

Fisheries Legislation (Coral) Amendment Regulation 2023

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 Legislation (Coral) Amendment Regulation 2023* (the Amendment Regulation) made under the *Fisheries Act 1994*.

In my opinion, the *Fisheries Legislation (Coral) Amendment Regulation 2023*, 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 Queensland Coral Fishery (QCF) is managed using a mixture of input and output controls, including individual transferable quota (ITQ) authorities and prescribed commercial catch (PCC) limits to ensure sustainable fishing practices and the long-term health of fish stocks.

In order to export Australian native animal or plant species, or species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES-listed), for commercial purposes, the plant or animal must come from an approved program. For example, the Wildlife Trade Operation (WTO), permitted through a WTO declaration (commonly referred to as a WTO export approval). WTO export approvals are granted for a maximum of three years.

The QCF is managed under both ITQ and PCC systems to continue to fulfill conditions under the WTO export agreement, which was granted on 28 October 2021. The conditions included that, in time for the 2022-23 fishing season, annual harvest limits must be imposed for:

- several coral species specified in the approval letter,
- all coral species with a catch history in the fishery during the reference period used in the *Coral Fishery Harvest Strategy 2021-2026* (2016-2018), and
- all other CITES-listed coral species harvested in the fishery.

In order to meet condition deadlines, harvest limits for all of the species required by the WTO export approval were implemented by PCC through the *Fisheries (Coral) Amendment Declaration 2022*, with the intent to revisit this arrangement for popular target species in the future.

Concerns have been raised that the ongoing use of PCC limits could result in unsustainable competition between fishers to harvest several popular species of coral as quickly as possible before PCC limits are reached. This may contribute to increased harvest of substandard specimen, leading to economic challenges to the profitability of the commercial market.

Concern was also raised that fishing activity may become more heavily concentrated closer to shore, resulting in a risk of localised depletion of popular coral species.

The Amendment Regulation for the QCF addresses the potential risks posed by long-term use of PCC limits to regulate popular coral species, and promotes sustainable fishing practices while ensuring the QCF meets conditions imposed under the WTO trade agreement:

- Implementing ITQs for key coral species to provide increased security of access for individual fishers, avoid a competitive race-to-fish, and reduce the likelihood of over-harvesting species in localised areas.
- Addressing resource implications associated with new ITQ arrangements, such as fees associated with the purchase and transfer of ITQ units.
- Remaining consistent with conditions imposed on the QCF under the WTO trade agreement.

The Amendment Regulation achieves these objectives by implementing intended management of key coral species through ITQ to avoid the risks associated with ongoing, long-term management of popular coral species through PCC, while remaining consistent with WTO trade agreement conditions.

Human Rights Issues

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

Section 24 - Property rights

Section 24 of the *Human Rights Act 2019*, relating to property rights, is relevant to the move from PCC limits to species-specific ITQ units for seven coral species in the QCF. In order to implement species-specific ITQ unit management, each relevant coral species must be moved from the broader category under DS-ITQ units, which authorise the take of “specialty coral species”, to new species-specific ITQ units.

Due to this, DS-ITQ units will no longer provide the holder with authority to fish the seven coral species. This is offset by the automatic allocation of the seven new ITQ units for existing holders of DS-ITQ units. Holders of DS-ITQ units will be allocated new ITQ units on a proportional basis, providing ongoing entitlement to the seven species which are no longer available under DS-ITQ units.

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

Section 28 of the *Human Rights Act 2019*, relating to cultural rights, is minimally impacted by the proposed declaration and regulation amendments to introduce new ITQ categories for individual coral species in the commercial harvest of the QCF. The amendments only apply to commercial harvest and will not limit cultural harvest activities, so no further assessment under the Act is required.

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

Section 24 - Property rights

(a) the nature of the right

Property rights, as protected under Section 24 of the *Human Rights Act 2019*, are derived from Article 17 of the Universal Declaration of Human Rights. These rights safeguard individuals from arbitrary or unlawful removal, interference, or deprivation of their property. In the context of the Amendment Regulation, property rights are engaged through the introduction of new ITQ categories for specific coral species, which may affect the value of existing DS-ITQ quota holdings.

The ITQ system operates as a property-like system, where quota authorities entitle individuals to a portion of the declared total quota entitlement (TQE) for a specific species or group of species during a quota year. The introduction of new ITQ categories for relevant specialty coral species devalues DS-ITQ units by reducing the weight entitlement of individual units, as well as reducing the number of coral species which may be taken under the DS-ITQ units.

Quota holders will be automatically allocated new ITQ units without the usual associated charges to provide entitlement to the relevant specialty coral species proportional to their existing DS-ITQ quota holdings, offsetting the impact of the Amendment Regulation by providing continued access to relevant specialty coral species.

The effect of devaluing existing DS-ITQ units engages the right to 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 to the rights to property imposed by the Amendment Regulation is implemented with the aim to address potential risks to the environmental sustainability and economic viability of the QCF while remaining compliant with conditions under the QCF WTO trade agreement.

This is consistent with a free and democratic society based on human dignity, equality and freedom as it addresses the need for a balance between economic interests of the QCF, and preserving the environment for the community and future generations by complying with conditions imposed under the WTO trade agreement that are designed to support ecological sustainability within the fishery.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose.

The limitation on property rights in the Amendment Regulation directly serves the purpose of ensuring environmental sustainability and economic viability in the QCF. By reallocating ITQs for the specific coral species on a proportional basis, the Amendment Regulation aims to remain compliant with conditions imposed under the WTO trade agreement while addressing potential risks of prolonged management of particular popular coral species through PCC limits.

The introduction of ITQ categories will support a more controlled and responsible harvest of coral species where fishers are entitled to a portion of the TQE for popular species. This approach will enable the fishery to continue operating economically while remaining compliant with WTO trade agreement conditions aimed at reducing environmental impact of fishing on the reef ecosystem. Implementing these measures can help maintain a balance between economic interests and environmental conservation.

In summary, the limitation imposed by the Amendment Regulation is well-aligned with its purpose and is expected to contribute to the avoidance of potential issues posed by ongoing implementation of PCC limits on popular coral species, while remaining consistent with WTO export approval conditions to provide for species-specific harvest limits.

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

The conditions under the WTO export approval necessitate implementation of species-specific harvest limits, which preclude less restrictive alternatives. While PCC limits have provided species-specific harvest limits, species-specific ITQ units are a more reasonable and less restrictive means of managing popular coral species, where competitive fishing has the potential to negatively impact the ecological and economic viability of the QCF.

The Amendment Regulation, therefore, represents the most reasonable and least restrictive approach to achieve these objectives, as PCC management of popular coral species encourages competitive behaviour that is not compatible with responsible fisheries management practices for popular coral 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 purpose of the limitation, which is to remain compliant with conditions under the WTO export agreement and avoid risks associated with ongoing management of popular coral species via PCC limits. Achieving this purpose benefits the public by promoting responsible resource management, ensuring the long-term health of the reef ecosystem, and supporting the livelihoods of those involved in the QCF.

The limitation affects property rights, as it makes changes to the existing ITQ unit entitlements by removing seven coral species from DS-ITQ unit entitlements. This is offset by automatic allocation of nil-cost new ITQ units that are proportionally based on existing DS-ITQ unit holdings, providing continued access to the seven coral species.

The introduction of ITQ categories for certain coral species in the fishery are intended to prevent impacts of a race-to-fish, such as overfishing of easily accessed areas, while still allowing the fishery to operate under the WTO export agreement to maintain economic viability.

The limitation serves to protect the long-term interests of both the environment and the people relying on the fishery for their livelihoods. The means selected to achieve the proper purpose are designed to minimise the impact on property rights.

(f) any other relevant factors

The *Fisheries Act 1994* grants the chief executive the power to revoke any declaration, including if it unreasonably impacts cultural or property rights. This safeguard provides an additional layer of protection for property rights and ensures that any adverse effects can be addressed if necessary.

Conclusion

I consider that the *Fisheries Legislation (Coral) Amendment Regulation 2023* 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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