

# Fisheries (Spanish Mackerel) Amendment Declaration 2022

Explanatory Notes for SL 2022 No. 140

made under the

*Fisheries Act 1994*

## General Outline

### Short title

*Fisheries (Spanish Mackerel) Amendment Declaration 2022*

### Authorising law

Sections 33 and 35 of the *Fisheries Act 1994*.

### Policy objectives and the reasons for them

Spanish mackerel (*Scomberomorus commerson*) is an important commercial and recreational fish species in Queensland that is prized for its status as a high-quality eating fish and a powerful sports fish. In 2020, 267 tonnes of Spanish mackerel was taken by commercial fishers and an estimated 183 tonnes was taken by recreational and charter fishers.

Although the East Coast Spanish Mackerel Fishery (the Fishery) operates along the entire Queensland east coast including in the Great Barrier Reef Marine Park, approximately 40 per cent of Queensland's commercial harvest is taken in the waters north of Townsville. This harvest is focused around the Lucinda region during the spawning season, typically a two lunar month period in Spring during which Spanish mackerel school to form one of the most notable and predictable spawning aggregations of fish on the Great Barrier Reef.

This commercial take of Spanish mackerel is subject to commercial fishing rules. The Fishery is a quota-managed fishery with a total allowable commercial catch (TACC) limit of 578.013 tonnes split into individual transferable quotas units which commercial fishers must hold in the fishery. Only approximately 50 per cent of the TACC has been used each year since its introduction in 2004.

Spanish mackerel may only be taken commercially by using fishing lines either by trolling or towing lures or baited lines behind a vessel and near the surface of the water. Other restrictions that apply to commercial fishers relate to size, form, and filleting of the fish, reporting and boat size requirements, and limited entry into the fishery.

Recreational limits on the take of Spanish mackerel also restrict the number of fish allowed to be possessed by a recreational fisher to three fish per person and a boat limit of six fish based on there being two or more people on board.

The Fishery contributes significantly to the Queensland economy with approximately 180 active commercial fishing licences. The estimated value of the commercial catch for the 2018 fishing season was \$3.4 million (\$6.7 million including flow-on effects) which helped support a total of 66 full-time equivalent jobs. Further, an estimated \$6.8 million was spent by Queenslanders on recreational fishing trips in waters where Spanish mackerel are targeted or caught in that time.

In December 2021, the Department of Agriculture and Fisheries (the department) released the 2020 stock assessment for Australian east coast Spanish mackerel which estimated the unfished biomass to be approximately 17 per cent. The latest Status of Australian Fish Stocks Report for the species, published by the Fisheries Research and Development Corporation, has since classified the stock as 'depleted.'

According to the *Queensland Government's Harvest Strategy Policy*, and consistent with the *Sustainable Fisheries Strategy 2017–2027* (the Sustainable Fisheries Strategy), immediate management action is required to recover Spanish mackerel stocks to a sustainable biomass level, as the biomass has fallen below the limit reference point of 20 per cent of unfished levels. This is also consistent with the requirements under the *National Guidelines to Develop Fishery Harvest Strategies* (the National Guidelines) and the *Commonwealth Fisheries Harvest Strategy Policy and Guidelines*.

The 2020 stock assessment confirms the sustainability concerns previously raised by independent research and anecdotally by Spanish mackerel fishers, which indicated:

- a 70 per cent reduction in the number of Spanish mackerel spawning aggregations within two decades;
- a decline in historically important spawning aggregations from waters east of Cairns;
- a reduction in the size and frequency of spawning aggregations in the Lucinda region; and
- a long-term decline in commercial catch rates.

Under National and Queensland harvest strategy guidelines immediate management action is required to stop the decline and rebuild the stock to a sustainable level.

Although initial consultation with stakeholders indicated a preference to rebuild stock in the shortest timeframe possible, a further analysis of stakeholder preferences and the assessment of the ecological and socio-economic impacts and benefits of the different combinations of management measures, indicated that 13–14 years would be the most appropriate timeframe to rebuild the east coast Spanish mackerel stock back to a sustainable biomass level.

The policy objective of the *Fisheries (Spanish Mackerel) Amendment Declaration 2022* (the Amendment Declaration) is to implement management action to support the recovery of Spanish mackerel to a sustainable target of 40 per cent of unfished biomass in a 13–14 year rebuilding timeframe through a harvest reduction of 35–40 per cent across all sectors.

This will:

- allow limited fishing to occur, maintaining a local supply and market for Spanish mackerel and supporting businesses that rely on the fishery;
- support rebuilding through greater reproductive output by leaving 175 to 189 additional tonnes of Spanish mackerel in the water annually;
- minimise the social and economic impacts while still achieving an acceptable rebuilding timeframe; and
- align with stakeholder feedback on preferred management measures.

## **Achievement of policy objectives**

The policy objective of the Amendment Declaration is achieved by amending Chapter 2, Part 5, Division 4 and Schedule 1, Part 1 of the *Fisheries Declaration 2019* (the Declaration) to prohibit a person from taking or possessing Spanish mackerel (only if taken in contravention of the prohibition on take) in the regulated waters during the regulated period.

The regulated waters are described in Schedule 1, Part 1 of the Declaration as:

- Northern Spanish mackerel waters – tidal waters east of longitude 142°31'49" east and north of latitude 22° south; and
- Southern Spanish mackerel waters – tidal waters east of longitude 142°31'49" east and south of latitude 22° south.

The regulated periods are described in sections 38A and 38B of the Declaration as:

- Northern Spanish mackerel waters – from 22 October 2022 – 12 November 2022 and 21 November 2022 – 12 December 2022; and
- Southern Spanish mackerel waters – from 1 February 2023 – 21 February 2023 and 1 March 2023 – 21 March 2023.

Introducing northern and southern seasonal closures for four, three-week periods (a total period of six weeks for each regulated waters) will reduce the overall quantity of Spanish mackerel taken by commercial and recreational fishers during peak spawning and migrating periods when they are highly vulnerable to intensive fishing. A limited through-supply of Spanish mackerel will be available when fishing is permitted in the periods between the three-week closures.

The seasonal closures will apply to commercial and recreational fishers. An exception applies for recreational fishers taking part in a licensed charter fishing trip prior to 1 July 2023 in consideration of pre-existing charter bookings, which can be made up to a year in advance. The department intends to remove this exception for the following fishing season.

## **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

Maintaining the *status quo* is not supported. To not make the Amendment Declaration would allow unsustainable fishing practices to continue and risk further declines in the Spanish mackerel biomass, including a possible fishery collapse. This would result in ever greater adverse impacts on fishers from all sectors, Queensland's community, and environment. It would also fail to meet Commonwealth policy requirements, the Sustainable Fisheries Strategy, the main objective of the *Fisheries Act 1994* and the Queensland's Government's responsibility to ensure our public fisheries resources are managed in a responsible and sustainable manner policy requirements.

A range of rebuilding scenarios were modelled to evaluate the costs and benefits of each approach. These scenarios were grouped according to the estimated rebuilding timeframe, including:

- a complete closure of the fishery with an estimated rebuilding timeframe of 7 years;
- a 50–60 per cent reduction in current harvest levels with an estimated rebuilding timeframe of 10–11 years; and
- a 35–40 per cent reduction in current harvest levels with an estimated rebuilding timeframe of 13–14 years.

Although the 35–40 per cent harvest reduction scenarios would involve longer rebuilding times and a higher risk of further stock decline compared to a total fishery closure or the 50–60 per cent harvest reduction scenarios, it was the preferred approach because it would:

- allow limited fishing to occur, maintaining a local supply and market for Spanish mackerel and supporting businesses that rely on the fishery;
- support rebuilding through greater reproductive output by leaving approximately 175 to 189 additional tonnes of Spanish mackerel in the water (i.e., not harvested by any fishing sector) each year;
- minimise social and economic impacts while still achieving an acceptable rebuilding timeframe of 7–14 years;
- allow vital fishing data to be collected to monitor stock recovery and assess the effectiveness of the implemented management actions; and
- align with stakeholder feedback on preferred combinations of management measures.

Three management options were considered, which were all estimated to achieve a 35–40 per cent harvest reduction and a rebuilding timeframe of 13–14 years through varying combinations of management measures. These options took into account stakeholder preferences and the social and economic impacts.

One option was an initial 2-year complete closure of the fishery. It was not considered suitable due the severe social and economic impacts of a 100 per cent reduction in harvest on fishers and businesses, as well as the challenges presented for monitoring stock recovery without the ongoing collection of valuable fishing data.

The two remaining management options were presented for further consultation. One option included a 6-week total seasonal closure which would significantly reduce catch limits. The alternative included was a 12-week total seasonal closure with slightly less restrictive catch limits to offset the longer closures.

These options are outlined in the following table.

Fishing sectors	Management measure	Option 1	Option 2	Commencement
All sectors	Northern seasonal closure (North of latitude 22° South)	<b>6 weeks</b> 22 October – 12 November 21 November – 12 December	<b>12 weeks</b> 24 August – 14 September 23 September – 14 October 22 October – 12 November 21 November – 12 December	22 October 2022
All sectors	Southern seasonal closure (South of latitude 22° South)	<b>6 weeks</b> 1 February – 21 February 1 March – 21 March	<b>12 weeks</b> 1 February – 21 February 1 March – 21 March 1 April – 21 April 1 May – 21 May	1 February 2023
Commercial	Total allowable commercial catch	165 tonnes	184 tonnes	1 July 2023
Recreational	In-possession limit	1 fish per person	2 fish per person	1 July 2023
Recreational	Boat limit (2 or more people on board)	2 fish per person	4 fish per person	1 July 2023
Charter	In-possession limit	1 fish per person	2 fish per person	1 July 2023

Rules to manage access to fisheries resources can be categorised as ‘output controls’ which limit the amount of fish taken such as bag limits or catch quotas; or ‘input controls’ which limit the amount of effort through gear restrictions, vessel restrictions and area or seasonal closures. The Sustainable Fisheries Strategy, as a general rule, recommends the use of output controls as they more directly control catch and allow fishers to catch their allowable limit in the most economically efficient manner. For this reason, it was anticipated that the longer seasonal closures and greater reliance on input controls in Option 2 would be less preferable to stakeholders.

This was supported through both rounds of public consultation, where stakeholders demonstrated a clear preference for a lower recreational catch limit to reduce the length of a seasonal closure in the first round and, in the second round, demonstrated a strong preference for Option 1 with shorter seasonal closures combined with more restrictive catch limits.

It was considered that under Option 2, the higher recreational in-possession limit would be less effective in constraining recreational harvest as the Queensland population continues to grow and not achieve the required stock rebuilding.

The preferred option, Option 1, is the most balanced option because it aligns most closely with stakeholder feedback, applies more direct and effective measures, and supports the recovery of Spanish mackerel to a sustainable biomass level, whilst permitting some access to the species in between seasonal closures. The management actions, other than seasonal closures contained in Option 1 are proposed to be implemented separately.

In consideration of pre-existing charter bookings made up to a year in advance, seasonal closures under both options were proposed to not apply to recreational fishers on licensed charter fishing trips until the following fishing season, starting on 1 July 2023.

## **Benefits and costs of implementation**

The Amendment Declaration benefits Queensland's community, environment, and economy by supporting the recovery of east coast Spanish mackerel stocks to a sustainable biomass level.

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

Whilst there will be some costs to the fishers with a reduction in the taking of overall Spanish mackerel by preventing the take of Spanish mackerel during peak spawning and migrating periods, this is outweighed by the long-term benefits. Rebuilding east coast Spanish mackerel stocks to a sustainable biomass will allow commercial and recreational fishers along Queensland's east coast to continue to access the fishery and will avoid the greater impacts associated with ongoing overfishing and a potential fishery collapse. In the longer term under the proposed management changes, the cost of fishing will go down, catch rates will go up and the value of the commercial quota on the market will also increase as it becomes a genuine limit on take.

## **Consistency with fundamental legislative principles**

The Amendment Declaration has been drafted with regard to the fundamental legislative principles (FLPs), as defined in section 4 of the *Legislative Standards Act 1992* (LSA). Potential FLPs have been identified and is addressed below.

The Amendment Declaration potentially breaches the FLP that legislation should have sufficient regard to the rights and liberties of individuals, including the right to conduct business without interference, because it prevents commercial fishers from taking and possessing Spanish mackerel in the Northern and Southern Spanish mackerel waters (line fishing) during the regulated period. The FLP that legislation should have sufficient regard to the rights and liberties of individuals, including that ordinary activities should not be unduly restricted, is also potentially breached as the Amendment Declaration restricts recreational fishing.

However, this potential breach is justified on the basis that these measures are necessary to allow the biomass of Spanish mackerel to recover to a sustainable level to protect the financial viability of the commercial fishery long-term, and to sustain the species for future

generations. Further, these amendments do not interfere with a commercial fisher's authority to take Spanish mackerel. They must merely comply with the seasonal closures and can continue to take the species under their licence outside of those times.

## Consultation

The East Coast Spanish Mackerel Working Group was established in early 2021 to provide operational advice on the management of the east coast Spanish mackerel fishery. The group met in May 2021, February 2022, and March 2022 to discuss, amongst other matters, the status of Spanish mackerel stocks and future management arrangements.

Public consultation on management measures to rebuild east coast Spanish mackerel stocks was conducted in two stages. The first consultation round sought to determine stakeholder preferences on possible management measures to rebuild the east coast Spanish mackerel stock back to a sustainable biomass level. Port visits with dedicated commercial Spanish mackerel fishers were held in Cairns, Townsville and Mooloolaba. The second round of consultation sought to provide stakeholders with an opportunity to have their say on rebuilding options and a draft harvest strategy, which were developed using feedback from the first round of consultation.

The first round of consultation was conducted from 6 April 2022 to 5 May 2022. In total, 1486 submissions were received, of which 1437 were responses to the online survey and 49 were written submissions. The majority of respondents identified as recreational fishers (89 per cent), with submissions also received from commercial fishers (7 per cent), charter fishing operators (4 per cent), interested community members (8 per cent), seafood wholesales/marketers (<1 per cent), hospitality workers/owners (1 per cent), fishing tackle retailers (2 per cent), Traditional Owners/fishers (2 per cent) and environmental, industry peak body and other non-government organisations (2 per cent).

Feedback was also received through nearly 1000 free form written comments and through discussions with fishery stakeholders over the phone, in meetings organised with affected fishers across Queensland's east coast and through responses to emails and letters sent to stakeholders.

It was observed that 65 per cent of respondents preferred the shortest rebuilding timeframe of 7 years. To achieve this there would need to be a 100 per cent reduction in harvest, or a total closure of the fishery, for 7 years. However, the responses to other survey questions regarding catch limits, minimum legal size and seasonal closures indicated that stakeholders would largely prefer a combination of management measures that would rebuild the stock in 13–16 years. Many survey respondents reasoned that their preference for a rebuilding timeframe of 7 years was to allow restrictions to be lifted as early as possible, but few appeared to recognise that this would require a total closure of the fishery.

Analysis of stakeholder preferences and an assessment of the potential ecological and socio-economic impacts and benefits under different management scenarios indicated that 13–14 years would be the most appropriate timeframe to rebuild Spanish mackerel stock back to sustainable levels.

The second round of public consultation on two management options (each comprised of several management measures) to rebuild Spanish mackerel stocks to a sustainable

biomass level was conducted from 8 July 2022 to 5 August 2022. In total, 781 submissions were received for the second round of consultation, of which 702 were responses to the online survey and 79 were written submissions. The majority of respondents were recreational fishers (67 per cent), with submissions also received from commercial fishers (8 per cent), charter fishing operators (3 per cent), interested community members (9 per cent), seafood wholesalers and marketers (3 per cent), the hospitality sector (2 per cent), Traditional Owners and fishers (<1 per cent), fishing tackle retailers (2 per cent) and environmental, industry peak body and other non-government organisations (2 per cent). Many respondents had multiple interests in the fishery and have identified themselves as aligning with more than one stakeholder group.

It was observed that the majority (69 per cent) of respondents preferred Option 1 over Option 2. Option 1 included the seasonal closures progressed in this Amendment Declaration.

The Sustainable Fisheries Expert Panel, which was established to provide independent expert advice to the Minister on best practice fisheries management and implementation of the Sustainable Fisheries Strategy, was also consulted on the management options.

Key stakeholders that were consulted on the management options include: Australian Fishing Trade Association, Australian Marine Conservation Society, Game Fishing Association of Australia, Great Barrier Reef Marine Park Authority (GBRMPA), Green Shirts Movement, Gulf of Carpentaria Commercial Fishermen Association, Moreton Bay Seafood Industry Association, Queensland Seafood Industry Association, Sunfish Queensland, The Fisherman's Portal Inc. and World Wide Fund for Nature (WWF).

The department has consulted the Office of Best Practice Regulation (OBPR) on a Preliminary Impact Assessment. The OBPR provided advice that no further assessment is required under the *Queensland Government Guide to Better Regulation*. The OBPR noted that the preferred option is likely to have significant adverse impacts on commercial Spanish mackerel fishers. However, no action could see a potential collapse of the fishery with severe and long-lasting consequences, and there is a large body of literature that shows that the socio-economic benefits of rebuilding fishing stocks outweigh the short-term costs. The OBPR also considered that the process undertaken by the department is comparable to the requirements of regulatory impact assessment in terms of analysis and consultation.