

# Fisheries (Coral) Amendment Declaration 2022

Explanatory Notes for SL 2022 No. 76

made under the

*Fisheries Act 1994*

## General Outline

### Short title

*Fisheries (Coral) Amendment Declaration 2022*

### Authorising law

Sections 33 and 34 of the *Fisheries Act 1994*

### Policy objectives and the reasons for them

The policy objectives of the *Fisheries (Coral) Amendment Declaration 2022* (the Amendment Declaration) are to:

- support the sustainable management of coral stocks in Queensland by restricting the amount of commercial take of *Convention on International Trade in Endangered Species* (CITES) listed and other particular corals at a species and genus level; and
- maintain the Queensland Coral Fishery's (QCF) Wildlife Trade Operation approval to export coral (WTO export approval), granted by the Commonwealth Minister for the Environment under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), by implementing the condition of approval that particular annual harvest limits are introduced before the start of the 2022-23 fishing season.

The QCF ("D" fishery symbol) is a hand collection harvest fishery operating along Queensland's east coast, from the tip of Cape York to the southern border of the Great Barrier Reef. The fishery targets a broad range of species from the classes Anthozoa and Hydrozoa and key components include hard corals, soft corals, sea anemones, live rock, coral rubble and coral sand. The majority of take is exported internationally and maintaining sustainable take and access to the international marine aquarium market is important to the viability of this fishery.

The QCF is currently managed via a mixture of input controls, which limit the amount of harvest effort put into the fishery, and output controls, which directly limit the amount of coral taken. Commercial fishers are also subject to rules associated with state marine park zoning and the Great Barrier Reef Marine Park zoning. Current management arrangements for the fishery include: compulsory catch reporting arrangements, limited

individual transferable quota authorities for “specialty coral” and “other coral”, limited fishery participants (59 licences are currently endorsed with a “D” symbol), and limits on the number of boats and collectors (maximum of 3) operating under a licence at any one time.

Australia’s obligations under CITES are met through Part 13A of the EPBC Act. In order to export Australian native animal or plant species and/or CITES-listed species for commercial purposes, the plant or animal must come from an approved program such as a Wildlife Trade Operation (WTO) permitted through a WTO declaration (commonly referred to as a WTO export approval). WTO export approvals are granted under the EPBC Act for a maximum of three years.

Accordingly, DAF must apply to the Australian Government every three years for approval to export coral from the QCF. A WTO export approval for the QCF was granted on 28 October 2021 subject to conditions including that, in time for the 2022-23 fishing season, annual harvest limits must be imposed for:

- several coral species specified in the approval letter;
- all coral species with a catch history in the fishery during the reference period used in the *Coral Fishery Harvest Strategy 2021-2026* (2016-2018); and
- all other CITES-listed coral species harvested in the fishery.

The Amendment Declaration will support sustainability of coral stocks in Queensland by distributing the pressure of commercial take across a broad range of coral species. Distributing this pressure will ensure that high-value corals are not targeted to a point that their sustainability is compromised. This will ensure that corals continue to be sustainably harvested into the future.

Urgent action is required to maintain the QCF’s WTO export approval under the EPBC Act. This will ensure commercial coral fishers in Queensland can continue to sustainably retain and export the prescribed corals species. If the WTO conditions of approval are not met, there is a high risk the Commonwealth Minister will revoke the WTO export approval and coral taken from the QCF will not be permitted to be exported. This will effectively prevent business operations for this primarily export fishery.

Separately, the Amendment Declaration also removes several transitional provisions from the *Fisheries Declaration 2019* that have elapsed.

## **Achievement of policy objectives**

The policy objectives of the Amendment Declaration are achieved by inserting a regulated fish declaration in *Fisheries Declaration 2019* to prescribe catch limits for CITES-listed and other particular corals.

The Amendment Declaration inserts, in schedule 2 (Regulated fish declarations), a new entry for ‘regulated coral’ which provides, in effect, that once the prescribed commercial catch for the particular coral is reached, that coral cannot be taken or possessed under a licence endorsed to operate in the QCF. The corals become regulated fish, and a person is prohibited from taking the prescribed corals in contravention of the regulated fish declaration (under section 78 of the *Fisheries Act 1994*).

New schedule 2A provides the individual prescribed commercial catch limits for the CITES-listed corals and other particular corals regulated by these amendments.

The Amendment Declaration also inserts new entries in Schedule 2 for coral of the order Scleractinia, the family Tubiporidae or the family Stylasteridae, (that is not regulated coral, live rock or coral rubble) and coral of the order *Antipatharia* or the family *Milleporidae*, which provide that these corals cannot be taken for trade or commerce. The additional entries are required to satisfy the WTO export approval condition by preventing the commercial take of any other CITES-listed corals that did not have a harvest limit specified in the Commonwealth Minister's approval letter for the QCF.

The Amendment Declaration will commence on 1 July 2022.

## **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 not inconsistent with the policy objectives of other legislation.

## **Alternative ways of achieving policy objectives**

As part of consultation on the implementation of the WTO condition of approval, the Marine Aquarium Fish Fishery and Coral Fishery Working Group (the Working Group) recommended that key CITES-listed and other particular coral species be administered through allocation of individual transferable quota authorities to provide increased security of access for individual fishers and avoid a competitive race-to-fish. This option could not be implemented before 30 June 2022 (the commencement of the 2022-23 fishing season) due to the significant legislative changes and administrative processes that would be required to implement species-level quota authorities.

As an interim measure, additional input controls were proposed in the consultation paper as a way of alleviating the 'race to fish' of priority species. However, no clear consensus could be reached by industry and therefore are not being progressed.

The preferred option, as progressed in this Amendment Declaration, is the most balanced option. It supports the sustainable management of coral stocks in Queensland and maintaining the QCF's WTO export approval listing whilst simultaneously enabling some access to CITES-listed corals for commercial fishers to mitigate economic impacts on industry.

## **Benefits and costs of implementation**

The Amendment Declaration supports Queensland's community, environment, and economy by improving the sustainable management of corals.

The Queensland Government will not incur any additional costs in the implementation of this Amendment Declaration. Ongoing monitoring of coral stocks will be undertaken within existing resources.

The Amendment Declaration will have both costs and benefits for commercial fishers. It will restrict the quantity of high-value corals that can be taken which could reduce the total value of the catch taken under the quota authorities and, indirectly, the value of quota authorities in the fishery. However, supporting sustainable management of coral stocks in Queensland and helping maintain the QCF's WTO export approval will allow commercial access to the fishery to continue. To not make the amendment would risk the WTO export approval being revoked, which would significantly impact this primarily export fishery.

Implementing species and genus level prescribed catch limits for corals in line with the Commonwealth WTO export approval conditions will also likely impact access to coral species for other sectors and projects. As a result of these changes the Department of Agriculture and Fisheries (the department) will be reviewing its policy position on access to coral species for broodstock and research, through the issue of General Fisheries Permit (GFP's), under the *Fisheries Act 1994*.

## **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 in accordance with section 4(3)(b) of the *Legislative Standards Act 1992*, including the right to conduct business without interference. This is because – whilst it does not restrict a licence-holder from owning or trading quota in the QCF, nor will it reduce his or her quota allocation – the Amendment Declaration does affect the possible value of the quota authority by reducing the quantity of high value corals that may be taken. This is a restriction on the operation of a commercial coral harvesting business.

However, this potential breach is justified because it is necessary to support the sustainable management of coral stocks in Queensland and help maintain the QCF's WTO export approval. This is achieved by implementing the condition of approval that the department introduce specific annual harvest limits for CITES-listed and other particular corals before the start of the 2022-23 fishing season. Further, whilst the total value of the catch and quota authorities may be decreased by reducing the quantity of high-value species that may be taken, this restriction is necessary to ensure that individual coral species and genera are not overharvested and remain sustainably managed and to maintain the ability to export coral taken under those authorities.

## **Consultation**

The department undertook public consultation on the management changes required to implement the WTO export approval conditions of approval from 7 to 29 April 2022.

As part of this process, the department published the *Coral Fishery Discussion paper - Consultation on management action to implement WTO conditions of approval* with instructions for feedback on its website. Stakeholders were encouraged to submit feedback through email and could either address survey questions or provide direct written feedback. QCF licence holders and key fisheries stakeholders were notified of the

consultation via email and were provided with a link to the relevant website and consultation paper. Options to speak to a fishery manager were also offered.

The department also hosted monthly online catch-ups with QCF licence holders over the preceding six months and online Question and Answer sessions every few days during the consultation process. These meetings provided a forum to discuss the WTO conditions, their implications and update QCF licence holders on implementation.

A total of 24 individual responses were received, as well as a response from the industry body ProVision Reef. The majority of respondents (20 in addition to ProVision Reef) were commercial fishers. Two respondents had retail interests and two had conservation interests. Stakeholders expressed unanimous concerns about the impact of the WTO export approval conditions on business viability.

The Marine Aquarium Fish Fishery and Coral Fishery Working Group (the working group) discussed the WTO export approval conditions at meetings in late 2021 and early 2022. Meeting communiques are published on the department's website. The working group recommended that key coral species be managed by allocation of individual transferable quota authorities. Why this approach is not feasible is detailed above (at 'Alternative ways of achieving policy objectives').

The department has consulted the Office of Best Practice Regulation (OBPR) on a Preliminary Impact Assessment for the Amendment Declaration. The OBPR provided advice that no further assessment is required under the *Queensland Government Guide to Better Regulation*. The OBPR noted that, whilst the amendments will have significant adverse impacts on licence-holders in the QCF, those holders accept the necessity of the amendments and have been closely involved in its development through ongoing consultation and engagement with the industry.