

Fisheries (Effort Caps and Other Matters) 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, 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 (Effort Caps and Other Matters) 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 Amendment Declaration is made under section 33 of the *Fisheries Act 1994*.

Queensland's east coast trawl fishery (ECT Fishery) is the state's largest commercial fishery, of which a significant proportion operates within the Great Barrier Reef World Heritage Area. The target species of the ECT Fishery include several species of prawns, scallops and bugs, and it contributes to Queensland's gross value of seafood production and export. In the 2019-20 financial year, the ECT Fishery produced 6,579 tonnes of product worth \$95 million.

The ECT Fishery is divided into 6 trawl regions, set out in Schedule 2, Part 4, of the *Fisheries (Commercial Fisheries) Regulation 2019*. These regions are managed primarily under harvest strategies through input controls such as regional effort caps, strip closures, fishing limits, and regulated periods. A harvest strategy specifies pre-determined management actions necessary to achieve ecological, economic and/or social objectives of a fishery.

The management controls in the harvest strategies provide clear instruction across multiple stakeholder interests, ensure the sustainable distribution of fishing effort, and provide for the ongoing evidence-based review and development of the ECT Fishery's sustainability.

The Amendment Declaration makes changes to effort caps, strip closures, and regulated periods for the otter trawl sector in the ECT Fishery in order to:

- support sustainable management of eastern king prawn stocks in the southern offshore trawl region A and B (SOT Region);
- support the sustainable management of small and soft prawns during their rapid-growth period through amendment to strip closures in the SOT Region;
- maintain sustainable, research-based management practice for the otter trawl sector in the ECT Fishery through setting seasonal effort limits; and
- maintain the ongoing economic viability of the industry and sustainable management of fishery resources in the southern inshore trawl region (SIT Region).

The Amendment Declaration amends the *Fisheries Declaration 2019* (Fisheries Declaration) to achieve these objectives by:

- Expanding the regulated waters in the SOT Region to protect the juvenile or adolescent prawns in nearby locations outside the current strip closures.
- Amending section 94 to change the prescribed closure period for Stradbroke Island (Trawl nets) regulated waters from ‘1 November to midday on 1 March’ to ‘midday on 1 January to midday on 1 March’ to reflect key fishing periods for trawl fishers based on the Gold Coast.
- Amending section 94 to prescribe new regulated waters ‘North Reef (trawl nets) with an annual closure from midday on 1 November to midday on 1 March.
- Amending Schedule 1, Part 2 to prescribe boundaries for the new North reef (trawl nets) regulated waters.
- Amending Schedule 1, Part 2 to replace the entries for Caloundra to Moreton Island (trawl nets) and Stradbroke Island (trawl nets) to provide a new description of the regulated waters.
- Amending the maximum number of effort units for the SIT Region from 167,625 to 204,102 based on a three-year average.
- Inserting a new section 86BA which provides for a 24 day per-month fishing limit to trigger in the SIT Region to commence once 70% effort cap has been used.
- Omitting and replacing section 86 to prescribe a new annual regulated period for SOT Region A and B commencing 8am on 20 September to 6pm on 1 November.
- Amending section 86D to reduce the maximum effort units for the Central Trawl Region from 500,711 to 318,584 based on average effort usage over a three-year period.
- Amending section 86E to reduce the maximum effort units for the Northern Trawl Region from 418,657 to 250,178 based on average effort usage over a three-year period.

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

Queensland’s coastal waters provide food resources for, and are culturally significant to, many Aboriginal peoples and Torres Strait Islander peoples. Bugs and scallops, which are the target species of the commercial otter trawl sector in the ECT Fishery, are also harvested through cultural fishing by Aboriginal peoples and Torres Strait Islander peoples within the fishery area.

The Amendment Declaration engages and positively promotes 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’ rights 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)). These rights are engaged because the Amendment Declaration changes the broader management arrangements for the several species targeted in the otter trawl sector in the ECT Fishery.

These rights are not limited as the management changes made in the Amendment Declaration do 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. Therefore, the Amendment Declaration does not restrict any traditional or customary take of the ECF Fishery's target species. In addition, these management changes may increase the availability of fishery resources to traditional owners because they reduce the total amount of effort permitted in the otter trawl sector in the ECT Fishery, which will reduce overall take of the target species.

This Amendment Declaration positively promotes the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples by supporting the ongoing sustainability of the target species stocks in Queensland and, therefore, facilitating their ability to maintain distinctive spiritual, material and economic relationships with waters and coastal seas and to conserve and protect the environment and productive capacity of their waters and coastal seas.

Property rights

The Amendment Declaration engages the property rights protected under section 24 of the *Human Rights Act 2019*.

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. Whilst the management control changes made in the Amendment Declaration do not restrict a person from possessing a PCFL, the strip closures and regulated periods within the otter trawl sector in the ECT Fishery restrict how and when a person may conduct trawl fishing under his or her PCFL. This limits the property right of the licence-holder with respect to the use and exploitation of his or her PCFL.

The Amendment Declaration separately engages a person's property rights because effort units, which a person is required to hold to participate in the commercial fisheries for which the relevant fishery symbols are written on his or her licence, have property-like characteristics. Whilst the management control changes made in the Amendment Declaration do not restrict a person from possessing effort units, reducing the maximum allowable effort which can be used in the Central and Northern Trawl Regions and implementing a fishing limit trigger based on the maximum effort cap within the SIT region restricts how a person may conduct trawl fishing with his or her effort units. This limits the property right of the licence-holder with respect to use and exploitation of his or her effort units.

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

(a) the nature of the right

Section 24 of the HR Act provides for property rights. 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. 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.

This right is based on Article 17 of the Universal Declaration of Human Rights.

(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 purposes of limiting a PCFL-holder's property rights are to:

- support sustainable management of eastern king prawn stocks in the SOT Region; and
- support the sustainable management of small and soft prawns during their rapid-growth period through amendment to strip closures in the SOT Region.

The purposes of limiting an effort unit holder's property rights are to:

- maintain sustainable, research-based management practice for the otter trawl sector in the ECT Fishery through setting seasonal effort limits; and
- maintain the ongoing economic viability of the industry and sustainable management of fishery resources in the SIT Region.

Supporting sustainable fisheries management and economic viability of industry are purposes which 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 PCFL-holders by amending the strip closures and regulated periods within the ECT fishery indirectly achieves the purposes of the amendments.

This is because imposing strip closures and regulated periods restricts when and where otter trawl fishing is conducted in the ECT Fishery. Closing waters prevents trawling activity at times when particular species are vulnerable in the area, which allows greater numbers of stock to mature, and for species within the area to repopulate stock numbers during times of closure. This facilitates the ongoing ecological and economic sustainability of the ECT Fishery by ensuring that stock numbers are maintained from season to season.

Limiting the property rights of effort unit-holders through setting effort caps and implementing a fishing limit trigger based on that cap within the ECT Fishery indirectly achieves the purposes of the amendments.

This is because setting effort caps and implementing a fishing limit trigger directly manages the amount of fishing that may occur and, through this, indirectly restricts the amount of harvest that may occur. It is one of the primary mechanisms used to ensure the long-term sustainability of the fishery resource as the restrictions help to reduce the potential for the occurrence of overfishing.

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

The purposes of the Amendment Declaration cannot be achieved through any less restrictive and reasonably available means.

The Department examined alternative management options which imposed tighter restrictions on fishing gear, larger-scale regional closures, or industry-funded buyout of excess effort. These management options were not considered to be reasonably available alternatives as they would require far greater oversight and regulatory obligations, and impose a greater

administrative and economic burden on fishers and not provide the same high level management of fisheries resources.

(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:

- support sustainable management of eastern king prawn stocks in the SOT Region;
- support the sustainable management of small and soft prawns during their rapid-growth period through amendment to strip closures in the SOT Region;
- maintain sustainable, research-based management practice for the ECT Fishery through setting seasonal effort limits; and
- maintain the ongoing economic viability of the industry and sustainable management of fishery resources in the SIT Region

outweighs the Amendment Declaration's limited impact on licence-holders and effort unit-holders property rights in his or her PCFL and effort units respectively.

Licence-holders remain fully able to take the species targeted in the ECT Fishery, and otherwise exercise all relevant property rights in relation to their PCFLs, outside of the strip closures during the relevant closure periods.

Whilst the days on which effort unit-holders will be permitted to fish will be restricted once the effort cap is reached, effort unit-holders remain fully able to take the species targeted in the otter trawl sector in the ECT Fishery, and otherwise exercise all relevant property rights in relation to their effort units, in compliance with the cap.

The limitation on property rights is, therefore, reasonable and demonstrably justified in the circumstance.

Conclusion

I consider that the Amendment Declaration 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