

Fisheries Quota (Spanner Crab Fishery) Amendment Declaration 2020

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Mark Furner MP, Minister for Agricultural Industry Development and Fisheries, provide this human rights certificate with respect to the *Fisheries Quota (Spanner Crab Fishery) Amendment Declaration 2020* made under the *Fisheries Act 1994*.

In my opinion, part of the *Fisheries Quota (Spanner Crab Fishery) Amendment Declaration 2020*, as tabled in the Legislative Assembly, limits a human right, but overall is compatible with, the human rights protected by the *Human Rights Act 2019*. The nature and extent of the limitation is outlined in this statement. In my further opinion, the remainder of the *Fisheries Quota (Spanner Crab Fishery) Amendment Declaration 2020* is compatible with the rights protected by the *Human Rights Act 2019* for the reasons outlined in this statement.

Overview of the Subordinate Legislation

A number of Queensland commercial fisheries are managed using quota based management systems which set out a total quota entitlement for a species or group of species. Colloquially, this is referred to as the total allowable commercial catch (or TACC). Under this system, individual fishers hold individual transferable quota (ITQ) units, a type of total quota entitlement. The ITQ units entitle the holder to take a proportion of the declared total quota entitlement for that species or group of species during the ITQ year. Generally, an ITQ year is from 1 July to 30 June each year. However, the ITQ year leading up to 1 July 2021 is a 13 month period from 1 June 2020 to 30 June 2021, as defined in section 122 of the *Fisheries (Commercial Fisheries) Regulation 2019*. This 13 month period is an anomaly, but is necessary to move the start date of the fishery season from 1 June each year to 1 July each year.

The commercial spanner crab fishery (managed area A) is a total quota entitlement managed fishery concentrated in south-east Queensland from Seventeen Seventy to the Gold Coast. Fishers target spanner crabs using baited tangle nets set on the sand. The fishery has approximately 40 boats participating in the fishery. The total quota entitlement for the fishery is set biennially.

From season to season, the declared total quota entitlement for a commercial fishery may be increased or decreased depending upon the status of the fish stocks concerned. As a consequence, the amount of catch (in kilograms) that a unit entitles the holder to take also increases and decreases.

The commercial spanner crab fishery (managed area A) is managed using a harvest strategy. Harvest strategies outline clear decision rules that increase and decrease the allowable harvest based on the health of the fishery. In most circumstances, a change to the total quota entitlement

will be consistent with the harvest strategy for the nominated fishery. A harvest strategy for the commercial spanner crab fishery (managed area A) was approved on 8 April 2020 in accordance with Part 2 of the *Fisheries Act 1994*.

On 24 February 2020, the Spanner Crab Working Group recommended that there be no change to the total quota entitlement for the 2020-21 and 2021-22 ITQ years, by assessing the fishery indicators (commercial catch and effort data, and the independent survey data) against the decision rules outlined in the draft harvest strategy for the fishery. Despite the harvest strategy being a draft at the time the Working Group met, no changes were made to the harvest strategy upon its approval under Part 2 of the *Fisheries Act 1994*. The recommendation from the Working Group was no change to the total quota entitlement for the next two fishery seasons.

Consequently, the *Fisheries Quota (Spanner Crab Fishery) Amendment Declaration 2020* prescribes the following total quota entitlements for the commercial spanner crab fishery:

- For the ITQ year 1 June 2020 to 30 June 2021, 891 tonnes.
- For ITQ years commencing on or after 1 July 2021, 847 tonnes.

The ITQ year 1 June 2020 to 30 June 2021 has an additional 44 tonnes because it is one month longer than the ordinary fishery season. The additional 44 tonnes was calculated by averaging the last five years of catch data for June (excluding the worst year of 2017 which was an outlier).

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Section 28 Cultural rights - Aboriginal peoples and Torres Strait Islander peoples

Clause 4 of the *Fisheries Quota (Spanner Crab Fishery) Amendment Declaration 2020*, which sets total quota entitlements for the 1 June 2020 to 31 June 2021 and 1 July 2021 to 30 June 2022 fishing seasons, may interact with Aboriginal peoples' ability to maintain and strengthen their distinctive spiritual, material and economic relationships with waters and coastal seas with which they have a connection under Aboriginal tradition (subsection 28(2)(d)), and to conserve and protect the environment and productive capacity of their waters and coastal seas (subsection 28(2)(e)).

The *Fisheries Quota (Spanner Crab Fishery) Amendment Declaration 2020* may impact on Aboriginal persons and Torres Strait Islander persons because it may reduce the availability of this fishery resource to traditional owners.

Section 24 Property rights

Clause 4 of the *Fisheries Quota (Spanner Crab Fishery) Amendment Declaration 2020*, which sets total quota entitlements for the 1 June 2020 to 31 June 2021 and 1 July 2021 to 30 June 2022 fishing seasons, may interact with a person's right to own property and not arbitrarily be deprived of his or her property (section 24) because ITQ units have property-like

characteristics. However, this amendment declaration does not limit a person's property rights because it does not limit a person from owning or trading ITQ units, nor will it reduce his or her ITQ unit allocation. Additionally, no person is being arbitrarily deprived of his or her property. No further assessment under the *Human Rights Act 2019* is required.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Section 28 Cultural rights - Aboriginal peoples and Torres Strait Islander peoples.

(a) the nature of the right

Section 28 provides for the distinct cultural rights held by Aboriginal peoples and Torres Strait Islander Peoples as Australia's first people. This clause is modelled on article 27 of the International Covenant on Civil and Political Rights (ICCPR), but also on articles 8, 25, 29 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). These articles recognise that Indigenous Peoples and individuals have the right: not to be subjected to forced assimilation or destruction of their culture (article 8); to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas (article 25); to conserve and protect the environment and the productive capacity of their lands, territories and waters (article 29); and to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions (article 31).

Subsection (1) recognises that Aboriginal peoples and Torres Strait Islander Peoples hold distinct cultural rights.

Subsection (2) recognises the rights of Aboriginal peoples and Torres Strait Islander Peoples to live life as Aboriginal or Torres Strait Islander persons who are free to practise their culture. The practise of culture includes, for example: the right to enjoy and maintain identity and culture; to maintain and use Indigenous languages; to maintain kinship ties; a freedom to teach cultural practices and educations to their children; the right to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

Subsection (3) provides that Aboriginal peoples and Torres Strait Islander Peoples have the right not to be subjected to forced assimilation of their culture.

This section is intended to be read with section 107 of the *Human Rights Act 2019*, which provides that the Act does not affect native title rights and interests.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The limitation on the cultural rights of Aboriginal and Torres Strait Islander Peoples relates to a reduction in the availability of this fishery resource to traditional owners. This may, for example, reduce the ability of Aboriginal and Torres Strait Islander people to maintain their distinctive spiritual, material and economic relationship to these waters as there will be a reduction in fisheries resources available to them.

The purpose of the limitation is to continue to ensure the long-term, commercial sustainability of the fishery resource. The *Fisheries Quota (Spanner Crab Fishery) Amendment Declaration 2020* sets out what the commercial fishing sector can harvest. It restricts the ability for overfishing to occur, specifically from commercial harvest, which would deplete fish stocks. This restriction on commercial catch, in turn, helps to ensure that Aboriginal peoples and Torres Strait Islander peoples can continue to enjoy their traditional relationship with waters and coastal seas including through traditional fishing methods.

The purpose of the limitation, to ensure the long-term, commercial sustainability of a natural resource, is recognition that natural resources are limited and must be managed, which is a relevant consideration in modern society. The limitations on this right are, therefore, consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Limiting the cultural rights of Aboriginal and Torres Strait Islander people through a reduction in the availability of certain fisheries resources is directly linked to the purpose of ensuring the long-term, commercial sustainability of the fishery resource as the restrictions help to reduce the risk of overfishing to occur.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The limitation on the rights is the least restrictive way to address the long term, commercial viability of the fishery resource. While the cultural rights of Aboriginal Peoples and Torres Strait Islander Peoples may be impacted by the operation of the commercial sector, Aboriginal and Torres Strait Islander Peoples will still be able to maintain their distinctive relationship with waters and coastal seas under Aboriginal tradition or Island custom, including through traditional fishing methods. The amendment declaration only applies to commercial fishing, and will reduce the impact on cultural fishing from the commercial fishing sector. There are no other reasonable available ways to restrict commercial catch.

In addition, limiting this right through the setting of a total quota entitlement potentially serves to preserve the distinctive spiritual, material and economic relationship with the land and waters, which could otherwise be limited in these waters if a total quota entitlement were not set and over-fishing occurred.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The setting of a total quota entitlement in the commercial spanner crab (managed area A) fishery may limit the cultural rights of Aboriginal and Torres Strait Islander Peoples by reducing the availability of this fishery resource to traditional owners. This, among other outcomes, may affect their right to maintain their distinctive spiritual, material and economic relationship with the land and waters.

Balanced against this limitation is the importance of preserving Queensland's fisheries resources from overfishing for all fishing sectors, which also, importantly, helps to protect Aboriginal Peoples and Torres Strait Islander Peoples' traditional cultural rights and connection to these waters. Therefore, the rights are only limited in a broad-scale commercial

fishing context, where a lack of limitation could result in depletion of fish stocks and, therefore, impact on achieving the purpose of ensuring the long-term sustainability of fish stocks in Queensland.

(f) any other relevant factors

The *Fisheries Quota (Spanner Crab Fishery) Amendment Declaration 2020* only relates to commercial harvest, and will not restrict Aboriginal and Torres Strait Islander Peoples from undertaking cultural harvest. The Queensland Government uses other policies and tools to ensure Aboriginal and Torres Strait Islander Peoples are able to maintain and strengthen their distinctive spiritual, material and economic relationships with waters and coastal seas with which they have a connection under Aboriginal tradition (subsection 28(2)(d)) and to conserve and protect the environment and productive capacity of their waters and coastal seas (subsection 28(2)(e)).

Further, the *Fisheries Quota (Spanner Crab Fishery) Amendment Declaration 2020* does not restrict the locations or time that Aboriginal and Torres Strait Islander peoples can fish, or restrict the amount they can catch.

Conclusion

I consider that part of the *Fisheries Quota (Spanner Crab Fishery) Amendment Declaration 2020* may limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom, to the extent outlined in this statement. I further consider that the remainder of the *Fisheries Quota (Spanner Crab Fishery) Amendment Declaration 2020* is compatible with the *Human Rights Act 2019* because it raises human rights issues but does not limit human rights.

Mark Furner MP
Minister for Agricultural Industry Development and Fisheries

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