

Fisheries Legislation Amendment Declaration (No. 2) 2021

Explanatory Notes for SL 2021 No. 162

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries Legislation Amendment Declaration (No. 2) 2021

Authorising law

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

Policy objectives and the reasons for them

Effort management generally

The Queensland Government manages several commercial fisheries using effort-based management systems that allocate effort entitlements for a fishery or part of a fishery. Under this system, individual fishers hold individual transferable effort (ITE) units or effort units. From season to season, the amount of effort that can be used may be increased or decreased depending upon the status of the fish stocks concerned. Effort units entitle the holder to fish according to a formula that takes into account the characteristics of their operation, a portion of the fishing effort allowed for that fishery, or part of the fishery, during the season.

Quota management generally

The Queensland Government manages several commercial fisheries using quota-based management systems that allocate the total quota entitlement for a fishery or part of a fishery. Under this system, individual fishers hold individual transferable quota (ITQ) units. ITQ units entitle the holder to take a portion of the catch allowed under the total quota entitlement for that fishery, or part of the fishery, during the season. From season to season, the total quota entitlement may be increased or decreased depending upon the status of the fish stocks concerned.

Harvest strategies

A key element of the *Queensland Sustainable Fisheries Strategy 2017-2027* (QSFS) is the development of harvest strategies, in collaboration with key stakeholders, which specify pre-determined management actions if triggers are reached. These 'decision rules' are developed to achieve ecological, economic and/or social objectives for the relevant fishery.

East coast trawl fishery—management region effort caps

The east coast trawl fishery is an effort-managed fishery operating in waters from Cape York to the Queensland/New South Wales border. There are approximately 280 active primary commercial fishing licences in the fishery. The fishery is comprised of six trawl management regions: the Northern, Central, Southern Inshore, Southern Offshore A, Southern Offshore B and Moreton Bay regions. Historically, holders entitled to fish in the fishery possessed either T1 or T2 effort units (or both). However, as part of amendments progressed in the *Fisheries Legislation Amendment Regulation 2020*, the east coast trawl fishery was divided into management regions, and T1 and T2 effort units were reallocated as effort units for the northern, central, southern inshore and southern offshore trawl regions. New effort units were also allocated for the Moreton Bay trawl region that operates under the M1 or M2 symbol. Each management region in the east coast trawl fishery, including Moreton Bay, is managed under its own harvest strategy (that have effect from 2021–2026).

The policy objective of the *Fisheries Legislation Amendment Declaration (No. 2) 2021* (the Amendment Declaration) is to implement the harvest strategies approved for the east coast trawl fishery. These harvest strategies manage fishing mortality through setting effort limits at a sustainable level that allows the stock to achieve its biomass targets. Implementing the east coast trawl fisheries' harvest strategies—specifically, by imposing limits on how much effort may be exerted in each management region (colloquially referred to as a 'regional effort cap')—will achieve the QSFS's objective of setting sustainable catch limits. Holders can fish until they use all their effort units or until the regional effort cap is reached, whichever comes first. As individuals use their effort units throughout the season, their usage is monitored in real time and will count towards the regional effort caps for the region/s in which the fishers operate. Once the regional effort cap is reached, all fishing in that region of the fishery must cease, irrespective of whether an individual still holds unused effort units.

Commercial trawl fishery (fin fish) total quota entitlement

The commercial trawl fishery (fin fish) (CTFFF), also known as the stout whiting or T4 fishery, is a quota-managed fishery operating in waters between 20 and 50 fathoms between Sandy Cape and the Gold Coast. CTFFF is managed by a total quota entitlement for prescribed whiting (currently 1,192 tonnes for the 2021 fishing season), and a total quota entitlement for goatfish and yellowtail scad (currently 100 tonne each for the 2021 fishing season), and participants in the fishery hold T4-ITQ units. Prescribed whiting includes both stout whiting and red spot whiting, however, over 95% of the harvest is stout whiting.

Since 1 September 2021, the fishery has been managed in accordance with the Commercial Trawl Fishery (Fin Fish) Stout Whiting Harvest Strategy. Under the harvest strategy, information from the stock assessment (every three years) or the standardised catch rate analysis (in interim years) is to be considered, using decision rules, to set the total quota entitlement that will achieve the target of 48% biomass for the stout whiting stock.

For the 2022 fishing season, the stock assessment analysis for stout whiting provided a recommended biological catch (RBC) of 2,786 tonnes to achieve 48% biomass by 2027. The stock assessment also estimated that 46% of the total harvest has historically been caught by T4 commercial fishers providing that 46% of the RBC (1,281 tonnes) is allocated to the T4 fishing sector as a total quota entitlement for the 2022 fishing season.

A further policy objective of the Amendment Declaration is, therefore, to adjust the total quota entitlement (or Total Allowable Commercial Catch) consistent with the approved Commercial Trawl Fishery (Fin Fish) Stout Whiting Harvest Strategy. There are no changes to the total quota entitlement for goatfish or yellowtail scad.

Achievement of policy objectives

East coast trawl fishery—management region effort caps

The policy objective of implementing effort caps consistent with the approved harvest strategies for the east coast trawl fishery's management regions is achieved by inserting new provisions into chapter 4, part 12 of the Fisheries Declaration (Declarations for east coast trawl fishery area) to prohibit the possession or use of trawl nets in a trawl region if the 'regional effort cap' for the fishing season in that region has been reached and the chief executive has published a notice stating this on the department's website. The prohibition on possession or use of a trawl net takes effect from midday on the day that is 5 days after the chief executive publishes the notice. The following effort caps have been prescribed for each region:

- Central trawl region (fishing season from 1 March–28/29 Feb): 500 711 effort units.
- Moreton Bay trawl region (fishing season from 1 Nov–31 Oct): 179 357 effort units.
- Northern trawl region (fishing season from 1 March–28/29 Feb): 418 657 effort units.
- Southern inshore trawl region (fishing season from 1 Nov–31 Oct): 167 625 effort units.
- Southern offshore trawl region (fishing season from 1 Nov–31 Oct): 845 266 effort units.

The commencement of the amendments to part 12 have been staggered to coincide with the start of the relevant fishing seasons for the trawl regions—

- Sections 86(AA) (southern offshore A and southern offshore B regions), 86B (southern inshore region) and 86C (Moreton Bay region) will commence on 1 November 2021 to coincide with the 1 November–31 October fishing season.

- Sections 86D (central region) and 86E (northern region) will commence on 1 March 2022 to coincide with the 1 March–28/9 February fishing season.

Commercial trawl fishery (fin fish) total quota entitlement

The Amendment Declaration achieves the further policy objective by prescribing a total quota entitlement for prescribed whiting in the CTFFF at 1,281 tonnes, effective from 1 January 2022. This 89 tonne increase to the total quota entitlement of prescribed whiting is consistent with the Commercial Trawl Fishery (Fin Fish) Stout Whiting Harvest Strategy.

Consistency with policy objectives of authorising law

The Amendment Declaration is consistent with the policy 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 harvest strategies for the east coast trawl fishery and the CTFFF specify decision rules and pre-determined management responses if triggers are reached. These harvest strategies, including the decision rules, which were developed in collaboration with stakeholders, are the optimal way to achieve the fisheries' ecological, economic and/or social objectives. The Amendment Declaration implements fishery management actions in accordance with these decision rules. If these actions were not implemented, the management of these fisheries would not achieve the agreed ecological, economic and/or social management objectives forest out under the respective harvest strategies. As such, the alternative outcome would be inconsistent with the objectives of the *Fisheries Act 1994*, that sets out the requirements for making, approving and implementing harvest strategies in Queensland . There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

The Queensland Government will not incur any additional costs in the implementation of this Amendment Declaration.

Introducing regional effort caps for the east coast fishery's trawl management regions will ensure the amount of effort allowed for each region is consistent with the approved harvest strategy for each management region in the fishery and reflect the relevant stock assessment or fishing effort estimates. Regional effort caps in the east coast trawl fishery are set to help achieve target biomass objectives for the respective regional stocks, consistent with the policy objectives of the harvest strategies for the east coast trawl fishery's management regions.

Setting the prescribed whiting total quota entitlement based on a sustainable catch level will ensure that the fishery will not be overexploited and can continue to rebuild to the target reference point of 48% biomass, consistent with the policy objectives of the Commercial Trawl Fishery (Fin Fish) Stout Whiting Harvest Strategy. This Amendment Declaration will increase the total quota entitlement for prescribed whiting by 89 tonnes for the 2022 season which will provide an economic benefit, as it represents an approximate gross value of \$400,500 to the fishery.

These amendments will ensure the fisheries can maximise their performances to meet environmental, social and economic management objectives.

Consistency with fundamental legislative principles

The Amendment Declaration is generally consistent with fundamental legislative principles, however, it may potentially breach the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals, including the right to conduct business without interference, because it restricts the commercial catch of fish by imposing total quota entitlements or regional effort caps. The potential breaches are likely to be justified on the basis that allowing commercial fishing must be balanced with the environmental, social and economic benefits from appropriate sustainable management of fisheries resources.

Consultation

The east coast trawl fishery regional effort caps have been consulted on through each of the Regional Harvest Strategy Workshops and the broader East Coast Trawl Working Group since 2019. Meeting communiques are published on the department's website. Proposed regional effort caps for all regions were also released for broad public consultation on 30 September 2020, as part of harvest strategy consultation, and all stakeholders had the opportunity to provide feedback. Feedback in response to the regional trawl harvest strategies was received from commercial, recreational and conservation stakeholders, but no feedback was received specific to the regional effort caps. The results of consultation are also available on the department's website.

The prescribed whiting total quota entitlement was discussed with the participants in the CTFFF in June and the Stout Whiting Workshop in August 2021. The Meeting communique is published on the department's website. The working group and fishery participants were supportive of the proposed total quota entitlement increase for the 2022 season consistent with harvest strategy decision rules.

The Amendment Regulation has been assessed by the Department of Agriculture and Fisheries in accordance with the *Queensland Government Guide to Better Regulation* as being machinery in nature (exclusion category (g)) as it makes no substantial change to policy and consists of provisions that are merely declaratory. Therefore, assessment by the Office of Best Practice Regulation within Queensland Treasury was not required.