

Fisheries (Coral) Amendment Declaration 2022

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Mark Furner MP, Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities, provide this human rights certificate with respect to the *Fisheries (Coral) Amendment Declaration 2022* (the Amendment Declaration) made under the *Fisheries Act 1994* (the Act).

In my opinion, the Amendment Declaration, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The purpose of the Amendment Declaration is to support sustainable management of coral stocks in Queensland by restricting the commercial take of *Convention on International Trade in Endangered Species* (CITES) listed and other particular corals at a species and genus level. This will be achieved by inserting a regulated fish declaration in the *Fisheries Declaration 2019* that prescribes the commercial catch (in kilograms) for the CITES-listed and other particular coral species, and where appropriate, genera, that are taken in the Queensland Coral Fishery (QCF). Minor supporting amendments are also made.

These amendments will help maintain the QCF's Wildlife Trade Operation approval to export coral (WTO export approval), granted by the Commonwealth Minister for the Environment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), by implementing the condition of approval that the Department of Agriculture and Fisheries (the department) introduce annual harvest limits before the start of the 2022-23 fishing season for:

- several coral species specified in the approval letter;
- all coral species with a catch history in the fishery during the reference period used in the *Coral Fishery Harvest Strategy 2021-2026* (2016-2018); and
- all other CITES-listed coral species harvested in the fishery.

If the WTO conditions of approval are not met, there is a high risk the Commonwealth Minister will revoke the WTO export approval and coral taken from the QCF will not be permitted to be exported. Maintaining access to the international marine aquarium market is important to this primarily export fishery.

The Amendment Declaration also restricts take of coral of the order *Scleractinia*, the family *Tubiporidae*, and the family *Stylasteridae* (that is not regulated coral, live rock or coral rubble), as well as coral of the order *Antipatharia* and the family *Milleporidae* to the extent that these corals cannot be taken for trade or commerce.

Separately, the Amendment Declaration also removes several transitional provisions from the *Fisheries Declaration 2019* that have elapsed.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

There is no commercial take of coral by Aboriginal peoples and Torres Strait Islander peoples in Queensland. There is also no traditional or customary take of coral, as would be permitted under an Indigenous fishing permit in accordance with section 54 of the *Fisheries (General) Regulation 2019*. In the QCF, 99% of the resource allocation is for commercial fishing and 1% is for recreational fishing (including charter). Further, there are significant barriers in place for recreational take of coral. This includes that recreational take of coral is not permitted in the Great Barrier Reef Marine Park or other Marine Parks, and that underwater breathing apparatus and other tools are not permitted to be used for recreational coral fishing. Whilst recreational take is minor in this fishery, it is possible that Aboriginal peoples and Torres Strait Islander peoples take coral in this way.

The Amendment Declaration engages and positively promotes the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples protected under section 28 of the *Human Rights Act 2019*. In particular, Aboriginal peoples' and Torres Strait Islander peoples' ability to maintain and strengthen their distinctive spiritual, material, and economic relationships with waters and coastal seas with which they have a connection under Aboriginal tradition or Island custom (subsection 28(2)(d)), and to conserve and protect the environment and productive capacity of their waters and coastal seas (subsection 28(2)(e)) are engaged by the amendment's change to the broader management arrangements for coral in the QCF.

These rights are not limited as the management change made in the Amendment Declaration does not restrict any traditional or customary take of coral species, nor does it alter the availability of fishery resources to traditional owners because it does not change the total amount of take of coral in the QCF. This management change positively promotes the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples by supporting the ongoing sustainability of coral stocks in Queensland, therefore, facilitating their ability to maintain distinctive spiritual, material, and economic relationships with waters and coastal seas and to conserve and protect the environment and productive capacity of their waters and coastal seas.

Property rights

The Amendment Declaration engages and limits the property rights protected under section 24 of the *Human Rights Act 2019*. Under this section, "All persons have the right to own property alone or in association with others" and "a person must not be arbitrarily deprived of the person's property." 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 Declaration 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 including taking his or her quota authorities, have property-like characteristics. Whilst the management change made in the Amendment Declaration 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 high value corals that may be taken. This limits the property right of the licence-holder with respect to use and exploitation of his or her quota.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) the nature of the right

Section 24 of the *Human Rights Act 2019* provides for property rights. This clause is modelled on article 17 of the Universal Declaration of Human Rights. The right essentially protects a person from having his or her property unlawfully removed. Subsection (1) provides that all persons have the right to own property alone or with others. Subsection (2) provides that a person must not be arbitrarily deprived of his or her property.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of limiting a licence-holder's property rights by introducing prescribed catch limits for CITES-listed and other particular corals is to support the sustainable management of coral stocks through distributing the pressure of commercial take across a broad range of coral species. Distributing this pressure will ensure that particular high-value corals are not targeted to a point that their sustainability is compromised. This will ensure that corals continue to be sustainably harvested into the future.

The Amendment Declaration is also proposed to help maintain the QCF's export approval through implementing the WTO condition of approval by prescribing these catch limits before the start of the 2022-23 fishing season. Without a WTO export approval, coral taken from the QCF would not be permitted to be exported. This would effectively prevent business operations for this primarily export fishery. Hence, the restriction on 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. These purposes are consistent with a free and democratic society based on dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Limiting the property rights of a licence-holder by reducing the quantity of high value species and genera that may be taken under his or her licence indirectly achieves the purposes of the amendments.

Restricting the quantity of high-value species and genera that can be taken supports sustainable management of coral stocks by ensuring that these individual corals are not overharvested as a

consequence of their high value. Introducing prescribed catch limits at a species and genus level will ensure that the sustainability pressure of commercial take is distributed across a broad range of coral species.

Implementing the QCF's WTO condition of approval by introducing these prescribed catch limits before the start of the 2022-23 fishing season will support the retention of the WTO export approval for Queensland corals.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The purposes of the amendments cannot be achieved through any less restrictive and reasonably available means.

The proposed alternative management option of administering key coral species through allocation of quota authorities for key CITES-listed and other particular corals to provide increased security of access for individual fishers and avoid a competitive race-to-fish could not be achieved before 30 June 2022. Significant legislative changes would be required to implement species-level quota authorities.

To not act to implement the WTO condition of approval would be a less restrictive option, but would not support sustainable management of coral stocks in Queensland and would risk the WTO export approval being revoked.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The pressing need to support sustainable management of coral stocks in Queensland and maintain the QCF's WTO export approval outweighs the limited impact on licence-holders. Whilst the value of quota authorities may be decreased by reducing the quantity of high value species that may be taken, this restriction is necessary to ensure that individual coral species and genera are not overharvested and remain sustainably managed, and to maintain the ability to export coral taken under those authorities. The limitation on property rights is, therefore, reasonable and demonstrably justified in the circumstance.

Conclusion

I consider that the *Fisheries (Coral) Amendment Declaration 2022* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

THE HONOURABLE MARK FURNER MP
MINISTER FOR AGRICULTURAL INDUSTRY DEVELOPMENT AND FISHERIES
AND MINISTER FOR RURAL COMMUNITIES