpose of the Principal Determination is to manage the biosecurity risk posed by imported uncooked prawns to an acceptably low level.

Assessments of the biosecurity risks associated with WSSV in relation to the following goods were undertaken:

- uncooked prawns sourced from Australian territory other than the area to which the WSSV Movement Control Order relates, or uncooked prawn meat sourced from such prawns, that are brought or imported into Australian territory without first having been brought or imported into any other country;
- uncooked prawns and uncooked prawn meat intended for use as laboratory or food samples for analysis;
- uncooked prawns and uncooked prawn meat intended to be transhipped to a passenger vessel that intends to leave Australian territory from a landing place or port in Australian territory; and
- uncooked prawns and uncooked prawn meat deriving from prawns that, in accordance with the secure supply chain, were wild-caught in Australian territory other than the area to which the WSSV Movement Control Order relates, and exported to Thailand, either in the form of uncooked prawns or uncooked prawn meat, for processing in Thai Union Group Public Company Limited, 79/233 Moo 7, Sethakit 1 Road, Tambon Tarsai, Amphur Muang, Samutsakorn 74000, Thailand.

The assessments show that those goods represent an acceptable level of biosecurity that meets Australia's Appropriate Level of Protection (ALOP).

## **Impact and Effect**

Under the Amendment Determination, uncooked prawns and uncooked prawn meat will not be allowed to be brought into or imported to Australian territory for the duration of the Principal Determination unless they fall within one or more of the exceptions above.

## **Consultation**

The department consulted with the Australian Fisheries Management Authority.

## **Details/ Operation**

Details of the Amendment Determination are set out in the [Attachment](#).

The Amendment Determination is a legislative instrument but, under section 182(6) of the Act, section 42 (disallowance) of the *Legislation Act 2003* does not apply to the Amendment Determination. Consequently, a Statement of Compatibility with Human Rights is not required.

**Details of the *Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No. 2) 2017***

Section 1 – Name

This section provides that the name of the Amendment Determination is the *Biosecurity (Suspended Goods—Uncooked Prawns) Amendment (Exceptions) Determination (No. 2) 2017*.

Section 2 – Commencement

This section provides that the Schedules 2 and 6 commences on the 7<sup>th</sup> day after registration. Sections 1 to 6 and Schedules 1, 3, 4 and 5 commences on the day after registration.

Section 3 – Authority

This section provides that the Amendment Determination is made under section 182(1) of the *Biosecurity Act 2015* (Act).

Section 4 – Definitions

This section sets out defined terms used in the Amendment Determination. It notes that a number of terms used in the Amendment Determination are defined in the Act.

Section 5 – Reasons for making this determination

This section provides the reasons for making the determination as required by section 182(5) of the *Biosecurity Act 2015*.

The reason explains why, having undertaken further assessment of the biosecurity risks associated with the proscribed class of goods, that it is possible to except further goods from the suspension under the Principal Determination. Detailed reasons are set out in Schedules 3 to 6.

Section 6 – Schedules

This section provides that the Amendment Determination is amended as set out in Schedules 1 and 2, and any other item in a Schedule has effect according to its terms.

Schedule 1 – Amendments commencing on the date after registration

This Schedule amends the *Biosecurity (Suspended Goods—Uncooked Prawns) Determination 2017*.

**Item 1** substitutes the note in section 5 to state that the Principal Determination sets out the reasons in its original form for making the Principal Determination. The reasons for making amendments to the Principal Determination are set out in the amending determinations.

**Item 2** inserts “(d) passenger vessel” in note 1 in section 6.

**Item 3** inserts a definition of “area to which the WSSV Movement Control Order relates” and “WSSV Movement Control Order”. The WSSV Movement Control Order can be accessed from <https://www.daf.qld.gov.au> and is incorporated as in force at the commencement of this Amendment Determination.

**Item 4** after “from such prawns” in paragraph 7(3)(aa), inserts “and brought or imported into Australian territory without first having been brought or imported into any other country”.

**Item 5** after “New Caledonia” in paragraph 7(3)(a), inserts “and brought or imported into Australian territory without first having been brought or imported into any other country”.

**Item 6** at the end of subsection 7(3) inserts:

- (f) either:
  - (i) uncooked prawns sourced from Australian territory other than the area to which the WSSV Movement Control Order relates; or
  - (ii) uncooked prawn meat sourced from such prawns;that are brought or imported into Australian territory without first having been brought or imported into any other country;
- (g) uncooked prawns and uncooked prawn meat intended for use as laboratory or food samples for analysis;
- (h) uncooked prawns and uncooked prawn meat intended to be transhipped to a passenger vessel that intends to leave Australian territory from a landing place or port in Australian territory.

#### Schedule 2—Amendments commencing 1 week after registration

This Schedule amends the *Biosecurity (Suspended Goods—Uncooked Prawns) Determination 2017*.

**Item 1** inserts a definition of “secure supply chain”.

**Item 2** at the end of subsection 7(3) inserts:

- (i) uncooked prawns and uncooked prawn meat deriving from prawns that, in accordance with the secure supply chain, were:
  - (i) wild-caught in Australian territory other than the area to which the WSSV Movement Control Order relates; and
  - (ii) exported to Thailand, either in the form of uncooked prawns or uncooked prawn meat, for processing in Thai Union Group Public Company Limited, 79/233 Moo 7, Sethakit 1 Road, Tambon Tarsai, Amphur Muang, Samutsakorn 74000, Thailand.

#### Schedule 3—Reasons—prawns sourced from Australian territory other than the area to which the WSSV Movement Control Order relates

This Schedule sets out the statement of reasons for exempting prawns sourced from Australian territory other than the area to which the WSSV Movement Control Order relates. The reasons are as follows:

The principal determination suspends the bringing or importing into Australian territory of goods included in the proscribed class of goods.

When read with the *Biosecurity (Movements between Parts of Australian Territory) Declaration 2016*, one effect of the principal determination is to suspend the bringing or importing of such goods:

- into mainland Australia from an external Territory to which the Act extends; or
- into an external Territory to which the Act extends from mainland Australia; or
- into an external Territory to which the Act extends from another such external Territory.

The Department has assessed the biosecurity risks associated with WSSV in relation to these movements of goods. As a result of this assessment, it is now thought that these movements, other than in relation to prawns sourced from the area to which the WSSV Movement Control Order relates, represent an acceptable level of biosecurity risk that meets Australia's ALOP.

### **Prawns harvested from mainland Australia**

Uncooked prawns harvested (whether farmed or wild caught) within mainland Australia, other than the area to which the WSSV Movement Control Order relates, and uncooked prawn meat sourced from such prawns, represents an acceptable level of biosecurity risk that meets Australia's ALOP, on the basis that:

- Prior to the Logan River outbreak in late November 2016 (see paragraph 5(d) of the principal determination), WSSV was considered exotic to Australian territory.
- Since that outbreak:
  - White spot disease has only been reported in prawn farms located in the Logan River region including the Woongoolba, Steiglitz and Alberton areas (including the Logan River Control Area).
  - WSSV has been detected in prawns caught from one wild sample site in southern Moreton Bay outside of the Logan River, adjacent to an infected farm. However, the source (farm escapees or wild) of these prawns is under investigation.
- The Queensland government has placed a Movement Control Order (the WSSV Movement Control Order) on the movement of decapod crustaceans, polychaete worms or water from the Logan River for 3 months, enforced from the 22 January 2017.

It is therefore reasonable to consider that uncooked prawns harvested (whether farmed or wild caught) from mainland Australia, other than the area to which the WSSV Movement Control Order relates, and uncooked prawn meat sourced from such prawns, represent an acceptable level of biosecurity risk to the external Territories to which the Act extends that meets Australia's ALOP.

The WSSV Movement Control Order is valid for 3 months from the 22 January 2017. If the Queensland government does not extend the Movement Control Order or apply an equivalent movement control measure after the expiration date, the Department will need to review biosecurity risks.

### **Prawns harvested from external Territories to which the Act extends**

White spot disease has not been reported in the external Territories to which the Act extends. Further, no commercial prawn fisheries or aquaculture industries exist or operate in those

external Territories from which to harvest and export prawns to mainland Australia or to other such external Territories.

It is therefore reasonable to consider that bringing or importing prawns harvested (farmed or wild caught) from the external Territories to which the Act extends, and uncooked prawn meat sourced from such prawns, into mainland Australia or another such external Territory, represents an acceptable level of biosecurity risk for WSSV that meets Australia's ALOP.

#### Schedule 4—Reasons—uncooked prawns and uncooked prawn meat intended for use as laboratory or food samples for analysis

This Schedule sets out the statement of reasons for exempting uncooked prawns or uncooked prawn meat intended for use as laboratory or food samples for analysis. The reasons are as follows:

Uncooked prawns and uncooked prawn meat imported as laboratory or food samples for analysis represent an acceptable level of biosecurity risk that meets Australia's ALOP on the basis that:

- Before the principal determination suspended the bringing or importing of goods in the proscribed class of goods into Australian territory, it was possible to bring or import samples of uncooked prawns and uncooked prawn meat as laboratory or food samples for analysis into Australian territory. However, a valid import permit issued by the Department was required, under the Act and instruments made under it, to import such goods for this purpose. If the principal determination were to be amended so as to permit the bringing or importing of uncooked prawns and uncooked prawn meat imported as laboratory or food samples for analysis into Australian territory, these arrangements would apply once more to the importation.
- Each import request is assessed on a case-by-case basis and appropriate biosecurity conditions are applied commensurate to the biosecurity risk of the sample. This includes specifying the laboratory or approved arrangement that the sample is sent to.
- Samples of prawns intended for food testing are sent to a Class 5.1 biosecurity containment (BC) level 1 laboratory or approved arrangement where transport, storage, security, and disposal of goods are strictly controlled. Requirements relating to approved arrangements for Class 5.1 biosecurity containment level 1 laboratory are detailed in the Department's publication *Approved Arrangement for 5.1: Biosecurity containment level 1 (BC 1) Requirements*, 4 July 2016, available at <http://www.agriculture.gov.au/SiteCollectionDocuments/biosecurity/import/arrival/approved-arrangements/class-5.1.pdf>.
- All other imported prawn samples (tissue, fluid, laboratory animals) are sent to a laboratory (approved arrangement) with at least a Class 5.1 biosecurity containment (BC) level 1, where they are transported, stored, secured, and disposed of in a manner that addresses potential biosecurity risk.

The import conditions which would apply to imported uncooked prawns and uncooked prawn products as laboratory or food samples for analysis, manage the biosecurity risk with respect to WSSV to a level that is within Australia's ALOP.

#### Schedule 5—Reasons—transhipped uncooked prawns and uncooked prawn meat for outgoing passenger vessels engaged in international travels

This Schedule sets out the statement of reasons for exempting transhipped uncooked prawns and uncooked prawn meat for outgoing passenger vessels engaged in international travels. The reasons are as follows:

Uncooked prawns and uncooked prawn meat for outgoing passenger vessels engaged in international travels (that is, transhipped goods) represent an acceptable level of biosecurity risk that meets Australia's ALOP on the basis that:

- Transhipped goods, including uncooked prawns and uncooked prawn meat, are subject to stringent biosecurity risk management measures between entry into Australian territory and loading onto passenger vessels bound for international locations.
- Full control and security of the integrity of these goods is maintained whilst they are in Australian territory.
- On-shore biosecurity management measures for transhipped goods include 'seals intact' storage. Movement to outgoing passenger vessels must be under the supervision of a biosecurity officer. Deconsolidation of these goods is not permitted without approval from the Department. The Department would take biosecurity risks into account when deciding whether to give such an approval.
- Further, the Department has biosecurity controls in place for the use and waste disposal of these goods on passenger vessels whilst in Australian waters (within 12 nautical miles from the coast). Passenger vessels sailing in Australian waters are not permitted to remove goods without the approval of a biosecurity officer. This covers prohibiting discharge of uncooked prawns and uncooked prawn meat into Australian waters and using uncooked prawns and uncooked prawn meat for fish feeding, bait or berley, in connection with fishing or tourist operations.

The measures in place for transhipped goods are considered sufficient to manage the biosecurity risk with respect to WSSV to a level that is within Australia's ALOP.

#### Schedule 6—Reasons—prawns exported to Thailand and re-imported to Australian territory

This Schedule sets out the statement of reasons for exempting uncooked prawns and uncooked prawn meat exported to Thailand and re-imported to Australian territory. The reasons are as follows:

Uncooked prawns and uncooked prawn meat deriving from prawns that, in accordance with the secure supply chain, were:

- wild-caught in Australian territory other than the area to which the WSSV Movement Control Order relates; and
  - exported to Thailand, either in the form of uncooked prawns or uncooked prawn meat, for processing at Thai Union Group Public Company Limited, 79/233 Moo 7, Sethakit 1 Road, Tambon Tarsai, Amphur Muang, Samutsakorn 74000, Thailand;
- represent an acceptable level of biosecurity risk that meets Australia's ALOP.

This on the basis that:

- The Department recognises Thailand's Department of Fisheries as a competent authority which has the structure, resource capacity and operational framework capable of administering effective traceability and biosecurity policy for the production of fish and fishery products.
- In 2015, the secure supply chain used to process prawns harvested in Australia and exported to Thailand for import back to Australia was assessed through a desk audit and

in-country verification visit. The assessment concluded that the robust biosecurity and traceability systems in place were adequate to ensure product integrity throughout processing in Thailand.

- Prior to the Department officially recognising Thailand's Department of Fisheries' ability to oversee the secure supply chain, all Australian prawns processed at Thai Union Group Public Company Limited's facility and imported back to Australia were subject to 100 per cent on-arrival testing in line with the policy for all raw imported prawns. From October 2011 to August 2015 (when testing requirements were removed) there was no confirmed positive results for WSSV in prawns imported through this pathway.
- A review of export and import volumes of product processed through this pathway found no evidence of additional product being added to the supply chain for re-export to Australia.
- Uncooked prawns imported into Australia through this approved pathway may have a higher likelihood of exposure to susceptible species than cooked or highly processed prawn products. However, confidence in the integrity of the system provides the Department with the assurance that it is unlikely that these products will be contaminated with WSSV.
- In order to ensure that product processed through this pathway continues to meet Australia's ALOP, the Department will implement on-arrival testing for WSSV and yellow head virus for the remainder of the period of operation of the principal determination. This will include:
  - holding the product in an approved arrangement pending confirmation of a negative test result; and
  - ordering the product to be re-exported, destroyed or cooked if a positive test result is found.