Agriculture and Fisheries and Other Legislation Amendment Bill 2023

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Submission to State Development and Regional Industries Committee in relation to the Agriculture and Fisheries and other Legislation Amendment Bill 2023

David Bobbermen | QSIA EO
p. [redacted] e. [redacted]

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1. Executive Summary

QSIA thanks the State Development and Regional Industries Committee for the opportunity to make this submission.

The Commercial Fishers of Queensland are supportive of any changes to the Fisheries Act 1994, that are derived from robust, broad consultation, and have a clear need and objective.

Several of the proposed amendments in the Bill, do not meet these criteria.

Very little meaningful consultation has occurred with industry around these proposed amendments. While significant discussions have been had between the Department and industry around "Independent Data Validation" on the East Coast Otter Trawl Fleet as a condition of the current Wildlife Trade Operations (WTO) (Part 13 and 13A of the EPBC Act), there has been virtually no consultation with the broader industry about Independent Onboard monitoring. We believe that there has been no consultation on the proposed S61A, or any other proposed amendments.

We live in a changing world, and with that, all industries must adapt. The Queensland Wild Harvest Fishing Industry recognises the need to adapt, but it does not accept enshrining in legislation powers that are either unnecessary or an overreach.

The proposed amendments to the Fisheries Act, are significantly targeted at the operations of the Commercial Fishing Industry. Our Industry is only a part (and an ever decreasing part) of the puzzle to ensure there is a future for all users of Queensland's wild fisheries resource. At some stage, the spotlight needs to focus on other users.

While there are many amendments that we support (some with amendment), **we do not support** the inclusion of a new Section 61A into the Fisheries Act. These proposed new powers being given to the Chief Executive have no place in the Act. The management regime it tries to implement can be easily implemented through subordinate policies and regulation, which will allow a more nuanced approach to any issues.

Significant concern is also raised regarding the privacy, copyright, and intellectual property surrounding the installation of Government mandated CCTV systems on private property. This "Big Brother" style solution is, to our knowledge, the only example of such an arrangement, and sets a dangerous precedent. Industry requires greater safeguards of their rights and interests if government mandated onboard cameras are deemed necessary.

Government needs to consider the implications of the proposed amendments to the Fisheries Act and how it impacts the daily operations of the industry. Government at all levels and all departments must work collaboratively with industry to ensure that any unintended consequences of the enacted amendments are worked through to ensure industry can continue to access the resource.

2. About Queensland Seafood Industry Association Inc

Queensland Seafood Industry Association Inc (QSIA) is Queensland's peak membership based organisation representing the wild harvest commercial seafood industry in Queensland. Its history dates back over 100 years. Membership activity ranges from the NSW border to the NT border and encompasses all forms of commercial fishing namely line, crab, net and Trawl. QSIA also has members that provide pre and post harvest goods and services to the industry.

QSIA's is proud to have Mr Keith Payne VC as its patron.

3. Relevance of the Bill and background.

There are several amendments in this Bill from Chapter 10 (clause 134) that directly impact QSIA's membership base. This submission is focused on those impacts.

It should be noted that an "onboard observer program" is not a new concept for Queensland. They were part of the industry's landscape for decades and were scaled back/abandoned by previous government. Industry wishes to work collaboratively with the Department of Agriculture and Fisheries to ensure that access to a low carbon, high nutrition, renewable source of protein remains open to the commercial fishing industry for all seafood consumers. In doing so the principle of proportionality needs to be considered, as too the triple bottom line framework[1].

4. Our Submission

a) Consultation

Section 3A(2) of the Queensland Fisheries Act 1994, states that

"The main purpose of this Act is to be achieved, so far as practicable –

(a) in consultation with, and having regard to the views and interests of, all persons involved in the commercial, charter, recreational or indigenous fishing and the community generally; and
(b) using a transparent and responsive approach to the management of access to fisheries resources."

Most of the amendments proposed in this Bill have had no consultation with the commercial fishing industry. Where consultation has occurred, it has been very limited and not canvassed alternative solutions to those specified in the proposed legislation. Consultation and negotiation have mainly

[1] Division 2, specifically S3(5)(d) - Fisheries Act 1994

been around the Field Trial Agreements for Independent Onboard Monitoring cameras for the East Coast Otter Trawl fleet.

At a recent meeting of the East Coast Otter Trawl working group, a member from the Department of Fisheries commented that some of the provisions of this Bill have been circulating for over a year and were written to mainly mitigate the perceived environmental impacts of gill netting within the Great Barrier Reef Marine Park. Recent adjustments to the gill netting industry in the Marine Park include commitments to mandate independent onboard monitoring. This commitment is referenced in the supporting documents, but does not, absolve the Department from the requirements of the Act which require consultation.

It is QSIA's belief that a "one size fits all" approach in the Act for some of these reforms is not workable. It should be in subordinate legislation to allow a more nuanced approach to the issue of protection of threatened endangered and protected species based on conservation status of the species, the array and order of key threatening processes, geographical overlap with fishing operations, type of fishing apparatus, and the experience/knowledge of individual fishers.

b) Impact Assessment Statement.

The Queensland Government Better Regulation Policy (September 2023) sets out requirements for regulatory reviews. Specifically, it prescribes when an Impact Assessment Statement must be prepared.

It is QSIA's view that an Impact Assessment Statement must be completed under the guidelines of this policy as the proposal has significant impacts. At the very least a Summary IAS must be completed.

The Explanatory Notes on page 33 states:

> *OBPR was consulted on a Preliminary Impact Assessment for the other amendments (non-IOM) in the Bill. OBPR advised that no further regulatory impact analysis is required for the amendments as the amendments are unlikely to results in significant adverse impacts.*

This statement raises many questions:

- It states that "no further regulatory impact analysis is required" – this implies that one has been done, but no reference to it can be found by QSIA.
- It excludes the provisions of Independent Onboard Monitoring (IOM), without providing any reasons. Surely the Department is not duplicating the Vessel Tracking rollout and subsequent Post Implementation Review[2]?
- QSIA disputes the assertion that "the amendments are unlikely to result in significant adverse impacts" for the reasons outlined in this submission.

[2] https://daf.engagementhub.com.au/vessel-tracking-review-engagement-portal

c) Clause 140.

Clause 140 attempts to address protected marine animal death and injury, to ensure the conservation status of protected species are not adversely affected. The commercial fishing industry supports and is actively participating in achieving this goal, through industry's continued self-improvement of fishing practices and gear, support of research and development, and a thorough understanding of protected species concerns, ecology, and solutions. The solutions to this complex issue as drafted by the government in Clause 140, are misguided in their justification, were identified without any industry consultation, are a gross-over overstep of the chief executives' powers and will not reasonably and proportionally reduce protected species interactions and lessen their conservation concerns.

There is a lack of justification for the proposed actions of Clause 140 in the '**Explanatory Notes'**. The only justification provided, is '*Repeated interactions with protected marine animals… can jeopardise the continuation of Wildlife Trade Operation export approvals'*. Unfortunately, the proposed legislation behind **Clause 140**, ignores other, more successful, less legally questionable, and community-supported solutions (e.g., fishery management plans, harvest strategies, protected species mitigation plans, professional development, monitoring regimes, and codes of best practice) to address protected marine animal interactions[3].

EPBC Act 1999 Part 13 and Part 13A provides legislation governing the Wildlife Trade Operation (WTO) approvals. The minister can *'accredit a plan, regime, or policy under section 208A, 222A, 245, 265'*. A [federal] minister can accredit a management plan only if they are satisfied:

(f) *the plan, regime, or policy requires persons engaged in fishing… to take all reasonable steps to ensure that members of a listed marine species are not killed or injured as a result of the fishing; and*

(g) *the fishery… does not, or is not likely to adversely affect the conservation status of a listed marine species or a population of that species.*

More specifically, the [federal] minister can declare that a specified wildlife trade operation is an ***approved wildlife trade operation*** if satisfied that:

"the operation will not be detrimental to:

i) The survival of the taxon to which the operation relates; or
ii) The conservation status of a taxon to which the operation relates.

[EPBC Act 1999, section 303FN (3b)]

[3] DCEEW, https://www.dcceew.gov.au/environment/marine/fisheries, provides access to approved, expired, and revoked WTO accreditation with reference to management actions used to justify conclusions.

Fisheries in Australia that are assessed for WTO approval under the EPBC Act 1999 Part 13, and 13A according to *'Guidelines for the Ecologically Sustainable Management of Fisheries*- Edition 2'. Under these '*Guidelines*' a fishery must *'be conducted in a manner that avoids mortality of, or injuries to, endangered threatened, or protected species…'* and fishery management authorities must ensure *'there are measures in place to avoid capture and/or mortality of endangered, threatened, or protected species'*.

There is no requirement to have a formal statutory fishery management plan[4]. Usually, fisheries and management authorities satisfy the conditions of WTO accreditation through non-statutory management arrangements or management policies and programs[5]. This includes harvest strategies, ecological risk assessments, data validation programs, protected species management strategies, and providing professional development for authority holders. Every fishery has interactions, as defined in *proposed* Section 61A (8), with protected marine animals, the *EPBC Act 1999* and assessment *Guidelines* only requires fishers and management to do what is reasonably possible to ensure mortalities and injuries do not occur. This stated goal of the *EPBC Act 1999* part 13 and 13A, and the assessment 'Guidelines' does not align with the how Clause 140 defines an *interaction*[6].

Once WTO accreditation has been approved, the [federal] minister can vary or revoke a declaration under the *EPBC Act 1999* section 303FT. The minister can:

"Vary a condition by:

(a) Specifying one or more conditions…; or,
(b) Revoking or varying a condition" [section 303FT (8)]"

"Revoke a declaration if he or she is satisfied that a condition of the declaration has been contravened" [Section 303FT (9)]

"revoke a declaration at anytime" [section 303FT (10)]

There is no mention in the *EPBC Act*, or in the '*Guidelines'* to suggest that an increase in protected species interactions, and or mortalities or injuries, will result in the revocation of an WTO accreditation. Any change in the nature, scale, intensity of impact, and/or management response to protected species interactions must be reported in annual reports or as auxiliary information. From

[4] DCEEW, https://www.dcceew.gov.au/environment/marine/publications/guidelines-ecologically-sustainable-management-fisheries
[5] See approved management plans, policies and programs at: https://www.dcceew.gov.au/environment/marine/fisheries
[6] Proposed section 61A (8) defines an interaction as: physical contact between a boat, person, or fishing apparatus involved in a fishing operation and the animal.

there, the [federal] minister may impose a new condition on the accreditation, requiring the management organisation to address any increase in interactions. It would not result in the immediate forfeiture or revocation of WTO accreditation. Indeed, of the four revocations (all of whom have been in Queensland), **none were the result of increased interactions, all had to do with the failure to implement non-statutory management plans**:

Queensland Mud Crab Fishery, breach of condition 5: failure to develop a harvest strategy by the end of 2019- since been completed. [7]

Blue Swimmer Crab Fishery, breach of condition 5: failure to develop a harvest strategy by the end of 2019- since been completed. [5]

Gulf of Carpentaria Inshore Fishery, breach of condition 5(b), 8(b), and 9: failure to implement an independent data validation program, failure to develop risk mitigation strategies for high-risk species, which were due to be implemented alongside a harvest strategy, failure to implement a harvest strategy. [5]

East Coast Inshore Fin Fish Fishery, inability to achieve WTO conditions: Whilst the exact conditions breached are not listed online, the conditions relating to protected species management referred to developing an independent data monitoring program, harvest strategies, and ecological risk assessments. [8]

There is no requirement to give the Chief Executive powers to enforce changes on authority conditions to maintain WTO approval. Indeed, no other jurisdiction has granted these powers to a Chief Executive, and no jurisdiction, other than Queensland, has had WTO revoked [9]. **These jurisdictions have maintained their WTO approvals through the development of harvest strategies, protected species management plans, fisher professional development, and other non-statutory policies**.

Repeated protected species interaction could affect WTO approvals if, and only if, there is no plan to reasonably manage, reduce, or address interactions that result in mortality or injury. These management plans, regimes, or policies can be, and are, achievable without jeopardising the

[7] Letter to Minister Furner from the federal minister for the Environment, Sussan Ley, 20th December 2021, available at: https://www.dcceew.gov.au/sites/default/files/documents/qld-blue-swimmer-crab-and-mud-crab-letter-2021.pdf

[8] Protected Species Management Plan for the East Coast Inshore Fishery. Available at: https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/38dcb9a7-219e-489e-8e36-4324b19f1e50/east-coast-inshore-protected-species-management-strategy.pdf?ETag=c1ad0ba4f4265b87203cbb0c3b9b684d

[9] WTO accreditations with references to management strategies can be found at: https://www.dcceew.gov.au/environment/marine/fisheries

[Queensland] *Human Rights Act 2019* and [Queensland] *Legislative Standards Act 1992*. The justification to violate those Acts, because *"immediate action is required… to address interactions with protected animals… because of the serious consequences any delay to act might create for the fishery or industry generally* - Explanatory Notes" is not accurate or grounded in fact.

Clause 140, would violate **section 24** (property rights), as is suggested in the **Statement of Compatibility**. This clause, if enacted, would give the chief executive the power to enforce conditions on authorities (S61A (2)), that can prevent the use of an authority (S61A (5)), without the holder having the right to respond to the proposed authority amendments (S61A (6)). This would mean an authority holder is deprived of their property, as per *Human Rights Act*, section 24 (2).

The [Queensland] minister argues that this violation of the *Human Rights Act* is justified because:

It is not possible to achieve this purpose [reduce risk of harm to protected species] without limiting property rights as repeated interactions in a 12-month period means the way in which a person is allowed to operate under their authority may need to be modified temporarily to reduce that interaction. The ability to amend an authority to place these additional conditions is essential to ensuring that behaviour is modified and there are appropriate consequences for failing to do so. **– Statement of Compatibility**

This justification is not factual and ignores all the other management solutions to reduce the real risk to protected species, that have been implemented in Queensland, and other state and territory jurisdictions. Several management solutions including, industry training, development of Codes of Best Practice, harvest strategies, and protected species management strategies have been developed in Australia and have reduced the real risk of harm to protected species to levels that are very respectable with respect to objective scientific assessment.

There are no identified less restrictive or reasonably available ways of achieving the identified purpose. ***– Statement of Compatibility***

The above statement is not true or accurate. There are several avenues of achieving a reduced risk of harm to protected species, if such action is required, without compromising the *Human Rights Act 2019*. Professional development through best-practice education programs, the development and distribution of handling and risk-identification guides, providing access to researchers, and the development and adoption of codes of best practices or environmental management systems can all achieve the identified purpose. These solutions are already available for most fisheries and could be easily developed for remaining fisheries through effective consultation with industry.

The amendment contains appropriate safeguards to minimise the potential limitation, including they can only be imposed in response to multiple interactions, and any conditions need to have an end date, and be reviewed by the chief executive. **– Statement of Compatibility**

Both the aforementioned human-rights safeguards a) imposed after multiple interactions, and b) an end-date on conditions, are not appropriate to safeguard **property rights** and will not prevent violations of the *Human Rights Act*. Every authority holder that accurately self-reports interactions with protected species will have more than 1 interaction. It is not possible to avoid interactions, especially as defined in S61A (8). Therefore, all authority holders will be eligible for forced amendment to the conditions of their authority. The drafters of Clause 140 show no regard both practical solutions to address protected species conservation, and the human rights afforded to all people(s) of Queensland. Furthermore, the addition of an end-date to amended conditions, will not, prevent severe economic loss, and subsequent fallout resulting from an imposed condition. Imposed conditions can under S61A (5) have "*effect is to stop the authority or someone else taking fisheries resources or using a boat or fishing apparatus*".

"On balance, the purpose of reducing the risk of harm to protected animals where there are repeated interactions within a 12-month period, is considered to outweigh the limitation on property rights."

"Sustainably managing Queensland's fisheries is essential to ensuring these resources are available not just now but into the foreseeable future"

"Not reducing harm to protected animals may risk more drastic future action should there be a significant risk to those protected animals due to repeated interactions"

Reducing the risk of harm to protected animals is important; however, there are other management measures available to achieve this goal, that do not violate the *Human Rights Act*. To that extent Clause 140 is not balanced, the powers provided to the chief executive will not reduce the risk to protected species any more than a non-statutory management plan would. It is an overstep of government that does not align with the principles and objectives of WTO accreditation under the *EPBC Act*. Clause 140 would be unfairly harmful to fishers, the commercial fishing industry, auxiliary businesses, Queensland consumers. Section 61 (A) is inappropriate, harmful, and careless and the entire section should be removed.

A) [page 99-101-] Entirety of S61A- Removed

Comment: Should not be legislated into the Fisheries Act, non-statutory management plans will achieve the same outcomes, maintaining and receiving WTO accreditation, without jeopardising the *Human Rights Act 2019*, *Legislative Standards Act 1992*, and natural justice principles. Failure to comply with these Acts and principles would make Clause 140 invalid.

B. [page 99, lines 24-26] – S61A (1) – Removed, as per point A

Comment: under the current criteria *'more than 1 interaction…'* S61A will apply to every authority holder who correctly fills out their logbook. This may be despite the authority holder not inflicting any mortality or injury to a protected species as the current definition of '*interaction'* used by Fisheries Queensland [S61A (8)], does not align with definition or purpose of the *EPBC Act 1999*, or *Guidelines*, which refers to mortality and injury.

In practice, this will have a detrimental impact on Threatened, Endangered, and Protected Species (TEPS) logbook reporting. This will de-incentivise fishers from self-reporting protected species interactions, which has been dramatically improving in recent years (evidenced by logbook data). This will reduce available information on the interactions with protected species. This would violate conditions in several WTO approved accreditations in Queensland [10], and would also violate the assessment '*Guidelines'*, to ensure "*reliable information is collected on the interaction with endangered, threatened or protected species…*".

Furthermore, applying this clause would lead to animosity between industry and fisheries management, further hampering efforts to develop additional management plans, strategies, and initiatives.

The entirety of S61A should be removed, and issues identified addressed through non-statutory management plans or arrangements.

If, and only if, this does occur then appropriate trigger points need to be established independently for, and specific-to, each fishery, or operation, through industry consultation.

C. [page 99-100, lines 27-29, 1-13]- S61A (2) – Removed, as per point A

Comment: There has been no definition of "reasonable condition", or "reasonable period", provided, both terms are vague. The examples provided S61A (2a)(2b)(2c), are broad and does not, "*makes apparent to an authority holder the types of conditions which may be imposed should interactions occur"* as suggested in the **Explanatory Notes**.

[10] WTO accreditations and their conditions can be found at: https://www.dcceew.gov.au/environment/marine/fisheries

It stands to reason that a "reasonable condition" would be a condition that does not jeopardise the investment, operation, and economic viability of an authority. The conditions mentioned in S61A (2c) do and will jeopardise the investment, operation, and economic viability of an authority. 2c (ii) and (iii), could result in expensive gear being 'worthless', forcing the fisher to outlay significant sums in new gear, for which, there will be minimal or no return if the condition is applicable over a "reasonable period". Furthermore, S61A (5) makes clear that these conditions would have the ability to 'shut down' a fishing operation.

A "reasonable period" is similarly ambiguous, a "reasonable period" may be interpreted as a period where the applicable "reasonable condition", would not jeopardise the investment, operation, and economic viability of an authority.

Furthermore, there is no guarantee that the conditions imposed, at the expense of the authority holder, will effectively reduce the risk of protected species interactions. Additionally, conditions may have unintended and unforeseen consequences for fishery resources, protected species, and/or environmental processes. There are several examples in *Fisheries Act 1994*, *Fisheries (General) Regulation*, and F*isheries (Commercial) Regulation*, where legislation has had negative impacts on protected species and prevented authority holders from self-reducing the risk of their operation. (e.g. not permitting more than two anchors on mesh nets, reduces a fisher's ability to avoid marine megafauna entanglement through keep their net taut). S61A(6), further increases the likelihood of imposed conditions having unintended consequences on protected species as it prevents any consultation with the authority holder.

The entirety of S61A should be removed, and issues identified addressed through non-statutory management plans or arrangements.

If, and only if, this does occur then fisheries management should work with industry and individual authorities to develop conditions that reasonably reduce the risk of mortality and injury to protected marine species. Definitions of reasonable condition and reasonable period need to be provided.

D. [page 100, line 14-21]- S61A (3) – Removed, as per point A

Comment: in 3a there needs to be a defined period for which the imposed conditions can be reviewed. Review of imposed conditions should be reasonable, and prompt, otherwise there is a risk of unintended, unmitigated consequences for fisheries resources, protected species, and the environment.

When review does occur, there is a need for the 'reviewer' to provide justification for their decision and an avenue for the authority to respond. An inability to apply these principles would be a breach of the *Legislative Standards Act 1992* section 4 (3a)(3b), and natural justice, as the rights and liberties of individuals would be compromised.

The entirety of S61A should be removed, and issues identified addressed through non-statutory management plans or arrangements.

If, and only if, this does occur then fisheries management must work with industry to develop guidelines for the review of imposed conditions to determine if they a) are achieving their desired purpose, b) are not compromising the economic viability of the authority, and c) there are no unintended consequences for fisheries resources, protected species, and the environment.

E. [page 100, line 22-26]- S61A (4) – Removed, as per point A

Comment: The chief executive must give notice of the decision to impose a condition; however, there is no requirement to provide this notice in a reasonable or prompt timeframe, that would allow a fisher to a) respond, and b) make the necessary changes to operate 'legally' before the commencement of the condition.

This clause does not allow an authority to respond, or even be made aware that the chief executive is considering imposing a condition, as explained in the Explanatory Notes, which violates the rights and liberties of an individual as per the *Legislative Standards Act 1992* section 4 (3a)(3b), and natural justice principles. The justification for which, that *"immediate action is required to be taken to address interactions with protected species…"*, is not accurate, as WTO approvals provide conditions and timeframes for which management strategies can be implemented. Therefore, there is a need and opportunity to provide a reasonable time (28 days as per S63 (1d)) for an authority to respond to proposed conditions.

Furthermore, if the condition is imposed immediately, there will be insufficient time for an authority to adopt the necessary changes, without unnecessarily impacting their operation, and downstream businesses. For example-

If an authority has a condition imposed restricting the type of net that can be used, then they will be forced to purchase another net, which must have material imported, and period of construction, then they may not be able to receive an income for several months. This is not reasonable.

Effectively, the immediacy of an imposed condition will shut down an authority for an extended period.

The entirety of S61A should be removed, and issues identified addressed through non-statutory management plans or arrangements.

If, and only if, this does occur then fisheries management must incorporate a mechanism by which an authority can respond to proposed conditions, and that provides adequate time to adjust their operation to be compliant with the imposed condition.

F. [page 100, line 27-29]- S61A (5) – Removed, as per point A

Comment: S61 (8) allows the chief executive to impose a condition where the effect is to stop the authority or someone else taking fisheries resources or using a boat or fishing apparatus. Practically, when imposing S61A (5), this means that the chief executive can 'shut down' an authority if they have interacted with two protected species (even if animals is unharmed), without warning, and without means for an authority to challenge the decision.

This is a breach of the *Legislative Standards Act 1992* and natural justice principles. It goes beyond what was intended in S61, which only allows the chief executive to impose conditions when the authority is being renewed or applied for.

S61A (5), violates section 24 of the *Human Rights Act 2019*, by arbitrarily depriving a person of their property. The justification provided by the [Queensland] minister for this violation, is not sufficient as has been mentioned.

The entirety of S61A should be removed, and issues identified addressed through non-statutory management plans or arrangements.

If, and only if, this does occur then fisheries management must work collaboratively with industry to address protected species concerns. Whilst this may result in a decision to not operate certain gear, or, to operate in a way that allows authorities to effectively transition to other apparatus and adjust their operations.

G. [page 100, line 30-31]- S61A (6) – Removed, as per point A

Comment: S63 relates to the amendment of an authority and states that *"the chief executive must give the holder of an authority a written notice"* [S63 (1)]. This written notice must contain the proposed amendment, reasons for the amendment, outlines the facts that formed the basis for the reasons, and invite the holder to show, with a minimum 28 days to respond, why the authority should not be amended [S63 (1a) to (1d)].

S63 complies with the *Human Rights Act 2019*, Legislative *Standards Act 1992*, and natural justice principles, and with the purpose of the *Fisheries Act 1994* as defined in Section 3A(2). Not applying S63, as is the purpose of S61A(6), is a breach of the aforementioned Acts and principles.

Not providing an authority holder an opportunity to respond to a proposed condition to their authority, and not providing adequate justification is akin to arbitrarily depriving a person of their property.

There is no reasonable justification provided [in the Explanatory Notes or Statement of Compatibility] as to why an authority holder should have their rights and property taken from them. Contrary to claims in the Explanatory Notes, an increase in interactions alone does not jeopardise the continuation of a WTO, there is no mention of this in both Part 13 and 13A of the *EPBC Act 1999*, and the *'Guidelines*'. Under section 303FT of the *EPBC Act 1999* there is no mention of revoking a declaration in response to an authority interacting with more than 1 protected species, nor is this a condition of any WTO approvals. Therefore, there is no justifiable means to violate the *Human Rights Act*, *Legislative Standards Act*, *Fisheries Act*, and natural justice principles in response to an authority interaction with more than 1 protected species.

H. [page 101, line 2-6]- S61 (8) – Removed, as per point A, but amended for use in other legislation, to replace "physical contact", with "mortality or injury".

Comment: The definition for an interaction listed here, is the definition practiced by fisheries management; however, it is not available in the Fisheries Act 1994, Fisheries (General) Regulation, or Fisheries (Commercial) Regulation.

This definition is not fit-for-purpose as it is does not align with the wording of the *EPBC Act* and '*Guidelines'* for WTO accreditation. That legislation and document refers to mortality or injury, when discussing protected species interactions with fishing apparatus. Most interactions in Queensland result in the animal either a) not becoming entangled, snared, caught, or entrapped by fishing apparatus or procedures, or b) if they do become entangled, snared, caught, or entrapped are released alive and unharmed (as per logbook data).

Several, if not all, fishing operations in Queensland would make physical contact with protected species in a year, some would have several interactions in a single day; however, these 'interactions' are inconsequential, and result in no harm to the animal. There are fishing operations in Queensland that do cause unavoidable mortality and injury in protected animals. The definition of interaction as provided here is not appropriate to assess protected animal risk with respect to fishing operations and must be reconsidered to better reflect the definitions and intentions of the *EPBC Act*.

d) Clause 142.

[Page 102, line 21] - S63D – "promptly" should be changed to "within 5 business days". Once made, the reasons for the decision need to be communicated as quickly as possible. The term "promptly" is vague and need to be avoided given that a Fishers business is being impacted by the decision.

e) Clause 143.

a. **[Page 103, lines 24-28] -S68AB(3) – Delete**

Nowhere in the Explanatory Notes or Statement of Compatibility is this power referred to.

An authority is often referred to as a "Property Right" and therefore cannot and should not be cancelled [resumed] merely because it is 90 days in arrears. More action must be taken, and more controls must be in place, for this radical step to be taken. Due to the "Property Right" nature, this is not akin to a motor vehicle registration fee as the supporting documents lead you to believe.

Further, it is **discriminatory** that this subsection refers only to charter fishing licence or commercial fisher licence.

b. **[Page 103, lines 30-35] -S68AB(4) – Delete definition of a "charter fishing licence" and "commercial fisher licence".**

Please definitions and no longer needed with the deletion of S68AB(3) due to the issues mentioned above in sub paragraph a.

f) Clause 157.

[Page 113, lines 7-10] -Schedule 1 – Definition *serious fishing offence*.

The explanatory notes (page 24) refer to the effects of this change has to authority holders (commercial fishers).

The way the Explanatory Notes is worded, this proposed amendment targets commercial operations and the is no discussion about what actions can and would be taken against the recreational sector.

It states that the issuing of fines has not been a deterrent, we would disagree. When Fisheries Queensland does issue a fine it does have an effect. The issue is that Fisheries Queensland are still reliant on the commercial operator to provide the evidence to convict the offending party. Very rarely does Fisheries Queensland actually seek evidence themselves.

Further, the Explanatory Notes falsely justifies this proposed amendment around the sustainability of the resource. QSIA argues that this amendment in no way impacts (let alone poses a "serious risk" to) the sustainability of fisheries resources.

No comment on this amendment is made in the Statement of Compatibility.

g) Clause 173.

a. [Page 135, lines 17-22] -S76W – Definitions for division.

The definition of "commercial fishing activity" is very broad with the including of the word "possessing" and covers:

- both on and off water activity (e.g. boat on a trailer parked on private property),
- whether or not fishing apparatus is deployed, (e.g. maintenance periods in port for Otter Trawl fleet)
- post harvest when fishers are off the water "possessing or using fisheries resources for trade or commerce".

As this definition is applied in the Clause 173, provided these "activities" are within the range of a camera installed on a "boat or type of boat", they must be recorded.

This definition needs to be narrowed to only include when "at sea" or equivalent and the designated purpose of the trip is "Commercial".

Section 76ZD (b) attempts to provide some boundaries to this issue though the term "monitoring period" which is defined in S76ZB.

b. [Page 136, lines 8-16] -S76Y – Approval of video monitoring equipment.

Comment: The experience of the roll out of the Vessel Tracking system, and the Post Implementation Review recently released[11] informs the department and industry that the approval of equipment is fraught with issues ranging from fit for purpose, ongoing supply, warranty, service and repair etc.

c. [Page 138, lines 1-11] -S76ZC – Recreational activities not to be recorded.

Privacy is a significant issue when video monitoring equipment is installed by Government to monitor the activities of private businesses and individuals.

Of particular concern in this section is the broad definition of "commercial fishing activity" previously discussed.
Further, it is unclear how these activities will not be recorded. The way this sub-division reads, if you are undertaking a commercial fishing activity, and wish to urinate overboard (which I am assuming is an activity of a personal nature under S 76ZC(2)(b), the act of urinating is not to be recorded. This is impractical!

Safeguards MUST be put in place where a "recreational activity" is recorded, it is a private video must be treated as such. See below about Copyright and other data ownership issues.

d. [Page 139, lines 1-31] -S76ZE – Giving recording and related information.

There are no comments in either the Explanatory Notes or Statement of Compatibility concerning ownership of copyright and intellectual property. Further there are no comments regarding confidentiality, particularly if non- commercial activity is on the data provided to the Chief Executive Officer.

While some of these issues may be covered by other Government policies and Legislation (for example through the Office of the Information Commissioner), its absence in the supporting documents is concerning.

It is QSIA's position that Copyright and Intellectual Property must remain the exclusive property of the Authority Holder and that the data remains confidential (to the full extent permitted by law). Further that the data can only be used for the purposes described in the Act, without the written consent of the authority holder.

e. [Page 140, lines 1-24] -S76ZF – Malfunctioning equipment.

Queensland commercial fishers can operate in remote and harsh environments, where access to communications is not available. Access to service agents can also be challenging. Fishers ought to be afforded the opportunity to continue fishing when a system malfunctions. Thise issue was highlighted in the recent Post Implementation review for the establishment of Vessel Tracking [11]

[11] https://daf.engagementhub.com.au/vessel-tracking-review-engagement-portal

This will be particularly important if the list of "Approved Equipment" S76Y[12] requires certain repair agents for warranty claims or for their perhaps specialised equipment.

Fisher's work 365/24/7 often miles from port[13] – there must be clear guidelines for out of business hours malfunctions, that allow a fisher to continue their operations.

f. [Page 140, lines 25-29] -S76ZG – Equipment not to be interfered with.

No definition of "interfere" could be found. This is a broad term that in the extreme means cannot be touched. It also indicates you are not able to improve the functioning of the equipment (e.g. cleaning a lens cover) With a penalty of 1,000 units, more clarity is required.

Suggest substituting interfere with tamper or tampered.

g. [Page 146, lines 19-22] -S76ZQ(3) – Requirement to help official observer

At sea, the boat captain has responsibility for the safety of all onboard and the boat.

At the end of the paragraph "or if safety is being compromised".

h. [Page 146, lines 28-33] and [Page 147, lines 1 -34] -S76ZR– Reasonable help if official observer unable to perform function.

There appears to be no allowance if the official observer is not able to be replaced.

S76ZP(3) makes it an offence, while under an "observation notice", to operate a boat without an official observer. Penalty Maximum - 1,000 units

S76ZR discusses a replacement official observer but does not provide any protection to the Fisher if an official observer is not replaced, or awaiting replacement, while an "observation notice" is in place. As currently worded, until the "observation notice" is amended by the Chief Executive, the fisher must cease fishing, or face a substantial fine.

Access to Official Observers, may be problematic, so this may impose significant financial burden on the Fisher.

A clause needs to be added in this section to make it clear what happens in this situation. It is our view that while an Official Observer is not available to be replaced, the "observation notice" be immediately suspended until a replacement.

[12] Page 136 from Line 8 of the Bill
[13] Some fishers can take days to steam back to port – e.g. trawl operators.