

Fisheries Legislation 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 Legislation Amendment Declaration 2022* (the Amendment Declaration) made under the *Fisheries Act 1994*.

In my opinion, the *Fisheries Legislation Amendment Declaration 2022* (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 *Queensland Sustainable Fisheries Strategy: 2017–2027* (the Strategy) sets out a 10-year reform agenda, including clear targets to be achieved for sustainable fisheries management. A key target of the Strategy is to set sustainable catch limits based on achieving maximum economic yield for all Queensland fisheries (around 60 per cent biomass) by 2027.

Harvest strategies, one of the key management tools outlined in the Strategy, are applied in Queensland to keep stocks at a ‘target reference point’ to achieve maximum economic yield for each fishery.

The approach taken to ensuring the sustainability of black jewfish and king threadfin in the East Coast Inshore Fishery (ECIF) through the *East coast inshore fishery harvest strategy: 2021–2026* (ECIF Harvest Strategy); and for stout whiting in the *Commercial trawl fishery (fin fish) stout whiting harvest strategy: 2021–2026* (Stout Whiting Harvest Strategy) is to restrict the amount of fish, in weight, that can be taken by commercial fishers, and in the ECIF recreational fishers, each year in the those fisheries. The weight restriction for black jewfish caught by commercial fishers is achieved through the mechanism of a prescribed commercial catch (PCC), and for king threadfin and stout whiting, the weight restriction is achieved through the mechanism of a total quota entitlement.

Black Jewfish

Black Jewfish are caught on the east coast of Queensland by commercial, recreational, charter and Indigenous fishers. The species is vulnerable to overfishing due to the increasing commercial catch driven by the high value placed on the species’ swim bladders in the export market.

To protect black jewfish stocks in the East Coast Inshore Fishery (ECIF), a PCC was introduced. This PCC prohibits a person from taking or possessing black jewfish once the PCC amount for a particular fishing season has been reached. The September 2022 stock assessment of black jewfish estimated that the spawning biomass of the species is probably at or above the target reference point of 60 per cent of unfished biomass and recommended taking a precautionary approach and increasing the amount of black jewfish that is permitted to be taken from 20 tonnes to 90 tonnes for all fishing sectors as the increase would not pose a greater risk to the sustainability of the species.

The main policy objective of the Amendment Declaration with respect to black jewfish is to adopt a precautionary approach to ensuring the sustainability of the species in the ECIF and increase the PCC for the species from 20 tonnes to 54 tonnes for commercial fishers in time for the 2023 fishing season. The increased PCC of 54 tonnes will be divided amongst management regions 2–5. The increased PCC will also enable commercial fishers to maximise the economic yield of black jewfish stocks whilst supporting the sustainable management of the species' stocks.

A further policy objective of the Amendment Declaration is to allow recreational fishing of black jewfish year-round irrespective of whether the commercial PCC has been reached. This is because the PCC provides commensurate support for recreational fishing expansion and accords with the stock assessment which indicates that, based on current estimates, the biomass of black jewfish can sustain ongoing recreational fishing.

King threadfin

King threadfin is a large, predatory fish species that is found in foreshore areas of turbid coastal waters, estuaries, tidal rivers and mangrove creeks. The species is subject to a total quota entitlement in the ECIF which is allocated across 5 management regions (management regions 1–5).

The 2020 stock assessment for king threadfin estimated the species' spawning biomass on the east coast to be 60 per cent for all of the management regions, on the basis of four separate assessment regions that approximate the fishery management regions. However, the assessment for management region 5 recommended a decrease in total quota entitlement for the region to account for high variability in the biomass which is dependent on high rainfall periods.

As there was very little fishing reported in management region 1 to justify any management changes, the total quota entitlement currently prescribed for the region will not be amended.

The policy objective of the Amendment Declaration, with respect to king threadfin, is to increase the total quota entitlement for the ECIF as a whole (from 72 tonnes to 87.2 tonnes), but to also take management action to reduce the amount of king threadfin taken in ECIF management region 5 to maintain biomass levels.

Prescribed whiting

The Commercial trawl fishery (fin fish) (T4 Fishery) is a quota-managed fishery which allows for the taking of 'prescribed whiting.' Prescribed whiting includes stout whiting, which makes up 95 per cent of the harvest, and red spot whiting.

The stout whiting stock level is currently assessed as ‘sustainable,’ with spawning biomass estimated to be above biomass associated with maximum sustainable yield.

A review of the total quota entitlement for prescribed whiting was conducted to determine the 2023 total quota entitlement, as required by the Stout Whiting Harvest Strategy. The review was based on catch rate monitoring data to December 2021 and recommended an 8.7% increase in the total quota entitlement from 1,281 tonnes to 1,393 tonnes.

The policy objective of the Amendment Declaration with respect to stout whiting is to manage prescribed whiting in the T4 Fishery to enable an increased harvest which will maximise the economic yield for this group of species. This is consistent with the primary objective of the Stout Whiting Harvest Strategy to maintain the target species at, or return to, a target spawning biomass level that aims to maximise economic yield for the fishery.

Human Rights Issues

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

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, have property-like characteristics for the licence-holder. PCFLs are required to commercially fish in the ECIF and T4 Fishery.

The amendments to the total quota entitlement for black jewfish, prescribed commercial catch for king threadfin in management regions 2–4, and total quota entitlement for prescribed whiting respectively increase the amount of fisheries resources that can be taken under a PCFL. As the amendments do not restrict the amount of fisheries resources that can be taken under a PCFL, they do not limit property rights. These amendments will benefit the property interests of licence-holders by allowing them to catch a greater amount of fish under their PCFLs.

The amendment to the total quota entitlement for king threadfin in management region 5, which reduces the total quota entitlement from 21,421kg to 14,110kg, limits the property rights of a licence-holder because it restricts the amount of fisheries resources that can be taken under a PCFL in that region.

Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

Aboriginal and Torres Strait Islander fishers access fisheries resources, including black jewfish, king threadfin, and stout whiting, throughout Queensland’s east coast.

The Amendment Declaration engages and limits the distinct cultural right of Aboriginal peoples and Torres Strait Islander peoples to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom, as protected under subsection 28(2)(d) of the *Human Rights Act 2019*.

The Amendment Declaration engages and limits this right because the amendments to the total quota entitlement for black jewfish and prescribed commercial catch for king threadfin (in management regions 2–4) in the ECIF and total quota entitlement for prescribed whiting in the T4 Fishery increase the amount of fisheries resources that may be taken by commercial fishers which may reduce the availability of these fisheries resources to traditional owners for cultural fishing.

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

Property rights

(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 reducing the total quota entitlement for king threadfin in management region 5 of the ECIF is to sustainably manage the species in the fishery in line with the ECIF Harvest Strategy through maintaining spawning biomass levels in the region. This will allow species stocks to continue to grow in the ECIF, which will support further maximisation of the economic yield in the fishery in the future. Overall, the total allowable commercial catch for the Queensland east coast will increase from 72,000 kilograms to 87,211 kilograms.

Sustainable management of fisheries resources promotes the common good whilst maximising economic yield promotes the development of Queensland's commercial fishing industry. 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 a licence-holder's property rights by reducing the total quota entitlement for king threadfin in management region 5 of the ECIF directly achieves the purpose of the amendment.

By setting maximum amounts of fisheries resources that can be taken by commercial fishers the likelihood of overfishing occurring, which would deplete stocks, is reduced. This restriction on commercial catch, in turn, helps to ensure Queensland's commercial fishing industry continues sustainably into the future.

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

Maintaining the *status quo* for king threadfin is not supported as this would be inconsistent with the decision rules set out in the ECIF Harvest Strategy which aim to set sustainable catch limits that are based on achieving maximum economic yield for all species at around 60 per cent of biomass.

Amending the *Fisheries Quota Declaration 2019* is the only way to achieve the policy objectives. Non-legislative options would not be able to effectively regulate fisheries and are not considered an appropriate or effective option for sustainable management of king threadfin.

(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 need to sustainably manage king threadfin stocks in the ECIF, as part of the broader objective for sustainable management of Queensland fisheries resources under the Strategy, outweighs the limited impact of commercial fishers made by reducing the total quota entitlement for king threadfin in management region 5 of the ECIF. Whilst the value of the individual transferable quota units in management region 5 (held under the PCFL) may be affected by reducing the amount of king threadfin that can be taken, this restriction is necessary to ensure that king threadfin is managed sustainably throughout the ECIF, including to help ensure Queensland's commercial fishing industry continues sustainably into the future. The limitation on property rights is, therefore, reasonable and demonstrably justified in the circumstance.

Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

(a) the nature of the right

Section 28 of the *Human Rights Act 2019* provides for the distinct cultural rights held by Aboriginal peoples and Torres Strait Islander peoples as Australia's first peoples. This clause is modelled on article 27 of the *International Covenant on Civil and Political Rights*, and also articles 8, 25, 29 and 31 of the *United Nations Declaration on the Rights of Indigenous Peoples*.

These articles recognise that Indigenous peoples and individuals have the right: not to be subjected to forced assimilation or destruction of their culture (article 8); to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas (article 25); to conserve and protect the environment and the productive capacity of their lands, territories and waters (article 29); and to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions (article 31).

Subsection (1) recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.

Subsection (2) recognises the rights of Aboriginal peoples and Torres Strait Islander peoples to live life as an Aboriginal or Torres Strait Islander person who is free to practise his or her culture. The practise of culture includes, for example: the right to enjoy and maintain identity and culture; to maintain and use Indigenous languages; to maintain kinship ties; a freedom to teach cultural practices and education to their children; the right to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

Subsection (3) provides that Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation of their culture.

This section is intended to be read with section 107 of the *Human Rights Act 2019*, which provides that the Act does not affect native title rights and interests.

(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 Aboriginal peoples' and Torres Strait Islander peoples' distinct cultural rights by increasing the amount of king threadfin (in management regions 2–4) and black jewfish that can be taken by commercial fishers in the ECIF, is to manage black jewfish stocks to enable an increased harvest to maximise the economic yield for this species and rebuild stocks of king threadfin to achieve target spawning biomass levels in accordance with the *East coast inshore fishery harvest strategy: 2021–2026*.

The purpose of limiting Aboriginal peoples' and Torres Strait Islander peoples' distinct cultural rights by increasing the amount of prescribed whiting that can be taken by commercial fishers in the T4 Fishery is to sustainably manage prescribed whiting stocks to enable an increased harvest to maximise the economic yield for this group of species in accordance with the *Commercial trawl fishery (fin fish) stout whiting harvest strategy: 2021–2026*.

Sustainable management of fisheries resources promotes the common good whilst maximising economic yield which promotes the development of Queensland's commercial fishing industry. 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 distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples through increasing the amount of king threadfin (in management regions 2–4) and black jewfish that can be taken by commercial fishers in the ECIF, and by increasing the amount of prescribed whiting that can be taken by commercial fishers in the T4 Fishery, directly achieves the purposes of the amendments.

By setting maximum amounts of fisheries resources that can be taken by commercial fishers, the likelihood of overfishing occurring, which would deplete stocks, is reduced. This restriction on commercial catch, in turn, helps to ensure that Aboriginal peoples and Torres Strait Islander peoples can continue to enjoy their traditional relationship with waters and coastal seas through cultural fishing into the future.

(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 limitation of the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples – through increasing the amount of king threadfin (in management regions 2–4) and black jewfish that can be taken by commercial fishers in the ECIF, and increasing the amount of prescribed whiting that can be taken by commercial fishers in the T4 Fishery – is the least restrictive way to ensure the sustainable management of these fisheries resources, whilst also maximising economic yield to promote the development of Queensland’s commercial fishing industry.

While cultural rights of may be impacted by the increase in the amount of commercial take in these fisheries, Aboriginal peoples and Torres Strait Islander peoples will still be able to maintain their distinctive relationship with waters and coastal seas under Aboriginal tradition or Island custom through cultural fishing.

Amending the *Fisheries Declaration 2019* and *Fisheries Quota Declaration 2019* is the only way to achieve the policy objectives. Non-legislative options would not be able to effectively regulate fisheries and are not considered an appropriate or effective option for sustainable management of the fishery resources.

In addition, limiting these rights through the setting of total quota entitlements and a prescribed commercial catch for commercial fishers potentially serves to preserve the distinctive spiritual, material and economic relationship with the land and waters, which could otherwise be limited in these fisheries if the restrictions on take were not set and overfishing occurred.

Maintaining the *status quo* is not supported as this would be inconsistent with the decision rules set out in the ECIF Harvest Strategy and the Stout Whiting Harvest Strategy which aim to set sustainable catch limits that are based on achieving maximum economic yield for all species at around 60 per cent of biomass.

(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

Whilst the increase in the amount of the amount of king threadfin, black jewfish and prescribed whiting that can be taken by commercial fishers may limit the cultural rights of Aboriginal peoples and Torres Strait Islander peoples by reducing the availability of these fisheries resources to traditional owners for cultural fishing, this restriction is necessary to maximise economic yield to promote the development of Queensland’s commercial fishing industry and to sustainably manage Queensland’s fisheries resources.

The limitation on the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples is, therefore, reasonable and demonstrably justified in the circumstance.

(f) any other relevant factors

The Amendment Declaration only relates to commercial fishing and will not restrict Aboriginal peoples and Torres Strait Islander peoples from undertaking cultural fishing. The Queensland Government uses other policies and tools to ensure Aboriginal peoples and Torres Strait Islander peoples are able 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 (subsection 28(2)(d)).

Further, the Amendment Declaration does not restrict the locations, or times, that Aboriginal peoples and Torres Strait Islander peoples can fish, or restrict the amount of fisheries resources they can take.

Conclusion

I consider that the Amendment Declaration 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

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