

Fisheries Quota (Reef Line Commercial Fishery) Amendment Declaration 2021

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 and Minister for Rural Communities, provide this human rights certificate with respect to the *Fisheries Quota (Reef Line Commercial Fishery) Amendment Declaration 2021* made under the *Fisheries Act 1994*.

In my opinion, the *Fisheries Quota (Reef Line Commercial Fishery) Amendment Declaration 2021*, 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 (Reef Line Commercial Fishery) Amendment Declaration 2021* is compatible with the rights protected by the *Human Rights Act 2019* for the reasons outlined in this statement.

Overview of the Subordinate Legislation

Fisheries Queensland manages a number of commercial fisheries using quota-based management systems which set the total allowable commercial catch for a fishery, part of a fishery, a species or group of species. This is achieved by either declaring a total quota entitlement for particular fisheries or parts of fisheries in the *Fisheries Quota Declaration 2019* (Quota Declaration), or by declaring how a fish is regulated in the *Fisheries Declaration 2019* (Fisheries Declaration) once the prescribed commercial catch reaches a certain amount for a species.

A total quota entitlement is declared for fisheries (or parts of fisheries) where participants in the fishery hold individual transferable quota authorities (units), which entitle the holder to take a portion of the declared total quota entitlement for that species or group of species during the season that correlates to their individual holding. Under this management system, persons who hold more units are able to take more product than persons who hold fewer units. From season to season, the declared total quota entitlement 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 Reef Line Fishery 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. Changes to the total allowable commercial catch are informed by the decision rules outlined in the harvest strategy for the nominated fishery and is always consistent with the principle for sustainable fisheries management.

The Reef Line Fishery Working Group, made up of industry, recreational, conservation and government representatives, met in April 2021 and discussed the 2020 stock assessment for coral trout, the 2020 stock assessment for red throat emperor, and the application of the harvest

strategy. They assessed the fishery indicators against the decision rules outlined in the harvest strategy and recommended the decision rules in the harvest strategy be applied. This resulted in the total quota entitlement for the 2021-2022 fishing season to reduce for regulated coral trout by 200 tonnes, and redthroat emperor by 52.88 tonnes.

The *Fisheries Quota (Reef Line Commercial Fishery) Amendment Declaration 2021* (the Amendment Declaration) amends the Quota Declaration to prescribe the following total quota entitlements for the Reef Line Commercial Fishery:

- For regulated coral trout, 963 tonnes; and
- For redthroat emperor, 558 tonnes.

Human Rights Issues

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

Section 24 Property rights

Clause 4 of the Amendment Declaration, which sets total quota entitlements for line years commencing from 1 July 2021, may interact with a person's right to own property and not be arbitrarily deprived of his or her property (section 24) because line units have property-like characteristics.

The Amendment Declaration may impact on a person's property rights because it is a reduction in the total quota entitlement for coral trout and redthroat emperor which has the effect of reducing the value of each line unit, because it reduces how much product fishers can take per line unit.

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

Clause 4 of the Amendment Declaration, which sets total quota entitlements for line years commencing from 1 July 2021, 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 Amendment Declaration may impact on Aboriginal persons and Torres Strait Islander persons because it may impact the availability of this fishery resource to traditional owners.

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

Section 24 Property rights

(a) the nature of the right

Section 24 provides for property rights. This section 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. This section does not provide a right to compensation. The protection against being deprived of property is internally 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 property rights relates to a reduction in the value of each line unit because it reduces how much product fishers can take. The purpose of the limitation is to continue to ensure the long-term sustainability of the fishery resource. The Amendment Declaration sets out what the commercial fishing sector can harvest. It restricts the ability for overfishing to occur, which would deplete fish stocks. The purpose of the limitation recognises 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 property rights of line unit holders through a reduction in the availability of coral trout and redthroat emperor is directly linked to the purpose of ensuring the long-term sustainability of the fishery resource as the restrictions help to reduce the potential for overfishing to occur.

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

The limitation on the right is the least restrictive way to address the long term, sustainability of the fishery resource. While the property rights of line unit holders will be impacted by the reduction in the total quota entitlement because it means the holder is entitled to take less fish, the Amendment Declaration does not limit or deprive the person of his or her line units in any other way or in relation to other participants in the fishery. Although there are alternative ways to restrict commercial catch, declaring a total quota entitlement is the most efficient and low risk way to ensure the long-term sustainability of the fishery. Total quota entitlement managed fisheries offer flexibility to fishing businesses, including, for example, by allowing for the trade and sale of units, and are commonly used to not only manage the sustainability of the fish stock, but also to improve catch rates and the profitability of the fishery by reducing competition.

(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 Reef Line Commercial Fishery may limit the property rights of line unit holders by reducing the availability of this fishery resource for commercial fishers. Balanced against this limitation is the importance of preserving Queensland's fisheries resources from overfishing. 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.

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 peoples. This clause is modelled on article 27 of the International Covenant on Civil and Political Rights (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 education 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 impacts on 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 Amendment Declaration 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 through traditional fishing methods.

The purpose of the limitation, to ensure the long-term, 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 peoples through a reduction in the availability of certain fisheries resources for commercial purposes is directly linked to the purpose of ensuring the long-term, sustainability of the fishery resource as the restrictions help to reduce the potential for overfishing to occur.

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

The limitation on the right 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 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 Reef Line Commercial 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 Amendment Declaration 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 Amendment Declaration does not restrict the locations, or times, that Aboriginal and Torres Strait Islander peoples can fish, or restrict the amount they can catch.

Conclusion

I consider that the *Fisheries Quota (Reef Line Commercial Fishery) Amendment Declaration 2021* is compatible with the *Human Rights Act 2019* because it 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 (Reef Line Commercial Fishery) Amendment Declaration 2021* 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 and
Minister for Rural Communities

© The State of Queensland 2021