

Fisheries Legislation Amendment Declaration 2021

Explanatory Notes for SL 2021 No. 76

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries Legislation Amendment Declaration 2021

Authorising law

Sections 33, 34 and 37 of the *Fisheries Act 1994*

Policy objectives and the reasons for them

Background

Fisheries Queensland manages a number of commercial fisheries using quota-based management systems. In such fisheries, there are limits on the total allowable commercial catch for the fishery, part of a fishery, a species or group of species. This is achieved by either declaring a total quota entitlement for particular fisheries or parts of fisheries in the *Fisheries Quota Declaration 2019* (Quota Declaration), or by declaring how a fish is regulated in the *Fisheries Declaration 2019* (Fisheries Declaration) once the prescribed commercial catch reaches a certain amount for a species.

A total quota entitlement is declared for fisheries (or parts of fisheries) where participants in the fishery hold individual transferable quota authorities (units). Quota authorities entitle the holder to take a portion of the declared total quota entitlement for that species or group of species during the season that correlates to his or her individual holding. From season to season, the declared total quota entitlement may be increased or decreased depending upon the status of the fish stocks concerned. Consequently, the amount of catch (in kilograms) that a unit entitles the holder to take also increases and decreases.

This differs from a species of fish that is regulated when the prescribed commercial catch for that species reaches a certain limit (the 'prescribed commercial catch limit'). Under this management system, participants in the fishery(s) compete to take the species on a first in, first served basis. All participants in the fishery(s) can fish for the species until the

prescribed commercial catch limit is reached. Once the prescribed commercial catch reaches the limit, the species becomes regulated in a stated way for relevant fishers.

The entry(s) for such a species in the Fisheries Declaration states how the species is regulated once the prescribed commercial catch limit is reached. Typically, relevant licence holders cannot take or possess that species of fish for the remainder of the fishing season.

In one circumstance, the fish or species is regulated in such a way that as the prescribed commercial catch limit is approached, different levels of restrictions are imposed. If the prescribed commercial catch for hammerhead shark reaches a certain tonnage amount, the Fisheries Declaration provides that the catch and possession limit for relevant licence holders for that species is 10. This is colloquially referred to as 'trip limits'. However, once the prescribed commercial catch for hammerhead shark reaches a higher tonnage amount, the Fisheries Declaration provides that the catch and possession limit for relevant licence holders is reduced to 4.

Under the *Queensland Sustainable Fisheries Strategy 2017-2027* (the Strategy), all major fisheries will be managed using harvest strategies. Harvest strategies outline clear decision rules that increase and decrease the allowable harvest based on the health of the fishery. A change to the total quota entitlement or prescribed commercial catch limit will be consistent with the harvest strategy for the nominated fishery. In accordance with Part 2 of the *Fisheries Act 1994*, harvest strategies for the east coast inshore, commercial crab, sea cucumber, tropical rocklobster and coral fisheries were approved on 14 June 2021.

New total quota entitlement fisheries

The *Fisheries Legislation Amendment Regulation 2020* (the FLAR) provided, among other things, for the issuing of quota authorities for the following existing commercial fisheries:

- Parts of the east coast inshore fishery (i.e. the commercial net fisheries) (ENL-ITQ units);
- Sea cucumber fishery (east coast) (hand-harvest ITQ units);
- Coral fishery (hand-harvest ITQ units);
- Shell grit fishery (hand-harvest ITQ units);
- Trochus fishery (hand-harvest ITQ units);
- Commercial crayfish and rocklobster fishery (hand-harvest ITQ units); and
- Commercial crab fishery (C1-ITQ units).

These provisions commenced on 30 September 2020 and the new quota authorities issued under those provisions will have effect from 1 September 2021. Some of these fisheries were already managed using a total quota entitlement, however, the quota authority or entitlement was stated in licence conditions.

For a number of these fisheries, the FLAR also establishes 'management regions' which describe where the quota authorities can be used. For example, a person may hold effort

units for the southern offshore management region which entitles him or her to fish using his or her effort units in that region only.

The first policy objective of the Amendment Declaration is to declare the total quota entitlement for these fisheries, species or group of species, in accordance with the relevant harvest strategies.

New prescribed commercial catch species

To ensure the long-term sustainability of certain fisheries resources, a number of new prescribed commercial catch limits are being introduced based on the relevant harvest strategy for the east coast inshore fishery.

The second policy objective of the Amendment Declaration is to regulate the following species to reduce or restrict the take, once the new prescribed commercial catch limits are reached:

- School mackerel
- Yellowfin bream
- Dusky flathead
- Sea mullet
- Spotted mackerel
- Tailor
- Black jewfish
- Shark and ray (complex)
- Hammerhead shark (complex).

Each of these species is targeted in the east coast inshore fishery. For some of these species, the policy objective is that multiple prescribed commercial catch limits apply because different prescribed commercial catch limits apply to different waters. In each case, the waters to which the prescribed commercial catch limits apply correlate directly to one of the 'prescribed ENL management regions' that are relevant to the use of quota authorities in the east coast inshore fishery.

Achievement of policy objectives

The policy objectives relating to total quota entitlements are achieved by amending the Quota Declaration to prescribe the following total quota entitlements:

- For the east coast inshore fishery (i.e. the commercial net fishery):
 - For east coast inshore management region 1:
 - for barramundi, 5,580 kilograms
 - for grey mackerel, 1,087 kilograms
 - for king threadfin, 2,136 kilograms
 - For east coast inshore management region 2:
 - for barramundi, 34,612 kilograms
 - for grey mackerel, 26,752 kilograms
 - for king threadfin, 13,625 kilograms
 - For east coast inshore management region 3:
 - for barramundi, 128,288 kilograms
 - for grey mackerel, 67,162 kilograms
 - for king threadfin, 11,195 kilograms

- For east coast inshore management region 4:
 - for barramundi, 53,826 kilograms
 - for grey mackerel, 13,606 kilograms
 - for king threadfin, 23,623 kilograms
- For east inshore management region 5:
 - for barramundi, 21,193 kilograms
 - for grey mackerel, 20,393 kilograms
 - for king threadfin, 21,421 kilograms
 - for school mackerel, 69,085 kilograms
 - for whiting, 162,000 kilograms
- For the commercial crab fishery for the ITQ year commencing 1 September 2021:
 - For the blue swimmer crab management region:
 - for blue swimmer crab, 242,982 kilograms
 - For the mud crab east coast management region:
 - for mud crab, 688,670 kilograms
 - For the mud crab Gulf of Carpentaria management region:
 - for mud crab 90,168 kilograms
- For the commercial crab fishery for each ITQ year commencing on or after 1 July 2022:
 - For the blue swimmer crab management region:
 - for blue swimmer crab, 263,000 kilograms
 - For the mud crab east coast management region:
 - for mud crab, 770,000 kilograms
 - For the mud crab Gulf of Carpentaria management region:
 - for mud crab 108,000 kilograms
- For the commercial hand-harvest fisheries:
 - For the sea cucumber fishery (east coast):
 - for black teatfish, 29,988 kilograms
 - for white teatfish, 53,001 kilograms
 - for other sea cucumber, 307,999 kilograms
 - For the coral fishery:
 - for specialty coral, 60,040 kilograms
 - for other coral, 140,012 kilograms
 - For the shell grit fishery:
 - for shell grit, 200,000 kilograms
 - For the trochus fishery:
 - for trochus, 190,000 kilograms
 - For the commercial crayfish and rocklobster fishery:
 - for red champagne lobster and tropical rocklobster, 195,000 kilograms.

The policy objectives relating to total quota entitlements are also achieved by deleting the second entry for 'grey mackerel' in part 2, schedule 2 in the Fisheries Declaration because grey mackerel is now a total quota entitlement-managed species.

The policy objectives relating to species regulated by prescribed commercial catch limits are achieved by prescribing the following in the Fisheries Declaration:

- that school mackerel becomes a no-take species for relevant licence holders in the relevant management region when the prescribed commercial catch taken in that region reaches the following limits:
 - East coast inshore management region 1 – 1,000 kilograms
 - East coast inshore management region 2 – 4,899 kilograms
 - For east coast inshore management region 3 – 4,011 kilograms
 - For east coast inshore management region 4 – 1,778 kilograms
- that yellowfin bream becomes a no-take species for relevant licence holders in east coast management region 5 when the prescribed commercial catch taken in that region reaches 81,000 kilograms
- that dusky flathead becomes a no-take species for relevant licence holders in east coast management region 5 when the prescribed commercial catch taken in that region reaches 41,003 kilograms
- that sea mullet becomes a no-take species for relevant licence holders in east coast management region 5 when the prescribed commercial catch taken in that region reaches 1,614,000 kilograms
- that spotted mackerel becomes a no-take species for relevant licence holders in the relevant management region when the prescribed commercial catch taken in that region reaches the following limits:
 - East coast inshore management region 1 – 19 kilograms
 - East coast inshore management region 2 – 24,521 kilograms
 - For east coast inshore management region 3 – 2,151 kilograms
 - For east coast inshore management region 4 – 659 kilograms
 - For east coast inshore management region 5 – 20,650 kilograms
- that tailor becomes a no-take species for relevant licence holders in east coast management region 5 when the prescribed commercial catch taken in that region reaches 120,000 kilograms
- that black jewfish becomes a no-take species for relevant licence holders in the relevant management region when the prescribed commercial catch taken in that region reaches the following limits:
 - East coast inshore management region 2 – 45 kilograms
 - East coast inshore management region 3 – 10,093 kilograms
 - For east coast inshore management region 4 – 9,593 kilograms
 - For east coast inshore management region 5 – 269 kilograms
- that shark and ray (complex) becomes a no-take species for relevant licence holders in the relevant management region when the prescribed commercial catch taken in that region reaches the following limits:
 - East coast inshore management region 1 – 8,925 kilograms

- East coast inshore management region 2 – 48,276 kilograms
- For east coast inshore management region 3 – 137,033 kilograms
- For east coast inshore management region 4 – 55,583 kilograms
- For east coast inshore management region 5 – 150,184 kilograms
- that hammerhead shark (complex) becomes a no-take species for relevant licence holders in the relevant management region when the prescribed commercial catch taken in that region reaches the following limits:
 - East coast inshore management region 1 – 2,483 kilograms
 - East coast inshore management region 2 – 28,255 kilograms
 - For east coast inshore management region 3 – 35,039 kilograms
 - For east coast inshore management region 4 – 12,252 kilograms
 - For east coast inshore management region 5 – 22,000 kilograms

The policy objectives relating to species regulated in relation to prescribed commercial catch limits are also achieved by making several consequential amendments to the Fisheries Declaration.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the main policy objectives of the *Fisheries Act 1994* which are to provide for the use, conservation and enhancement of the community's fisheries resources and fish habitats in a way that seeks to promote ecologically sustainable development.

Inconsistency with policy objectives of other legislation

The amendment regulation is consistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

In accordance with the Strategy and harvest strategies for each particular fishery, initial total quota entitlements and prescribed commercial catch limits have been set using predetermined decision rules. There are, therefore, no alternative ways of achieving policy objectives. Without placing restrictions on the amount of fish which commercial fishers are allowed to take, overfishing may occur which could result in the depletion of fish stocks and impact the sustainability of the species.

Benefits and costs of implementation

Restricting total quota entitlements and prescribed commercial catch limits to sustainable levels will ensure that Queensland's fisheries will not be overexploited and can be rebuilt or maintained at the target reference point of 60 per cent biomass (as a proxy for Maximum Economic Yield or MEY), consistent with the policy objectives of the Strategy. Building and maintaining fish stocks to MEY will promote the most economically efficient use of the resource and provide for resilience in the system and enable fast recovery from adverse

environmental conditions. Total quota entitlements and prescribed commercial catch limits will, therefore, maximise the performance of the fishery to meet environmental, social and economic management objectives.

Unlike previous fisheries management arrangements that were costly to administer, inflexible and increasingly ineffective in ensuring the suitability of fisheries resources, quota-managed fisheries strike a balance between ensuring the economic viability of commercial fishing sectors and managing the long-term sustainability of the targeted species, within existing Governmental resources. Although managing quota-managed fisheries or parts of fisheries can be resource intensive for Government, it is essential to deliver on the sustainable management of Queensland's fisheries.

Consistency with fundamental legislative principles

The subordinate legislation has been drafted with regard to, and is consistent with, the fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

Setting the initial total quota entitlement and prescribed commercial catch limits for these particular fisheries represents the final implementation step of previous changes made to fisheries legislation as part of the Strategy. Since the release of the Strategy, extensive consultation on the fisheries reforms has been undertaken via fishery-specific working groups, the Sustainable Fisheries Expert Panel and various discussion papers and public consultation on the fishery harvest strategies themselves.

The harvest strategies for the east coast inshore fishery sea cucumber fishery, coral fishery, the commercial crayfish and rocklobster fishery and commercial crab fisheries were the subject of a recent consultation process commencing 30 September 2020 and concluding on 31 January 2021 (with a suspension in between for the period surrounding the State election). For each fishery, a 'commercial catch limit setting rationale' document was also subject to public consultation, as well as extensive discussion within each fishery's working group. Each rationale outlined the proposed total quota entitlement or prescribed commercial catch limit for species that required quota management within the fishery. Aside from concerns associated with the fisheries reforms about the general impact of new or revised catch limits on ongoing access, no significant issues were raised during public consultation.

For the remaining hand-harvest fisheries, no quota setting rationale was required as the proposal merely formalised existing quota arrangements in legislation that were previously implemented via licence conditions and no policy changes were made.

The Amendment Declaration has been self-assessed by the Department of Agriculture and Fisheries in accordance with the *Queensland Government Guide to Better Regulation*. The Department of Agriculture and Fisheries assessed that it is excluded from undertaking further regulatory impact analysis on the basis of Category (g) – (regulatory proposals that are of a machinery nature).

For east coast inshore, commercial crab, sea cucumber, tropical rocklobster and coral fisheries, the Amendment Declaration limits the commercial take of certain species by declaring a total quota entitlement or imposing a prescribed commercial catch limit in accordance with the relevant harvest strategies for those fisheries. The harvest strategies outline clear decision rules that increase and decrease the allowable harvest based on the health of the fishery. For the shell grit and trochus fisheries, there are no harvest strategies in place, but the fisheries were already managed using a total quota entitlement where the quota authority/entitlement was stated in licence conditions. No changes to the licence holders' entitlements were made in declaring the total quota entitlements in the Amendment Declaration for these fisheries.

The department determined that the Amendment Declaration falls within agency assessed category (g) because it makes no substantial change to policy and consists of provisions that are merely declaratory in accordance with the relevant harvest strategy for the fishery or existing licence conditions. Therefore, assessment by the Office of Best Practice Regulation within the Queensland Productivity Commission was not required.

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