

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture and Northern Australia

Biosecurity Act 2015

Biosecurity Amendment (Biofouling Management) Regulations 2021

Legislative Authority

The *Biosecurity Act 2015* (the Act) provides the regulatory framework for the management of diseases and pests that may cause harm to human, animal or plant health or the environment.

Section 645 of the Act provides that the Governor-General may make regulations prescribing matters that are required or permitted by the Act to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 193(1) of the Act requires the operator of a vessel to give a report (a pre-arrival report) if:

- it is intended that the vessel enters, or actually does enter, Australian territory:
 - on a voyage which commenced outside of Australian territory; or
 - after the vessel has been exposed to another conveyance while outside Australian territory; or
- it is intended that the vessel be, or the vessel is, exposed to a conveyance subject to biosecurity control or certain goods.

A conveyance is defined by section 16 of the Act as any of an aircraft, vessel, vehicle, train or other prescribed means of transport.

Subsection 193(2) provides for various requirements in relation to a pre-arrival report.

Relevantly, paragraph 193(2)(a) provides that the pre-arrival report must include information in relation to the vessel which is prescribed in the *Biosecurity Regulation 2016* (the Principal Regulation). Paragraph 193(2)(d) further provides that the pre-arrival report must be in a form or forms approved by the Director of Biosecurity.

Purpose

For the purposes of paragraph 193(2)(a), section 48 of the Principal Regulation sets out the information required to be included in a pre-arrival report for vessels (other than certain vessels travelling from certain areas in the Torres Strait, which are governed by section 49).

The *Biosecurity Amendment (Biofouling Management) Regulations 2021* (the Regulations) amend section 48 of the Principal Regulation to require information about ‘biofouling’ management to be included in a vessel’s pre-arrival report.

Background

‘Biofouling’ is the attachment or accumulation of aquatic organisms, such as microorganisms, plants and animals, to any part of a vessel, on surfaces and structures immersed in, or exposed to, the aquatic environment.

Vessel biofouling is a major pathway for the introduction of marine species into Australian waters. Once introduced they can spread, threaten healthy marine habitats, and have adverse economic and health effects, including to Australia's important fisheries.

The department considers that this issue can be addressed through requiring details of biofouling management practices, such as inspections, cleaning and treatment, to be included in the pre-arrival report required from the operators of vessels under section 193 of the Act.

Consultation

The department consulted with peak industry bodies, including Maritime Industry Australia Limited, Shipping Australia Limited and Ports Australia. It also consulted with port operators and staff, shipping agents, classification societies, marina and recreational vessel representative bodies, such as Australian Sailing, representations from Australian state and territory biosecurity agencies and others identified through research and discussion with industry members. Matters raised during consultation were taken into account in improving the policy to manage biofouling risks and informed the Proposed Regulations. Consulted stakeholders broadly supported the regulatory model that would be enabled by the Proposed Regulation.

The Office of Best Practice Regulation (OBPR) has been consulted, and the Consultation Regulation Impact Statement (RIS) was available for public consultation from 1 April 2019 to 31 May 2019 (OBPR ID 12793).

A Regulation Impact Statement has been drafted to support the proposed amendment (OBPR ID 25041).

Impact and Effect

The Regulations will require operators of vessels to provide certain information about biofouling management in pre-arrival reports. Whilst this marginally increases reporting requirements for those operators, it is nevertheless appropriate. The Regulations are designed to protect Australia's favourable biosecurity status by ensuring that biosecurity risks associated with, or arising from, biofouling can be adequately assessed and managed.

Details/Operation

Details of the instrument are set out at [Attachment A](#).

Other

The Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out at [Attachment B](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence the day after the end of the period of 6 months beginning on the day this instrument is registered.

Details of the *Biosecurity Amendment (Biofouling Management) Regulations 2021*

Section 1 – Name

This section provides that the name of the instrument is the *Biosecurity Amendment (Biofouling Management) Regulations 2021* (the Regulations).

Section 2 – Commencement

Subsection 2(1) provides that each provision of the Regulations specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Item 1 in the table provides that the whole of the Regulations commence the day after the end of the period of 6 months beginning on the day this instrument is registered. This commencement date is to allow for effective communication with industry stakeholders in relation to the measures in the Regulations prior to commencement and to update information technology systems accordingly.

The note to subsection 2(1) highlights that the table only relates to the provisions of this instrument as originally made. The table will not be amended to deal with any later amendments of this instrument.

Subsection 2(2) provides that any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument. Column 3 allows for the insertion of relevant dates and details.

Section 3 – Authority

This section provides that the Regulations are made under the *Biosecurity Act 2015* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Proposed Regulations has effect according to its terms.

Schedule 1 – Amendments

Biosecurity Regulation 2016

After paragraph 48(2)(o)

Schedule 1 to the Regulations inserts new paragraphs 48(2)(oa), (ob), (oc) and (od) in subsection 48(2) of the *Biosecurity Regulation 2016* (the Principal Regulation) to require the operator of a vessel to include certain information about biofouling management in the report the operator is required to give under section 193 of the Act (a pre-arrival report).

The information about biofouling management to be included in a pre-arrival report is:

- details of any inspections of the vessel for biofouling, cleaning of biofouling or treatment for biofouling undertaken before the vessel's arrival in Australian territory;
- details of any inspections of the vessel for biofouling, cleaning of biofouling or treatment for biofouling intended while the vessel is in Australian territory;
- practices included in any plan of biofouling management for the vessel that is currently in use; and
- details of the voyage history of the vessel in the past 12 months.

The purpose of Schedule 1 to the Regulations is to require the provision of information about biofouling management, so that biosecurity risks associated with, or arising from, biofouling can be appropriately identified and managed.

The biofouling information required will be specified in the form or forms approved by the Director of Biosecurity under paragraph 193(2)(d) of the Act.

Information that may be required with respect to biofouling may vary from vessel to vessel and depend on particular circumstances, such as a vessel's point of origin. The information required would cover details of any biofouling inspections, cleaning or treatment undertaken both before and after arrival of the vessel in Australian territory, practices included in any plan of biofouling management that is currently in use by the operator of the vessel and details of the voyage history of the vessel in the past 12 months.

Examples of practices in a plan of biofouling management may include the application of anti-fouling paint, frequency of in-water inspections, in-water cleaning and any other measures to prevent build-up of biofouling.

The purpose for requesting details of the voyage history of the vessel in the past 12 months is to allow the department to assess the impact the vessel's voyage history may have on biofouling accumulation and, consequently, the associated biosecurity risk to Australia upon that vessel's arrival. For example, extended ship idle time can lead to an increase likelihood of biofouling accumulation, which may increase the associated biosecurity risk of that vessel.

Statement of Compatibility with Human Rights

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

Biosecurity Amendment (Biofouling Management) Regulations 2021

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

Overview of the Legislative Instrument

The *Biosecurity Amendment (Biofouling Management) Regulations 2021* (the Regulations) amend section 48 of the *Biosecurity Regulation 2016* (the Principal Regulation).

Section 48 sets out the information required in relation to pre-arrival reports for vessels (other than certain vessels travelling from certain areas in the Torres Strait, which are governed by section 49 of the Principal Regulation). The operator of a vessel or an aircraft is required to give a pre-arrival report under section 193 of the *Biosecurity Act 2015* (the Act) in certain circumstances, including where a vessel enters or intends to enter Australian territory on a voyage that commenced outside of Australian territory.

The Regulations amend section 48 of the Principal Regulation to require to information about ‘biofouling’ management to be included in a vessel’s pre-arrival report.

‘Biofouling’ is the attachment or accumulation of aquatic organisms, such as microorganisms, plants and animals, to any part of a vessel, on surfaces and structures immersed in, or exposed to, the aquatic environment. Vessel biofouling is a major pathway for the introduction of marine species into Australian waters. Once introduced they can spread, threaten healthy marine habitats, and have adverse economic and health effects, including to Australia’s important fisheries.

Human rights implications

The Regulations engages, or has potential to engage, the following rights:

- the prohibition on arbitrary interference with privacy (Article 17 of the International Covenant on Civil and Political Rights (ICCPR)).

Prohibition on arbitrary interference with privacy

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual’s privacy, family, home or correspondence. This right may be subject to permissible limitations where those limitations are provided by law and are non-arbitrary. In order for limitations not to be arbitrary, they must seek to achieve a legitimate objective and be reasonable, necessary and proportionate to this purpose.

The amendments to section 48 of the Principal Regulation made by this instrument require a pre-arrival report given by the operator of a vessel to include information about biofouling management. This is in order to enable appropriate assessment of the biosecurity risk posed by biofouling associated with vessels that are in Australian territory or intend to enter Australian territory.

The requirement on operators of vessels to provide information about biofouling management under section 48 may incidentally require the provision of personal information. The amendments made to section 48 of the Principal Regulation by the Regulations are necessary for the legitimate objective of assessing the level of biosecurity risk posed by biofouling associated with vessels that are in, or intend to enter, Australian territory. It is important for biosecurity officers to have access to this information so that the level of biosecurity risk may be assessed properly and managed appropriately. To the extent that the collection, use, storage and sharing of information with respect to management of biofouling may include personal information, this may engage the right to privacy.

Pre-arrival report obligations, including the provision of the information required by section 48 of the Principal Regulation, apply only in particular circumstances and the persons required to provide information about biofouling would be the operator of the vessel, who can be reasonably expected to be aware of these obligations.

In relation to the amendments made by this instrument, Part 2 of Chapter 11 of the Act includes a range of protections relating to the collection, storage and disclosure of protected information. Section 580 provides that only certain persons may collect, disclose, or use information and that they may only do so for a permissible purpose (a purpose which promotes the objects of the Act). Section 585 also provides an offence for the improper collection or use of protected information. The protections provide a safeguard against any potential misuse or disclosure of information gathered under section 48 of the Principal Regulation that relates to biofouling.

Summary

To the extent that this instrument may engage the prohibition on arbitrary interference with privacy under Article 17 of the ICCPR, any limitations on this right are permissible as they are limited to only those measures that are necessary, reasonable and proportionate to achieving the legitimate objective of protecting Australia from biosecurity risks associated with, arising from or posed by biofouling that could have harmful consequences to the Australian environment, economy and export markets.

Conclusion

The Regulations are compatible with human rights to the extent that where they may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon. David Littleproud MP
Minister for Agriculture and Northern Australia