

Fisheries (Saucer Scallops) 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 Minister for Rural Communities, provide this human rights certificate with respect to the *Fisheries (Saucer Scallops) Amendment Declaration 2021* made under the *Fisheries Act 1994*.

In my opinion, the *Fisheries (Saucer Scallops) Amendment Declaration 2021* (the Amendment Declaration), 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 Amendment Declaration is made under sections 33 and 34 of the *Fisheries Act 1994*.

The main purpose of the Amendment Declaration is to prevent the take of saucer scallops in the southern inshore and central trawl regions. It is proposed that this closure would remain in place until scallop stocks have rebuilt to a 30 per cent biomass level. Further purposes of the Amendment Declaration are to:

- continue to prevent the take of saucer scallop in the southern offshore trawl regions during the saucer scallop spawning season; and
- continue to restrict the use and possession of trawl nets within the southern inshore trawl region and southern offshore trawl regions at certain times, including during the saucer scallops spawning season.

Human Rights Issues

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

Section 24 Property rights

The Amendment Declaration interacts with a person's right to own property and not be arbitrarily deprived of his or her property (section 24) because primary commercial fishing licences (PCFLs), which entitle the holder to participate in the commercial fisheries for which the relevant fishery symbols are written on his or her licence, have property-like characteristics. The Amendment Declaration restricts how the holder can use his or her property-like licence by restricting or preventing the take of saucer scallops under the licence.

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

The Amendment Declaration interacts 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 impacts the availability of fishery resources to traditional owners because it restricts or prevents the take of saucer scallop.

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

(a) the nature of the right

Section 24 of the *Human Rights Act 2019* 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 their property. The protection against being deprived of property is limited to arbitrary deprivation of property.

Section 28 of the *Human Rights Act 2019* provides for the distinct cultural rights held by Aboriginal peoples and Torres Strait Islander peoples as Australia's first peoples. This section 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 purpose of restrictions to prevent or limit the take of saucer scallop that limits rights is to allow the biomass of the species to recover. The 2021 scallop stock assessment estimated the 2020 spawning biomass in the southern inshore trawl region was at 12 per cent of unfished biomass. Consistent with the Queensland Government's Sustainable Fisheries Strategy 2017-2027 and Harvest Strategy Policy, a biomass below 20 per cent is the limit reference point at which targeted fishing for the stock must cease and a rebuilding strategy be developed to rebuild the biomass to a sustainable level that would enable fishing to recommence. This is consistent with national standards for fisheries management.

The purpose recognises that natural resources are limited and must be sustainably managed, which is a relevant consideration in modern society. The results of the saucer scallop stock assessment indicate that abundance of the species is so low that existing fishing access, along with other environmental influences, are affecting recruitment. Not taking significant management action would likely mean the saucer scallop stock will never recover to sustainable levels. 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 PCFL holders and the cultural rights of Aboriginal peoples and Torres Strait Islander peoples by restricting and preventing the take of saucer scallops is directly linked to the purpose of allowing the biomass of the species to recover.

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

Given the low biomass of the saucer scallop stock, doing nothing poses a significant risk for the fishery. Since 2016, a range of management actions have been taken to attempt to rebuild saucer scallop stock while providing continued fishing access. Unfortunately, these actions have not been successful in the longer-term in rebuilding the stock. There are no alternative policy options that provide suitable protection to the saucer scallop stock to allow rebuilding to occur, other than restricting take in some way.

Based on knowledge to date, scallop in the Southern Offshore Trawl Region does not contribute to the spawning biomass of the scallop fishery, and scallop can continue to be taken from this region. Preventing the take of scallop from within the Great Barrier Reef Marine Park (Marine Park) is consistent with recommendations about concerns regarding the current health of the reef from Australian Government and international experts. The Marine Park is mostly contained within the Central and Southern Inshore Trawl Regions. Saucer scallops will continue to be permitted to be taken in the southern offshore trawl regions outside of saucer scallop spawning season because this area is outside the area assessed by the stock assessment.

The following options to limit the take of saucer scallop were rejected:

- Restrict the take of saucer scallop in the southern inshore trawl region, southern offshore trawl regions and central trawl regions until the biomass rebuilt to 40 per cent

(maximum sustainable yield). This option was not progressed because it is likely that rebuilding can be achieved with less impact social and economic impact.

- Restrict the take of saucer scallops in the southern inshore trawl region only until the species recovers to above 22 per cent biomass. Continued fishing would be permitted for scallops in both the southern offshore trawl regions and the central trawl regions. This option was not progressed because there is a lack of confidence that rebuilding of stocks can occur with minimal intervention.
- Restrict the take of saucer scallops from all trawl regions until there is evidence of significant recovery (40 per cent biomass) and prohibit fishing for any species in the southern inshore trawl region until saucer scallop is at 20 per cent biomass. This option was not progressed because it is considered too precautionary and would have a significant social and economic impact, with no certainty that the resulting scientific economic impacts would be justified in the effort to rebuild the biomass of the species.

(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 need to allow the scallop biomass to rebuild to sustainable levels, by restricting access to scallops in certain regions, so that the fishery is available over the long-term and for future generations outweighs the short-term impacts on PCFL holders, because they can fish elsewhere for scallops and/or take different species. The combination of restricting and preventing the take of saucer scallops in the relevant trawl regions is the most balanced option, providing protection for saucer scallops consistent with stock assessment recommendations, and simultaneously enabling some access to the species to mitigate the impact on human rights.

(f) any other relevant factors

The Amendment Declaration 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 under cultural harvest.

Conclusion

I consider that the *Fisheries (Saucer Scallops) Amendment Declaration 2021* is compatible with the *Human Rights Act 2019* because it does 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.

Mark Furner MP
Minister for Agricultural Development and Fisheries and
Minister for Rural Communities

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