

Fisheries Legislation (Sea Cucumbers) Amendment Regulation 2025

Explanatory notes for SL 2025 No. 68

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries Legislation (Sea Cucumbers) Amendment Regulation 2025.

Authorising law

Section 37 of the *Fisheries Act 1994* (Fisheries Act) states that the chief executive may make a declaration (a quota declaration) about the total quota entitlement for a fishery or part of a fishery.

Section 223 of the Fisheries Act states that the Governor in Council may make regulations under this Act. A regulation may, among other things, prescribe matters for the management of a fishery.

Policy objectives and the reasons for them

The purposes of the *Fisheries Legislation (Sea Cucumbers) Amendment Regulation 2025* (Amendment Regulation) are to:

- Continue to ensure the sustainable management of the sea cucumber fishery in Queensland by reducing the amount of commercial take of Convention on International Trade in Endangered Species (CITES) listed species.
- Maintain the Queensland sea cucumber fishery's Wildlife Trade Operation (WTO) approval to export sea cucumber product, granted by the Commonwealth Minister for the Environment and Water under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), by implementing the condition of approval that specified annual harvest limits are introduced before the start of the 2025-26 fishing season on 1 July 2025.
- Support the sustainable management of sandfish by introducing catch limits for these fish in accordance with the decision rules in the relevant harvest strategy.

The Queensland sea cucumber fishery

The Queensland sea cucumber fishery (fishery symbol B1) is a commercial harvest fishery operating predominately within an area that encompasses the Great Barrier Reef Marine Park, Boot, Ashmore, Marion and Saumarez reefs in the Coral Sea Marine Park. The majority of harvested product is exported.

Queensland fisheries legislation sets the total allowable commercial catch (TACC) for several species in this fishery. The TACC can be lowered or raised in response to pre-approved management arrangements under approved harvest strategies and is the most direct method to control commercial harvest levels.

The TACCs for this fishery are currently managed through Individual Transferable Quotas (ITQs). Under an ITQ system, the TACC for a species or set of species is determined through scientific assessment and management decisions, then divided into quotas that are allocated to the fisheries quota holders. These ITQs represent a fixed percentage of the TACC (rather than a fixed weight of fish), and are a fisher's secure and ongoing asset within a fishery, which can be bought, sold or leased between other commercial fishers.

In addition to ITQ, the TACC for a species may also be implemented through a Prescribed Commercial Catch (PCC) limit. For this option, the TACC is not divided up and allocated to fishers on an individual basis. The PCC is available on a competitive basis to all commercial fishers in the fishery until the PCC limit is reached for the fishing season.

Commercial fishing for sea cucumber is managed under the Queensland Fisheries Act. However, export of products taken under this fishery is managed under Commonwealth legislation. Amendments to Queensland fisheries management arrangements may sometimes be required in order to meet Commonwealth export approval requirements.

Ensure compliance with Commonwealth conditions for export approvals

To export Australian native animal or plant specimens and/or specimens listed under CITES for commercial purposes, the specimens must come from an approved program such as a WTO issued under the EPBC Act by the Commonwealth Department of Climate Change, Energy, the Environment and Water (DCCEEW).

The Queensland sea cucumber fishery has been declared an approved WTO under Part 13A of the EPBC Act until 30 November 2027, authorising the export of harvested product subject to 13 conditions being met by the Department of Primary Industries (DPI) throughout the period of the approval.

Condition 5 of the fishery accreditation requires that, by 1 July 2025, DPI must implement a 10,000 kg annual TACC for *Thelenota anax* (amberfish) and 40,000 kg TACC for *Thelenota ananas* (prickly redfish).

These catch limits were set by the DCCEEW on a precautionary basis taking into account recent catch history for these species, due to the fact that these species were listed under Appendix II of CITES on 25 May 2024. Appendix II lists species that are not necessarily now threatened with extinction but that may become so unless trade is closely controlled.

Currently these species do not have species-specific catch limits or TACCs under Queensland fisheries legislation. They are included along with various other species in the ‘other sea cucumber’ TACC. In order to comply with the WTO conditions, it is necessary to introduce a species-level TACC for each of these species.

Amend harvest limits for key fishery species in accordance with harvest strategies

Harvest strategies provide clarity about overall fishery objectives, fishery performance targets, triggers for management action and appropriate management responses.

The *Sea Cucumber Harvest Strategy 2021-2026* (the Harvest Strategy) provides decision rules for commercial fishing. If the annual catch for certain species exceeds the trigger reference limit, the Harvest Strategy requires that a TACC be set to maintain the annual catches of that species at, or below, the trigger level until a further assessment can be undertaken.

The catch trigger for *Holothuria scabra* (sandfish) is 15,000 kg. In the 2023–2024 fishing season, the total catch of sandfish by the commercial fishing sector was 17,900 kg, almost 3 tonnes over the trigger reference limit. Therefore a catch limit must be set for this species to maintain harvest at the limit of 15,000 kg.

Achievement of policy objectives

The Queensland sea cucumber fishery is managed under a quota management system, utilising ITQ for certain species. Prickly redfish, amberfish and sandfish currently managed under ITQ along with other designated species in the ‘other sea cucumber’ ITQ category, referred to as B10-ITQ.

These species will not be managed as separate ITQ categories. They will remain within the general ‘other sea cucumber’ B10-ITQ category. However they will additionally be subject to annual species-level PCC limits under Schedule 2, Part 2 of the Fisheries Declaration 2019:

- *Thelenota ananas* (prickly redfish) – 40,000 kg
- *Thelenota anax* (amberfish) – 10,000 kg
- *Holothuria scabra* (sandfish) – 15,000 kg.

Additionally, the common names and scientific names for these species will be added to Schedule 7, Part 6 of the *Fisheries (General) Regulation 2019*.

These changes must be introduced before the start of the 2025-26 fishing season on 1 July 2025.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main purpose of the Fisheries Act 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 Regulation is not inconsistent with the policy objectives of any other legislation.

Alternative ways of achieving policy objectives

Maintaining the status quo was considered. The status quo means these three species of sea cucumber would not be subject to individual species-level catch limits. Holders of B10 ITQ would be able to continue to take unlimited numbers of these species until the overall B10 ITQ quota limit was reached.

However, this would not fulfil the WTO condition of approval. To not act to implement the WTO condition of approval would be a less restrictive option but would not support sustainable management of sea cucumber stocks in Queensland and would risk the WTO export approval for the fishery being revoked.

The option of implementing catch limits for these species via separate ITQ categories was also considered. Under this option, prickly redfish, amberfish and/or sandfish would be removed from the 'other sea cucumber' (B10-ITQ units) category and managed as separate ITQ categories. The catch limit for the B10-ITQ category would be reduced accordingly. The new ITQ units would need to be allocated to holders of existing B10-ITQ units on a proportional basis according to number of B10-ITQ units held, to maintain each commercial fisher's relative economic position in the Queensland sea cucumber fishery.

However, the management of these species under 'other sea cucumber' B10-units provides flexibility for commercial fishers in terms of the amount of sea cucumbers they take. Currently, commercial fishers may decide to utilise B10-ITQ units for other species in response to market and fishery conditions. Establishing amberfish, for example, as an ITQ managed species will remove 10,000 kg available to fishers to use flexibly and assign it to amberfish only.

Given that take of this species in recent fishing years is very low, this may negatively affect fishers in the Queensland sea cucumber fishery. The results of consultation revealed that fishers in the Queensland sea cucumber fishery preferred the catch limits to be managed via PCC rather than separate ITQ categories.

Benefits and costs of implementation

The Amendment Regulation benefits Queensland's community, environment and economy by supporting the sustainable management of stocks of fisheries resources in the sea cucumber fishery, which supports ongoing industry access.

Whilst the management change made in the Amendment Regulation does not restrict a person from owning or trading quota, nor will it reduce his or her quota allocation, it does affect the possible value of the quota by reducing the quantity of certain high value sea cucumbers that may be taken. This limits the property right of the licence holder with respect to use and exploitation of his or her quota.

Restricting the quantity of high-value species that can be taken supports sustainable management of sea cucumber stocks by ensuring that these individual sea cucumbers are not overharvested as a consequence of their high value. Introducing prescribed catch limits at a species level will ensure that the sustainability pressure of commercial take is distributed across a broad range of sea cucumber species.

Implementing the fishery's WTO condition of approval by introducing these prescribed catch limits before the start of the 2025-26 fishing season will support the retention of the WTO export approval for Queensland sea cucumbers.

The Queensland Government will not incur any additional costs in the implementation of this Amendment Regulation. Ongoing monitoring and enforcement of regulated periods and areas will be undertaken within existing resources.

These amendments will ensure the fisheries can maximise their performances to meet environmental, social and economic management objectives.

Consistency with fundamental legislative principles

The Amendment Regulation has been developed with regard to the fundamental legislative principles (FLPs) as defined by section 4 of the *Legislative Standards Act 1992* (LSA).

Individuals' rights and liberties – FLP issues not listed in the Legislative Standards Act - Abrogation of common law rights must be justified - Includes - Common law property rights

Introduction of species-level catch limits for certain fish in the sea cucumber fishery.

- Deprivation of property is not limited to physical dispossession of property and can take the form of any interference with the use, enjoyment or exploitation of private property.
- The Amendment Regulation engages a person's property rights because primary commercial fishing licences (PCFLs), which entitle the holder to participate in the commercial fisheries for which the relevant fishery symbols are written on his or her licence, and quota authorities, have property-like characteristics.

- Whilst the management change made in the Amendment Regulation does not restrict a person from owning or trading quota, nor will it reduce his or her quota allocation, it does affect the possible value of the quota by reducing the quantity of certain high value sea cucumbers that may be taken annually. This limits the property right of the licence holder with respect to use and exploitation of their quota.
- The purpose of limiting a licence-holder's property rights by introducing prescribed commercial catch limits for particular sea cucumbers is to support the sustainable management of sea cucumber stocks by distributing the pressure of commercial take across a broad range of species. Distributing this pressure will ensure that particular high-value sea cucumbers are not targeted to a point that their sustainability is compromised. This will ensure that sea cucumbers continue to be sustainably harvested into the future.
- The Amendment Regulation is also proposed to help maintain the Queensland Sea Cucumber Fishery's export approval through implementing the Wildlife Trade Operation (WTO) condition of approval by prescribing these catch limits before the start of the 2025-26 fishing season. Without a WTO export approval, sea cucumbers taken from the fishery would not be permitted to be exported. This would effectively prevent business operations for this primarily export fishery. Hence, the restriction on certain species associated with the quota authorities also enables the holder to continue to exploit his or her quota authorities.
- Sustainable management of a fishery resource promotes the common good while enabling exploitation of quota authorities promotes the rights of holders of the property-like quota authorities.

FLPs that are not in the LSA - Ordinary activities should not be unduly restricted - Includes - Right to conduct business without interference

Introduction of species-level catch limits for certain fish in the sea cucumber fishery.

- Although the commercial take of amberfish, prickly redfish and sandfish is currently constrained as part of a multi-species 'other sea cucumber' quota, there are no species-level catch limits within that category. Therefore, if a fisher were particularly targeting those species, the operations of their business may be restricted by the amendments.
- This potential engagement is justified because it is necessary to support the sustainable management of the sea cucumber fishery in Queensland.
- In the case of amberfish and prickly redfish, the purpose is to help maintain the fishery's WTO export approval. This is achieved by implementing the condition of approval that the department introduce specific annual harvest limits for CITES-listed species before the start of the 2025-26 fishing season. Implementing this condition ensures that CITES-listed species are not overharvested and maintains the ability to export sea cucumber product taken under those authorities.
- In the case of sandfish, the Sea Cucumber Harvest Strategy requires catch limits to be set if any of the tier 2 species exceeds a catch trigger. Setting a catch limit for this species to maintain harvest at the trigger limit of 15,000 kg will ensure sustainable management of the fishery. The practical impact on fishing will be minimal because the catch limit has historically been below this limit.

The engagement is therefore not considered to be a breach of FLPs.

Consultation

A consultation paper and survey questionnaire was sent to Sea Cucumber working group members and Cape York special working group members, inviting consultation from 12 to 28 March 2025.

Survey respondents agreed with setting a TACC via implementation of PCCs for prickly redfish and amberfish. No feedback was provided regarding Sandfish being management via implementation of PCCs in line with the harvest strategy.

Regulatory Impact Analysis

A Summary Impact Analysis Statement (IAS) for the Amendment Regulation has been prepared, in line with the *Queensland Government Better Regulation Policy*.

Management arrangements for sandfish are minor and machinery in nature as this does not involve substantive regulatory or policy change. The change is consistent with the approved decision rules for sandfish in the Harvest Strategy. Further analysis was undertaken on the management arrangements for amberfish and prickly redfish, and the key conclusion is that regulatory changes are required because maintaining the status quo will contravene the WTO conditions. A revocation of the WTO as a result of not meeting the conditions would result in significant financial and operational impacts to the Queensland sea cucumber fishery. The proposed legislative amendments present the most streamlined process with the least impact to fishers in the Queensland sea cucumber fishery, while not increasing administrative burden on DPI.