

Fisheries (Effort Caps and Other Matters) Amendment Declaration 2022

Explanatory Notes for SL 2022 No. 150

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries (Effort Caps and Other Matters) Amendment Declaration 2022

Authorising law

Section 33 of the *Fisheries Act 1994*.

Policy objectives and the reasons for them

The policy objectives of the *Fisheries (Effort Caps and Other Matters) Amendment Declaration 2022* (the Amendment Declaration) are to:

- support sustainable management of eastern king prawn stocks in the southern offshore trawl region A and B (SOT Region);
- support the sustainable management of small and soft prawns during their rapid-growth period through amendment to strip closures in the SOT Region;
- maintain sustainable, research-based management practices for the otter trawl sector in the east coast trawl fishery (ECT Fishery) through setting seasonal effort limits; and
- maintain the ongoing economic viability of the industry and sustainable management of fishery resources in the southern inshore trawl region (SIT Region).

Queensland's ECT Fishery is the state's largest commercial fishery, a significant portion of which operates within the Great Barrier Reef World Heritage Area. The target species of the fisheries are prawns, scallops and bugs, and the ECT Fishery contributes significantly to Queensland's gross value of seafood production and export. In the 2019-20 financial year the ECT Fishery produced 6,579 tonnes of product worth \$95 million.

The ECT Fishery is divided into 6 trawl regions, set out in Schedule 2, Part 4, of the *Fisheries (Commercial Fisheries) Regulation 2019* as:

- Northern trawl region (section 138)
- Central trawl region (section 139)
- Southern inshore trawl region (section 140)

- Southern offshore trawl region A (section 141)
- Southern offshore trawl region B (section 142); and,
- Moreton Bay trawl region (section 143).

These regions are managed primarily under harvest strategies through input controls such as regional effort caps, strip closures, fishing limits, and regulated periods. A harvest strategy specifies the pre-determined management actions necessary to achieve ecological, economic and/or social objectives of a fishery.

The management controls in the harvest strategies provide clear instruction across multiple stakeholder interests, ensure the sustainable distribution of fishing effort, and provide for the ongoing evidence-based review and development of the ECT Fishery's sustainability.

The regional effort caps are reviewed at scheduled intervals based on available stock assessment reports for the target species to achieve a target biomass of 60% of unfished levels set under the *Queensland harvest strategy policy*. The Target biomass levels are based on research conducted by the Fisheries Research and Development Corporation and the Commonwealth Scientific and Industrial Research Organisation (CSIRO).

Regional harvest strategy workshops have been conducted by the Department of Agriculture and Fisheries (the department) to review the performance of the ECT Fishery and receive input from key stakeholders in relation to the harvest strategies.

The regional harvest strategy workshops have reported that the results from existing measures have been largely favourable, although further measures are required to continue to support sustainability and economic viability within the ECT Fishery.

Objective 1: Support sustainable management of eastern king prawn stocks in the SOT Region

The SOT Region is a multi-species region within the ECT Fishery with the eastern king prawn recognised as the primary target species.

The SOT Region is currently subject to a closure from 20 September to 1 November each year which prohibits the use of trawl nets in shallow waters of the area (waters falling within the 50-fathoms depth contour) (SOT Closure) to allow for the recovery of small prawn and spawning stocks in shallow waters, while fishing can continue all year in deeper waters.

Although the SOT Closure has been successful in maintaining a sustainable stock of eastern king prawns, industry stakeholders expressed concerns regarding the effects of closing the shallow waters in the area.

There is a general trend of increased commercial fishing effort which threatens to trigger early closure of the SOT Region season through exhausting the effort cap limit set by the *Fisheries Declaration 2019* (Fisheries Declaration). The increased fishing pressure may create undesirable competitive conditions such as a 'race to fish' before a potential closure, which, in turn, may have negative impacts on the economic viability of the fishing industry and on peripheral businesses who rely on fisheries products during the regulated fishing season.

Fishers also voiced concerns that the SOT Closure impacts stock sustainability because there is an increase in commercial fishing effort in deep waters of the SOT Region during the closure.

The policy objective is to continue to support sustainable management of stock numbers in the whole of the SOT Region as well as the economic viability of the industry by extending the current shallow water closure to all depths of water during the closure period.

The change will create a full closure before harvest occurs in key months for both the shallow and deep-water fisheries to meet market demand around Christmas. This will reduce fishing pressure on the deep-water trawl grounds and result in less pressure on the regional effort cap being reached.

Objective 2: Support the sustainable management of small and soft prawns during their rapid-growth period through amendment to strip closures in the SOT Region

Annual closures of specified inshore areas (strip closures) in the SOT Region have been in place since 2021 to protect small prawns in the period from 20 September to 1 March. The strip closures were implemented in response to industry concern regarding the sustainability of small and soft prawns in their nursery grounds during their rapid-growth phase.

At the Southern Offshore Harvest Strategy Workshop, participants discussed options for additional protection for small prawns and how the South Stradbroke Island closure period unduly restricts fishing activity during a key fishing period for the area.

Fishers reported the presence of juvenile or adolescent prawns in nearby locations outside the current strip closures, The workshop made the following recommendations, which have been supported by a majority of industry stakeholders, to:

- modify the Caloundra–Moreton Island strip closure to include the area of Caloundra and near the Jumpinpin Bar
- extend the closure of South Stradbroke Island to Point Lookout; and
- introduce an additional closure near North Reef around Swain Reefs.

Workshop participants also supported changing the beginning of the closure period for the South Stradbroke Island strip closure from 1 November to 1 January, with the end date to remain 1 March, to reflect key fishing and market periods for trawl fishers based on the Gold Coast.

The policy objective is to offer further protection for small prawns to support sustainable stock numbers and economic viability of the SOT Region by implementing recommended changes to the strip closures of two inshore strips and introducing an additional recommended closure.

Objective 3: Maintain sustainable, research-based management practice for the ECT Fishery through setting seasonal effort limits

In the 2020-21 fishing season, because of the target species changing from scallops to Moreton Bay bugs, the regional effort cap for the SIT Region was reduced from 246,000 to 167,626 effort units. In April 2022, over 75% of the maximum effort cap had been reached. However, due to the impact of the COVID-19 pandemic on commercial fishing

in 2020 and 2021, the data may not reflect 'realistic' effort usage by the industry for that period.

The discussions held in the Southern Inshore Harvest Strategy Workshop included the increase in current effort use, and the risks associated with excess effort in the SIT Region.

Stock assessments are currently underway in the ECT Fishery for target species to inform the regional effort caps for the 2024-25 fishing season but will not be available to determine the seasonal caps for the 2023-24 fishing season. As an interim measure, industry stakeholders support an increased effort cap for the SIT Region.

The interim cap will be based on a three-year average effort cap for 2017-18, 2018-19 and 2019-20 as it is considered a reasonable representation of normal fishing effort until stock assessments are available in 2023 and is consistent with the approach used in other regions where updated stock assessments are not yet available.

The policy objective is to maintain sustainability for the ECT Fishery through setting seasonal effort limits that, in the absence of stock assessment reports, calculate the overall effort for the Northern, Central, and Southern Inshore regions by using a three-year average of effort use for those regions. This approach will allow continued management of the ECT Fishery where stock assessment reports are not available and will be a transitional step to implementing reduced caps for a 60% biomass target to maintain sustainability and economic viability. The use of average industry effort will result in a reduction the maximum effort units for the Central and Northern regions (by around 182,000 and 168,000 respectively), and increase the maximum effort units for the SIT Region by around 28,000 units.

Objective 4: Maintain the ongoing economic viability of the industry and sustainable management of fishery resources in the SIT Region

The Fisheries Declaration currently provides that, in the SOT Region, a 24-day-per-month restriction may be triggered through the months of May, June, and July if 309,014 or more effort units are used within the period from 1 November to 31 March. The purpose of the restriction, which applies to boats identified in T1 or T2 licences, is to reduce fishing effort during spawning months following high levels of effort earlier in the fishing season.

While the restriction limits the amount of effort for individual boats, it does not fully address the effort in the ECT Fishery. Advice from the Southern Inshore Harvest Strategy Workshop was that if the regional effort cap is reached too early, there are negative implications for the market supply of seafood from the region and the viability of fishing and seafood-related businesses.

As a means of reducing effort in the latter part of a season, to allow time for stock recovery before the commencement of the following season, industry stakeholders support putting a trigger in place to slow down effort usage for the remainder of the season.

The policy objective is to reduce pressure on the stocks in the latter part of the season, and support stock recovery before the next fishing season by applying similar restrictions in the SIT Region as provided for in the SOT Region. Most industry stakeholders support a 24-day-per-month fishing limit to trigger in the SIT Region to commence once the 70% effort cap has been used. The limit of 24 days per-month will apply to the remainder of the trawl season.

Achievement of policy objectives

The policy objectives of the Amendment Declaration are achieved by amending the Fisheries Declaration. The achievement of policy objectives is discussed below as they arise within Parts 2-5 of the Amendment Declaration.

Part 2 – Amendments commencing on notification

The amendments in Part 2 of the Amendment Declaration, commencing on notification, achieve the objective of *supporting the sustainable management of small and soft prawns during their rapid-growth period through amendment to strip closures in the SOT Region* by:

- Expanding the regulated waters in the SOT Region to protect the juvenile prawns in nearby locations outside the current strip closures.
- Amending section 94 (Regulated waters to which division applies and their regulated periods) to change the prescribed closure period for Stradbroke Island (trawl nets) regulated waters from ‘midday on 1 November to midday on 1 March’ to ‘midday on 1 January to midday on 1 March’ to reflect key fishing periods for trawl fishers based on the Gold Coast.
- Amending section 94 to prescribe new regulated waters ‘North Reef (trawl nets) with an annual closure from midday on 1 November to midday on 1 March.
- Amending Schedule 1, Part 2 to prescribe boundaries for the new North Reef (trawl nets) regulated waters.
- Amending Schedule 1, Part 2 to replace the entries for Caloundra– Moreton Island (trawl nets) and Stradbroke Island (trawl nets) to provide a new description of the regulated waters.

Part 3 – Amendments commencing on 1 November 2022

The amendments in Part 3 of the Amendment Declaration, commencing on 1 November 2022, achieve two objectives:

- Maintaining sustainable, research-based management practice for the ECT Fishery by amending the maximum number of effort units for the SIT Region from 167,625 to 204,102 based on a three-year average.
- Maintaining the ongoing economic viability of the industry and sustainable management of fishery resources in the SIT Region by inserting a new section 86BA (Restrictions on using particular boats if threshold number of effort units used) which provides for a 24 day-per-month fishing limit to trigger in the SIT Region to commence once 70% effort cap has been used. The limit of 24 days-per-month will apply to the remainder of the trawl season.

Part 4 – Amendments commencing on 2 November 2022

The amendments in Part 4 of the Amendment Declaration, commencing on 2 November 2022, achieve the objective of *supporting sustainable management of eastern king prawn stocks in the SOT Region* by omitting and replacing section 86 (Possessing or using trawl

nets in regulated period generally) to prescribe a new annual regulated period for SOT Region commencing 8am on 20 September to 6pm on 1 November.

This will extend the southern offshore closure for shallow waters (inside 50 fathoms) prescribed in section 86A (Possessing or using trawl nets in regulated period generally) to the deep-water section of the ECT Fishery for the same period.

Part 5 – Amendments commencing on 1 March 2023

The amendments in Part 5 of the Amendment Declaration, commencing on 1 March 2023, achieve the objective of *maintaining sustainable, research-based management practice for the East Coast Trawl Fishery through setting seasonal effort limits* by amending:

- section 86D (Possessing or using trawl nets if maximum number of effort units used) to reduce the maximum effort units for the Central Trawl Region from 500,711 to 318,584 based on average effort usage over a three-year period; and
- section 86E (Possessing or using trawl nets if maximum number of effort units used) to reduce the maximum effort units for the Northern Trawl Region from 418,657 to 250,178 based on average effort usage over a three-year period.

Consistency with policy objectives of authorising law

The Amendment Declaration is consistent with the main 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

Maintaining the *status quo* is not supported because it would not support sustainable stock numbers and economic viability of the ECT Fishery.

The department examined alternative management options which imposed tighter restrictions on fishing gear, larger-scale regional closures, or industry-funded buyout of excess effort. These management options were not considered to be reasonably available alternatives as they would require far greater oversight and regulatory obligations, and impose a greater administrative and economic burden on fishers and not provide the same high level management of fisheries resources.

The management controls as progressed in this Amendment Declaration are considered to be the most suitable in achieving proportional balance of economic and ecological sustainability of fisheries resources.

Benefits and costs of implementation

The Amendment Declaration benefits Queensland's community, environment and economy by supporting the sustainable management of stocks of fisheries resources in the ECT Fishery, which supports ongoing industry access.

The Queensland Government will not incur any additional costs in the implementation of this Amendment Declaration. Ongoing monitoring and enforcement of regulated periods and areas will be undertaken within existing resources.

The changes to the maximum effort units within the ECT Fishery may reduce the number of effort units available to applicable commercial fisheries licence holders. However, supporting the sustainable management of the ECT Fishery and its stocks supports commercial fisheries to continue accessing the ECT Fishery now and into the future. Effort caps in the ECT 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 ECT Fishery's management regions.

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 has been drafted with regard to the fundamental legislative principles (FLPs), as defined in section 4 of the *Legislative Standards Act 1992* (LSA). One potential breach of FLPs has 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 restricts trawling activities in the ECT Fishery by expanding and introducing regulated areas and regulated periods within the ECT Fishery.

However, this potential breach is justified on the basis that these measures are necessary to allow east king prawns and other species within the regulated regions to mature and recover from trawling in the early parts of the fishing season. This will protect the long-term financial viability of the trawl fishery and sustain fisheries resources for future generations. Further, these amendments do not interfere with a commercial fisher's authority to take fisheries resources outside the regulated periods or areas. They must merely comply with the regulated periods or areas and can continue to take the species under their licence outside of those restrictions.

Consultation

Public consultation on the management actions for the ECT Fishery, progressed in the Amendment Declaration, was conducted through harvest strategy workshops. Harvest strategy workshops are held to review the performance of each fishery and receive input from key stakeholders in relation to the harvest strategies.

The department conducted the following harvest strategy workshops with industry stakeholders for the ECT Fishery:

- Southern Offshore Harvest Strategy Workshop in Mooloolaba on 21 and 22 April 2022;
- Southern Inshore Harvest Strategy Workshop in Hervey Bay on 28 and 29 April 2022; and

- Northern and Central Regions Harvest Strategies Workshop in Cairns on 16 and 17 May 2022.

Workshop participants identified key issues and risks in the ECT Fishery, and proposed management actions to address them. Discussions included information on ongoing stock assessments for key species in each region, latent effort in the industry and setting effort caps for the 2023 fishing season.

Following the workshops, the Queensland Government released a discussion paper on 1 July 2022 titled *Queensland east coast otter trawl fishery – Consultation on proposed management actions* seeking feedback on possible management actions identified through the workshops to ensure the sustainable management of the ECT Fishery consistent with the Queensland Sustainable Fisheries Strategy 2017-2027 and to maintain ongoing export accreditation under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*.

A total of 59 responses to the discussion paper were received from stakeholders. Most commercial fishing stakeholders supported the amendment of effort caps. Although the Australian Marine Conservation Society (AMCS) did not support an increase to the effort cap in the SIT Region due to the depleted status of the scallop stock.

The ECT Fishery holds accreditation under national environment laws allowing it to continue exporting its catch, including scallops. The AMCS noted this accreditation is subject to strict conditions, including that scallops are not subject to overfishing.

However, the risk is considered to be low as scallops are declared to be 'no-take' and their discard mortality is low in the region. A majority of respondents were supportive of amendments to expand strip closures.

The department consulted the Office of Best Practice Regulation (OBPR), within Queensland Treasury, on whether the Amendment Declaration is excluded from further analysis under the *Queensland Government Guide to Better Regulation*. The OBPR assessed that the proposal is excluded from further analysis on the basis the proposal will not add significantly to the burden of regulation and is unlikely to result in significant adverse impacts.