

Fisheries (Saucer Scallops) 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 (Saucer Scallops) Amendment Declaration 2020* made under the *Fisheries Act 1994*.

In my opinion, the *Fisheries (Saucer Scallops) Amendment Declaration 2020*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The main purposes of the *Fisheries Act 1994* (Act) are 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.

Section 33 of the Act provides that the chief executive may make a fisheries declaration of the types listed in part 5, Division 1, subdivision 1 including a regulated fish declaration, a regulated waters declaration, and a quota declaration prescribed under sections 34, 35 and 37.

The objective of the *Fisheries (Saucer Scallops) Amendment Declaration 2020* (Amendment Declaration) is to amend the *Fisheries Declaration 2019* to implement urgent fisheries management action to rebuild the stocks of saucer scallop to a target of 40 per cent of unfished biomass in the Queensland southern offshore and inshore trawl regions.

It includes the need to take the following management action:

- reducing the total scallop effort entitlement from 118,865 to 80,000 effort units for the southern offshore and inshore trawl regions in order to protect saucer scallop stock to enable stock to rebuild to a 40 per cent biomass by 2026;
- shortening the closure period for taking or possessing saucer scallops for the southern offshore and inshore trawl regions by 10 days. This will balance the need to protect scallop stocks by the reduction in the scallop effort entitlement, which has the potential of affecting the livelihood of fishers who do not travel outside the southern inshore region, with additional fishing days;
- implementing an additional 31 days restriction on the possession or use of trawl nets in the Southern Inshore Trawl Region. This is comprised of a 19-day extension of the existing six week closure, which reduces fishing pressure on all stocks, including scallops, while still allowing fishers to continue to fish during the peak market period leading up to Christmas. This is combined with a 12-day restriction during the Christmas/new year period to allow fishers to have time off without risk of the total effort entitlement being reached during this time and to allow scallop meat quality to improve. The restrictions will

not apply to a person possessing or using an otter trawl net under a T6, T7, or T8 licence. Fishers will still be able to continue to fish for other species outside of the Southern Inshore Trawl Region during the closure periods;

- providing for midday commencement and end time for the no-take closure periods to align with existing trawl closures.

Human Rights Issues

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

Section 24 Property rights

Section reference	How the clause engages the right	Restriction of right
Clause 3 - Section 86	This section provides for a regulated period restricting the taking or possession of saucer scallops and provides for a reduction in the total effort units that can be used in the scallop fishery during a fishing season. This may potentially affect a person's property rights.	Effort units have property-like characteristics which means that, in cases where effort is reduced, effort unit holders' property rights may be limited.

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

(a) The nature of the right

Section 24 provides for property rights. This clause is modelled on article 17 of the Universal Declaration of Human Rights (UDHR). The right essentially protects a person from having his or her property unlawfully removed. Subsection (1) provides that all persons have the right to own property alone or with others. Subsection (2) provides that a person must not be arbitrarily deprived of his or her property. The protection against being deprived of property is limited to arbitrary deprivation of property.

(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 section 24 property rights within the Amendment Declaration results in the restriction of the total number of effort units that can be used to take scallop during the annual period from midday on 1 May to midday on 20 November. This does not directly restrict an individual's access right for that fishery. The Amendment Declaration does not limit a person's property rights because it does not limit a person from using his or her allocated effort units or allowing someone else to use his or her effort units to fish for other permitted fisheries resources within the fishery. Additionally, no person has been arbitrarily deprived of his or her property because the reductions in the total effort entitlement does not restrict the competitive access to a share of the total effort entitlement.

These limitations are consequently 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

The limitation of property rights helps to achieve the purpose of ensuring the long-term sustainability of the commercial fishing industry through the reduction of pressure on saucer scallop stocks.

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

At this time, the methods referred to above are the best available solutions for ensuring commercial sustainability of the East Coast Fishery. The limitations pursued have considered ways to be as minimally restrictive as possible, such as shortening the closure period for taking or possessing saucer scallops for the southern offshore and inshore trawl regions by 10 days. This will balance the need to protect scallop stocks by the reduction in the scallop effort entitlement, which has the potential of affecting the livelihood of fishers who do not travel outside the southern inshore region, with additional fishing days.

(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 limitations do not result in the deprivation of property rights and are the least restrictive way to address the long-term commercial viability of the fishery resource.

The combined management action, including the reduction in the total effort entitlements, is implemented to support the rebuilding of stocks of saucer scallop to sustainable levels. In doing this, the management action seeks to balance the long-term sustainability of the saucer scallop stocks and viability of the industry, including maintaining Commonwealth Wildlife Trade Operation and export approval for the East Coast Trawl Fishery.

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

Section reference	How the clause engages the right	Restriction of right
Clause 3 - Section 86	This section restricts the taking or possession of saucer scallops in regulated periods and provides for a total effort unit cap, which may not be consistent with traditional Aboriginal or Torres Strait Islander traditions, potentially limiting their ability to maintain and strengthen their relationship with waters and coastal seas.	Aboriginal peoples and Torres Strait Islander peoples maintain traditional fishing rights and can fish using traditional methods in this capacity as long as the fishery resources taken are not sold commercially, which partially restricts cultural rights.

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

(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 1966* (ICCPR), but also 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 an Aboriginal or Torres Strait Islander person who is free to practise his or her culture. The practice 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 section 28 cultural rights within the Amendment Declaration results in the restriction of the amount of, and times, saucer scallops can be accessed in the fishery. The purpose of this limitation is to limit the ability for overfishing to continue, which would deplete the saucer scallop stocks. This limitation, in turn, helps to ensure that Aboriginal and Torres Strait Islander peoples can continue to enjoy their traditional relationship with waters and coastal seas through traditional fishing methods.

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

The restrictions imposed on the ways in which saucer scallops can be taken in the Amendment Declaration is directly linked to the intention of preserving saucer scallop stocks, as the limitations help to reduce the potential for overfishing to occur.

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

While the cultural rights of Aboriginal Peoples and Torres Strait Islander peoples are limited by the operation of these sections, 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 through traditional fishing methods. The restrictions outlined in these sections only apply to commercial fishing.

(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 importance of preserving Queensland's fisheries resources from overfishing for all fishing sectors, including Aboriginal Peoples and Torres Strait Islander peoples, outweighs the importance of preserving individual traditional cultural rights to maintain their economic relationship with fisheries resources in this instance. 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 saucer scallop stocks in Queensland, viability of the industry, and maintaining Commonwealth Wildlife Trade Operation fishing and export approval for the East Coast Trawl Fishery.

The combined management action, including the reduction in the total quota (effort) entitlement, is implemented to support the rebuilding of stocks of saucer scallop to sustainable levels. The management action seeks to balance the long-term sustainability of the saucer scallop stocks and viability of the industry, including maintaining Commonwealth Wildlife Trade Operation fishing and export approval for the East Coast Trawl Fishery.

Conclusion

I consider that the *Fisheries (Saucer Scallops) Amendment Declaration 2020* is compatible with the *Human Rights Act 2019* because it does not raise a human rights issue.

MARK FURNER MP
MINISTER FOR AGRICULTURAL INDUSTRY DEVELOPMENT AND FISHERIES

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