

Fisheries (Saucer Scallops) Amendment Declaration 2020

Explanatory Notes for SL 2020 No. 196

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries (Saucer Scallops) Amendment Declaration 2020

Authorising law

Section 33, 34, 35 and 37 of the *Fisheries Act 1994*

Policy objectives and the reasons for them

In 2016, the biomass of Queensland saucer scallop stocks was found to be as low as six (6) per cent of its unfished 1958 biomass. This triggered initial management action in December 2016 to close all scallop replenishment areas (SRA) and introduce a winter no take closure between 1 May and 31 October each year.

The previous 2019 saucer scallop stock assessment estimated that scallop biomass had increased over the past two years from nine (9) per cent to 22 per cent of the unfished biomass. However, despite the improvement, modelling indicates that the management arrangements that are currently in place, have not been sufficient to enable saucer scallops to rebuild to sustainable levels, and further management action is required. In 2019, the winter no-take closure was extended for an additional month to provide further protection, and a total effort entitlement of 118,865 effort units for the 2019-2020 fishing season was implemented to support the rebuilding of stock levels.

The 2020 saucer scallop stock assessment estimates that scallop biomass has reduced to 17 per cent of the unfished biomass and that stock building is unlikely to occur unless further management action is taken. The aim of ongoing monitoring and management action on scallops is to achieve a rebuilding of this stock to sustainable levels, 40-50 per cent biomass, in line with national standards.

The East Coast Trawl Fishery has approximately 309 active commercial fishing licences with a gross value production, based on 2018-19, of \$80.8 million. This reflects the significant contribution to regional economies and jobs in Queensland from commercial

fishing. Implementing urgent management action will assist in maintaining Commonwealth Wildlife Trade Operation (WTO) approval under the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) for the fishery, which will ensure commercial fishers can continue to access fishing grounds within the Great Barrier Reef World Heritage Area and existing markets for other trawl products such as prawns.

The policy objective of the *Fisheries (Saucer Scallops) Amendment Declaration 2020* (Amendment Declaration) is to implement urgent management action to support rebuilding scallop stocks consistent with the most up to date stock assessment modelling. It includes the need to take the following management action:

- reducing the total scallop effort entitlement from 118,865 to 80,000 effort units for the southern offshore and inshore trawl regions, in order to protect saucer scallop stock and to enable stock to rebuild to a 40 per cent biomass by 2026;
- shortening the closure period for taking or possessing saucer scallops for the southern offshore and inshore trawl regions by 10 days. This will balance the need to protect scallop stocks by the reduction in the scallop effort entitlement, which has the potential of affecting the livelihood of fishers who do not travel outside the southern inshore region, with additional fishing days.
- implementing an additional 31 days restriction on the possession or use of trawl nets in the Southern Inshore Trawl Region. This is comprised of a 19-day extension of the existing six week closure, which reduces fishing pressure on all stocks, including scallops, while still allowing fishers to continue to fish during the peak market period leading up to Christmas. This is combined with a 12 day restriction during the Christmas/new year period to allow fishers to have time off without risk of the total effort entitlement being reached during this time and to allow scallop meat quality to improve. The restrictions will not apply to a person possessing or using an otter trawl net under a T6, T7, or T8 licence. Fishers will still be able to continue to fish for other species outside of the Southern Inshore Trawl Region during the closure periods.
- providing for midday commencement and end time for the effort cap period to avoid trawlers, which fish at night, having to stop and return to port after only fishing for half the night when the effort cap period expires.

Achievement of policy objectives

The Amendment Declaration achieves its objectives by amending the *Fisheries Declaration 2019* by:

- amending section 86(3)(b) to reduce the scallop effort entitlement from 118,865 to 80,000 effort units;
- amending section 86(3) to adjust the 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 amended to shorten the regulated period from '1 May

to 30 November' to 'midday 1 May to midday 20 November'. Similarly, the second regulated period has been amended to reflect the new closure dates. The second regulated period applies to the Southern Inshore Trawl Region, which commences five days after the chief executive has published that the maximum effort units of 80,000 has been reached in the period between 20 November to 24 April, or midday 1 May;

- inserting new section 86A (Possessing or using trawl nets in Southern Inshore Trawl Region) to provide for the additional closure dates for the possession and use of trawl nets other than otter nets under a T6, T7, or T8 licence.
- providing a midday commencement and end time for the effort cap period start and end dates.

Consistency with policy objectives of authorising law

The Amendment Declaration is consistent with the main objectives of the *Fisheries Act 1994* 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

The 2020 stock assessment for scallops has indicated a decline in biomass that is now below a 20% limit reference point for fisheries that under the National Harvest Strategy Guidelines is a trigger for significant harvest reductions. The scallop biomass estimate is 17% biomass and maintaining the current management arrangements was not considered to be an option due to the risk of further decline in scallop biomass and overall sustainability of the stock.

The following management options were prepared for consultation:

- cease all take of scallops immediately until recovery is demonstrated. The stock assessment modelling options suggests this would rebuild biomass to 40 per cent of 1958 levels by 2024 although a number of environmental influences would likely influence the length of the rebuilding timeframe. The no take on scallops would apply each fishing season year until the biomass had recovered to agreed target levels (i.e. 40 per cent biomass). Future assessments would rely solely on the independent survey data alone to provide recovery information.
- reduce the existing scallop effort entitlement, based on the stock assessment modelling options, to a total 47,000 effort units from 118,865 in order to rebuild stock to 40 per cent biomass by 2026. Other current management arrangements would

- remain in place including the existing winter no take closure from 1 May to 1 December and the southern trawl closure from 20 September to 1 November;
- reduce the existing scallop effort entitlement, based on the stock assessment modelling options, to a total 80 000 effort units from 118,865 in order to rebuild stock to 40 per cent biomass by 2028. Other current management arrangements would remain in place including the existing winter no take closure from 1 May to 1 December and the southern trawl closure from 20 September to 1 November.
 - reduce the total effort entitlement outlined in the previous option/s as well as reduce the no take winter closure by 10 days (adjusting it to 1 May to 20 November) and extend the existing southern trawl closure from six to eight weeks (adjusting it to 20 September to 20 November). This would ease pressure on scallops, prawns and bugs prior to Christmas and ensure there would be no change in effort units between the scallop and prawn fisheries.

The consultation with the working groups identified additional options such as other reductions in the total effort entitlement (i.e. an effort level between 80,000 and 47,000); changes to fishing rules and gear requirements such as larger square mesh codends to filter out more undersized scallop; and extensions of the existing winter no take scallop closure until January in order to improve the value of retained catch.

While the additional options that were raised would have benefits, they would impose additional costs to industry and received less support than some of the recommended options. Changes to existing fishing apparatus requirements would involve costs to replace; and limiting the access to scallop for lengthy periods (until January) would force fishers to move their operations to other areas in the fishery to earn an income, resulting in added flow on fishing pressure in those areas of the fishery.

A complete no take closure on scallops is the most likely way to rebuild stocks in the shortest timeframe. However, this option would have significant impacts on commercial fishers, regional wholesalers and continuity of supply for export markets at a time when the Novel Coronavirus (COVID-19) pandemic already represents a significant challenge for the seafood sector. Industry was unanimous in its concerns about the ramifications of a full closure. In addition, without commercial catch and effort data being collected from the fishery, the ability to monitor and model the stock's recovery over time would be challenging and likely require additional investment in fishery monitoring.

While the stock assessment clearly indicates the stock is not in good condition, the most current stock assessment modelling indicates that some fishing can continue while rebuilding occurs, if there are appropriate controls on the amount of fishing effort. The management action in the Amendment Declaration is consistent with the stock assessment modelling, indicating the stock is likely to rebuild to sustainable target biomass levels of 40 per cent within eight years. A longer rebuild time provides for some continued commercial catch of scallops to support regionally-based fishing businesses.

If these revised management arrangements do not demonstrate an improvement in the stock following the 2020-21 season and the biomass remains at, or lower than, 20 per cent biomass, the Department of Agriculture and Fisheries (the Department) has advised Industry

that closure of the stock would be recommended for the 2021-22 season. This is consistent with harvest strategy management and the principles of the Sustainable Fisheries Strategy 2017-2027 (the Strategy).

Benefits and costs of implementation

The Amendment Declaration will not impose additional costs to the community or the government as it is consistent with routine fisheries management adjustments.

While there will be some further restriction in access to scallops, commercial fishers will still have continued access to the fishery and Queenslanders will benefit from continued supply of saucer scallops. The expected costs to commercial fishers will be minimal and commercial fishers will still be permitted to fish in other areas of the fishery and for other species of fish. This allows fishers to earn an income from other more sustainable species within this fishery while the stock rebuilds and access restrictions can be eased.

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). A potential FLP has been identified and is addressed below.

Scrutiny of Legislative Assembly – LSA s 4(4)(b)

The potential FLP relates to whether the subordinate legislation has sufficient regard to the institution of Parliament by allowing the Chief Executive to make a fisheries declaration that is not subject to Parliamentary scrutiny.

Due to the nature of fisheries declarations, which require specific, technical knowledge on regulated waters, regulated fish, regulated fishing apparatus and regulated fishing methods, and the need for the new fisheries declaration to be easily adapted to reflect current practices, it would be impractical and overly burdensome on Parliament's time to consider the fisheries declaration. It is, therefore, more practical and timely for the Chief Executive to make and amend the fisheries declaration based on the Chief Executive's expertise and knowledge.

Consultation

The Trawl Working Group met on 8 and 15 June 2020 to consider the results of the 2020 scallop stock assessment. The Southern Inshore Harvest Strategy Group was also consulted on 9 June 2020. The groups consist of fishing industry stakeholders, conservation group members and recreational fishing stakeholders selected through an expression of interest process available to all stakeholders. Meeting communiques are available on the Department's website.

The groups discussed a range of potential options for management action to support rebuilding the stock.

There was no consensus on recommended management action. Industry stakeholders supported a reduction in the total effort entitlement, consistent with the stock assessment modelling of 80,000, along with additional fishing closures. All Industry stakeholders recognised the need to take sufficient management action to maintain EPBC Act approvals that enable continued access to fishing in the Great Barrier Reef World Heritage Area and export of product. The conservation members supported a complete no take of scallops until biomass has recovered to sustainable levels above 20% biomass. They remain concerned that reducing the effort cap and adjusting the closures is not sufficiently precautionary to rebuild this stock.

Regulatory Impact Analysis:

The Department consulted the Office of Best Practice Regulation (OBPR), within the Queensland Productivity Commission, on a Preliminary Impact Assessment. The OBPR provided advice that no further assessment is required under the *Queensland Government Guide to Better Regulation*.

OBPR assessed that further regulatory impact analysis is not required at this time as it is unlikely to contribute substantially to the immediate policy response. The assessment was based on:

- the impacts directly on scallop catch, estimated to be worth \$300,000 per annum across 50 to 80 scallop vessels, may be offset by fishing other species;
- the overall economic impact cannot be reliably determined; however, industry has been consulted and there appears to be good support for the measures; and
- the proposal seeks to balance the long-term sustainability of the saucer scallop stocks and viability of the industry, including maintaining Commonwealth WTO fishing and export approval for the East Coast Trawl Fishery.