

Fisheries (Saucer Scallops) Amendment Declaration 2021

Explanatory Notes for SL 2021 No. 135

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries (Saucer Scallops) Amendment Declaration 2021

Authorising law

Sections 33 and 34 of the *Fisheries Act 1994*

Policy objectives and the reasons for them

Saucer scallops are a species of fish targeted in the southern inshore trawl region and southern offshore trawl regions within the broader East Coast Trawl fishery. The southern inshore trawl region, from Yeppoon to Hervey Bay, produces most of the catch, with intermittent, historical catches of saucer scallop occurring in the southern offshore trawl regions (offshore from Fraser Island and further south) from time to time. In 2020, the saucer scallop harvest was 100 tonnes in the southern inshore trawl region and 140 tonnes in the southern offshore trawl regions. Saucer scallop catch in the southern offshore trawl regions is not incorporated into the stock assessment modelling for the species because it is highly variable and, historically, it has not been the main area of fishing for scallops.

Incidental catches of saucer scallops are also taken in the Swain Reefs/Hydrographers Passage area which is located within the central trawl region. In 2020, the saucer scallop harvest in this region was approximately 10 tonnes. Saucer scallop catch in this area is not currently incorporated into the stock assessment modelling for the species, because it is uncertain what function stock in this region has in recruitment and spawning.

There is no recreational or charter catch of scallops in Queensland.

Since 2016, significant management actions have been taken to rebuild saucer scallop stocks following the 2016 stock assessment that estimated the stock biomass was 6 per cent of the unfished biomass. This included urgent management action in December 2016 to close all 'saucer scallop replenishment areas' (SRAs) and to introduce a no-take spawning closure between 1 May and 31 October each year. The SRAs are the main

settlement areas for juvenile scallops and were opened and closed rotationally. At the time, the saucer scallop fishery was not closed, based on the anticipated economic impact to industry and regional jobs, particularly in the Bundaberg and Hervey Bay region.

Biomass data suggested the 2016 fishery management arrangements were having a positive effect on rebuilding the species, and the fishery remained active with a range of effort controls and closures in place to restrict catch to a level that stock assessments recommended. By 2018, the biomass of saucer scallop had increased to 22 per cent. However, the 2019 stock modelling showed that the 2016 management changes had not been successful long term in rebuilding saucer scallop biomass in the southern inshore trawl region, with biomass declining to 17 per cent.

Unfortunately, these actions have not been successful in the longer-term rebuilding of the stock. The 2021 stock assessment estimates the 2020 spawning biomass of saucer scallops in southern inshore trawl region is 12 per cent of the unfished biomass. According to the Queensland Government's Harvest Strategy Policy, and consistent with the *Sustainable Fisheries Strategy 2017-2027*, targeted fishing ceases where stocks are below 20 per cent biomass and a rebuilding strategy is to be developed to rebuild the biomass to a sustainable level that would enable fishing to recommence.

Urgent significant management action is required to protect and allow the recovery of saucer scallop stocks. The main policy objective of the *Fisheries (Saucer Scallops) Amendment Declaration 2021* (the Amendment Declaration) is to prevent the take of saucer scallops in the southern inshore and central trawl regions. It is proposed that this closure would remain in place until scallop stocks have rebuilt to a 30 per cent biomass level.

Based on knowledge to date, saucer scallop in the Southern Offshore Trawl Region does not contribute to the spawning biomass of the saucer scallop fishery, and saucer scallop can continue to be taken from this region. Preventing the take of scallop from within the Great Barrier Reef Marine Park (Marine Park) is consistent with recommendations about concerns on the current health of the reef from the Australian Government and international experts. The Marine Park is mostly contained within the Central and Southern Inshore Trawl Regions, however there is some overlap with the Southern Offshore Trawl Region but this is in deepwater areas where scallops do not occur. Saucer scallops will continue to be permitted to be taken in the southern offshore trawl regions at certain times because this area is outside the area assessed by the stock assessment.

Further policy objectives of the Amendment Declaration are to:

- continue to prevent the take of saucer scallop in the southern offshore trawl regions during the saucer scallop spawning season
- continue restrictions on the use and possession of trawl nets within the southern inshore trawl region and southern offshore trawl regions at certain times, including during the saucer scallops spawning season.

These measures are the basis of the rebuilding strategy for saucer scallop stocks. Without immediate action, the scallop fishery is likely to never recover to a sustainable biomass.

Achievement of policy objectives

The policy objective of preventing the take of saucer scallops in the southern inshore and central trawl regions is achieved by amending the entry for 'saucer scallop' in schedule 2 of the *Fisheries Declaration 2019* to provide that a person must not take saucer scallop in these regions and must not possess saucer scallop in these regions unless the person is travelling through the region (after taking scallops in an offshore region) at a speed of at least 5 knots.

The further policy objectives are achieved by:

- amending section 110A of the *Fisheries Declaration 2019* to provide that a person must not take saucer scallop in the southern offshore trawl from midday on 1 May to midday on 20 January each year (compared to previously where this prohibition also applied to the inshore region which has now been closed to scallop fishing completely);
- inserting a new section 86 into the *Fisheries Declaration 2019* (which continues the effect of previous section 86AA) to provide that a person must not use a trawl net in the southern inshore trawl region and southern offshore trawl regions between 8am and 6pm each day unless the person is using the net in waters south of the eastern tip of Point Cartwright or is using an otter trawl net under a T5 licence where scallops do not occur; and
- inserting a new section 86A into the *Fisheries Declaration 2019* (which continues the effect of previous section 86A with minor changes) to provide that a person must not possess or use a trawl net in the southern inshore trawl region every year from midday on 20 September to midday on 1 November, and from midday on 23 December to midday on 3 January, unless the person is possessing or using an otter trawl net under a T6, T7 or T8 licence which restrict holders to operate in rivers and creeks or nearshore areas where scallops do not occur. Compared to the previous section 86A of the *Fisheries Declaration 2019*, the new section 86A shortens the period during which a trawl net cannot be used and possessed in the southern inshore trawl region to better reflect the saucer scallop spawning season.

Consistency with policy objectives of authorising law

The Amendment Declaration is consistent with the policy objectives of the *Fisheries Act 1994*, to provide for the use, conservation and enhancement of the community's fisheries resources and fish habitats in a way that seeks to:

- apply and balance the principles of ecologically sustainable development; and
- promote ecologically sustainable development.

Inconsistency with policy objectives of other legislation

The Amendment Declaration is consistent with the policy objectives of other legislation including the *Fisheries Act 1994*.

Alternative ways of achieving policy objectives

Given the low biomass of the saucer scallop stock, doing nothing poses a significant risk for the fishery. There are no alternative policy options that will provide suitable protection to the saucer scallop stock to allow rebuilding to occur, other than restricting take.

The results of the saucer scallop stock assessment indicate that abundance of the species is so low that existing fishing, along with other environmental influences, is affecting recruitment. Not taking significant management action would likely mean the saucer scallop stock will never recover to sustainable levels. Ongoing fishery-independent surveys and stock assessments are required to track stock recovery and monitor any unintended consequences associated with the shift in fishing effort as part of the broader rebuilding strategy.

The following options to limit the take of saucer scallop were rejected:

1. Restrict the take of saucer scallop in the southern inshore trawl region, southern offshore trawl regions and central trawl regions until the biomass rebuilt to 40 per cent (maximum sustainable yield). This option was not progressed because it would have a significant social and economic impact and it is likely that rebuilding can be achieved with less impact.
2. Restrict the take of saucer scallops in the southern inshore trawl region only until the species recovers to above 22 per cent biomass. Continued fishing would be permitted for scallops in both the southern offshore trawl regions and the central trawl regions. This option was not progressed because there is a lack of confidence that rebuilding of stocks can occur with minimal intervention.
3. Restrict the take of saucer scallops from all trawl regions until there is evidence of significant recovery (40 per cent biomass) and prohibit fishing for any species in the southern inshore trawl region until saucer scallop is at 20 per cent biomass. This option was not progressed because it is considered too precautionary and would have a significant social and economic impact, with no certainty that the resulting scientific economic impacts would be justified in the effort to rebuild the biomass of the species.

The preferred option, as progressed in this Amendment Declaration, is the most balanced option, providing a combination of restricting and preventing take of saucer scallops consistent with stock assessment recommendations, and simultaneously enabling some access to the species to mitigate economic impacts on industry.

Benefits and costs of implementation

The main benefit of the Amendment Declaration is that it provides protection for saucer scallops consistent with stock assessment recommendations which allows for the species to rebuild to a sustainable biomass. It also mitigates the economic impact to industry by allowing for continued access to saucer scallop in the southern offshore trawl region that has not historically contributed to stock recruitment.

No new or additional costs to Government are expected because of implementation of the Amendment Declaration, as Government will continue to monitor saucer scallop stock recruitment within existing resources.

The costs to industry are more tangible in that commercial fishers can no longer take saucer scallop at all in the southern inshore and central trawl regions. This will also affect saucer scallop processing facilities, as demand for these services is expected to be reduced. There are six significant scallop processing facilities in Hervey Bay, Urangan, Tin Can Bay, Gladstone and Bundaberg. Throughout the year, these processors cut and freeze product that is harvested in Queensland. In recent years, as Queensland saucer scallop catch has declined, these facilities have commenced processing of saucer scallop from other parts of Australia, such as Western Australia. Continued access to saucer

scallop in the southern offshore trawl regions will enable some processing of Queensland product to continue.

DAF recently commissioned BDO EconSearch Australia (BDO) to conduct economic analysis of the Queensland East Coast Trawl fishery. While BDO did not model the saucer scallop fishery independently, the analysis assisted the understanding of impacts, assuming saucer scallop profitability is the same as the remainder of the trawl fishery. The Gross Value of Produce of the saucer scallop fishery was estimated at \$1.80 million, and it was estimated to make an economic contribution of \$1.24 million (Gross State Product) or \$3.07 million, if flow on benefits are included. Approximately 31 full time equivalents are employed (direct and flow on).

It is difficult to assess how many jobs would be directly impacted by management action on saucer scallop as the Queensland Government no-longer administers seafood marketing. However, up to five full time equivalent positions may be lost from the prevention of take of saucer scallop in the southern inshore trawl region alone.

Other concerns arising from stopping the take of saucer scallop from all regions include the loss of supply chains and markets that may be difficult to re-establish once the fishery is reopened.

Consistency with fundamental legislative principles

The Amendment Declaration is generally consistent with fundamental legislative principles. However, it may potentially breach the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals in accordance with section 4(3)(b) of the *Legislative Standards Act 1992*, as set out below.

The Amendment Declaration potentially breaches the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals, including the right to conduct business without interference, because it prevents or restricts the take and/or possession of saucer scallops in the southern inshore, southern offshore and central trawl regions and prevents the use and possession of trawl nets in the southern inshore and southern offshore trawl regions at certain times.

However, this potential breach is justified on the basis that these measures are necessary to allow the biomass of the species to recover to a sustainable level to protect the financial viability of the commercial fishery long-term, and to sustain the species for future generations. Further, these amendments still allow for fishers to use and possess their gear at other times and does not prevent fishers from taking other species targeted in the East Coast Trawl fishery, such as prawns and bugs.

Consultation

Consultation was undertaken with the Trawl Working Group (TWG) on 27-28 April 2021 on the proposed options for managing saucer scallop. The TWG includes Government representatives, industry representatives and the Great Barrier Reef Marine Park Authority (GBRMPA), as a significant portion of the fishery operates within the Great Barrier Reef World Heritage Area. Further consultation was undertaken from 27-29 May 2021 in relation the proposed harvest strategies for the southern inshore trawl region and southern offshore trawl region, and management options for saucer scallops were

discussed. Meeting communiqués are available on the department's website outlining the range of views.

Final consultation on the preferred option was undertaken in late July, and all impacted licence holders, as well as key industry and conservation representative groups and GBRMPA, were invited to provide feedback on the proposed options to support decision making.

While all stakeholders agree in principle on the need for management action to address sustainability concerns, there is no consensus on the management action that should be taken, or the point at which management action should be eased.

There is also no consensus from industry on how best to rebuild scallop stocks. Industry raised concerns about the impact of closing the scallop fishery, including: ongoing market access; effort shift into other trawl species; unemployment, particularly in the processing sector; and financial hardship. Despite industry being aware of the significantly reduced state of saucer scallop stocks, it is likely there will be opposition to management intervention which prevents access to the harvest of scallop.

GBRMPA is supportive of stopping the take of scallop. It is concerned about the poor state of the scallop stock and, given the biomass is below national sustainability standards, has strongly recommended responsible and significant management action to support rebuilding. The option progressed in this Amendment Declaration represents a balanced approach by providing protection for saucer scallops consistent with stock assessment recommendations and simultaneously enabling some access to the species to mitigate economic impacts on industry.

The Department of Agriculture and Fisheries has consulted the Office of Best Practice Regulation (OBPR) on a Preliminary Impact Assessment. The OBPR provided advice that no further assessment is required under the *Queensland Government Guide to Better Regulation*.

The Office of Best Practice Regulation noted that the closure of the scallop fishery will have significant impacts on the industry (an estimated annual \$1.8 million gross value added). Further, the OBPR noted that the options considered follow a period of pursuing lower impact alternatives; that a do-nothing option is no longer feasible; and that consultation has been proportionate to the impact and is expected to continue within the overarching harvesting strategy.