

# Fisheries (Hammerhead Sharks) Amendment Declaration 2022

Explanatory Notes for SL 2022 No. 70

made under the

*Fisheries Act 1994*

## General Outline

### Short title

*Fisheries (Hammerhead Sharks) Amendment Declaration 2022*

### Authorising law

Sections 33 and 34 of the *Fisheries Act 1994*

### Policy objectives and the reasons for them

The policy objectives of the *Fisheries (Hammerhead Sharks) Amendment Declaration 2022* (the Amendment Declaration) are to:

- support sustainable management of hammerhead sharks through allowing better identification of species landed and reducing the risk of shark finning at sea and unlawful possession and sale of fin product; and
- maintain the scalloped hammerhead shark's 'Conservation Dependent' status listing under the *Environment Protection and Biodiversity Act 1999* (Cth) (EPBC Act) by implementing the Commonwealth Threatened Species Scientific Committee's (TSSC) management recommendation to require hammerhead sharks be landed with head and/or fins naturally attached in the Gulf of Carpentaria.

The scalloped hammerhead shark (*Sphyrna lewini*) is a hammerhead shark species found globally in tropical and warm temperate seas, including those of northern Australia. The species has undergone varying levels of reduction in abundance worldwide and is listed on Appendix II of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora*. Appendix II includes species not necessarily threatened with extinction, but for which trade must be controlled to avoid utilisation incompatible with their survival.

In Queensland, the scalloped hammerhead shark is a permitted species in the East Coast Inshore Fishery and Gulf of Carpentaria Inshore Fishery (GOCIF) respectively). While the species can be line caught, the majority of catch is made through net-based fisheries.

Management arrangements for hammerhead sharks are intended to ensure ongoing sustainability whilst continuing to allow access to the fisheries. No hammerhead shark (all *Sphyrna* species) can be taken by the charter and recreational sectors. There are limits on the commercial catch of hammerhead sharks in the Gulf of Carpentaria waters and on the Queensland east coast. All hammerhead sharks must be landed with fins naturally attached on the east coast but, prior to this Amendment Declaration, this requirement only applied in the Gulf of Carpentaria waters once 37.5 tonnes of hammerhead sharks had been landed in a season.

In 2018, the scalloped hammerhead shark was nationally listed as a 'Conservation Dependent' species under the EPBC Act. Listing in this category ensured the species could continue to be retained by commercial fishers. To support the 'Conservation Dependent' listing, the TSSC made management recommendations for implementation by the Queensland and Northern Territory governments. Continued listing in this category is contingent on these recommendations being implemented, and both jurisdictions gave an undertaking to implement the recommendations.

Since the listing of scalloped hammerhead shark as a 'Conservation Dependent' species, Queensland has implemented most of the TSSC's management recommendations. Requiring all hammerhead sharks be landed with head and/or fins naturally attached was the only management recommendation for Queensland still requiring a legislative amendment.

The Amendment Declaration will support sustainability of hammerhead sharks by:

- allowing better identification of species landed, for example by enabling fishers to compare the physical attributes of hammerhead sharks they have taken or for Queensland Boating and Fisheries Patrol officers to confirm species identity;
- reducing the risk of shark finning at sea and hence unlawful possession and sale of fin product (which are much more easily concealed than a trunk with fins attached); and
- making commercial fishers unable to lawfully possess detached hammerhead shark fins on a boat.

Allowing better identification of species will reduce uncertainty in the data reported about hammerhead shark take, which will support more informed stock assessments for the scalloped hammerhead shark and other hammerhead shark species. Discouraging unlawful possession and sale of sharks will help ensure that all hammerhead sharks taken are properly reported, which will also support more informed stock assessments for the scalloped hammerhead shark and other hammerhead shark species. These stock assessments will feed into improved management of the fishery, and ultimately help maintain its long-term sustainability.

Urgent action is required to maintain the scalloped hammerhead shark's 'Conservation Dependent' listing under the EPBC Act. This will ensure commercial fishers in Queensland and other jurisdictions can continue to sustainably retain the species. If the scalloped hammerhead shark's listing is changed to 'Endangered', the species will become 'no take' nationally and fishers will be required to take all reasonable steps to avoid catching the species. Even if fishers do not target scalloped hammerhead shark, it is extremely difficult for net-based fisheries to avoid interactions with the species.

## Achievement of policy objectives

The policy objectives of the Amendment Declaration are achieved by amending the form requirement for hammerhead shark in the *Fisheries Declaration 2019* (Schedule 2, part 2, entry for hammerhead shark, sixth row). The amendments insert a regulated fish declaration in the *Fisheries Declaration 2019* which creates the form requirement that hammerhead sharks (all species) taken in the Gulf of Carpentaria must be possessed as whole fish with fins naturally attached, or trunked or gutted with fins naturally attached, whilst on a boat. As a regulated fish, a person is prohibited from taking hammerhead shark in contravention of its regulated fish declaration (under section 78 of the *Fisheries Act 1994*). The Amendment Declaration will commence on 1 July 2022.

Introducing this regulated fish declaration for the Gulf of Carpentaria will standardise the form requirement for commercial take of hammerhead sharks across Queensland. As there is no recreational take of hammerhead sharks, this requirement will only apply to commercial fishers who hold a licence in a relevant fishery.

Whilst the TSSC is considering the conservation status of scalloped hammerhead shark only, the management recommendation it made, and the Amendment Declaration, applies to all hammerhead sharks because of the morphological similarities between scalloped hammerhead shark and other hammerhead shark species taken in Queensland.

## 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 not inconsistent with the policy objectives of other legislation.

## Alternative ways of achieving policy objectives

Two management options for urgently supporting the sustainability of hammerhead shark and implementing the TSSC's conditions of approval were proposed by the Department of Agriculture and Fisheries (the department):

- **Option 1:** a risk-based species-specific harvest strategy for scalloped hammerhead shark in the Gulf of Carpentaria and regulatory changes to require fins to be naturally attached for all hammerhead shark species landed in the Gulf of Carpentaria waters; and
- **Option 2:** regulatory changes to make all hammerhead shark species 'no take' in the Gulf of Carpentaria until fisheries reforms are progressed.

The proposed management options were subject to a consultation process with stakeholders (detailed below at 'Consultation'). The management option to implement a harvest strategy and form requirement to land all hammerhead shark species with fins naturally attached was the preferred option for industry as this will ensure commercial fishers in Queensland can continue to retain hammerhead shark, maintaining the long-term economic viability of Queensland commercial fishers.

Not only does this benefit fishery economics, but the continued retention of hammerhead shark ensures important catch, effort and biological information is collected for future stock assessments. If the 'no take' option was implemented, no data would be collected for future stock assessments required to estimate and monitor stock levels. Additionally, due to the natural morphology of hammerhead sharks, they are vulnerable to capture in nets, and if made 'no take', commercial net fishers would be unable to completely avoid all interactions, resulting in bycatch and discards of hammerhead shark catch.

The preferred option, as progressed in this Amendment Declaration, is the most balanced option. It supports the sustainability of scalloped hammerhead shark and maintaining the species' 'Conservation Dependent' listing whilst simultaneously enabling some access to hammerhead shark for commercial fishers to mitigate economic impacts on industry.

## **Benefits and costs of implementation**

The Amendment Declaration supports Queensland's community, environment, and economy by improving the sustainable management of scalloped hammerhead shark.

The Queensland Government will not incur any additional costs in the implementation of this Amendment Declaration. Ongoing monitoring of scalloped hammerhead shark stocks will be undertaken within existing resources.

The Amendment Declaration will have both costs and benefits for commercial fishers. Retaining hammerhead shark in its whole form will take up a greater amount of space on boats than detached fins, which could otherwise be used to store catch. However, supporting sustainable management of hammerhead sharks and helping maintain the scalloped hammerhead shark's 'Conservation Dependent' listing will allow commercial access to the fishery to continue. To not make the amendments would risk an 'Endangered' listing under the EPBC Act which would result in even greater adverse impacts on commercial fishers in Queensland, as the species would become 'no take'.

## **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*, including the right to conduct business without interference, because it restricts how hammerhead sharks can be possessed by commercial fishers in the Gulf of Carpentaria.

However, this action is justified on the basis that the restriction is necessary to support sustainable management of hammerhead sharks and help maintain the scalloped hammerhead shark's 'Conservation Dependent' listing. This is achieved through allowing better identification of species landed and reducing the risk of shark finning at sea and

unlawful possession and sale of fin product, and through directly implementing the TSSC's recommendation. Further, these amendments do not interfere with commercial fishers' authority to take hammerhead sharks. They must merely comply with the form requirement for the possession of those sharks. This requirement is already in place for the east coast fisheries that take hammerhead sharks in Queensland.

## Consultation

The department undertook public consultation on the management options for scalloped hammerhead shark in the Gulf of Carpentaria from 25 November to 8 December 2021.

As part of this process, the department emailed a letter summarising the proposed management actions to all commercial fishers that are permitted to take hammerhead shark in the GOCIF (N3, N12, N13, N11 and S authority holders). These documents were also made available on the department's eHub website, through which feedback could be submitted.

A total of six (6) responses were received in the consultation process, with four (4) responses to the online survey and two (2) written submissions. Five (5) of the six respondents supported the implementation of a risk-based species-specific harvest strategy for scalloped hammerhead shark in the Gulf of Carpentaria and regulatory changes to require fins to be naturally attached for hammerhead shark (all species) landed in the Gulf of Carpentaria. The remaining respondent did not provide a management action recommendation.

The department also updated the GOCIF Working Group on the proposed management action in January 2022.

The department 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 OBPR noted that the amendments, in isolation, would result in adverse impacts on some commercial fishers, as storage space on fishing vessels for other catch would be reduced if hammerhead sharks are to be retained in their whole form. However, given that an 'Endangered' listing would result in even greater adverse impacts on fishers in both the Gulf of Carpentaria and the other east coast fisheries that take hammerhead sharks, the OBPR was of the view that the amendments are unlikely to result in significant adverse impacts.