

# Fisheries (Spanish Mackerel) 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 (Spanish Mackerel) 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

Spanish mackerel (*Scomberomorus commerson*) is an important commercial and recreational fish species in Queensland. The majority of Queensland's commercial harvest of Spanish mackerel is taken in the Lucinda region, north of Townsville, during the spawning season, a two lunar month period in Spring during which Spanish mackerel school to form one of the most notable and predictable spawning aggregations of fish on the Great Barrier Reef.

In December 2021, the Department of Agriculture and Fisheries (the department) released the 2020 stock assessment for Australian east coast Spanish mackerel which estimated the unfished biomass to be approximately 17 per cent. The latest Status of Australian Fish Stocks Report for the species, published by the Fisheries Research and Development Corporation, has classified the stock as 'depleted' because it has fallen under the limit reference point of 20 per cent of unfished levels.

The main policy objective of the *Fisheries (Spanish Mackerel) Amendment Declaration 2022* (the Amendment Declaration) is to implement management action to support the recovery of Spanish mackerel stocks to a sustainable target of 40 per cent of unfished biomass in a 13–14 year rebuilding timeframe through a harvest reduction of 35–40 per cent across all sectors.

The policy objective of the Amendment Declaration will be achieved by amending Chapter 2, Part 5, Division 4 and Schedule 1, Part 1 of the *Fisheries Declaration 2019* (the Declaration) to insert a regulated waters declaration which will prohibit a person from taking or possessing (only if taken in contravention of the prohibition on take) Spanish mackerel in the regulated waters during the regulated periods. This regulatory approach is commonly referred to as a 'seasonal closure.'

The regulated waters and regulated periods are:

- Northern Spanish mackerel waters – tidal waters east of longitude 142°31'49" east and north of latitude 22° south from 22 October 2022 – 12 November 2022 and 21 November 2022 – 12 December 2022; and
- Southern Spanish mackerel waters – tidal waters east of longitude 142°31'49" east and south of latitude 22° south from 1 February 2023 – 21 February 2023 and 1 March 2023 – 21 March 2023.

Introducing the seasonal closures for four, three-week periods during the peak spawning and migrating periods will support harvest reduction through limiting opportunities for fishers to take the species when it is intensely aggregated. Implementing the seasonal closures in this way will also allow some fishing to occur, maintaining a local supply and market for Spanish mackerel and supporting businesses that rely on the fishery.

The seasonal closures will apply to commercial and recreational fishers. An exception applies for recreational fishers taking part in a licensed charter fishing trip in consideration of pre-existing charter bookings, which are made up to a year in advance. The department intends to remove this exception for the following season.

## 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

Spanish mackerel is targeted by Indigenous fishers along Queensland’s east coast.

The Amendment Declaration engages 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’ right to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom (section 28(2)(d)); and right to conserve and protect the environment and productive capacity of their territories, waters, coastal seas and other resources (section 28(2)(e)) are engaged because the Amendment Declaration changes the broader management arrangements for the take of Spanish mackerel in Queensland.

These rights are not limited, however, as the management changes made in the Amendment Declaration – the new seasonal closures – do not restrict cultural harvest of Spanish mackerel or negatively affect the species’ availability for cultural harvest. Instead, the Amendment Declaration positively protects Aboriginal peoples’ and Torres Strait Islander peoples’ rights as the seasonal closures support the recovery of Spanish mackerel to a sustainable biomass level of 40% of unfished biomass which in turn will increase the availability and security of the species for cultural harvest.

#### 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 amendments engage property rights because a Primary Commercial Fishing Licence (PCFL) with the ‘SM’ fishery symbol and an L1, L2, L3 or L8 line fishery symbol, which entitles the holder to commercially take Spanish mackerel in the fishery, has property-like characteristics for the licence-holder. Whilst the management change made in the Amendment Declaration does not restrict a person from reaching his or her quota limit, owning or trading quota, or reduce his or her quota allocation, it imposes a time restriction on when a commercial fisher can take Spanish mackerel to fill his or her quota under his or her licence, which is an interference with his or her property rights with respect to the use of that licence.

**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 limiting a licence-holder’s property rights by introducing seasonal closures for Spanish mackerel is to support rebuilding of the species’ stocks to a sustainable biomass level by reducing the current harvest amount. Rebuilding Spanish mackerel stocks will ensure that the species can continue to be sustainably harvested into the future.

Sustainable management of a fishery resource promotes the common good while enabling future sustainable harvest promotes the rights of holders of the property-like licences. 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 a licence-holder by introducing seasonal closures for Spanish mackerel indirectly achieves the purposes of the amendments. Introducing the seasonal closures during the peak spawning and migrating periods will support harvest reduction through limiting opportunities for fishers to take the species when it is intensely aggregated. Reducing current harvest is a key factor in rebuilding the species’ stocks to a sustainable biomass level.

(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.

A management option initially considered was a 2-year complete closure of the fishery for the taking of Spanish mackerel, however this is not less restrictive on fishers. A longer overall seasonal closure of 12 weeks (separated into 3-week blocks) was also considered in the second round of public consultation on management options to rebuild Spanish mackerel stocks. This option is not less restrictive on fishers and would involve more frequent seasonal closures and a longer overall closure period.

Maintaining the status quo would be the less restrictive option, but is not supported as it would risk further unsustainable decline in the Spanish mackerel biomass. This would result in ever greater adverse impacts on fishers from all sectors, Queensland's community, and environment. It would also fail to meet Commonwealth policy requirements, the Queensland Sustainable Fisheries Strategy: 2017–2027, the main objective of the *Fisheries Act 1994* and the Queensland's Government's responsibility to ensure our public fisheries resources are managed in a responsible and sustainable manner policy requirements.

(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 the recovery of Spanish mackerel stocks to a sustainable biomass level outweighs the limited human rights impact on licence-holders. Whilst the seasonal closures may make it more difficult for licence-holders to harvest Spanish mackerel by limiting opportunities to take the species when it is intensely aggregated, licence-holders are otherwise fully able to exercise the property-like rights of their licences. The impact of the restriction on a person's ability to fish under a licence is also balanced by dividing the seasonal closures into four, three-week periods which will provide an opportunity for licence-holders to continue to fish for Spanish mackerel during the spawning and pre/post-spawning (migration) seasons. The limitation on property rights is, therefore, reasonable, and demonstrably justified in the circumstance.

## Conclusion

I consider that the *Fisheries (Spanish Mackerel) 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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