

Fisheries (Hammerhead Sharks) Amendment Regulation 2017

Explanatory notes for SL 2017 No. 135

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries (Hammerhead Sharks) Amendment Regulation 2017

Authorising law

Section 223 of the *Fisheries Act 1994*

Policy objectives and the reasons for them

The purpose of the subordinate legislation is to strengthen fisheries management arrangements for hammerhead shark in order to help prevent them being listed as “endangered”.

Hammerhead sharks have undergone varying levels of reduction in abundance worldwide. Hammerhead sharks are listed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Appendix II includes species not necessarily threatened with extinction, but for which trade must be controlled in order to avoid utilisation incompatible with their survival.

The Federal Government is considering listing scalloped hammerhead sharks as threatened species under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the EPBC Act). Advice from the Threatened Species Scientific Committee is due to be provided to the Federal Minister for Environment and Energy by September 2017. If scalloped hammerhead sharks are listed, then great and smooth hammerhead sharks will also be listed due to their similarity.

Listing these species in the ‘endangered’ category of threatened species would have significant implications for Queensland’s commercial fisheries. It would make them no-take in Commonwealth waters and prohibit export of hammerhead sharks taken from Queensland waters. As it is difficult for net fishers to avoid hammerheads, this would have a significant impact on the fisheries on the East Coast and the Gulf of Carpentaria and result in a high level of discarding.

A 'conservation dependent' category listing would allow the take of hammerhead sharks while still providing protections to ensure their sustainability. However, the current fishing rules in place in relevant State and Territory jurisdictions are not sufficient to support a conservation dependent listing under the EPBC Act process.

Without changes to set sustainable catch limits, verification of catch and collection of discard information in Queensland, hammerhead sharks are likely to be listed as 'endangered'.

Achievement of policy objectives

The subordinate legislation will provide for amendments to the *Fisheries Regulation 2008* to commence on 1 January 2018 and declare three species of hammerhead shark (*Sphyrna spp.*) as a regulated fish. It will limit the catch of hammerhead shark in East Coast waters and Gulf of Carpentaria waters by using a Total Allowable Commercial Catch (TACC).

TACC is a term that describes a limit to the amount of fish of a particular species or species group that can be taken by commercial fishers from a fishery in a prescribed species. The 'prescribed commercial catch' is the term used in the *Fisheries Regulation 2008* when describing the progressive total of fish taken towards the TACC.

The catch of hammerhead sharks will be limited to a TACC of 100 tonnes in the Queensland East Coast waters and 50 tonnes in the Gulf of Carpentaria waters in each quota year. The Queensland East Coast waters are separated into northern and southern regions at the latitude 24°30'S, with the TACC split into 78 tonnes and 22 tonnes respectively. This latitude divide is consistent with that used for sharks as a group and other regulated fish.

In addition, a catch trigger of 75 per cent of the TACC will limit the incidental number of hammerhead sharks taken per trip and regulate the form in which hammerhead sharks must be kept on a boat. If the prescribed commercial catch in either the north or south regions of the East Coast fishery or the Gulf of Carpentaria reaches 75 per cent of the TACC for the region in a quota year, the following arrangements apply for that region:

- commercial fishers, regardless of whether they hold an 'S' fishery symbol, will be limited to an incidental hammerhead shark trip number of 4 or less for persons holding a line fishery symbol and 10 or less for persons holding a net fishery symbol; and
- commercial fishers will be required to land their catch of all species of hammerhead shark in whole form only (i.e. gilled and gutted with head and fins naturally attached).

If the prescribed commercial catch reaches 100 per cent of the TACC for the region in a quota year, commercial fishers will not be able to take or possess hammerhead shark species at all in that region. A quota year is the period of one year from 1 July in a year and ending on 30 June in the next year.

The combined TACC for hammerhead sharks of 150 tonnes is based on the *Non Detriment Finding (NDF) for the export of shark species listed in CITES and harvested from Australian waters*, published in 2014 by the Federal Government. The NDF established a national sustainable harvest level of 370 tonnes for the three *Sphyrna* species of hammerhead shark. Harvest shares were discussed with the Federal, Northern Territory and Western Australian Governments. The TACC is also consistent with a stock assessment undertaken by the Queensland Government and completed in May 2016 which indicated the maximum sustainable yield was between 133 tonnes and 531 tonnes

for scalloped and great hammerhead. The TACC is considered conservative based on this stock assessment.

The 75 per cent triggers are set to allow for the minor delays in providing information to fishers so that TACCs will not be exceeded unexpectedly and to appropriately constrain the catch of hammerhead. The requirement to possess hammerhead sharks in whole form once the trigger is reached is so that they can be readily identified by compliance officers.

The subordinate legislation will not change the arrangements for sharks as a group and hammerhead sharks will still be included in the arrangements for sharks as a group. In Queensland East Coast waters, the take of sharks as a group (all shark and ray species other than certain listed species) is limited by the use of a limited-entry Shark and Ray ('S') symbol and a Total Allowable Commercial Catch (TACC). The catch of sharks as a group is not limited in Gulf of Carpentaria waters, other than through licence symbols requirements and netting regulations.

Alternative ways of achieving policy objectives

Two alternative options to the proposed subordinate legislation were identified.

One option was to not make any amendments. This option would most likely result in the Federal Government listing hammerhead sharks as 'endangered' because the existing management arrangements for sharks as a group are not sufficient to support a 'conservation dependent' listing.

Under this option, hammerhead sharks would become a no-take species in Commonwealth waters. All fishers operating in Commonwealth waters would be required to take all reasonable steps to avoid interactions with hammerhead sharks. Export of hammerhead sharks taken from Queensland waters would be prohibited and export approvals for other species in Queensland net fisheries could be at risk due to the risk of incidental catches of hammerhead sharks.

Another option was to introduce the same management arrangements via licensing conditions. This non-regulatory measure is not considered efficient because it would require amendment of hundreds of individual fishing licences. This measure would also be more challenging to enforce.

Consistency with policy objectives of authorising law

The subordinate legislation is consistent with the 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; and promote ecologically sustainable development.

Inconsistency with policy objectives of other legislation

The subordinate legislation is not inconsistent with policy objectives of other legislation.

Benefits and costs of implementation

There should be minimal impact of the amendments on fishers because the TACC is set above current catch levels. The average catch over the last 3 to 5 years is 80-90 tonnes per year.

However, these same fishers will also be most negatively affected if hammerhead sharks are listed as endangered. A benefit of the subordinate legislation includes that fishers are more likely to maintain access to fishing of hammerhead sharks in Commonwealth waters and access to export markets. It will also reduce discards of dead hammerhead shark.

There will be minor increased reporting requirements for fishers associated with the enforcement of the subordinate legislation. However, this will ensure more effective monitoring of the impacts of fishing on hammerhead sharks and support their sustainability.

Consistency with fundamental legislative principles

The subordinate legislation is consistent with fundamental legislative principles.

Consultation

The Department of Agriculture and Fisheries (DAF) met with industry representatives on 8 and 9 December 2016 to discuss the potential listing of hammerhead shark as endangered. DAF subsequently wrote to all net licence holders alerting them to the potential listing. DAF again met with industry representatives on 8 June 2017. DAF updated stakeholders on the progress and timing of the listing process and discussed some of the operational matters. The TACC split into three regions after discussions at that meeting. Further consultation with industry as the regulations are implemented was agreed.

DAF has also received correspondence from peak commercial fishing industry groups (the Queensland Seafood Industry Association and the Fishermen's Portal) and peak environmental group (WWF) on the matter.

Stakeholder views about the conservation status of the species are mixed, with conservation groups advocating stronger protections and the commercial fishing industry arguing that the catch in Queensland is minor compared to the international harvest, is sustainable at current catch levels and that further regulations are unnecessary.

DAF met with senior officials from the Federal Department of the Environment and Energy, the Northern Territory Government and the Great Barrier Reef Marine Park Authority on 20 February 2017 to agree on proposed minimum management change requirements to avoid an 'endangered' listing.

The Minister for Agriculture and Fisheries wrote to the Federal Minister for Environment and Energy on 22 May 2017 about the Queensland Government's intention to strengthen fisheries management arrangements for hammerhead sharks.

DAF submitted a Preliminary Impact Assessment to the Office of Best Practice Regulation (OBPR) for consideration. The advice from OBPR was that a Regulatory Impact Statement was not required, but if a listing (either conservation dependent or endangered) did not occur then DAF should re-assess the appropriateness of the amendments.