

Fisheries (East Coast Trawl) (Scallops) Amendment Management Plan 2016

Explanatory notes for SL 2016 No. 238

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries (East Coast Trawl) (Scallops) Amendment Management Plan 2016

Authorising law

Sections 32 and 34 of the *Fisheries Act 1994*

Policy objectives and the reasons for them

Saucer scallops are found in Queensland waters from Noosa to Rockhampton. There are around 140 trawl operators that harvest scallop as well as other species such as Moreton Bay bugs and prawns. The value of the harvest from the fishery has declined from around \$16 million a year in the 1990's to \$4 million in 2015. The catch rate from January 2015 to April 2016 was the lowest in the recorded history of the fishery.

The scallop fishery opened from an annual seasonal closure on 1 November 2016 and three of the six Scallop Replenishment Areas (SRAs) that have been closed for 12 months are scheduled to open on 3 January 2017. The SRAs act as scallop nurseries. They have been rotationally open to trawl fishing since 2001.

As a result of industry concerns and declining catch levels, the Department of Agriculture and Fisheries conducted an urgent quantitative stock assessment for scallop in 2016 to determine the sustainability of the scallop fishery. The assessment found that biomass is potentially as low as 6% of its original biomass, and is at the lowest in the recorded history of the fishery. Other modelling was conducted which indicated the biomass could be 20-50% but confidence in these figures is very low.

The policy objective of the subordinate legislation is to implement sustainability measures that provide for the recovery of the stocks of scallops and to restore the fishery for the long term. Those sustainability measures are to permanently close the scallop replenishment areas prescribed in the *Fisheries (East Coast Trawl) Management Plan 2010 (Plan)* and to

implement a winter spawning closure for scallops from 1 May to 31 October each year for the whole of the East Coast Trawl Fishery waters during which the taking and possession of saucer scallops will be prohibited.

Failure to take appropriate management action in response to the findings of the latest assessment report would jeopardise the sustainability of the scallop fishery.

Another policy objective of the subordinate legislation is to allow the nets currently prescribed for the primary purpose of taking scallops, to continue to be used for the taking of bugs during the winter spawning closure for scallops.

Achievement of policy objectives

The subordinate legislation will achieve its objectives by making the following changes:

- amending section 21 of the Plan to remove the references to 'regulated period' to provide that the prohibited activities prescribed in section 21 such as possessing or using a trawl net are prohibited will apply at all times in the SRAs.
- amending sections 4-9 in part 2 of schedule 1 of the Plan to remove the prescribed regulated periods for the SRAs because, as a consequence of the amendment to section 21, there will not be regulated periods for the SRAs.
- amending section 10 of the Plan to provide that a person must not in the regulated period take or possess saucer scallops in the east coast trawl fishery waters. The regulated period will be midday 1 May to midday 31 October each year.
- amending sections 40(b), 116(5)(b), 117, 128(2) and 129 to permit the use of nets that meet the prescribed requirements for primarily taking scallops to continue to be used during the winter closure to take Moreton Bay bugs.

Consistency with policy objectives of authorising law

The subordinate legislation is consistent with the main purpose of the *Fisheries Act 1994* which is 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.

Inconsistency with policy objectives of other legislation

The subordinate legislation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

From the range of available management options four main options and their impacts were considered.

Option 1 – Close the fishery

Although the assessment findings suggests this may be the most appropriate action given the biomass estimate, there would be a significant impact on trawl operators and fish processors from Hervey Bay to Bundaberg at a critical time of the year, with very little notice. It would likely result in loss of processing jobs and potential loss of international

markets that may never be recovered. Given that there is still some uncertainty in the stock assessment model, it would be difficult to justify complete closure of the fishery until more independent monitoring is done.

Option 2 – Allow scallop to be taken from 1 November to 30 April but permanently close the Scallop Replenishment Areas from 3 January 2017 and prohibit the taking of scallop during the winter months (1 May to 31 October each year)

This is the proposed approach as it is more moderate and will still allow the taking of scallops from 1 November to 30 April each year. This approach will help prevent further depletion of the stock but reduce the potential for permanent impacts on the industry and access to markets. Keeping the scallop replenishment areas closed, rather than opening them on 3 January, will give the stock in those areas a 12 month head start on recovery.

Option 3 – Allow scallop to be taken from 1 November to 30 April each year but permanently close the Scallop Replenishment Areas from 1 May 2017 and prohibit the taking of scallop during winter (1 May to 31 October each year)

To delay the implementation of the closure of the scallop replenishment areas until 2017 would be inconsistent with scientific evidence and would likely depress the stock even further and delay recovery. Although this option would still reduce catch by an estimated 10-15% in the 2016-17 season (due to the 2017 winter closure), it would not be as effective as option 2 in promoting recovery of the stock. This would also likely be unacceptable to the Federal Government which approves export from the fishery only when the fishery is accredited as sustainable under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth). In this way it could jeopardise the export approval for the entire east coast trawl fishery which has a gross value of production of around \$80 million per year (based on 2015 data).

Option 4 - Take no action

Not taking any action would be inconsistent with the evidence and the objectives of the *Fisheries Act 1994*. It would also delay the inevitable, with more drastic measures, such as closing the fishery entirely, likely to be needed within the next one-two years. It would likely be even less acceptable to the Federal Government which could jeopardise exports from the trawl fishery.

These options are in addition to undertaking: 1) an independent review of the stock assessment; 2) additional fishery independent monitoring to improve confidence in the stock assessment, track stock recovery and monitoring for unintended consequences; and 3) consultation with industry and other stakeholders on the development of long term management arrangements for scallops.

Benefits and costs of implementation

Despite low catch levels in recent years, scallops still form a valuable component of the profit of individual trawl fishers operations and are an important product for the processing sector especially between Gladstone and Mooloolaba where fish processors employ local people to process scallops. The proposed closures are likely to have a significant impact on trawl operators and processors from Hervey Bay to Bundaberg.

Consistency with fundamental legislative principles

The subordinate legislation has been drafted with regard to the fundamental legislative principles (FLP's) as defined in section 4 of the *Legislative Standards Act 1992*.

The amendment of section 10 of the Plan to provide a winter closure for the East Coast Trawl fishery during which the taking or possessing of saucer scallops in the waters is prohibited is a potential breach of the principle in section 4(2)(a) of the *Legislative Standards Act 1992* that legislation should have sufficient regard to the rights and liberties of individuals. However, prohibiting the activities is justified because the right of a licence holder to take and possess scallops in the regulated waters needs to be balanced with the need to manage and sustain the stock of scallops for future generations.

Similarly, the amendment of section 21 and Part 2 of Schedule 1 of the Plan to provide that the Scallop Replenishment regulated waters remain permanently closed is also a potential breach of the principle that legislation should have sufficient regard to the rights and liberties of individuals because it expands prohibition on trawling in the regulated waters to every year. The permanent closure is justified because the right of a licence holder to trawl in the waters needs to be balanced with the need to manage and sustain the stock of scallops for future generations.

Consultation

Industry members have been raising various concerns about the status of scallop stocks and options to improve the management of the fishery for a number of years.

Some members of the industry wrote to the former Minister for Agriculture and Fisheries seeking support for a winter spawning closure for scallops amongst other changes in early 2016. However there wasn't consensus within industry.

In response, Fisheries Queensland (a division of the Department of Agriculture and Fisheries) brought forward the stock assessment to better understand the status of the scallop.