

Fisheries Legislation Amendment Declaration 2022

Explanatory Notes for SL 2022 No. 194

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries Legislation Amendment Declaration 2022

Authorising law

Section 37 of the *Fisheries Act 1994*.

Policy objectives and the reasons for them

In June 2017, as part of the Queensland Government's commitment to best-practice management of Queensland's fisheries resources, the Government released the *Queensland Sustainable Fisheries Strategy: 2017–2027* (the Strategy). The Strategy sets out a 10-year reform agenda, including clear targets to be achieved for sustainable fisheries management.

A key target of the Strategy is to set sustainable catch limits based on achieving maximum economic yield for all Queensland fisheries (around 60% biomass) by 2027.

Harvest strategies, one of the key management tools outlined in the Strategy, are considered throughout Australia to be a best-practice fisheries management tool to achieve ecological, economic and/or social objectives of a fishery. Harvest strategies set out fishery-specific targets and limits, along with management actions for achieving them. In Queensland, harvest strategies are applied to keep stocks at a 'target reference point' which aims to achieve maximum economic yield for each fishery. These pre-agreed rules allow for responsive decision-making based on the review of the performance of each fishery.

The approach taken to ensuring the sustainability of black jewfish and king threadfin in the East Coast Inshore Fishery (ECIF) through the *East coast inshore fishery harvest strategy: 2021–2026* (ECIF Harvest Strategy); and for stout whiting in the *Commercial trawl fishery (fin fish) stout whiting harvest strategy: 2021–2026* (Stout Whiting Harvest Strategy) is to restrict the amount of fish, in weight, that can be taken by commercial fishers, and in the ECIF recreational fishers, each year in the those fisheries. The weight restriction for black

jewfish caught by commercial fishers is achieved through the mechanism of a prescribed commercial catch (PCC), and for king threadfin and stout whiting, the weight restriction is achieved through the mechanism of a total quota entitlement.

The biomass of these fisheries stocks is assessed at scheduled intervals using the nationally agreed Status of Australian Fish Stocks classification framework. These assessments allow for the amount of fish permitted to be taken in a commercial fishery to be increased or decreased depending upon the stock status of the species.

Black jewfish

Black Jewfish are caught on the east coast of Queensland by commercial, recreational, charter and Indigenous fishers. Commercial catch of black jewfish is focused in the waters around Central Queensland. The species was historically considered a by-product species but has now become a targeted line caught species, and recently there has been a large shift in commercial effort and gear types used by commercial fishers. Black jewfish is vulnerable to overfishing due to increasing commercial catch driven by the high value of the species' swim bladders in the export market.

To protect black jewfish stocks, a prescribed commercial catch was introduced in April 2019. This PCC prohibits a person from taking or possessing black jewfish once the PCC amount for a particular fishing season has been reached. The current PCC for black jewfish in the ECIF is 20 tonnes, which is divided between management regions 2–5.

Black jewfish is the only species in Queensland whereby recreational fisher access to the species is determined on the level of commercial harvest. Given the estimated biomass from the September 2022 stock assessment, there is no longer a need to restrict recreational fishers from accessing black jewfish once the total PCC has been reached.

The September 2022 stock assessment of black jewfish estimated that the spawning biomass of the species is probably at or above the target reference point of 60% of unfished biomass. The stock assessment recommended taking a precautionary approach, and to increase the amount of black jewfish that is permitted to be taken by all fishing sectors from 20 tonnes to 90 tonnes for all fishing sectors as this increase would not pose a greater risk to the species.

The main policy objective of the *Fisheries Legislation Amendment Declaration 2022* (the Amendment Declaration), with respect to black jewfish, is to adopt a precautionary approach to ensuring the sustainability of the species in the ECIF and increase the PCC from 20 tonnes to 54 tonnes in time for the 2023 fishing season. The increased PCC of 54 tonnes will be divided amongst management regions 2–5. The increased PCC will also enable commercial fishers to maximise the economic yield of black jewfish stocks whilst supporting the sustainable management of the species' stocks.

A further policy objective of the Amendment Declaration is to allow recreational fishing of black jewfish year-round irrespective of whether the commercial PCC has been reached.

This increase in the total catch of 90 tonnes, also provides commensurate support for recreational fishing expansion by increasing its share of the total catch to 36 tonnes. The increase accords with the stock assessment which indicates that, based on current estimates, the biomass of black jewfish can sustain ongoing recreational fishing.

King threadfin

King threadfin is a large, predatory fish species that is found in foreshore areas of turbid coastal waters, estuaries, tidal rivers and mangrove creeks. It is found across northern Queensland and down to the Brisbane River in South-East Queensland. The species is primarily caught by Indigenous, recreational and charter fishers by line and by commercial fishers using set large mesh nets.

In the ECIF, the species is subject to a total quota entitlement which is allocated to 5 management regions (management regions 1–5).

The 2020 stock assessment for king threadfin estimated the species' spawning biomass on the east coast to be 60% for all of the management regions, on the basis of four separate assessment regions that approximate the fishery management regions.

The stock assessment reported that no urgent action needs to be taken to attain sustainable levels. However, it recommended that a revised total quota entitlement for each management region be set for the start of the 2023 fishing season. This would ensure that fishing remains sustainable, particularly as king threadfin stocks have increased in recent years.

As there was very little fishing effort reported in management region 1 to justify any management changes, the total quota entitlement currently prescribed for that region will not be amended.

The initial allocation of total quota entitlement to fishers was based on the historical catch records of king threadfin. Now that stock assessment data is available, a review of the total quota entitlement for each management region is required as per the harvest strategy. The total quota entitlement for management regions 2, 3 and 4 will increase based on the results of the stock assessment data.

However, the assessment for management region 5 recommended a decrease in total quota entitlement for the region. The stock assessment indicated that the king threadfin biomass in management region 5, was highly variable and relied heavily on high rainfall periods. The frequent high rainfall events which have occurred in management region 5 over the last 10 years have significantly increased the king threadfin biomass in the area, and any reduction in frequency or duration of such high rainfall events would significantly impact the king threadfin biomass accordingly. The reduction will not impact on the overall harvest in this region. With only 1 month remaining in the current fishing year, only 49% of the total quota entitlement (10,400kg) has been taken.

The policy objective of the Amendment Declaration, with respect to king threadfin, is to manage king threadfin in the ECIF to enable an increased harvest which will maximise the economic yield for this group of species. This is consistent with the primary objective of the ECIF Harvest Strategy to maintain the target species at, or return to, a target spawning biomass level that aims to maximise economic yield for the fishery.

Prescribed whiting

The Commercial trawl fishery (fin fish) (T4 Fishery) is a quota-managed fishery which allows for the taking of 'prescribed whiting.' Prescribed whiting includes stout whiting, which makes up 95% of the harvest, and red spot whiting.

Licence holders for the T4 Fishery hold individual transferable quota units (ITQ) which entitle the holder to take a portion of the declared total quota entitlement for that species, or group of species, during the ITQ year. In the T4 Fishery, ITQ units are referred to as T4-ITQ units and a T4-ITQ year is the period from 1 January to 31 December.

The stout whiting stock level is currently assessed as 'sustainable,' with spawning biomass estimated to be above biomass associated with maximum sustainable yield.

A review of the total quota entitlement for prescribed whiting was conducted to determine the 2023 total quota entitlement, as required by the Stout Whiting Harvest Strategy. The review was based on catch rate monitoring data to December 2021 and recommended an 8.7 % increase in the total quota entitlement from 1,281 tonnes to 1,393 tonnes.

The recommended increase is the maximum sustainable total quota entitlement that can be set by calculating under a catch rate assessment year in accordance with the Stout Whiting Harvest Strategy. The risk of fishing to the sustainability of stout whiting stocks is considered low due to the existing management framework and the small number of operators with access to the fishery.

The policy objective of the Amendment Declaration, with respect to stout whiting, is to manage prescribed whiting in the T4 Fishery to enable an increased harvest which will maximise the economic yield for this group of species. This is consistent with the primary objective of the Stout Whiting Harvest Strategy to maintain the target species at, or return to, a target spawning biomass level that aims to maximise economic yield for the fishery.

Achievement of policy objectives

Black jewfish

The policy objectives of the Amendment Declaration, with respect to black jewfish, are achieved by amending Schedule 2 (Regulated fish declarations), part 2 of the *Fisheries Declaration 2019* to—

- omit item 1 in the first entry row for black jewfish which prescribes the commercial catch for the species in waters other than the Gulf of Carpentaria waters; and
- increase the prescribed commercial catch for management regions 2–5 of the ECIF in the second entry row for black jewfish.

This will allow all year recreational fishing while still retaining a total commercial catch for each management region in the ECIF.

King threadfin

The policy objective of the Amendment Declaration, with respect to king threadfin, is achieved by amending Schedule 1 (Total quota entitlement), part 1 of the *Fisheries Quota Declaration 2019* to increase the total quota entitlement for king threadfin in management regions 2–4 of the ECIF and decrease the total quota entitlement in management region 5 of the ECIF.

Prescribed whiting

The policy objective of the Amendment Declaration, with respect to prescribed whiting, is achieved by amending Schedule 1 (Total quota entitlement), part 4 of the *Fisheries Quota Declaration 2019* to increase the total quota entitlement for prescribed whiting, which includes stout whiting.

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

Maintaining the *status quo* in the ECIF or T4 Fishery is not supported as this would be inconsistent with the decision rules set out in the ECIF Harvest Strategy and the Stout Whiting Harvest Strategy which aim to set sustainable catch limits that are based on achieving maximum economic yield at around 60% of biomass.

Amending the *Fisheries Declaration 2019* and *Fisheries Quota Declaration 2019* is the only way to achieve the policy objectives. Non-legislative options would not be able to effectively regulate fisheries and are not considered an appropriate, or effective option for sustainable management of the fisheries resources.

Benefits and costs of implementation

The Amendment Declaration benefits Queensland's community, environment, and economy by supporting the sustainable management of black jewfish, king threadfin and prescribed whiting stocks.

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

Black jewfish and king threadfin

The Amendment Declaration will economically benefit commercial fishers in the ECIF Fishery by as increasing the PCC for black jewfish in management regions 2–5, and the total quota entitlement for king threadfin in management regions 2–4 will increase the amount of black jewfish that may be taken by relevant licence holders and will proportionally increase the amount of king threadfin that may be taken under each

individual transferable quota unit. This will support the commercial economic performance of the fishery.

Although the Amendment Declaration will also reduce the total quota entitlement for king threadfin in management region 5 of the ECIF from 21,421kg to 14,110kg which may have financial impacts for commercial fishers, the reduction supports the sustainability of king threadfin stocks and ensures that business can be conducted in the long-term thereby benefiting the Queensland's community, environment and economy.

Prescribed whiting

The Amendment Declaration will economically benefit commercial fishers in the T4 Fishery as increasing the total quota entitlement for prescribed whiting will proportionally increase the amount of prescribed whiting that may be taken under each T4-ITQ unit. This will support the commercial economic performance of the fishery.

Consistency with fundamental legislative principles

The Amendment Declaration has been drafted with regard to, and is generally consistent with, the fundamental legislative principles (FLPs) as defined in section 4 of the *Legislative Standards Act 1992* (LSA). However, the Amendment Declaration may potentially infringe upon the FLP that legislation should have sufficient regard to the rights and liberties of individuals, including the right to conduct business without interference (section 4(2)(a) of the LSA).

Legislation should have sufficient regard to the rights and liberties of individuals - LSA, section 4(2)(a)

Clause 4 (Amendment of sch 2 (Regulated fish declarations)) of the Amendment Declaration prescribes the PCC for black jewfish for management regions 2–5 of the ECIF.

Clause 6 (Amendment of sch 1 (Total quota entitlements)) of the Amendment Declaration prescribes the total quota entitlement for king threadfin for management regions 2–5 of the ECIF and the total quota entitlement for prescribed whiting in the T4 Fishery.

The FLP is potentially infringed because restricting the amount of fisheries resources that can be taken by commercial fishers in the ECIF and T4 Fishery may unduly restrict a person's right to conduct a commercial fishing business without interference. However, the potential infringement is justified as maintaining sustainable stocks of fisheries resources is critical to ensure the long-term viability of the commercial fishing industry. The potential infringement ensures that business can be conducted in the long-term and operates to minimise business impacts that could result from any future need to take significant management action, such as if a stock collapsed.

Further, the total quota entitlement in a majority of management regions for king threadfin, the PCC for black jewfish and the total quota entitlement for prescribed whiting in the T4 Fishery will be increased by the Amendment Declaration, which will economically benefit commercial fishing businesses.

Consultation

Black jewfish and king threadfin

The Department of Agriculture and Fisheries (the department) undertook consultation with the ECIF Working Group on 26–27 July 2022 and 6 October 2022.

The ECIF Working Group was presented with the findings of the 2022 black jewfish stock assessment and was advised that the assessment had indicated that revising the total allowable catch of black jewfish permitted to be taken for all sector to 90 tonnes was an acceptable precautionary increase. Further discussion was had surrounding allocating sectoral catch shares, with the recreational and commercial members unable to reach any agreement. The department, having taken into consideration all views discussed by the ECIF Working Group, recommended to the Chief Executive, a middle ground initial sectoral catch share allocation of sixty per-cent commercial and forty per-cent recreational.

The ECIF Working Group members were provided an overview of the 2020 king threadfin stock assessment. The Working Group noted that king threadfin biomass was close to or above 60% in all ECIF regions. The Working Group members considered the king threadfin stock assessment to recommend total quota entitlement for the 2023 fishing season. The general consensus between Working Group members was to recommend an increase in the total allowable commercial catch from 72 tonnes to 87.2 tonnes with a 50/50 catch share allocation to be reviewed in 2023 in consideration of discard data and the 2022 total commercial catch.

Prescribed whiting

An online workshop was held with T4 Fishery stakeholders on 13 August 2021. The stakeholders were advised that under the Stout Whiting Harvest Strategy, the total quota entitlement for future T4-ITQ years in the T4 Fishery will be set by stock assessments every three years and standardised catch rate information in intervening years.

The department advised the two active operators in the T4 Fishery of the total quota entitlement increase for the 2023 T4-ITQ year through telephone and email. The two operators are supportive of the increase.

Regulatory Impact Analysis

The Amendment Declaration has been self-assessed by the department in accordance with the *Queensland Government Guide to Better Regulation*. The department assessed that the Amendment Declaration is excluded from undertaking further regulatory impact analysis on the basis of 'Category (g) – Regulatory proposals that are of a machinery nature' as it makes no substantial change to policy and consists of provisions that are merely declaratory in accordance with the decision rules of the ECIF Harvest Strategy and the Stout Whiting Harvest Strategy.