



Commissioner for  
Better Regulation  
Red Tape Commissioner

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6 September 2019

Ms Megan Bourke-O'Neil  
Deputy Secretary, Policy & Innovation  
Department of Transport  
21/1 Spring Street  
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Dear Ms Bourke-O'Neil

## **REGULATORY IMPACT STATEMENT FOR FISHERIES REGULATIONS 2019**

I would like to thank your staff at the Department of Transport (the Department) for working with my team on the preparation of the Regulatory Impact Statement (RIS) for the Fisheries Regulations 2019. The existing Fisheries Regulations are made under the *Fisheries Act 1995* (the Act) and are due to sunset in February 2020.

As you know, under section 10 of the *Subordinate Legislation Act 1994* (the SLA), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and be proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 4 September 2019 meets the adequacy requirements of the SLA.

### **Background**

As the current Fisheries Regulations are sunsetting, the RIS outlines the policy rationale for the continued regulation of commercial and recreational fishing and aquaculture in Victoria. The Department notes that fishing is an important cultural, recreational and commercial pursuit in Victoria, with 260 000 recreational licence holders, 720 commercial and aquaculture licence holders and an estimated 830, 000 fishers exempted from holding a licence (such as persons under the age of 18 and seniors) per year.

The Department explains that fish in Victoria's inland and marine waters are a resource owned by the Crown under the Act, with multiple uses and benefits (e.g. fishing as a commercial food source, leisure activity, culturally significant activity, as well as providing ecological benefits such as biodiversity). Without government management, this effectively leads to a 'problem of the commons' – fishers are incentivised to catch as much as they can before someone else does. This has the potential to lead to overfishing, inefficient resource allocation and misuse, as well as potentially depleting fish stock and eventual collapse of fisheries.

The current fishing regulation framework under the Act establishes:

- a licensing and permit system for recreational, commercial, scientific/research, indigenous purposes and aquaculture, including a Licensing Appeals Tribunal;
- limitations on use of equipment and fishing take, with associated penalties for non-compliance;
- fisheries management plans, including joint management between the Commonwealth and Victoria;
- powers of authorised officers to enforce compliance; and
- various conservation tools to protect aquatic species and establish fisheries reserves.

The regulations aim to give effect to the objectives of the Act - namely to ensure that fishing in Victoria is sustainable and protects and conserves fisheries resources and ecosystems. The Victorian Fisheries Authority (VFA) is the regulator who enforces the Act and its associated legislation.

### **Analysis**

The RIS identifies a range of high-level options for the overall approach to how fisheries are to be regulated, assessed against a base case of letting the current regulations lapse without replacement. This base case would mean that no recreational or commercial fishing or aquaculture would be legal under the Act.

The Department notes that within each option, there are many individual elements and combinations that could be chosen (such as licence types, catch limits, equipment use etc). To simplify analysis, the RIS assumes the same restrictions on fishing and production activity as the status quo for Options One and Two, combined with changes proposed below.

The options are assessed against whether they would achieve the objectives of the Act, and the level of compliance and enforcement costs imposed on licensees and the VFA respectively.

#### *Option One – Restricted licences with compliance requirements*

This option would make regulations to allow licensed recreational and commercial fishing and aquaculture to occur with clearly defined restrictions. These restrictions include:

- where and when licences can be used;
- what fish can be caught or grown;
- what equipment can be used; and
- controls on growing and translocation.

The option also imposes compliance requirements to support enforcement of the regulations, such as registration of boats, marking of equipment, reporting requirements such as requiring commercial licensees to maintain receipts, logs and notifications for the VFA) and restrictions on the number of commercial fishers and the number and timing of commercial fishing trips.

This is broadly similar to current arrangements. In addition, this option would also make additional changes to restrictions for commercial and recreational fishing around:

- varying bag and size limits (both restricting and increasing for various species);
- allowing the use of certain equipment, such as barbed flying gaffs and combined longlines for various licence types; and
- removing closed season for certain fish species in Mt Emu Creek and the Moyne river.

The option also imposes new compliance requirements from the status quo, through mandating the transition from paper-based to electronic reporting, and vessel monitoring systems (VMS) for certain commercial licence classes, which is estimated to affect 185 boats (which do not currently have VMS).

#### *Option Two – Restricted licences with no other compliance requirements*

This option would make regulations to allow licensed recreational and commercial fishing and aquaculture to occur with clearly defined restrictions but remove obligations on licence holders around ensuring compliance with fishing activity and production controls. Enforcement would rely on VFA officers monitoring and checking activity where it occurs, rather than relying on licensee reporting requirements.

This option would impose the same restrictions and changes to licensees as per Option One, including the proposed changes to restrictions.

#### *Option Three – Unrestricted licences*

This option would make regulations to allow recreational and commercial fishing and aquaculture activities to occur, but without any limitations or controls. Effectively, this would mean fishing catch would be unrestricted, as well as equipment used, size of fish caught and where and when fish could be caught, grown or moved.

#### *Non-feasible options*

The Department considers a fourth option of prescribing licensing and authorisation via regulation, but elements such as use of equipment and catch limits being managed via non-enforceable guidelines. The RIS argues this option would provide incentives to exploit fisheries resources without reprisal, is impractical and unable to meet the objectives of the Act and therefore not feasible.

### **Proposal**

Based on the criteria above, the Department explains that Option One – restricted licences with compliance requirements – is the preferred option, as it meets the objectives of the Act while providing the most efficient approach to compliance.

The Department estimates that Option One will impose \$12 million in regulatory compliance costs (NPV) over ten years on the commercial fishing sector. The regulatory compliance costs on the recreational sector are considered minor by the Department and are unquantified. It is estimated to additionally require around \$13 million per year for the VFA to enforce the regulations. This is less than the estimated enforcement cost for Option Two (\$20 million per year). The Department argues Option Two would require a significant increase in VFA resources, as non-compliance would be harder to detect and require proactive monitoring by VFA to observe catch as it occurs.

Balanced against these costs, Options One and Two allow for an estimated \$100 million per year of commercial fishing and aquaculture production, and \$2.3 billion in direct expenditure for recreational fishing. The RIS details that compared to the other options, Option One provides for better ecological outcomes (and thus meet the objectives of the Act more effectively), such as:

- more effective management of sustainable fisheries;
- reducing by-catch through better controls;
- enforcing ethical fishing practices; and
- facilitating better understanding of harvest levels.

Option Three, by comparison, would allow for unrestricted licensed fishing and impose minimal compliance burden, but could jeopardise the objectives of the Act for sustainability and conservation of fisheries resources and ecosystems.

### **Implementation and evaluation**

The Department notes that it has consulted with industry on proposed regulatory changes, and that industry is broadly supportive.

The Department notes that given that the proposed Regulations largely continue current arrangements, existing mechanisms will continue to operate. Changes will be communicated to stakeholders (such as representative bodies and licence holders) in writing with updates to the Recreational Fishing Guide and social media. In addition, the VFA will run port visits with Seafood Industry Victoria to assist commercial fishers to understand to new catch reporting and VMS requirements.

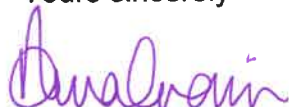
The RIS explains that arrangements will be in place to enable commercial licence holders to transition to electronic reporting and the use of VMS, such as allowing certain licensees to continue to use paper-based reporting until the new licensing year in 2020 and assisting other licensees in the operation of the VMS.

The proposed regulations will be subject to formal evaluation when they sunset in 2029. The RIS flags that elements of the regulations may be reviewed prior to this as a result of remaking fees, royalties and levies by 2027, or any other potential regulatory changes.

The VFA will continue to monitor the effectiveness of the regulations through ongoing monitoring of catch data, offence data and ongoing engagement with industry stakeholders via the Recreational Fishing Round Table, Aquatic Strategic Action Group and other fora.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 9092 5800.

Yours sincerely



Anna Cronin

**Commissioner for Better Regulation**