

Fisheries (Hammerhead Sharks) Amendment Declaration 2022

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, the Honourable 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 (Hammerhead Sharks) Amendment Declaration 2022* (the Amendment Declaration) made under the *Fisheries Act 1994*.

In my opinion, 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 main policy objective of the *Fisheries (Hammerhead Sharks) Amendment Declaration 2022* (the Amendment Declaration) is to support sustainable management of hammerhead sharks through allowing better identification of species landed and reducing the risk of shark finning at sea and black marketing of fin product.

The Amendment Declaration is also proposed to help maintain the scalloped hammerhead shark's 'Conservation Dependent' status listing under the *Environment Protection and Biodiversity Act 1999 (Cth)* (EPBC Act) by implementing the Commonwealth Threatened Species Scientific Committee's (TSSC) management recommendation to require hammerhead sharks be landed with head and/or fins naturally attached in the Gulf of Carpentaria.

The objectives of the Amendment Declaration will be achieved by inserting a regulated fish declaration in the *Fisheries Declaration 2019* which creates the form requirement that hammerhead sharks (all species) taken in the Gulf of Carpentaria must be possessed as whole fish with fins naturally attached, or trunked or gutted with fins naturally attached, whilst on a boat. Introducing this requirement in the Gulf of Carpentaria will standardise the form requirement for commercial take of hammerhead sharks across Queensland.

As there is no recreational take of hammerhead sharks, this requirement will only apply to commercial fishers who hold a licence in a relevant fishery.

Human Rights Issues

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

Cultural rights—Aboriginal peoples and Torres Strait Islander peoples

Sharks, including hammerhead sharks, are significant as totemic symbols and as food resources to some Aboriginal peoples and Torres Strait Islander peoples. Hammerhead sharks are identified as a totem for many of the Torres Strait Island clans or families across the islands.

The Amendment Declaration engages, but does not limit, the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples protected under section 28 of the *Human Rights Act 2019*. In particular, Aboriginal peoples' and Torres Strait Islander 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 or Island custom (subsection 28(2)(d)), and to conserve and protect the environment and productive capacity of their waters and coastal seas (subsection 28(2)(e)) is engaged because it changes the management arrangements for hammerhead sharks in the Gulf of Carpentaria.

These rights are not limited, however, as the management change made does not restrict cultural harvest of hammerhead shark species, nor does it impact the availability of fishery resources to traditional owners because it does not alter the total amount of hammerhead sharks that may be taken in the Gulf of Carpentaria. The Amendment Declaration merely regulates the form in which commercial fishers are permitted to possess hammerhead sharks.

Property rights

The Amendment Declaration engages the property rights protected under section 24 of the *Human Rights Act 2019*. Under this section, "All persons have the right to own property alone or in association with others" and "a person must not be arbitrarily deprived of the person's property." Deprivation of property is not limited to physical dispossession of property and can take the form of any interference with the use, enjoyment or exploitation of private property.

The Amendment Declaration engages a person's property rights 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 for the licence-holder. The Amendment Declaration engages, but does not limit a licence-holder's property rights with respect to his or her licence, however, as the amendments do not restrict the amount of or manner in which hammerhead sharks can be taken under that licence.

The Amendment Declaration separately engages and minorly limits property rights by restricting how a licence-holder who has taken a hammerhead shark in the Gulf of Carpentaria can use and exploit that personal property, namely through requiring that person to possess each hammerhead shark he or she takes as the whole fish with fins naturally attached or trunked or gutted with fins naturally attached whilst on a boat.

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. 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.

(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 restricting how a licence-holder who has taken a hammerhead shark in the Gulf of Carpentaria can use and exploit that shark as personal property by requiring him or her to possess that shark as whole fish with fins naturally attached or trunked or gutted with fins naturally attached whilst on a boat is to support the sustainable management of hammerhead sharks through allowing better identification of species landed and reducing the risk of shark finning at sea and black marketing of fin product.

The Amendment Declaration is also proposed to help maintain the scalloped hammerhead shark's 'Conservation Dependent' status listing under the EPBC Act by implementing the TSSC's recommendation to require hammerhead sharks be landed with head and/or fins naturally attached in the Gulf of Carpentaria. This will maintain industry access to hammerhead sharks.

Sustainable management of a fishery resource promotes the common good while maintaining industry access promotes the rights of licence holders under a property-like PCFL. These purposes are consistent with a free and democratic society based on 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 licence-holders by requiring them to possess hammerhead sharks as whole fish with fins naturally attached or trunked or gutted with fins naturally attached whilst on a boat indirectly achieves the purposes of the amendments because it:

- allows better identification of species landed, for example, by enabling fishers to compare the physical attributes of hammerhead sharks caught or for Queensland Boating and Fisheries Patrol officers to confirm species identity; and
- reduces the risk of shark finning at sea and hence black marketing of fin product (which is much more easily concealed and transported than a trunk with fin attached) by making fishers unable to lawfully possess detached hammerhead shark fins on a boat.

Allowing better species identification will reduce uncertainty in hammerhead shark take data whilst discouraging black marketing will help ensure that all hammerhead sharks taken are properly reported. Both outcomes directly support more informed stock assessments for the scalloped hammerhead shark and other hammerhead shark species. These stock assessments will feed into improved management of the fishery, and ultimately help maintain its long-term sustainability.

Limiting property rights by restricting the form in which hammerhead sharks can be possessed on a boat will directly achieve the purpose of implementing the TSSC's management recommendation.

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

The purposes of the amendments cannot be achieved through any less restrictive and reasonably available means. The alternative management option of amending the *Fisheries*

Declaration 2019 to make hammerhead shark a ‘no take’ species in the Gulf of Carpentaria until further fisheries reforms are progressed is not less restrictive of property rights as it would more significantly limit the ability of licence-holders to take hammerhead shark.

To not act to implement the TSSC’s recommendation would be a less restrictive option, but would not support sustainable management of the scalloped hammerhead shark and would risk an ‘Endangered’ listing under the EPBC Act. An ‘Endangered’ listing would result in significant adverse impacts on fishers, including scalloped hammerhead shark becoming a ‘no take’ species nationally. This closure would cause further issues as even if fishers do not target scalloped hammerhead shark, it is extremely difficult for net-based fisheries to avoid interactions with 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 pressing need to support sustainable management of hammerhead sharks and maintain the scalloped hammerhead shark’s ‘Conservation Dependent’ status listing under the EPBC Act outweighs the limited impacts on licence-holders as they remain fully able to take hammerhead sharks under the relevant licence. The Amendment Declaration merely requires licence-holders to not remove fins from hammerhead sharks whilst on a boat. They remain able to do this, and otherwise exercise all relevant property rights in relation to a hammerhead shark, once it has been landed. The limitation on property rights is, therefore, reasonable and demonstrably justified in the circumstance.

Conclusion

I consider that the *Fisheries (Hammerhead Sharks) Amendment Declaration 2022* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

THE HONOURABLE MARK FURNER MP
MINISTER FOR AGRICULTURAL INDUSTRY DEVELOPMENT AND FISHERIES
AND MINISTER FOR RURAL COMMUNITIES

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