

Fisheries Legislation (Spanish Mackerel and Bar Rockcod) Amendment Declaration 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 (Spanish Mackerel and Bar Rockcod) Amendment Declaration 2023* (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

Spanish mackerel (*Scomberomorus commerson*) is an important commercial and recreational fish species in Queensland. Around 40 per cent of Queensland's commercial harvest of Spanish mackerel is taken in the Lucinda region, north of Townsville, during the spawning season in Spring when 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 first policy objective of the Amendment Declaration is to implement a range of management actions to support the recovery of Spanish mackerel 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 Amendment Declaration achieves its first policy objective by making amendments to the Fisheries Declaration 2019 (Fisheries Declaration) and Fisheries (Quota) Declaration 2019 to:

- Reduce the total quota entitlement for take of Spanish mackerel by commercial fishers from 578.013 tonnes to 165 tonnes;
- Reduce the recreational possession limit for Spanish mackerel to one fish per person or two fish per boat with two or more recreational fishers on board (excluding licensed charter fishing trips);

- Remove the extended charter trip possession limit for Spanish mackerel, which currently allows recreational fishers to take twice the in-possession limit;
- Remove the exception for the possession of Spanish mackerel during regulated period by recreational fishers on licensed charter fishing trips in Spanish mackerel waters;
- Add further regulated periods for the Northern Spanish mackerel waters for the period 2023-2025 based on lunar phasing and clarify that the regulated periods for the Southern Spanish mackerel waters are fixed;
- No longer permit a person to possess Spanish mackerel taken outside of the Northern or Southern Spanish mackerel waters, within those waters, during the regulated periods;
- In line with the above, insert the following exemptions to the seasonal closures:
 - An exemption that will provide commercial fishers with additional time to return to or wait in or nearby specified ports after the regulated period has commenced, enabling remote fishers to fish until the start of both the Spanish mackerel and Reef line fishery closures, travel time to return to their port and additional time to unload; and
 - An exemption that that will permit a person to possess Spanish mackerel on a non-commercial boat during a regulated period for consumption, if there is no fishing gear on board. (i.e. the fish was not taken during that trip).

Implementing the above measures will help reduce harvest by limiting opportunities for fishers to take the species when it is aggregated to spawn. Continuing to implement 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.

All of the amendments will commence on 1 July 2023.

Bar Rockcod

Bar rockcod (*Epinephelus septemfasciatus* and *Epinephelus ergastularius*) is a coral reef fin fish that is targeted in the Reef line fishery. Coral reef fin fish are harvested by the commercial, recreational (including charter) and Indigenous fishing sectors. The main target species of the commercial sector in the Reef line fishery are coral trout and redthroat emperor. This fishery also targets ‘other species’ such as crimson snapper, red emperor, saddletail snapper, spangled emperor and stripey snapper. Bar rockcod is one of the ‘other species’ for this fishery.

The Reef line fishery is managed using a quota management system which has individual transferrable quota (ITQ) units (“line units”) for three categories - coral trout, redthroat emperor and ‘other species’. The sustainable harvest levels for species in the Reef line fishery are managed consistent with the Harvest Strategy for the fishery (*Reef line fishery harvest strategy: 2020–2025*).

In 2022, a review of the reef line fishery identified that bar rockcod’s catch in 2021 calendar year had exceeded the historic average (12.33 tonnes a year between 2011-2015) by more than 2 times the historic average (24.67 tonnes) and reached 27.5 tonnes. The assessment of bar rockcod’s catch triggered decision rule 2.3 within the Harvest Strategy:

If the annual harvest of any species is greater than 2 times the average reference period catch (2011–2015) and the annual catch is more than 20 tonnes, an interim competitive Total Allowable Commercial Catch will be set at 2 times the reference period catch level and a stock assessment will be undertaken.

The second policy objective of the Amendment Declaration is therefore to amend the *Fisheries Declaration 2019 (the Declaration)* to give effect to this decision rule. This will help ensure the sustainability of this fish species while monitoring and research is undertaken to complete a stock assessment that provides a sustainable recommended harvest limit.

The second policy objective of the Amendment Declaration is achieved through an amendment to the Fisheries Declaration to introduce a Prescribed Commercial Catch (PCC) limit of 24.67 tonnes for bar rockcod in Schedule 2, Part 2 of the Fisheries Declaration. The PCC for bar rockcod will be calculated by the chief executive from the period of 1 July to 30 June each year, which aligns with the ‘line year’ for ITQ units in the reef line fishery. Once the PCC has been reached, there will effectively be a total prohibition on the commercial catch of bar rockcod as the reef line fishery is the only commercial fishery that permits the take of bar rockcod.

Human Rights Issues

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

In my opinion, the human rights that are relevant to the Amendment Regulation are:

- Cultural rights—Aboriginal peoples and Torres Strait Islander peoples – s 28 of the *Human Rights Act 2019*

Spanish mackerel and bar rockcod can be targeted by Aboriginal and Torres Strait Islander persons 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 and bar rockcod in Queensland.

These rights are not limited, however, as the management changes made in the subordinate legislation, in particular, the new seasonal closures and reduced possession limits, do not restrict cultural or customary harvest of Spanish mackerel and bar rockcod 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 management actions supports the recovery of Spanish mackerel to a sustainable biomass level and the ongoing sustainable management of bar rockcod.

Property Rights

(a) The nature of the right

Section 24 of the *Human Rights Act 2019* protects property rights. This section 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 Amendment Declaration limits property rights protected under section 24 of the *Human Rights Act 2019*. The Amendment Declaration does this by reducing the total quota entitlement (TQE) of Spanish Mackerel and imposing a PCC for bar rockcod for commercial fishers acting under a relevant authority in the respective Spanish mackerel and Reef line fisheries. Primary Commercial Fishing Licences with a quota entitlement entitles the holder to take commercial take of selected fish species up to their ITQ limit, and for this reason have property-like characteristics. By reducing the TQE for Spanish mackerel and introducing a PCC for bar rockcod, affected commercial fishers will be entitled to take less Spanish mackerel and will be limited in their take of bar rockcod, which is an interference with the property rights of those licences.

The purpose of limiting a licence-holder's property rights by reducing the total quota entitlement for Spanish mackerel and introducing a PCC for bar rockcod is to support rebuilding of the Spanish mackerel stocks to a sustainable biomass level by reducing the current harvest amount and to support the ongoing sustainable management of bar rockcod. These actions 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 reducing the TQE for Spanish mackerel and introducing a PCC for bar rockcod directly achieves the purposes of the limitation. Reducing the commercial take of both species through the particular amendments will assist in rebuilding the stocks of Spanish mackerel and support the ongoing sustainable management of bar rockcod, ensuring the sustainability of the fisheries.

(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.

Maintaining the status quo would be the less restrictive option but is not supported as it would risk further unsustainable decline in the biomass of Spanish mackerel. 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.

An alternative approach was not considered for the amendment of the PCC for bar rockcod, as this is necessitated by decision rules set out in the Harvest Strategy

(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 the recovery of Spanish mackerel sustainable biomass level and support the ongoing sustainable management of bar rockcod outweighs the limited human rights impact on licence-holders. Whilst the reduction in Spanish mackerel's total quota entitlement and the introduction of a PCC for bar rockcod will reduce and or limit their entitlement under a licence, licence-holders are otherwise fully able to exercise the property-like rights of their licences. The limitation on property rights is, therefore, reasonable, and demonstrably justified in the circumstance.

Conclusion

I consider that the *Fisheries Legislation (Spanish Mackerel and Bar Rockcod) Amendment Declaration 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 MINISTER FOR RURAL COMMUNITIES

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