

Fisheries Legislation (Spanish Mackerel and Bar Rockcod) Amendment Declaration 2023

Explanatory Notes for SL 2023 No. 80

made under the

Fisheries Act 1994

General Outline

Short title

Fisheries Legislation (Spanish Mackerel and Bar Rockcod) Amendment Declaration 2023

Authorising law

Sections 33, 34, 35 and 37 of the *Fisheries Act 1994*.

Policy objectives and the reasons for them

Spanish Mackerel

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 2021-2022, 266.7 tonnes of Spanish mackerel were 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 Lucinda region, in waters north of Townsville. This typically peaks during a two lunar month period in Spring when 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 quota entitlement (TQE) 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 TQE 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. Recreational fishers on extended charter fishing trips (greater than 48 hrs) can take two times the possession limit and charter fishing operations are not subject to boat limits.

Management arrangements for Spanish mackerel include seasonal closures. These seasonal closures regulate the commercial and recreational harvest of Spanish mackerel. In the north these closures align to peak spawning and migrating periods when they are highly vulnerable to intensive fishing. When closures were introduced in the *Fisheries (Spanish Mackerel) Amendment Declaration 2022*, (the 2022 Amendment Declaration) exception was made for licensed charter fishing that had been booked prior to 1 July 2023, with the intent of removing the exception starting in the following season. The exception allowed 12 months for some recreational fishing via licensed charter trips which are often booked years in advance and was intended to minimise the economic and social impact of the introduction of the closures.

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 (DAF) released the 2020 stock assessment for Australian east coast Spanish mackerel which estimated the unfished biomass to be approximately 17 per cent, indicating urgent action was needed to rebuild the fishery. 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.'

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 first policy objective of the *Fisheries Legislation (Spanish Mackerel and Bar Rockcod) Amendment Declaration 2023* (the Amendment Declaration) is to implement a range of management actions 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.

Bar Rockcod

Bar rockcod (*Epinephelus septemfasciatus* and *Epinephelus ergastularius*) is a coral reef fin fish within the Reef Line Fishery. Coral reef fish are harvested by the commercial, recreational, Indigenous and charter fishing sectors. The main target species of the commercial sector in the Reef Line Fishery are coral trout and redthroat emperor. This fishery also targets 'other species' such as crimson snapper, red emperor, saddletail snapper, spangled emperor and stripey snapper. Bar rockcod is one of the 'other species' for this fishery.

The Reef Line Fishery is managed using a quota management system which has ITQ units ("line units") for three categories - coral trout, redthroat emperor and 'other species'. The sustainable harvest levels for species in the Reef Line Fishery are managed consistent with the Harvest Strategy for the Reef Line Fishery and the objectives of ecologically sustainable development outlined in the *Fisheries Act 1994*.

In 2022, a review of the Reef Line Fishery identified that harvest of bar rockcod in 2021 calendar year had exceeded the historic average (12.33 tonnes a year between 2011 - 2015) by more than 2 times the historic average (24.67 tonnes) and reached 27.5 tonnes.

This harvest of bar rockcod triggered rule 2.3 within the Harvest Strategy for the Fishery:

If the annual harvest of any species is greater than 2 times the average reference period catch (2011–2015) and the annual catch is more than 20 tonnes, an interim competitive Total Allowable Commercial Catch will be set at 2 times the reference period catch level and a stock assessment will be undertaken.

The second policy objective of the Amendment Declaration is to amend the *Fisheries Declaration 2019* (the Declaration) to give effect to this decision rule. This will help ensure the sustainability of this fish species while monitoring and research is undertaken to complete a stock assessment that provides a sustainable recommended harvest limit.

Achievement of policy objectives

Spanish Mackerel

The Amendment Declaration achieves its first policy objective by making amendments to the Fisheries Declaration and *Fisheries (Quota) Declaration 2019* to:

- Reduce the total quota entitlement for take of Spanish mackerel by commercial fishers from 578.013 tonnes to 165 tonnes;
- Reduce the recreational possession limit for Spanish mackerel to one fish per person or two fish per boat with two or more recreational fishers on board (excluding licensed charter fishing trips);
- Remove the extended charter trip possession limit for Spanish mackerel, which currently allows recreational fishers to take twice the in-possession limit;
- Remove the exception for the possession of Spanish mackerel during regulated period by recreational fishers on licensed charter fishing trips in Spanish mackerel waters;
- Add further regulated periods for the Northern Spanish mackerel waters for the period 2023-2025 and clarify that the regulated periods for the Southern Spanish mackerel waters is static;
- No longer permit a person to possess Spanish mackerel taken outside of the Northern or Southern Spanish mackerel waters, within those waters, during the regulated periods;
- In line with the above, insert the following exemptions to the seasonal closures:

- An exemption that will provide commercial fishers with additional time to return to or wait in or nearby specified ports after the regulated period has commenced, enabling remote fishers to fish until the start of the closure, travel time to return to their port and additional time to unload; and
- An exemption that that will permit a person to possess Spanish mackerel (taken outside of the regulated waters) on a boat during a regulated period for consumption.

Bar Rockcod

The second policy objective of the Amendment Declaration will be achieved through the introduction of a Prescribed Commercial Catch (PCC) limit of 24.67 tonnes for bar rockcod in Schedule 2, Part 2 of the Fisheries Declaration. Once the PCC has been reached, there will effectively be a total prohibition on the commercial catch of bar rockcod as the Reef Line Fishery is the only commercial fishery that permits the take of bar rockcod. The PCC for bar rockcod will be calculated by the chief executive from the period of 1 July to 30 June each year, which aligns with the 'line year' for individual transferrable quota (ITQ) units in the Reef Line Fishery. Once the PCC has been reached, any person acting under a licence with the symbol 'L1', 'L2', 'L3' or 'L8' will be prohibited from taking or possessing bar rockcod for the remainder of the relevant period.

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 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.

An alternative approach was not considered for the amendment of the PCC for bar rockcod, as the decision rules articulated in the Harvest Strategy require this management response in this circumstance. The decision rules in the harvest strategy are unambiguous and clear around setting harvest limitations and capping the catch at 2 times the reference period to maintain sustainable management of the fishery. The only way to implement decision rules consistent with the Harvest Strategy is by legislative amendment.

Benefits and costs of implementation

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

The Queensland Government will not incur any additional costs in the implementation of this Amendment Declaration. Ongoing management of Spanish mackerel and bar rockcod 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 and bar rockcod by reducing the amount of the respective fish species that can be taken, this cost is outweighed by the long-term benefits for both species. Without the proposed management changes, it will be impossible to rebuild a sustainable biomass and avoid the greater impacts associated with ongoing overfishing and a potential fishery collapse.

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*.

Legislation should have sufficient regard to the rights and liberties of individuals - *Legislative Standards Act 1992*, subsection 4(2).

The Amendment Declaration potential infringes the FLP that legislation should have sufficient regard to the rights and liberties of individuals, including the right to conduct business without interference and right for ordinary activities not to be unduly restricted. It does this by prescribing a number of measures that prevent or limit the take of Spanish mackerel (applying to both recreational and commercial fishers) and reducing the commercially available take of bar rockcod.

However, any perceived infringement is justified on the basis that these measures are necessary to allow the biomass of Spanish mackerel and bar rockcod to recover to sustainable levels to protect the financial viability of the commercial fisheries long-term and maintaining the sustainable management of bar rockcod stocks.

Consultation

Bar rockcod

The decision rules for other species harvest were presented to the Reef Line Fisheries Working Group in an online out of session meeting 13 June 2022. The Working Group worked through the Harvest Strategy decision rules for Other Species (other regulated coral reef fin fish) and provided their advice on the outcome. The PCC for prescribed bar rockcod within to the other species total quota entitlement for the 2023-24 fishing season is consistent with the Harvest Strategy.

The Reef Line Fisheries Working Group supported application of decision rule 2.3 to establish a PCC for bar rockcod of 2 times the historic average and seek a stock assessment.

Spanish mackerel

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.

In 2022 public consultation was undertaken 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.

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 the 2022 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).

Regulatory Impact Analysis

The Amendment Declaration, to the extent it relates to Bar Rockcod, and to continuing seasonal closures for Spanish mackerel, has been self-assessed by DAF in accordance with the *Queensland Government Guide to Better Regulation*. DAF assessed that it is excluded from undertaking further regulatory impact analysis on the basis of Category (g) – regulatory proposals that are of a machinery nature.

DAF has consulted the Office of Best Practice Regulation (OBPR), within the Queensland Treasury, on a Preliminary Impact Assessment which included the following amendments:

- Reduce the total quota entitlement for take of Spanish mackerel by commercial fishers from 578 tonnes to 165 tonnes;
- Reduce the recreational possession limit for Spanish mackerel to one fish per person or two fish per boat with two or more recreational fishers on board (excluding licensed charter fishing trips);
- Remove the extended charter trip possession limit for Spanish mackerel, which currently allows recreational fishers to take twice the in-possession limit; and
- Remove the exception for the possession of Spanish mackerel during regulated period by recreational fishers on licensed charter fishing trips in Spanish mackerel waters.

For these amendments OBPR provided advice that no further assessment is required under the *Queensland Government Guide to Better Regulation*.

Further consultation was undertaken with OBPR on the amendments to no longer permit a person to possess Spanish mackerel taken outside of the Northern or Southern Spanish mackerel waters, within those waters, during the regulated periods and the relevant exceptions. The OBPR considered that this proposal would not add to the burden of regulation and is unlikely to result in significant adverse impacts. No further regulatory impact analysis was required under The *Queensland Government Guide to Better Regulation*.