

Fisheries Legislation (Coral) Amendment Regulation 2023

Explanatory Notes for SL 2023 No. 44

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries Legislation (Coral) Amendment Regulation 2023

Authorising law

Sections 33, 34, 35, 36, 49, 52, 62, 118, and 223 of the *Fisheries Act 1994* (the Act).

Policy objectives and the reasons for them

The policy objectives of the *Fisheries Legislation (Coral) Amendment Regulation 2023* (the Amendment Regulation) are to:

- maintain the Queensland Coral Fishery's (QCF) Wildlife Trade Operation approval to export coral (WTO export approval), granted by the former Commonwealth Minister for the Environment under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, by continuing to implement the condition of approval that particular annual harvest limits are introduced; and
- enable QCF licence holders to avoid the impacts associated with a race-to-fish scenario for popular target species, including environmental and business risks.

The QCF ("D" fishery symbol) is a hand collection harvest fishery operating along Queensland's east coast. 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 Department of Agriculture and Fisheries (the department) is responsible for managing commercial fisheries, which are currently managed through a mixture of input and output controls. These controls 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 QCF incorporate the use of individual transferable quota (ITQ) authorities which apply to individual license holders and

prescribed commercial catch (PCC) limits which apply to specific species, or genera of corals.

In order to export Australian native animal or plant species, or species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES-listed), for commercial purposes, the plant or animal must come from an approved program. For example, the Wildlife Trade Operation (WTO), permitted through a WTO declaration (commonly referred to as a WTO export approval). WTO export approvals are granted for a maximum of three years.

On 28 October 2021, the Australian Government reissued WTO export approval for the QCF, 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 subsequent implementation of PCC limits at a species-level satisfied these conditions while allowing the fishery to continue. As part of consultation on the implementation of the WTO export approval condition, 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 the allocation of ITQ units.

This option could not be implemented before 30 June 2022 (the commencement of the 2022-23 fishing season) due to the scale of the legislative changes and administrative processes required to implement species-level ITQ units. The harvest limits for all of the species required by the WTO export approval were therefore implemented by PCC through the *Fisheries (Coral) Amendment Declaration 2022*, with the intent to revisit this arrangement for popular target species in the future.

Accordingly, the Amendment Regulation addresses the intention to revisit this arrangement, by regulating seven key individual coral species through ITQ units. This also addresses some concerns that have been noted as a result of implementing PCC limits, while remaining consistent with the requirements under the QCF's WTO export approval.

Separately, the Amendment Regulation also amends the definition of relevant day to align annual dates for management controls used in the QCF. By aligning the relevant day for specialty coral PCC limits with the fishing season, the amendment regulation makes a minor administrative amendment to provide greater efficiency and clarity for ongoing QCF management.

Achievement of policy objectives

The Amendment Regulation implements species-specific ITQs for the seven key coral species by removing them from the broader 'specialty corals' quota and creating a new category called 'select corals' in which new species-specific quotas are to be established. This distinguishes them from 'specialty coral' species that are still being managed through PCC arrangements.

New ITQ units for each species are introduced and defined for the purpose of the QCF, including the quota for the species, and the method of allocation for the new ITQ units. To achieve this, the Amendment Regulation provides for the issue of new ITQ units until the 30 June 2023, and the entitlement under those new units to commence from 1 July 2023.

To provide for the issue of units, the *Fisheries (Commercial Fisheries) Regulation 2019* (the Commercial Regulation) is amended to establish the new 'select coral' category, and assigns ITQ units for each of the seven select coral species in the category.

The *Fisheries (General) Regulation 2019* (the General Regulation) is amended to provide for issue of these new ITQ units, including eligibility of holders, authority to issue prior to 30 June 2023, and addition of held units to a primary fishing license.

Amendments to the Commercial Regulation, the *Fisheries Declaration 2019* (the Declaration), and the *Fisheries Quota Declaration 2019* (the Quota Declaration) provide for implementation of entitlement granted by the new ITQ units.

In the Commercial Regulation, this is achieved by introducing chapter 4, part 5D, to provide for the meaning and entitlement of select coral ITQ units, including by defining the quota year, the method by which entitlement is calculated annually, the method by which entitlement may be used, and the evidence of use by weight notice.

In the Declaration this is achieved by removing the PCC harvest limits for each of the select coral species, to allow management of the harvest limit to be conducted through the new total quota entitlements (TQE), as introduced in the Quota Declaration. The Quota Declaration is also amended to remove the weight of the new TQEs from the specialty coral TQE, reflecting that entitlement for the seven select coral species is now managed under separate TQEs.

The Amendment Regulation also adjusts the definition of "relevant day" in the Dictionary (Schedule 5) of the Declaration to include 'regulated coral' as a category of fish for which the relevant PCC should commence on the day after 30 June rather than 30 December. This has the effect of aligning this timeframe with the quota year for the QCF.

Consistency with policy objectives of authorising law

The Amendment Regulation 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 Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

Maintaining the status quo for the seven key coral species is not supported, as implementing ITQ-based access for these species will enable licence holders to avoid the impacts associated with a race-to-fish scenario for popular target species, including environmental and business risks.

Benefits and costs of implementation

The Amendment Regulation 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 Regulation. Ongoing management and monitoring of coral stocks will be undertaken within existing resources.

The Amendment Regulation will have both costs and benefits for commercial fishers. Whilst it will not change the quantity of the species-level harvest limits set for the seven key coral species, it will restrict the quantity of these popular target species that each individual licence holder may take. Restricting the quantity of the seven key coral species that can be taken under a quota authority may affect the value of that quota authority. 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. In addition, ITQ-based access for the seven key coral species will enable licence holders to avoid the impacts associated with a race-to-fish scenario for popular target species, including environmental and business risks. In particular, the security of access granted by proportional allocation of ITQ units will benefit the environment and the QCF through allowing fishers to better distribute their fishing effort across the quota year and the Great Barrier Reef.

Consistency with fundamental legislative principles

The Amendment Regulation 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 the changes progressed in the Amendment Regulation will no longer permit a licence-holder to take any quantity of the seven key coral species regulated by PCC (within the shared PCC limit) but instead restrict take to his or her ITQ holding, which is to be proportionally allocated in line with his or her holding in the Specialty coral quota category. Restricting the quantity of the seven key coral species that can be taken under a quota authority may affect the value of the quota authority. This is a restriction on the operation of a commercial coral harvesting business.

The potential breach is justified as it is necessary to support the sustainable management of coral stocks in Queensland and help maintain the QCF's WTO export approval. Whilst replacing the PCCs with ITQ for the seven key coral species will restrict the quantity of these corals which a licence-holder may take, each licence-holder will be guaranteed access to those species through the proportional allocation. ITQ-based access for the

seven key coral species will enable licence holders to avoid the impacts associated with a race-to-fish scenario for popular target species.

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.

Prior to the implementation of PCCs, 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 export approval 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 ITQ authorities.

The department undertook targeted public consultation from 25 October 2022 to 11 November 2022 to finalise a list of coral species to be considered for management as ITQ. As part of this process the department published the Targeted Consultation on Proposed Coral ITQ Species discussion paper to current quota holders. A total of 17 individual responses were received and most commercial fishers also attended an online briefing. The seven selected species were supported by 12 of the 17 quota holders. All seven selected species are listed on the WTO approvals Appendix B, which indicates species of concern to the Commonwealth government.

The department has consulted the Office of Best Practice Regulation (OBPR) on a Preliminary Impact Assessment for the Amendment Regulation. The OBPR provided advice that no further assessment is required under the *Queensland Government Guide to Better Regulation*. The OBPR noted the department's advice that the introduction of PCC limits has had adverse impacts on the operations of the QCF. The proposal does not change the species-level harvest limits set for the key coral seven species but rather the way in which the quantity of authorised harvest is Distributed between licence holders.