

Fisheries Amendment Declaration 2019

Explanatory notes for SL 2019 No. 181

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries Amendment Declaration 2019

Authorising law

Sections 33, 34, 35 and 36 of the *Fisheries Act 1994*

Policy objectives and the reasons for them

The need for fisheries reform in Queensland was established by a number of reviews, starting with the review by MRAG Asia Pacific, an independent fisheries and aquatic resource company, in 2014. In 2016, the Government released the *Green Paper on fisheries management reform in Queensland* (the Green Paper) for consultation. The Green Paper outlined the issues facing Queensland's fisheries and priority areas for reform. The overwhelming message of the response was that all stakeholders wanted the management of fisheries to be reformed. Most stakeholders agreed that doing nothing was not an option.

This feedback was used to inform the *Queensland Sustainable Fisheries Strategy 2017-2027* (the Strategy) which was released by the Government in June 2017. It outlines the Government's vision for the future management of Queensland's fisheries and includes specific principles to be met and timed actions to review fishing rules and access; implement vessel tracking on commercial fishing vessels; set sustainable catch limits; manage ecological risks from fishing activities; and implement harvest strategies to manage our priority fisheries.

The Strategy included clear targets to be achieved and actions to deliver on these targets. It included the following actions relevant to legislative reform:

- Action 7.1 - Review fishing rules, regulations and access arrangements as part of developing harvest strategies for each fishery.
- Action 7.2 - Amend fisheries legislation to minimise regulation and ensure rules are clear and practical.
- Action 8.1 - Amend the fisheries legislation (*Fisheries Act 1994* and *Fisheries Regulation 2008*) in 2018 to clarify the roles of the responsible Minister and Fisheries Queensland, to ensure decision-making is at the appropriate level and is timely and

evidence-based, and that rules can be changed via declaration as far as possible to ensure sufficient flexibility.

The Government also committed at the 2017 State election to “Review the *Fisheries Act 1994* and *Fisheries Regulation 2008* to create a legislative framework for recreational and commercial fishers that is contemporary, simple to understand reflective of community expectations”. Commitments have also been made under the Reef 2050 Long-Term Sustainability Plan which can only be achieved by amendments to fisheries legislation.

In order to deliver on this election commitment and the more specific principles and commitments outlined in the Strategy, amendments to the *Fisheries Act 1994* and its subordinate legislation were required. The first stage of legislative reforms was delivered by the *Fisheries (Sustainable Fisheries Strategy) Amendment Act 2019*. Consequential amendments included the making of the *Fisheries Declaration 2019* which commenced with relevant Act amendments in May 2019.

In June 2019, the Government released the *Discussion Paper on proposed changes to the Fisheries Regulation 2008* (the Discussion Paper) which outlined 102 proposed amendments. The *Fisheries Amendment Declaration 2019* (Amendment Declaration), *Fisheries (General) Regulation 2019* (General Fisheries Regulation) and the *Fisheries (Commercial Fisheries) Regulation 2019* (Commercial Fisheries Regulation), which all commenced on 1 September 2019, together implement 39 of the 102 proposals outlined in the Discussion Paper. The General Fisheries Regulation and the Commercial Fisheries Regulation replaced the *Fisheries Regulation 2008*, which expired on 31 August. Together, the three subordinate instruments form the next stage of the Government’s fisheries reforms.

Consistent with the Strategy and Directions Paper, the main policy objectives of the Amendment Declaration are to:

- implement fisheries reforms that are essential for long-term sustainability and profitability;
- urgently take the pressure off snapper and pearl perch stocks to ensure their sustainability;
- standardise fishing rules and support compliance; and
- reduce red tape and remove unnecessary restrictions.

The Amendment Declaration includes actions relating to snapper, pearl perch and scallops. Stocks of these species are considered depleted according to the national *Status of Australian Fish Stocks* and require urgent management action to recover these stocks. All of these stocks remain below the nationally recommended 20 per cent biomass limit reference point which necessitates an urgent government response while a longer term rebuilding plan can be established.

The objectives of the urgent management action for snapper are to immediately limit and reduce fishing pressure to halt any further stock declines, protect the spawning stock, be consistent with a rebuilding strategy and apply the strategy to all sectors based on their catch share. Limiting the taking of snapper aims to assist in reducing fishing pressure by 30% across all sectors (commercial, charter and recreational) to leave fish in the water to rebuild stocks to sustainable levels.

In 2016, a scallop stock assessment and independent review showed the biomass of scallop was potentially as low as 6 per cent of its original biomass and urgent management actions were introduced to reduce fishing effort, including closing all scallop replenishment areas and introducing a winter no-take closure for scallops. Results from an updated stock assessment completed in 2019 (including 2018 data) have estimated that scallop biomass has increased over the past two years to between 9 and 17 per cent of original levels. This season's scallop catches suggests the current fishery management arrangements are having a positive effect and the fishery is improving. However, the updated stock modelling shows that this will not be enough to rebuild the stock to sustainable levels and further management action is required. The Amendment Declaration includes actions to help rebuild scallop stocks to Maximum Sustainable Yield levels (i.e. 40 per cent biomass by 2027) consistent with the Strategy.

Achievement of policy objectives

The Amendment Declaration achieves its objectives by amending the *Fisheries Declaration 2019*. The most significant reforms are discussed below in relation to the objective to which they most closely align.

Implement fisheries reforms that are essential for long-term sustainability and profitability

The Amendment Declaration makes the following changes that are essential for long-term sustainability and profitability:

- increasing the king threadfin minimum legal size from 60cm to 65 for the taking or possessing of the fish by all fishers in waters other than the Gulf of Carpentaria. This increase is consistent with the best available science on biological size at maturity for this species and will allow more fish to mature on the east coast;
- implementing small prawn strip closures in the Southern Offshore Trawl Management region to prevent targeting of small prawns in the Southern Offshore Trawl Management region. The strip closures were mapped in consultation with industry stakeholders;
- making the following changes to in-possession limits for recreational fishers:
 - decreasing the number of mud crab that a recreational fisher may take or possess from '10' to '7';
 - establishing a maximum possession limit of 20 blue swimmer crabs;
 - decreasing the recreational possession limit for bivalve molluscs that a recreational fisher may take or possess from 50 to 30 to avoid overharvesting issues of pipis on ocean beaches and to minimise the risk of further area closures;
 - providing for maximum recreational possession limits of 50 for cuttlefish and squid (other than tiger squid), mullet (other than sea mullet and diamond scale mullet) and smooth-clawed rock lobster and yellowtail pike;
 - clarifying the recreational in-possession limit for oysters to apply to all species of oyster except pearl oyster;
 - aligning the existing northern and southern tropical rock lobster recreational in-possession limits to provide for a maximum of 5 for both. This is an increase in the northern in-possession limit from 3 to 5;
 - excluding 'pearl oyster' from the taking and possessing of oysters 2, schedule 2, part 2;
 - ensuring all species are subject to an appropriate and sustainable limit by introducing a possession limit of 20 for all species that are not subject to a species-

specific possession limit. The limitations are justified on the basis that all species should be subject to a sustainable limit. The species excluded from this limit are:

- Australian anchovy,
 - Australian sardine,
 - common hardyhead,
 - marine yabby,
 - silver biddy,
 - southern herring,
 - soldier crab or
 - worm (other than beachworm or Cribb Island worm);
- prohibiting the recreational take of hammerhead sharks in recognition of the conservation-dependent status of the fish under the federal *Environmental Protection and Biodiversity Conservation Act 1999* (Cwlth);
 - prohibiting the recreational take of white teatfish due to their importance to ecosystems and their susceptibility to overfishing;
 - establishing a recreational 'boat limit' for high-value black-market species (e.g. black jewfish, mud crabs, snapper etc.) whereby in cases where there is more than 1 person on board a vessel, the person in charge of the vessel must ensure that there are not more than twice the individual possession limit that would otherwise apply to these species on board;
 - making the following changes to Mary River cod and Murray cod management:
 - allowing the recreational take of Mary River cod in stocked impoundments;
 - amending the regulated waters for Mary River cod;
 - amending and aligning the seasonal closures for Mary River cod and Murray cod;
 - introducing new closed waters to protect Mary River cod;
 - clarifying the in-possession rules for Mary River cod in stocked impoundments; and
 - establishing a single minimum legal size limit for Mary River cod and Murray cod;
 - clarifying that despite the maximum number prescribed in the grey reef shark and whitetip reef shark entries, the maximum number of shark (other than grey reef shark, whitetip reef shark, speartooth shark, white shark or sandtiger shark) must not be exceeded; and
 - allowing a recreational fisher to possess a maximum of 5 Australian bass in a prescribed stock impoundment to ensure that recreational fishing pressure remains within sustainable limits.

Urgent sustainability actions for scallop, snapper and pearl perch

The Amendment Declaration makes the following changes to ensure the sustainability of scallop, snapper and pearl perch:

- introducing a seasonal closure from 15 July to 15 August each year to prohibit the taking or possessing of snapper and pearl perch to protect snapper at the start of its spawning season to maximise successful reproduction and to rebuild stock levels. Pearl perch is included as they are commonly caught with snapper. The closure is timed to avoid the school holidays and minimise the impact on fishing and tourism businesses, capture more full moons when spawning occurs, while achieving the harvest reductions necessary to start rebuilding stock;
- prohibiting taking and possessing snapper and pearl perch for trade or commerce if the prescribed commercial catch for snapper is more than 42 tonnes and the prescribed commercial catch for pearl perch is more than 15 tonnes;
- increasing the pearl perch minimum size limit from 35 cm to 38 cm for all fishers and reducing the recreational in-possession limit from 5 to 4 fish to support the recovery of pearl perch stocks;

- amending management arrangements to support the recovery of scallops involving two regulated periods in which a person must not in the southern offshore and inshore trawl waters, take or possess scallops by:
 - changing the first regulated period from '1 May to 31 October' to '1 May to 30 November'; and
 - providing, as a trigger for the earlier commencement of the second regulated period, a specific effort cap for scallop to rebuild depleted stocks within the southern inshore region of the East Coast Trawl Fishery. If 118,000 or more effort units are used during the period from 1 December to 24 April, the regulated period starts 5 days after the chief executive has published that the maximum effort units have been used and ends on the 30 April. In other words, the maximum effort unit cap would result in scallop becoming a no take species earlier than 1 May. These arrangements do not affect the taking of fish of other species in the Fishery such as prawns and bugs.

Standardising fishing rules and supporting compliance

The Amendment Declaration makes the following changes to standardise fishing rules and support compliance:

- strengthening black jewfish management (black jewfish now being the highest value fisheries resource in Queensland) by prohibiting the take and possession of black jewfish in the Dalrymple Bay and Hay Point regulated waters, in addition to the North Cape York regulated waters, because approximately 98,000 kg of the total reported commercial catch of the species has come from the Dalrymple Bay and Hay Point regulated waters alone, and over-targeting of aggregations is a significant risk for stock collapses;
- strengthening compliance in the use of dillies by requiring recreational fishers using dillies to label them with the name of the user rather than the owner. This will make it easier to identify the person who is using the apparatus and enforce the crab pot limit;
- standardising seasonal fishery closure provisions by removing references to start and end times and using only the closed and open dates (which has the effect of ensuring all closures commence at the start of the day stated and end at the end of the day stated) with the exception of those regulated waters where maintaining current arrangements was considered necessary to deliver the original policy intent of the closure (e.g. weekend closures in some commercial fisheries that were intended to reduce the potential for interactions with recreational fishers); and
- clarifying that the size limit for giant queenfish in the Gulf of Carpentaria applies to all fishers and is not restricted to recreational fishers.

Reducing red tape and removing unnecessary restrictions

The Amendment Declaration makes the following change to reduce red tape and remove unnecessary restrictions:

- clarifying that no recreational in-possession limit applies to mangrove and rock worms. The limit on the recreational take of bloodworms was originally intended to protect the commercially valuable species, the Cribb Island worm. Mangrove and rock worms are not targeted by the commercial sector but are a popular recreational bait species, especially in the Redcliffe area.

Consistency with policy objectives of authorising law

The Amendment Declaration is consistent with the main objective 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 Amendment Declaration is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

Maintaining the status quo was not considered an option because it would not achieve the objectives of the Strategy or meet the expectation of the community for sustainable fisheries in Queensland. In particular, it would not support the ongoing rebuilding of scallop stocks or take the pressure of snapper and pearl perch stocks to enable a rebuilding plan to be established.

There are significant risks for ecological, social and economic sustainability of Queensland's fisheries without the reforms delivered in the Amendment Declaration. Generally, in proposing actions to achieve the policy objectives the following key principles were considered:

- Without change, it is likely that more stocks would be at risk of depletion over time as management arrangements failed keep pace with changing harvesting practices and environmental influences. By being clear about what action will be taken and when, harvest strategies help remove much of the uncertainty around how a fishery will be managed. The proposed fishing rules changes are necessary to support the initial implementation of effective harvest strategies for Queensland's fisheries.
- Already there is significant competition between and within sectors. Without change conflict would increase and would be reflected in lower individual catches in all fishing sectors, as well as over-capitalisation and reduced financial returns in the commercial fishing industry. Eventually, it may have necessitated further adverse fishing rules or closures and administration of the system would become more complex and cumbersome.
- Without good compliance with management arrangements our fisheries resources would remain at risk. Legislation that allows some fishers to exploit fishing rules not only undermines management, it affects the fishing experience for others and may also lead to reduced catch limits or additional fishing rules to ensure sustainability of our fisheries resources. The proposed fishing rules changes are necessary to support effective compliance across Queensland's fisheries.

The high value of black jewfish swim bladders has seen the harvest of the species increase in recent years to a level where there are now concerns over the sustainability of the species. As a consequence the additional measures to limit the take of these species in key areas (Dalrymple Bay and Hay Point regulated waters) and implement a

total closure to all fishing once the prescribed commercial catch is reached are considered necessary and no alternative is considered viable.

During consultation on the Discussion Paper, feedback on a number of alternatives was considered as follows:

- Some respondents suggested alternative changes to size and in-possession limits for certain species, some higher and some lower. As a result of this feedback, yellowtail pike and the smooth-clawed rock crab are now also classified as a bait species and subject to an in-possession limit of 50 (as opposed to 20).
- Some respondents also suggested higher or lower recreational possession limits for mud crab. Of those who did not support the change to seven, a good number of those felt it was still too high and a possession limit of five would be more reasonable. The limit of seven reflects that 67% of those recreational fishers who responded on this proposal supported this limit and is a balanced outcome given this is an iconic species for all fishers.
- Some respondents preferred to retain the existing marking requirements for crab pots. Continuing to allow recreational fishers to use crabbing apparatus marked with the owners details as opposed to the user's details was not considered appropriate on the basis that the current arrangements make enforcement of these regulations difficult and this has been exploited by persons illegally harvesting these species.
- The original proposal to establish a total prohibition on all forms of fishing in Obi Obi Creek to protect Mary River Cod was not supported. Following additional consultation with local land owners and stakeholders, an alternative approach was identified to establish a three month seasonal closure from 1 August to 31 October annually to protect Mary River cod at their most vulnerable time during spawning. For the remainder of the year, fishing would continue to be permitted. Representatives indicated the local community understand the importance of protecting Mary River cod during this period and supported this revised approach.

Benefits and costs of implementation

Implementing the fisheries reforms and urgent sustainability actions aligns with the Directions Paper and Strategy. They are intended to support the implementation of a modern and responsive management system for Queensland's fisheries that is transparent, consultative, and based on the best available data. Many of these changes set the framework to enable harvest to be managed effectively under harvest strategies. It is anticipated that the proposed changes will result in more resilient, sustainable fisheries; a better recreational fishing experience; a profitable commercial fishing sector; less regulatory burden generally; and improved stakeholder engagement.

A Supporting Impact Statement was released with the Discussion Paper in June 2019 outlining the objectives, summarising the consideration of options over the last 18 months, the benefits and impacts of the proposed changes and additional analysis of the more significant proposed changes.

The proposals being progressed in the Amendment Declaration, predominantly to recreational fishing rules, will not affect the average fisher. There will be some impacts in addressing urgent sustainability issues for scallop, snapper and pearl perch. However, fishers will continue to have access to these fisheries to provide seafood, support jobs, recreational fishing, and tourism in Queensland. The specific impacts are discussed below.

Impact on commercial fishers of specific reforms

Commercial and charter businesses and recreational fishers will not be able to retain snapper and pearl perch during the spawning closure from 14 July to 14 August annually. While this is likely to impact on all fishers and fishing businesses, there are limited alternative management tools to take the pressure of these stocks to allow them to start rebuilding. To minimise the impact on charter fishing and local tourism businesses in particular, the closure has been set to avoid the important winter school holiday period. All fishers are also able to target other species during this time (e.g. amberjack etc.). Generally, it will be difficult to rebuild these stocks without these changes. The cost of the urgent management action now is expected to be offset in the long-term when stocks are rebuilt to sustainable levels.

Closures introduced in the Southern Offshore Trawl Management Region will provide additional protections to small prawns at times of year when they are found in these areas. While this will have an economic impact upon commercial trawl fishers who have previously targeted these animals in the short term, this impact is expected to be largely offset by the additional returns provided to the fishers who will be able to harvest these animals at a time when they are of a size that attracts a significantly better price per kilogram.

The closure of the Dalrymple Bay and Hay Point regulated waters to the commercial take of black jewfish will impact fishers who have targeted this species in this area previously. These restrictions are spatially specific, meaning all other parts of the fishery remain accessible. The closure is considered necessary due to the significant sustainability concerns around targeting aggregating stocks – black jewfish have been subject to stock collapses around the world as a result of similar fishing behaviour. This measure is intended to minimise the risk of fishing pressure (it applies to all sectors) by inhibiting persons targeting this species.

Impact on the community of specific reforms

Recreational fishers will be impacted by the proposed changes to size and possession limits. However, these proposals provide a good balance between catching a good feed, ensuring recreational fishing is sustainable and enabling management of our fisheries that keeps pace with changing fishing behaviours. Some of the changes, like boat limits, are necessary to reduce the risks of black-marketing, particularly for high value resources (i.e. mud crab, prawns). Recognising the importance of boat-based charter fishing in Queensland, charter fishers are exempt from the boat limits.

The average recreational fisher is unlikely to be impacted by changes to the general possession limits and boat limits because their catch does not approach these limits. Similarly, the reduction in the mud crab limit is unlikely to affect the majority of recreational fishers targeting this species. However, the limits will impact some fishers but ensure the

management of recreational harvest is consistent with the new harvest strategies being implemented. Capping recreational catch will also reduce the risk of black-marketing and will bring Queensland's management in line with best practice.

Changes to the management arrangements for Murray cod and Mary River cod are generally intended to ensure the long-term sustainability of these species, which are listed as 'endangered' under the Commonwealth *Environment Protection Biodiversity and Conservations Act 1999*, and will reduce potential confusion as to which management arrangements apply to these two visually similar species. These measures will prevent recreational fishers accessing these species in certain areas during the closed periods, but are considered necessary to support the recovery of Mary River cod.

More broadly, the community will benefit from the establishment of supporting fishing rules that ensure the overall effectiveness of the management of our fisheries. The community will also benefit from the measures to long-term sustainability and profitability of fisheries, including closure to protect snapper and pearl perch to all sectors which will allow stocks to rebuild.

There are no new fees, offences or financial costs associated with the Fisheries Amendment Declaration other than those that existed under the expired Regulation.

Consistency with fundamental legislative principles

The subordinate legislation has been drafted with regard to the fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* (LSA). Potential breaches of FLPs are discussed below.

Legislation should have sufficient regard to rights and liberties of individuals – LSA s4(2)(a)

Legislation should not, without sufficient justification, unduly restrict ordinary activity - Restrictions on recreational fishers

The potential FLP issue related to these provisions is whether the legislation unduly restricts ordinary activity without sufficient justification. The consequences of unmanaged access to fisheries resources which may severely impact the future sustainability of fisheries are the basis for the restrictions on all fishers.

Provisions imposing additional closures

- Clause 7 - Amendment of s17 (Regulated waters to which division applies) - 'Taking any fish in other particular regulated waters')
- Clause 10 - Replacement of s29 (Taking or possessing black jewfish – North Cape York) with Dalrymple Bay and Hay Point and North Cape York
- Clause 12 - Replacement of s35 (Taking or possessing saucer scallops in regulated periods – Swain Reefs and Hydrographers Passage) – Taking or possessing snapper or pearl perch in regulated period—regulated tidal waters
- Schedule 3, item 9 - Schedule 2 part 2 entry for hammerhead shark

Clause 7 amends section 17 to include Tinana Creek (upstream) as regulated waters in which the taking and possessing of fish is prohibited. The prohibitions are justified on the

basis that the Mary River cod has an 'endangered' status under the federal *Environment Protection and Biodiversity Conservation Act 1999*, and they will protect this species at known breeding aggregation sites during the breeding period and allow the wild population of this species to recover.

Clause 10 extends the prohibition of taking or possessing of black jewfish in the Dalrymple Bay and Hay Point regulated waters. It is justified for sustainability of the fish as black jewfish is the highest value fisheries resource in Queensland and those areas are known aggregation sites—it is estimated that approximately 98 000 kg of the reported commercial catch of black jewfish has come from this single area.

Clause 12 inserts a seasonal closure on taking or possessing snapper or pearl perch during the period 15 July to 15 August. The short period that the restrictions apply is justified on the basis that in Queensland, snapper are known to spawn in aggregations over several months (approximately June to September) and across many locations, and synchronise spawning on the lunar cycle. The timing and duration of spawning varies depending on water temperature and other environmental conditions. Snapper are vulnerable to being caught during this time and are subject to high fishing pressure during the winter months. The timing of the fishing closure will avoid school holiday periods and minimise the impact on fishing and tourism, while capturing more full moons when spawning occurs for successful reproduction and achieving harvest reductions to start rebuilding stocks of the fish. While there is limited information on the spawning behaviour of pearl perch, they are included in the closure as they are commonly caught with snapper.

Item 9 in schedule 2 prohibits a recreational fisher taking hammerhead sharks. This is justified due to their conservation-dependent status under the federal *Environmental Protection and Biodiversity Conservation Act 1999*

Provisions extending the period of a closure

- Clause 11 - Amendment of s 33 (Taking or possessing Murray cod in regulated period—particular waters of the Murray– Darling drainage division)
- Clause 15 – Replacement of ch 2, pt 12, divs1-3

Clause 11 amends section 33 to change the regulated period for Murray cod from '1 September to 30 November' to '1 August to 31 October' each year. This change is justified because Murray cod and Mary River cod both have an 'endangered' status under the federal *Environment Protection and Biodiversity Conservation Act 1999*. Recent research has shown that both of these species actually commence spawning in August, so aligning the seasonal closures would provide good protection for both species during the spawning season.

Clause 15 inserts new section 86 to introduce new management arrangements to support the recovery of scallops by providing two regulated periods in which a person must not, in the southern offshore and inshore trawl waters, take or possess scallops. The first regulated period has been changed from 1 May to 31 October to 1 May to 30 November. The second regulated period introduces a specific effort cap for scallop to rebuild depleted stocks within the southern inshore region of the East Coast Trawl Fishery. If 118,000 or more effort units are used during the period from 1 December to 24 April, the regulated period starts 5 days after the chief executive has published the maximum effort units have been used and ends on the 30 April if reached. The maximum effort units would result in scallop becoming a no take species earlier than 1 May. This is justified to assist in

rebuilding scallop stocks by reducing the duration scallops stocks are exposed to commercial fishing pressure. Fishers will still be able to continue to fish for other species such as prawns and bugs if the total entitlement for scallops is reached during the closure period.

Provisions restricting ways of taking fish

- Clause 13 - Insertion of new s39A Possessing or using fishing lines—particular regulated waters.

Clause 13 inserts a new section 39A which provides that a person must not possess or use a fishing line during the regulated period of 1 August to 31 October in the following regulated waters:

- Coomera River (upstream)
- Albert River (upstream)
- Running Creek
- Christmas Creek
- Stanley River
- Mary River (upstream).

The prohibition is justified on the basis that the Mary River cod has an 'endangered' status under the federal *Environment Protection and Biodiversity Conservation Act 1999*, and that prohibiting line fishing will help to protect and allow the species to recover. Research has indicated that if caught, Mary River cod may not breed successfully if at all after being disturbed.

Provisions regulating possessing fish in certain form

- Item 14 of Schedule 3 - 'Schedule 2 part 2 entry for mulloway'
- Item 18 of Schedule 3 - 'Schedule 2 part 2 entry for scaly jewfish'

Items 14 and 18 of schedule 3 amend schedule 2 part 2 to prohibit a person from possessing mulloway and scaly jewfish in a form other than whole while on a boat. This restriction is similar to the existing restriction placed on the possession of black jewfish on a boat. These new restrictions are justified on the basis that these species are similar in appearance to black jewfish, and allowing the processing of these species at sea to continue may be exploited which will undermine the measures intended to ensure the sustainability of the black jewfish and mitigate black marketing.

Restrictions on size of fish

- Item 17 of Schedule 3 - 'Schedule 2 part 2 entry for pearl perch'

Item 17 of schedule 3 amends schedule 2 part 2 to increase the minimum size limit for pearl perch from 35cm to 38cm. This is justified to support the recovery of pearl perch stocks in Queensland waters.

Restrictions on number of fish

- Clause 19 - New section 109A Particular fish regulated by number or volume if more than 1 recreational fisher on a boat
- Item 5 of Schedule 3 - 'Schedule 2 part 2 entry for blue swimmer crab'
- Item 6 of Schedule 3 - 'Schedule 2 part 2 after entry for crab'

- Item 13 of Schedule 3 - 'Schedule 2 part 2 after entry for mud crab'
- Item 21 of Schedule 3 - 'Schedule 2 part 2 entry for tropical rocklobster'
- Item 22 of Schedule 3 - 'Schedule 2 part 2 after entry for white shark'
- Item 23 of Schedule 3 - 'Schedule 2 part 2 entry for whitetip reef shark'
- Item 24 of Schedule 3 - 'Schedule 2 part 2 entry for any freshwater fin fish species not mentioned in this column or column 1 of the table in part 3 –'
- Item 26 of Schedule 3 - 'Schedule 2 part 2 after entry for crimson snapper or saddletail snapper or a combination of these fish-'squid other than tiger squid

Clause 19, by inserting new section 109A, introduces a recreational boat limit for high value, black market species. The boat limit is imposed if there is more than 1 recreational fisher on a boat, and the person in control of the boat must ensure that there are no more than twice the regulated number of the following species:

- mud crab,
- tropical rocklobster, shark,
- barramundi,
- coral trout,
- Spanish mackerel,
- sea cucumber,
- prawns,
- snapper,
- black jewfish

The in-possession boat limit does not apply to a boat that is taking part in a licensed charter fishing trip. This is justified on the basis that additional protection is required for high-value black market species. The requirement does this by limiting the amount of fish a recreational fishing boat can take (i.e. not a commercial quantity) and dis-incentivising black-marketing activities. A similar requirement has been in place for tropical rocklobster in Queensland for some time.

Item 5 of Schedule 3 amends schedule 2, part 2 to amend the entry for blue swimmer crab to limit a recreational fisher taking or possessing more than 20 of the crabs. The limit is justified on the basis it aligns with the general in-possession limit being introduced for all species in Queensland. Blue swimmer crabs are being given a separate species specific limit as adjustments to the recreational take of the species may be warranted in the future based upon the recommendations made through the fishery's harvest strategy.

Item 6 of Schedule 3 amends schedule 2, part 2 to limit a recreational fisher taking or possessing more than 50 Crib Island worms or part of a Crib Island worm. The limit is justified on the basis worm species are often used as bait by recreational fishers and 50 per person is considered an adequate amount to allow for such practices to continue.

Item 13 of Schedule 3 amends schedule 2, part 2 to limit a recreational fisher taking or possessing more than 50 mullet (other than diamond scale mullet, freshwater mullet or sea mullet). The limit is justified on the basis mullet species, other than those which have been excluded, are often used as bait by recreational fishers and 50 fish per person is considered an adequate amount to allow for such practices to continue. This approach will also help to address species identification issues by adopting a common in-possession limit.

Item 21 of Schedule 3 amends schedule 2, part 2 to limit the taking of tropical rocklobster by a recreational fisher to 5 regardless of the area where the recreational fisher takes the fish. The intent of this amendment is to establish a single fishing rule in Queensland

(currently there are two based on Northern and Southern Queensland), with the less restrictive limit of 5 being applied state-wide.

Item 22 of Schedule 3 amends schedule 2, part 2 to prohibit the recreational taking of white teatfish. This is justified on the basis that the fish has a high commercial value, is important to local ecosystems and is susceptible to overfishing.

Item 23 of Schedule 3 amends schedule 2, part 2 to clarify the intended policy that the maximum number of whitetip reef shark is not cumulative with the general shark possession limits. Currently there are separate provisions for grey reef shark and whitetip reef shark which has the unintended consequence to allows the take of one of each of these species in addition to general shark limits. The limitation on the numbers is to limit the taking of shark to sustainable levels.

Item 24 of Schedule 3 amends schedule 2, part 2 to introduce a general in-possession limit of 20 for any fin fish species not subject to a species specific in-possession limit. The limit is justified on the basis that all fish should be fished within sustainable limits. It is also consistent with the existing in-possession limit of 20 for all freshwater fin fish species and other jurisdictions (like the Northern Territory and New South Wales). There are exceptions to the species that are subject the general in-possession limit because they are commonly used as bait. These species excluded from this limit are:

- Australian anchovy,
- Australian sardine,
- common hardyhead,
- marine yabby,
- silver biddy,
- southern herring,
- soldier crab
- worm (other than beachworm or Cribb Island worm)
- Yellowtail pike or
- smooth-clawed rock crab

Item 26 of Schedule 3 amends schedule 2, part 2 to introduce an in-possession limit of 50 for cuttlefish or squid other than tiger squid for use for bait. The limit is justified on the basis that the species should be fished within sustainable limits.

Legislation should not, without sufficient justification, unduly restrict ordinary activity including the right to conduct business without interference - Restrictions on commercial fishers

The potential FLP issue related to these provisions is whether the legislation unduly restricts ordinary activity without sufficient justification including the right to conduct business without interference. The consequences of unmanaged access to fisheries resources, which may severely impact the future sustainability of fisheries and risk export accreditations for commercial fisheries, are the basis for the restrictions on commercial fishers.

Provisions imposing additional closures

- Clause 7 - Amendment of s17 (Regulated waters to which division applies) 'Taking any fish in other particular regulated waters'
- Clause 10 - Replacement of s29 (Taking or possessing black jewfish – North Cape York) with Dalrymple Bay and Hay Point and North Cape York
- Clause 12 - Replacement of s35 (Taking or possessing saucer scallops in regulated periods-Swain Reefs and Hydrographers Passage)

Clause 7 amends section 17 to include Tinana Creek (upstream) as regulated waters in which the taking and possessing of fish is prohibited. The prohibition is justified on the basis that the Mary River cod has an 'endangered' status under the federal *Environment Protection and Biodiversity Conservation Act 1999*, and they will protect and allow the species to recover.

Clause 10 extends the prohibition of taking or possessing of black jewfish in the Dalrymple Bay and Hay Point regulated waters. It is justified for sustainability of the fish as Black jewfish is the highest value fisheries resource in Queensland and those areas are known aggregation sites—it is estimated that approximately 98 000 kg of the reported commercial catch of black jewfish has come from this single area.

Clause 12 replaces section 35 which has been incorporated into new provisions. Section 86 inserts a seasonal closure on taking or possessing snapper or pearl perch during the period 15 July to 15 August each year. The short closure is needed to protect snapper at the start of its spawning season to maximise successful reproduction and to rebuild stock levels. Snapper are known to spawn in aggregations over several months (approximately June to September) and across many locations, and synchronise spawning on the lunar cycle. The timing and duration of spawning varies depending on water temperature and other environmental conditions. Snapper are vulnerable to being caught during this time and are subject to high fishing pressure during the winter months.

The closure avoids the school holidays and minimises the impact on fishing and tourism businesses, and better captures more full moons when spawning occurs while achieving harvest reductions to start rebuilding stock. Pearl perch is included as they are commonly caught with snapper

Provisions extending the period of a closure

- Clause 11 - Amendment of s 33 (Taking or possessing Murray cod in regulated period—particular waters of the Murray– Darling drainage division)
- Clause 15 - Replacement of ch 2, pt 12, divs1-3

Clause 11 amends section 33 to change the regulated period for Murray cod from '1 September to 30 November' to '1 August to 31 October' each year. This change is justified because Murray cod and Mary River cod both have an 'endangered' status under the federal *Environment Protection and Biodiversity Conservation Act 1999*. Recent research has shown that both of these species actually commence spawning in August, so aligning the seasonal closures would provide good protection for both species during the spawning season.

Clause 15 inserts new section 86 to introduce new management arrangements to support the recovery of scallops by providing two regulated periods in which a person must not, in the southern offshore and inshore trawl waters, take or possess scallops. The first regulated period has been changed from '1 May to 31 October' to '1 May to 30 November'. A specific effort cap for scallop has been introduced to trigger the start of the second regulated period. It will help rebuild depleted stocks within the southern inshore region of the East Coast Trawl Fishery. The closures are justified to assist in rebuilding scallop stocks by reducing the duration scallops stocks are exposed to commercial fishing pressure. Fishers will still be able to continue to fish for other species such as prawns and bugs if the total entitlement for scallops is reached and during the closure period.

Provisions restricting ways of taking fish

- Clause 13 - Insertion of new s39A (Possessing or using fishing lines—particular regulated waters)

Clause 13 inserts a new section 39A to possess or use a fishing line during the period 1 August to 31 October in the following waters:

- Coomera River (upstream)
- Albert River (upstream)
- Running Creek
- Christmas Creek
- Stanley River
- Mary River (upstream).

The prohibition is justified on the basis that the Mary River cod has an 'endangered' status under the federal *Environment Protection and Biodiversity Conservation Act 1999*, and that no line fishing will help to protect and allow the species to recover.

Provisions regulating possessing fish in certain forms

- Item 14 of Schedule 3 - 'Schedule 2 part 2 entry for mullocky'
- Item 18 of Schedule 3 - 'Schedule 2 part 2 entry for scaly jewfish'

Item 14 and 18 of schedule 3 amends schedule 2 part 2 to prohibit a person from possessing mullocky and scaly jewfish in a form other than whole while on a boat. This restriction is similar to the existing restriction placed on the possession of black jewfish on a boat. These new restrictions are justified on the basis that these species are similar in appearance to black jewfish, and allowing the processing of these species at sea to continue may be exploited, which will undermine the measures intended to ensure the sustainability of the black jewfish and mitigate black marketing.

Restrictions on size of fish

- Item 17 of schedule 3 - 'Schedule 2, part , entry for pearl perch'

Item 17 of schedule 3 amends schedule 2 part 2 to increase the minimum size limit for pearl perch from 35cm to 38cm. This is justified to support the recovery of pearl perch stocks in Queensland waters.

Restrictions on number of fish

- Item 23 of Schedule 3 - 'Schedule 2 part 2 entry for whitetip reef shark'

Item 23 of Schedule 3 amends schedule 2, part 2 to clarify the intended policy that the maximum number of whitetip reef shark is not cumulative with the general shark possession limits. Currently there are separate provisions for grey reef shark and whitetip reef shark which has the unintended consequence to allow the take of one of each of these species in addition to general shark limits. The limitation on the numbers is to limit the taking of shark to sustainable levels

Consequences imposed by legislation should be proportionate and relevant to the actions

- Clause 19 - New section 109A (Particular fish regulated by number or volume if more than 1 recreational fisher on boat)

This provision provides that where there is more than one recreational fisher on a boat which is not taking part in a licensed charter fishing trip, the person in control of the boat must ensure there is not more than twice the regulated maximum number of the fish prescribed in the section.

This offence is justified because black marketing of fish, particularly the high value species susceptible to illegal trade including barramundi, mud crab, black jewfish and tropical rock lobster, involves recreational fishers selling at hotels and clubs. It has the potential to impact on the viability of a number of commercial fisheries, and leads to unsustainable fishing practices which are detrimental to fisheries resources and fish habitats, particularly the high value species susceptible to illegal trade, including barramundi, mud crab, black jewfish and tropical rock lobster.

Legislation does not reverse the onus of proof in criminal proceedings without adequate justification – LSA s4(3)(d)

- Clause 19 - New section 109A (Particular fish regulated by number or volume if more than 1 recreational fisher on boat)

This provision provides that where there is more than one recreational fisher on a boat which is not taking part in a licensed charter fishing trip, the person in control of the boat must ensure there is not more than twice the regulated maximum number of the fish prescribed in the section.

The potential FLP issue is whether the legislation reverses the onus of proof in criminal proceedings without adequate justification because it imposes a strict liability on a defendant. This approach is justified because the offences involve matters which would be within the defendant's knowledge and/or on which evidence would be available to them. A communication strategy will be implemented to educate recreational fishers on the new obligations as well as a transitional period for compliance.

Consultation

Since the release of the Strategy in 2017, extensive consultation on fisheries reforms has been undertaken. 10 Fishery-specific working groups have met 41 times since late 2017 and the Sustainable Fisheries Expert Panel (the Panel) have met eight times. Both have been integral to the engagement approach on the fisheries reforms. A meeting communiqué has been published on DAF's website and promulgated via social media following each meeting.

In June 2019, the Government released the Discussion Paper for public consultation. The Discussion Paper outlined 102 proposed amendments, focussing on:

- *Implementing the fisheries reforms – essential for long-term sustainability and profitability.* Proposed changes included matters that will apply across all sectors,

and commercial fishing, charter fishing, recreational tidal and freshwater fishing sectors only (e.g. splitting fisheries in management regions, total allowable commercial catch limits, in-possession limits, general possession limits and boat limits).

- *Urgent sustainability actions – taking the pressure off snapper and pearl perch.* Proposed changes included seasonal closures and changes to size and in-possession limit for pearl perch.
- *Standardising fishing rules and supporting compliance.* Proposed changes included strengthening management of black jewfish, standardising reporting requirements, consolidating and clarifying vessel requirements, and standardising fishery closure provisions.
- *Reducing red tape and removing unnecessary restrictions.* Proposed changes included enabling online licensing transactions and removing unnecessary restrictions

1245 responses were received along with 20,000 Net Free North campaign emails through World Wide Fund for Nature and 3,000 campaign emails supporting the fisheries reforms and seeking changes to reduce the impact of commercial netting on protected species through Australian Marine Conservation Society were received. Of the 989 online survey responses, 272 were from commercial fishers, 619 were from recreational fishers and 22 were from charter fishers.

Overall, there was good support for the majority of the reforms being delivered initially (39 of the total of 102 that were proposed). Feedback on some of the specific proposals being progressed in the Amendment Declaration is summarised below.

There was mixed feedback for some proposals, meaning some respondents supported the change while others did not. For example, there was majority support for the proposed seasonal snapper and pearl perch closure (62 per cent); recreational boat limit for black-marketing species (61 per cent); mollusc and gastropod possession limit change (73 per cent); and pearl perch size limit changes and some of the bait species and proposed limits (68 per cent). However, some respondents did not support these proposals and/or recommended alternatives. There was some constructive feedback on the species that should be considered, but with different possession limits to apply that have been incorporated into the final changes.

There was a lot of discussion about the proposed:

- Boat limits to minimise the risk of black marketing by recreational fishers. 969 responses were received with 61.3 per cent support. Almost 200 comments were received with 76 of these unsupportive. Unfortunately, some recreational fishers are doing the wrong thing and this change is an important disincentive for recreational fishers to engage in black-marketing. Coral trout was removed prior to consultation as there is a total possession limit of 20 reef fish already in place in that fishery and to minimise the impact on recreational fishers who travel longer distances to fish. Tropical rock lobster already has a boat limit. For the remaining priority black market species (mud crab, shark, barramundi, Spanish mackerel, sea cucumber, prawns, snapper and black jewfish), it is proposed to implement a boat limit based on two times the in-possession limit. Recognising the importance of boat-based charter fishing in Queensland, charter fishers would be exempt.
- Snapper and pearl perch seasonal closure to protect snapper at the start of its spawning season to maximise the opportunity for successful reproduction and recruitment. 598 online survey respondents supported a seasonal closure, while 263 did not. There was

concern about the impact of a closure on local businesses and discussion about whether it would be better to avoid school holiday periods. The modelling indicates that a minimum of one month in a high-catch period is required to reduce fishing pressure to a level that could allow stocks to rebuild. Based on historical catch trends, July represents 23 per cent of the harvest, while other spawning months such as June (11 per cent) and August (12 per cent) would not contribute the same overall reduction. While there is limited information on the spawning behaviour of pearl perch, they are included in the closure as they are commonly caught with snapper and it would minimise the risk of fishing effort during the closure shifting to this also depleted stock.

- Recreational mud crab possession limit proposed change from ten to seven did not attract the level of attention anticipated. A good number of recreational fishers supported (67 per cent) the proposed change, while some did not. Of those who did not support the change, a good number of those felt it was still too high and a possession limit of five would be more reasonable.

While views vary between the proposals, many recreational fishers are generally supportive of the proposed changes and recognise the need for recreational fishing reform alongside commercial fishing reform. The conservation sector was generally supportive of the proposed changes. The commercial sector was generally supportive, but they also sought some stronger changes for the recreational fishing rules and were concerned about the impact of the urgent sustainability changes on commercial fishers.

These reforms will ensure sustainable and profitable fisheries and enable fish stocks to be rebuilt to a higher level of biomass (around 60 per cent), which promotes the most economically efficient use of the resource; builds a more resilient system that can bounce back from adverse environmental conditions; and supports increased satisfaction of all fishers. Without these changes, we cannot create a system of management that will ensure the future sustainability of Queensland's fisheries resources

The Department of Agriculture and Fisheries consulted with the Office of Best Practice Regulation about proposed fisheries reforms and consultation process. It advised that some of the reforms in the Discussion Paper were likely to be assessed as having 'significant adverse' impacts under the *Queensland Government Guide to Better Regulation* and therefore would require further regulatory impact analysis. Most of the proposed changes that would be considered to have 'significant adverse' impacts (i.e. splitting fisheries up, setting sustainable commercial catch limits and allocating quota) are still being considered have not yet been progressed.

Given the comprehensive consultation process, commencing with the MRAG Review in 2014, followed by the Green Paper on fisheries reforms in 2016, release of the Strategy in 2017 triggering a detailed engagement process, along with the clear Government policy direction outlined in the Directions Paper, a full Regulatory Impact Statement (RIS) has not been prepared. A Supporting Impact Statement was prepared.

It is difficult to do the quantitative economic modelling required in a RIS, as currently there is insufficient data to model social and economic impacts. With the information currently available, a RIS would not be at a scale that would represent the diversity of fishing businesses that currently operate within our fisheries and therefore would not be a good indicator of impact. There is also a lack of industry reporting, quantitative information or research to extrapolate any other meaningful insight into modelling the impacts. Recognising this, and to compensate for the inability to qualitatively model the impacts, the engagement process has been designed around working with individual fishers to

better understand the impacts and to refine the proposed fishing rules to minimise impact on individual fishing businesses while still achieving the overall objectives.

In exempting the fisheries reforms from a more detailed RIS the Government commits to undertaking a Post Implementation Review, consistent with the *Queensland Government Guide to Better Regulation*, within two years of the commencement of the full suite of fisheries reforms (i.e. 1 July 2022). The Queensland Government has initiated a new study into the contribution Queensland's commercial fisheries, seafood processing sector and related businesses make to the State's economy and community generally. The outcomes of this research will help the Government to better understand and minimise the impacts of fisheries management on these sectors. It will also establish an important baseline that can be used to monitor the impact and benefit of the Strategy over the next 10 years.