

**Subordinate legislation tabled between
16 September 2015 – 27 October 2015**

Report No. 12, 55th Parliament
Agriculture and Environment Committee
January 2016

Agriculture and Environment Committee

Acting Chair	Mr Linus Power MP, Member for Logan*
Deputy Chair	Mr Stephen Bennett MP, Member for Burnett
Members	Mrs Julieanne Gilbert MP, Member for Mackay Ms Jennifer Howard MP, Member for Ipswich* Mr Robbie Katter MP, Member for Mount Isa Mr Ted Sorensen MP, Member for Hervey Bay

Note* On 9 December 2015, Ms Jennifer Howard MP, informed the Leader of the House of her intention, due to her appointment as Assistant Minister for Local Government, to resign in February 2016 from the position of Chair of the Agriculture and Environment Committee. On 10 December 2015, the Leader of the House appointed Mr Linus Power MP to act as Chair for any of the committee's meetings and deliberations until such time as a replacement chair is appointed.

Committee Staff	Mr Rob Hansen, Research Director Dr Maggie Lilith, Principal Research Officer Ms Maureen Coorey, Executive Assistant (part-time) Ms Julie Fidler, Executive Assistant (part-time) Ms Carolyn Heffernan, Executive Assistant (part-time)
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Technical Scrutiny Secretariat	Ms Renee Easten, Research Director Mr Michael Gorringe, Principal Research Officer Ms Kellie Moule, Principal Research Officer Ms Tamara Vitale, Executive Assistant
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Contact details Agriculture and Environment Committee
Parliament House
George Street
Brisbane Qld 4000

Telephone 07 3553 6662

Fax 07 3553 6699

Email aec@parliament.qld.gov.au

Web www.parliament.qld.gov.au/aec

1 Introduction

1.1 Role of the committee

The Agriculture and Environment Committee is a portfolio committee established by the Legislative Assembly on 27 March 2015 under the *Parliament of Queensland Act 2001*.¹ It consists of government and non-government members. The committee's primary areas of responsibility are: agriculture and fisheries; sport and racing; environment and heritage protection; and national parks and the Great Barrier Reef.²

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio area to consider –

- a) the policy to be given effect by the legislation
- b) the application of fundamental legislative principles to the legislation, and
- c) for subordinate legislation – its lawfulness.

1.2 Aim of this report

This report advises of portfolio subordinate legislation (SL) tabled between 16 September 2015 and 27 October 2015 (as listed below) that the committee has examined.

SL nos: 128 to 137 were tabled on 13 October 2015 and have a disallowance date of 18 February 2016. SL nos: 141 to 148 tabled on 27 October 2015 have a disallowance date of 25 February 2016. The report incorporates advice provided to the committee by the Technical Scrutiny Secretariat.

Other than the issues discussed in section 2 of this report and relating to SL Nos. 129, 137, 141 and 148 (as shaded in the table below), no FLP or policy issues were identified by the committee.

SL No	Subordinate Legislation	Tabled On	New Disallowance Date
128	Proclamation made under the <i>Environmental Protection and Other Legislation Amendment Act 2014</i>	13/10/2015	18/02/2016
129	Environmental Protection Amendment Regulation (No. 1) 2015	13/10/2015	18/02/2016
130	Nature Conservation (Protected Areas Management) Amendment Regulation (No.3) 2015	13/10/2015	18/02/2016
137	Nature Conservation (Protected Areas) Amendment Regulation (No.2) 2015	13/10/2015	18/02/2016
141	Fisheries (Commercial Trawl Fishery-Fin Fish) Quota Declaration 2015	27/10/2015	25/02/2016
148	Rural and Regional Adjustment Amendment Regulation (No.3) 2015	27/10/2015	25/02/2016

¹ Section 88 *Parliament of Queensland Act 2001* and Standing Order 194.

² Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland.

2 Issues identified in particular subordinate legislation

2.1 SL 129 – Environmental Protection Amendment Regulation (No. 1) 2015

The explanatory notes outline that the objectives of SL No. 129 are to:

- reduce regulatory burdens by removing legislative provisions that are no longer required;
- improve efficiency in the payment of fees for amendment applications for environmental authorities;
- ensure the level of environmental regulation for meat processing operations is proportionate to environmental risks; and
- update terminology and references in the Environmental Protection Regulation 2008.³

The explanatory notes also detail that those policy objectives are to be achieved by:

- providing for the deletion of contaminated land provisions after the commencement of contaminated land provisions in the *Environmental Protection and Other Legislation Amendment Act 2014* on 30 September 2015;
- implementing changes to streamline the process for the payment of fees for amendment applications;
- deregulating meat processing activities which pose a lower risk to the environment;
- updating the titles of ‘ERA Standards’ to refer to new versions; and
- updating out-dated terminology and references relating to dams to reflect terminology used in the new ‘Manual for Assessing Consequence Categories and Hydraulic Performance of Structures.’⁴

The notes state that the Amendment Regulation is consistent with the object of the *Environmental Protection Act 1994* (EPA), which is to protect Queensland’s environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (ecologically sustainable development).⁵

Potential FLP issue and comment

Section 4(5)(e) of the *Legislative Standards Act 1992* provides that whether subordinate legislation has sufficient regard to the institution of parliament depends on whether the subordinate legislation allows the sub-delegation of a power delegated by an Act only:

- if authorised by an Act, and
- in appropriate cases and to appropriate persons.

The significance of dealing with such matters other than by subordinate legislation is that since the relevant document is not “subordinate legislation”, it is not subject to the tabling and disallowance provisions of Part 6 of the *Statutory Instruments Act 1992*.

³ Environmental Protection Amendment Regulation (No. 1) 2015, Explanatory Notes p.1.

⁴ Environmental Protection Amendment Regulation (No. 1) 2015, Explanatory Notes p.1.

⁵ Environmental Protection Amendment Regulation (No. 1) 2015, Explanatory Notes p.2.

Authorised by an Act

Section 318DA of the EPA provides that:

(1) The chief executive may make a minor amendment of an ERA Standard by publishing a copy of the amended ERA Standard on the department's website.

(2) The amended ERA Standard takes effect when it is approved by a regulation.

Section 23 of the *Statutory Instruments Act 1992* provides that if an Act authorises the making of a statutory instrument with respect to a matter, the statutory instrument may make provision for the matter by applying, adopting or incorporating another document.

Accordingly, it would appear the sub-delegation is authorised.

Appropriate cases and to appropriate persons

In considering whether it was appropriate for matters to be dealt with by an instrument that was not subordinate legislation, and therefore not subject to parliamentary scrutiny, the former Scrutiny of Legislation Committee (SLC) considered the importance of the subject dealt with and matters such as the practicality or otherwise of including those matters entirely in subordinate legislation.

The ERA Standard is a standard for the eligibility criteria and standard conditions for an ERA.

Availability of document and parliamentary scrutiny

The former SLC's concerns about sub-delegation were reduced where the document in question could only be incorporated under subordinate legislation (which could be disallowed) and attached to the subordinate legislation, or required to be tabled with the subordinate legislation and made available for inspection.

It is noted that the ERA Standard is incorporated by the Amendment Regulation. The document is available on the Department's website, however it does not appear that it is intended that it will be tabled in Parliament.

It is also noted that the ERA Standard cannot be changed or replaced unless the Regulation is amended to prescribe a new or amended version of the ERA Standard. This is the case with the current Amending Regulation.

Currently, the minor ERA Standard amendment is not contained in the subordinate legislation in its entirety, and as such its content does not come to the attention of the House. Similarly, while a [future] Amendment Regulation will alert the House that there has been an amendment to the document, it will not contain information about the changes that have been made.

Where there is, incorporated into the legislative framework of the State, an extrinsic document (such as the ERA Standard) that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the House, it may be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the institution of Parliament.

The committee considered whether the Amendment Regulation has sufficient regard to the institution of parliament when the ERA Standard is not contained in the subordinate legislation in its entirety. However, it is noted that the Minister has provided information about minor changes to the ERA Standard (including the reasons for, and the nature of, the changes) in the explanatory notes to help ensure that the House is informed.

The explanatory notes do not address the potential FLP issues set out above.

Potential issues and comment

The notes outline that the amendments will not add to the administrative cost of the Queensland Government. As the amendments to remove contaminated land provisions are administrative, which are machinery in nature, they will not impact stakeholders, other than to provide greater clarity and consistency.⁶

The explanatory notes also state that the amendment to deregulate lower risk meat processing activities will only impact on four to five lower risk meat processing operations in Queensland. According to the notes, the impacts on the Department of Environment and Heritage Protection will be positive as it will no longer need to assess applications for lower risk meat processing activities given that the amendments will deregulate these activities, and deregulation will enable government resources to be focussed on activities which pose a higher risk to the environment.⁷

The notes detail that the amendment of schedule 3B to update ERA Standards version numbers will have no impact on industry as current environmental authority holders to which the ERA Standards apply will not be required to transition to the new ERA Standards. The notes outline that the changes to the ERA Standards are limited to the replacement of terms and no additional requirements will be imposed upon operators. Furthermore, the amendment of schedule 3B will not have an impact on the community as the level of environmental protection afforded by the ERA Standards will remain unchanged.⁸

The committee noted the following omissions from the explanatory notes:

- There are no details on the definition of “lower risk” meat processing operations, which will be affected by this change.

The notes do not specify whether those operations were consulted or informed about the changes.

Committee’s request for advice

The committee wrote to the Department of Environment and Heritage Protection to seek answers to the following:

1. Could the department please advise whether the Minister will table the ERA Standard in Parliament?
2. Could the department please also advise why the issue of whether the regulation has sufficient regard to Parliament is not included in the explanatory notes?
3. Could the department please ensure that the explanatory notes for future amendments to the Regulation address this potential FLP issue?
4. Could the department please provide an explanation on what is meant by “lower risk” meat processing operations?
5. Could the department please also advise whether consultation was conducted with those meat processing operations and the general feedback received?

⁶ Environmental Protection Amendment Regulation (No. 1) 2015, Explanatory Notes p.2.

⁷ Environmental Protection Amendment Regulation (No. 1) 2015, Explanatory Notes p.2.

⁸ Environmental Protection Amendment Regulation (No. 1) 2015, Explanatory Notes p.2.

Department's advice

The department provided the following responses:

1. *The Environmental Protection Act 1994 (EP Act) does not require the tabling of ERA Standards. These are publically available documents, published online on the Queensland Government's Business and Industry Portal. The Department considers that given the public availability there is not a further need for the Minister to table the ERA Standards in Parliament.*
2. *The process for making ERA Standards was originally inserted into the Environmental Protection Act by the Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012. Whether the provisions of the EP Act as amended would have sufficient regard to Parliament was considered during the drafting of the amendment Bill.*

The EP Act provides two mechanisms for placing conditions on environmental authorities. One is through the ERA Standards and the other is through site specific assessment. Site specific assessment is used for the higher risk activities. The amendments ensured that for State administered Environmentally Relevant Activities (ERAs) the responsibility for approving the conditions, whether through ERA Standards or site specific conditions, rested with the chief executive as a matter of consistency. The usual process for setting conditions on many approvals by government including environmental authorities did not require additional parliamentary scrutiny and therefore it was considered that the following the same approach for ERA Standards (for lower risk activities) did not raise any fundamental legislative principle issues.

The changes to the ERA Standards were very minor and the department fully detailed the nature and reasons for the changes in the explanatory notes. All ERA Standards are also publically available on the Queensland Government's website for the House to view. The Office of the Queensland Parliamentary Counsel did not advise of any concerns in relation to the application of fundamental legislative principles in the drafting of the subordinate legislation.

As the fundamental legislative principles were considered at the time of preparing the amendment bill and as no new issues were identified through the drafting process for the regulation, the question of sufficient regard to Parliament was not further discussed in the explanatory notes.⁹

The department noted the committee's advice and will implement measures to ensure that the explanatory notes for future amendments address the above potential FLP issue.¹⁰

In regards to the committee's question regarding the definition of "lower risk" meat processing operations, the department stated:

In September 2012, the Department published a consultation document titled "Assigning Environmentally Relevant Activities to Assessment Tracks". That document included an assessment of all prescribed Environmentally Relevant Activities (ERAs) and an assessment of whether each threshold of the ERA should continue to be regulated as an ERA. Full public consultation was undertaken on the document and submissions were taken into account in preparing the subsequent amendments to Schedule 2 of the Environmental Protection Regulation 2008. The report is available from the [department](#).¹¹

⁹ Department of Environment and Heritage Protection, Correspondence 11 December 2015.

¹⁰ Department of Environment and Heritage Protection, Correspondence 11 December 2015.

¹¹ Department of Environment and Heritage Protection, Correspondence 11 December 2015.

The department explained that the assessment of ERA 25(2a) — >1000 T to 5000 T/y Meat processing including rendering. They stated:

This ERA involves processing and rendering meat, or meat products, for human and animal consumption.

The threshold of the activity includes abattoirs and rendering operations (cooking and drying of fatty wastes from abattoirs, cooking oils, animal wastes) which process 1000 to 5000 tonnes of meat or meat products per year.

The activity has the potential for a range of environmental emissions including:

- *odour from holding pens, paunch handling and wastewater treatment*
- *odour from the rendering of meat product*
- *release of air emissions from combustion of fuel for heating and steam generation*
- *noise from livestock*
- *water emissions containing significant nutrient and biological oxygen demand components.*

Rendering processes generally cook and grind residual materials to manufacture products that may include tallow, fats, and protein and bone meals. The potential impacts of the rendering process include the release of volatile organic compounds that have low odour thresholds.

The potential impact of odour is heightened if the waste treatment system includes the use of anaerobic or paunch ponds. The environmental values of the affected waters need to be considered on a site specific basis where any discharge of wastewater to waters is proposed.¹²

The department also advised that, in reviewing the definition of the ERA in 2015, it was determined that there were some operations which did not include the sources of contaminants listed in the excerpt from the 2012 report above. They explained that those operations processed carcasses but did not involve, for example, live animals, on-site wastewater treatment or rendering and that it was these operations that were classified as lower risk.¹³ The department stated:

'Lower risk' meat operations were therefore considered to be those that involve the processing of animal carcasses into meat products but do not involve any of the following activities:

- *Slaughtering animals; or*
- *Rendering the meat or meat products; or*
- *Release of waste to waters; or*
- *Treatment of waste using anaerobic or facultative systems.*

Therefore, any relevant meat operation that does not include the listed activities should fall into the category of 'lower risk' for the purposes of the Environmental Protection Regulation 2008.¹⁴

The department advised that 'the review of the definition of the ERA for meat processing was initiated following representation being made on behalf of one the processing operations that benefits from the change in the definition. The change in the regulation reduced regulatory burden and costs for those businesses by removing the distinction between retail and non-retail premise. The consideration of whether a premise is retail or otherwise is not material to determining the potential for environmental harm.'¹⁵

¹² Department of Environment and Heritage Protection, Correspondence 11 December 2015.

¹³ Department of Environment and Heritage Protection, Correspondence 11 December 2015.

¹⁴ Department of Environment and Heritage Protection, Correspondence 11 December 2015.

¹⁵ Department of Environment and Heritage Protection, Correspondence 11 December 2015.

The department stated:

As the change in definition affects only a handful of operators and as that effect is beneficial, further consultation was not undertaken. The Department is not aware of any concerns being raised by the operators since the regulation amendment was made.¹⁶

Committee comment

The committee is satisfied with the department's advice.

2.2 SL 137 – Nature Conservation (Protected Areas) Amendment Regulation (No. 2) 2015

The explanatory notes detail that the objective of the Nature Conservation (Protected Areas) Amendment Regulation (No. 2) 2015 is to declare eleven new nature refuges, amend seven existing nature refuges and revoke six existing nature refuges.¹⁷

The explanatory notes also outline that these objectives will be achieved through amendments to Schedule 5 of the Nature Conservation (Protected Areas) Regulation 1994.¹⁸

The notes state that the core benefit of the declaration of nature refuges is the preservation of significant conservation values, which may include, but are not limited to:

- Areas containing or providing habitat for threatened or near threatened flora or fauna species;
- Threatened habitats or vegetation types;
- Habitats or vegetation types poorly represented in existing reserves;
- Remnant vegetation;
- Corridors linking areas of remnant vegetation or existing reserves;
- Significant wetlands;
- Areas that contribute to the future resilience of the Queensland landscape; and
- Environmental values such as carbon sequestration.¹⁹

The explanatory notes explain that landholders are able to negotiate conservation agreements that allow their continued environmentally sustainable use of the land, providing for continuing productive use that is consistent with conservation values. Subject to any other relevant legislation and lease requirements, nature refuge landholders are free to continue to own and manage their land to generate an income as per the conditions negotiated in their conservation agreement.²⁰

The notes also do not provide any additional details or information on the refuges that are being amended or revoked.

¹⁶ Department of Environment and Heritage Protection, Correspondence 11 December 2015.

¹⁷ Nature Conservation (Protected Areas) Amendment Regulation (No. 2) 2015, Explanatory Notes p.1.

¹⁸ Nature Conservation (Protected Areas) Amendment Regulation (No. 2) 2015, Explanatory Notes p.1.

¹⁹ Nature Conservation (Protected Areas) Amendment Regulation (No. 2) 2015, Explanatory Notes p.2.

²⁰ Nature Conservation (Protected Areas) Amendment Regulation (No. 2) 2015, Explanatory Notes p.2.

Potential issues and comment

The explanatory notes outline that consultation was conducted with the following departments or sections of departments, or their earlier departmental iterations:

- Department of Natural Resources and Mines
- Office of the Coordinator-General of the Department of State Development
- Queensland Rail
- Department of Transport and Main Roads, and
- Department of Agriculture and Fisheries.²¹

Other parties consulted under section 44 and 45 of the Act, where relevant, include: native title claimants, holders or their representatives; mining interest holders; financial institutions; sublessees; covenant holders; and easement holders. The notes detail that landholders have been closely involved in the development of their conservation agreements. Responses and consent have been received from consulted parties where relevant.²²

The notes however do not indicate the type of response received from the parties consulted under sections 44 and 45, nor does it provide the feedback from those departments.

Committee's request for advice

The committee asked the Department of Environment and Heritage Protection to clarify the changes to the eleven new nature refuges, the amendment to the seven existing nature refuges and the revocation to the six existing nature refuges.

The committee also sought from the department advice on the type of feedback received from its consultation with the various parties under sections 44 and 45.

Department's advice

The department explained that there are no changes to the eleven new nature refuges as these are new nature refuges which added 28,408 hectares to the protected area estate.²³

The department also provided the following explanation for the amendment to the seven existing nature refuges and the revocation to the six existing nature refuges:

Of the seven existing nature refuges that required amendments –

- *three (Aberdeen, Craig's Pocket, Haggerstone Island) required new conservation agreements to ensure the nature refuge endures any tenure conversion from leasehold to freehold. This resulted in an additional 226.77 hectares of nature refuge;*
- *one (Talaroo) was amended to increase the area of the nature refuge (additional 21,830 hectares) to comply with Indigenous Land Council requirements of the landholder;*
- *one (Range View) was amended to decrease the existing nature refuge, with an area of 582 hectares removed. These hectares are now part of the new Messmate Nature Refuge (one of the eleven above) and an addition to Girringun National Park.*
- *one (East Mount Mellum) was amended to increase the overall area of the nature refuge (additional 6.6 hectares) as part of a negotiation to excise a small area for an access easement;*

²¹ Nature Conservation (Protected Areas) Amendment Regulation (No. 2) 2015, Explanatory Notes p.2.

²² Nature Conservation (Protected Areas) Amendment Regulation (No. 2) 2015, Explanatory Notes p.3.

²³ Department of Environment and Heritage Protection, Correspondence 11 December 2015.

- one (Brigooda) was amended to remove part of the lot (6.6 hectares) for which values no longer exist due to clearing (note this is part of a larger compliance investigation settled by an offset on the neighbouring property).

Of the six revocations –

- three (Kynuna, Red Cap Hill, Wondekai - a total of 39,395 hectares) were the result of tenure conversions resulting in the conservation agreements becoming invalid. The landholders were unwilling to sign a new conservation agreement;
- three (Pandanus, Petrogale, Valley Views - a total of 58.05 hectares) were short-term conservation agreements that expired. The landholders were unwilling to sign a new conservation agreement.²⁴

In relation to the feedback received from the consultation with the various parties under sections 44 and 45 of the Act, the department advised:

The level of consultation varies from requiring consent from s45 interested parties (e.g. mining and banking interests), with a date for providing consent or otherwise, to advising s44 interested parties of the pending nature refuge and providing a response date for submissions (e.g. native title holders (note that, where native title rights and interests in land exist, nature refuges do not affect those rights and interests)).

Where an objection has been raised by s45 interests, the department will negotiate to come to a mutually agreeable outcome (e.g. excising areas due to proposed mining activities or a future road).²⁵

Committee comment

The committee is satisfied with the department's advice.

2.3 SL 141 – Fisheries (Commercial Trawl Fishery-Fin Fish) Quota Declaration 2015

The explanatory notes outline that the Commercial Trawl Fishery (Finfish) is managed by an annual quota to ensure the fishery remains commercially and ecologically sustainable. The policy objective of Subordinate legislation No. 141 is to provide for the declaration of the 2016 annual quota for taking prescribed whiting, goatfish and yellowtail scad in the fishery.²⁶

The explanatory notes detail that these objectives will be achieved by declaring the annual quota for taking prescribed whiting at 1090 tonne and for goatfish and yellowtail scad at 100 tonne for each of the species. The declaration will be effective from 1 January 2016 to 31 December 2016.²⁷

The explanatory notes state that the quota declared for prescribed whiting for 2016 represents a reduction of 60 tonnes from the 2015 quota. The notes outline that the proposed reduction is due to declining stocks as information collection from monitoring suggest that the fishery is sustainable. The reduction is intended to improve the commercial sustainability of the fishery. The explanatory notes detail that catch rates over recent years have been static and slightly below long term averages and may be improved (and hence profitability may also be improved) in the long term by a reduction in total catch.²⁸

²⁴ Department of Environment and Heritage Protection, Correspondence 11 December 2015.

²⁵ Department of Environment and Heritage Protection, Correspondence 11 December 2015.

²⁶ Fisheries (Commercial Trawl Fishery-Fin Fish) Quota Declaration 2015, Explanatory Notes p.1.

²⁷ Fisheries (Commercial Trawl Fishery-Fin Fish) Quota Declaration 2015, Explanatory Notes p.1.

²⁸ Fisheries (Commercial Trawl Fishery-Fin Fish) Quota Declaration 2015, Explanatory Notes p.1.

Potential issues and comment

The explanatory notes state that Fisheries Queensland will notify all commercial fishers in the Commercial trawl Fishery (Fin fish) of the commencement of the declaration.²⁹

Section 24(2) of the *Legislative Standards Act 1992* states:

The explanatory note must also include -

- (a) *if consultation took place about the subordinate legislation -*
 - (i) *a brief statement of the way the consultation was carried out; and*
 - (ii) *an outline of the results of the consultation; and*
 - (iii) *a brief explanation of any changes made to the legislation because of the consultation; or*
- (b) *if consultation did not take place—a statement of the reason for no consultation.*

The notes do not specify whether any consultation prior to the declaration has been conducted with commercial fishers. And if consultation was not conducted, the explanatory notes do not state the reasons.

Committee's request for advice

The committee asked the Department of Agriculture and Fisheries (DAF) to clarify whether consultation was conducted with commercial fishers in relation to the reduction of the annual quota, and if so, the general feedback received. The committee also asked DAF to provide reasons if consultation was not conducted.

Department's advice

The department explained that the Commercial Trawl Fishery (Finfish) consists of five licences which are held by two licence holders. The department stated:

Consultation was conducted in person with both Commercial Trawl Fishery (Finfish) licence holders at a scheduled meeting on 25 August 2015 at the Primary Industries Building, 80 Ann Street, Brisbane. At this meeting, the recommendation of the 2016 annual quota setting process were presented. These were determined using an agreed process which incorporates fishery catch and effort logbook data, along with age-length data collected from biological samples provided by the fleet. Both licence holders supported the recommended 2016 quota amount of 1090 tonnes. Fisheries Queensland supported this decision. This 2016 quota amount represented a 60 tonne reduction from the 2015 quota and is below the maximum sustainable yield able to be caught.³⁰

Committee comment

The committee is satisfied with the department's advice.

²⁹ Fisheries (Commercial Trawl Fishery-Fin Fish) Quota Declaration 2015, Explanatory Notes p.1.

³⁰ Department of Agriculture and Fisheries, Correspondence 9 December 2015.

2.4 SL 148 – Rural and Regional Adjustment Amendment Regulation (No.3) 2015

The explanatory notes state that the Queensland Government’s Sustainable Fishing Policy included a commitment to establish three net-free fishing zones in north and central Queensland:

- Trinity Bay - Cairns,
- St Helens Beach – Cape Hillsborough, North of Mackay,
- Yeppoon/Keppel Bay/Fitzroy River, Capricorn Coast.³¹

The notes detail that the Sustainable Fishing Policy included the setting aside of \$10 million to fund a buyout of commercial fishing activity in these areas and meet the compensation needed to establish the three net-free fishing zones.³²

The Fisheries and Another Regulation Amendment Regulation (No. 1) 2015 provided for the establishment of the net free fishing zones, the buyback of particular fishing boat licences and payments to commercial fishers affected by the establishment of the zones. This was examined by the committee in its [Report No. 8](#), which was tabled on 8 October 2015.

The explanatory notes outline that the objective of this amendment regulation is to provide for further payment to the commercial fishers most affected by the establishment of the zones. Commercial fisher licence holders who take fish under commercial fishing boat licences are eligible under the *Fisheries Act 1994* to apply for compensation. The notes state that the payments are to assist eligible commercial fisher licence holders transition their business in response to the establishment of the net free zones.³³

The explanatory notes outline that targeted and public consultation was undertaken with commercial fishers, recreational fishers and charter fishers on aspects of the proposed implementation package, including zone boundaries, the buyout scheme and the potential for a payment scheme. The notes also detail that the Government had considered feedback subsequent to the consultation and the Fisheries and Another Regulation Amendment Regulation (No.1) 2015 was notified on 11 September 2015.³⁴

Prior to the notification, the Government announced its intent to progress the regulation and affected fishers were contacted. The notes state that feedback from affected fishers highlighted a gap in the assistance measures for fishers who had relied heavily on net fishing within the zones. As a result, the Government approved the establishment of the additional payments to particular holders of commercial fisher licences scheme to eligible fishers.³⁵

The notes outline that the costs to Government will be within the \$10 million originally allocated to fund a buyout of commercial fishing activity in the new net free areas and payments to commercial fishers affected by the establishment of the zones.³⁶

Potential issues and comment

Section 4 of the amendment regulation, amends the Fisheries and Another Regulation Amendment Regulation (No.1) 2015 by inserting the word ‘pocket’ to read ‘set pocket net’ in section 6.2(a) and section 6.3(a).

Sections 6 & 7 of the amendment regulation amend the Rural and Regional Adjustment Regulation 2011 to provide for an additional compensation scheme for fishers affected by the establishment of net-free fishing zones. The new scheme at Schedule 28 appears to provide up to an additional \$1.5 million in compensation to affected fishers from the original \$10 million committed by the Government for implementing the net-free zones, licence buy-backs and compensation payments to affected fishers. The

³¹ Rural and Regional Adjustment Amendment Regulation (No.3) 2015, Explanatory Notes p.1.

³² Rural and Regional Adjustment Amendment Regulation (No.3) 2015, Explanatory Notes p.1.

³³ Rural and Regional Adjustment Amendment Regulation (No.3) 2015, Explanatory Notes p.1.

³⁴ Rural and Regional Adjustment Amendment Regulation (No.3) 2015, Explanatory Notes p.3.

³⁵ Rural and Regional Adjustment Amendment Regulation (No.3) 2015, Explanatory Notes p.3.

³⁶ Rural and Regional Adjustment Amendment Regulation (No.3) 2015, Explanatory Notes p.2.

explanatory notes state that ‘...feedback from affected fishers highlighted a gap in the assistance measures for fishers who had relied heavily on net fishing within the zones.’

The committee notes that no further details were provided in the explanatory notes on those additional payments.

Committee’s request for advice

The committee wrote to the Department of Agriculture and Fisheries to seek clarification on the reasons for the change in wording (Section 4 of the amendment regulation) which inserts the word ‘pocket’ in section 6.2(a) and section 6.3(a).

The committee also asked if the additional payments are new or if they were previously enshrined in the regulation. The committee also sought examples of payments that individual heavily-affected fishers may now receive under the new compensation scheme, and examples of total compensation payments that those fishers may receive under all compensation schemes.

Department’s advice

The department explained that the change in wording (Section 4 of the amendment regulation) is to correct a drafting error in the legislation and will have no effect on fishers’ eligibility for compensation.³⁷

The department also stated that ‘the additional payments under the Impact Alleviation Scheme are for commercial fishers impacted by the introduction of three new free zones under the Government’s Sustainable Fishing Policy. These are new payments and are available to fishers who:

- a) had fished at least 60 Days in one of the net free zones
- b) had at least 50 per cent of their recorded net fishing effort occurring in the net free area.’³⁸

The department provided the following two examples of compensation payments:

Example 1: A fisher who holds a commercial fishing boat licence and a commercial fisher licence may receive three payments under the new scheme as outlined below:

- Buyback scheme payment \$150,000 (licence average)
- Settlement scheme payment up to \$59,500
- Impact Alleviation Scheme: up to \$116,000

Example 2: A fisher who only holds a commercial fisher licence may receive a payment under the settlement scheme and the Impact Alleviation scheme.

- Settlement scheme payment up to \$59,500
- Impact Alleviation Scheme: up to \$116,000³⁹

Committee comment

The committee is satisfied with the department’s advice.

³⁷ Department of Agriculture and Fisheries, Correspondence 9 December 2015.

³⁸ Department of Agriculture and Fisheries, Correspondence 9 December 2015.

³⁹ Department of Agriculture and Fisheries, Correspondence 9 December 2015.

3 Recommendations

Recommendation 1

The committee recommends that the Legislative Assembly note the contents of this report.



Linus Power MP
Acting Chair
January 2016