

## State Development and Regional Industries Committee

### Report No. 35, 57th Parliament

#### Subordinate legislation tabled on 12 October 2022

## 1 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
140	Fisheries (Spanish Mackerel) Amendment Declaration 2022	12 October 2022	21 February 2023

\*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

## 2 Summary of committee considerations

The Fisheries (Spanish Mackerel) Amendment Declaration 2022 (the Declaration) introduces management actions to support the recovery of the east coast Spanish mackerel fishery by prohibiting the take or possession of Spanish mackerel in certain regulated waters at certain periods of time.

The committee was briefed extensively by the Department of Agriculture and Fisheries (the department) on the Declaration, including the stock assessments underpinning the proposed management actions and consultation undertaken by the department. This information was fundamental to informing the committee's deliberations, and is available on the committee's website.<sup>1</sup>

The committee did not identify any issues regarding the policy to be given effect by the subordinate legislation, fundamental legislative principles, or its lawfulness. The explanatory notes comply with the *Legislative Standards Act 1992* (Legislative Standards Act).

The committee is satisfied that the Declaration is compatible with human rights and that the certificate tabled with the Declaration provides a sufficient level of information to understand potential issues.

A summary of the committee's examination is provided in the remainder of this report.

## 3 Fisheries (Spanish Mackerel) Amendment Declaration 2022 – SL No. 140

### 3.1 Policy objective

The objective of the Fisheries (Spanish Mackerel) Amendment Declaration 2022 (Declaration) is to implement steps that support the recovery of the east coast Spanish mackerel fishery (the fishery).

<sup>1</sup> Correspondence, Director-General, Department of Agriculture and Fisheries, 27 May 2022. <https://documents.parliament.qld.gov.au/com/SDRIC-F506/GENERALBRI-2D6D/220527%20-%20Robert%20Gee,%20Director-General%20DAF%20-%20Spanish%20mackerel%20stock%20assessment.pdf>

The Declaration seeks to support a target level of 40 per cent of unfished biomass over a 13 to 14-year rebuilding period through a harvest reduction of 35 to 40 per cent across all fishing sectors (i.e. commercial, recreational and charter fishers).<sup>2</sup>

The explanatory notes state that the harvest reduction proposed by the Declaration will:

- allow limited fishing to occur, maintaining a local supply and market for Spanish mackerel and supporting businesses that rely on the fishery;
- support rebuilding through greater reproductive output by leaving 175 to 189 additional tonnes of Spanish mackerel in the water annually;
- minimise the social and economic impacts while still achieving an acceptable rebuilding timeframe; and
- align with stakeholder feedback on preferred management measures.<sup>3</sup>

### **3.2 What actions does the Declaration introduce?**

The Declaration prohibits a person from taking or possessing Spanish mackerel in regulated waters during the regulated period. The Declaration commenced on 22 October 2022.<sup>4</sup>

The regulated waters are described in Schedule 1, Part 1 of the Declaration and are:

- Northern Spanish mackerel waters – tidal waters east of longitude 142°31'49" east and north of latitude 22° south; and
- Southern Spanish mackerel waters – tidal waters east of longitude 142°31'49" east and south of latitude 22° south.<sup>5</sup>

The Declaration introduces northern and southern seasonal closures for 4 three-week periods (a total of 6 weeks for each of the regulated waters) to reduce the amount of catch taken when the Spanish mackerel are most vulnerable to fishing.<sup>6</sup> The regulated periods are described in the Declaration as follows:

- Northern Spanish mackerel waters – from 22 October 2022 – 12 November 2022 and 21 November 2022 – 12 December 2022; and
- Southern Spanish mackerel waters – from 1 February 2023 – 21 February 2023 and 1 March 2023 – 21 March 2023.<sup>7</sup>

The seasonal closures will apply to commercial and recreational fishers, with an exception for licensed charter fishing occurring before 1 July 2023. This is to account for pre-existing charter bookings. The explanatory notes state that the department intends to remove this exemption for the following fishing season.<sup>8</sup>

### **3.3 Stock assessments**

Stock assessments underpin the target levels and management actions proposed by the Declaration. The committee is aware that some stakeholders within the fishing sector have questioned certain

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<sup>2</sup> Explanatory notes, p 2.

<sup>3</sup> Explanatory notes, p 3.

<sup>4</sup> Fisheries (Spanish Mackerel) Amendment Declaration 2022 (Amendment Declaration), section 2.

<sup>5</sup> Explanatory notes, p 3.

<sup>6</sup> Explanatory notes, p 3.

<sup>7</sup> Amendment Declaration, sections 38A and 38B.

<sup>8</sup> Explanatory notes, p 3.

aspects of the stock assessment. To understand this issue further, the committee requested extensive briefing on the nature, inputs and review of the assessment model.<sup>9</sup> In summary, the briefing advised:

- The department's 2020 stock assessment estimated unfished Spanish mackerel biomass to be between 14 and 27 per cent of unfished levels, and most probably at around 17 per cent.<sup>10</sup>
- The Fisheries Research and Development Corporation classified the stock as 'depleted'.<sup>11</sup>
- The stock assessment used a leading population model, known as stock synthesis, to assess the status of the fishery up to 2020. This model is one of the most widely used and tested models in the world and is used by other Australian fisheries jurisdictions such as the Commonwealth Scientific and Industrial Research Organisation (CSIRO), the South Australian Research and Development Institute, the Australian Fisheries Management Authority, and the Victorian Fisheries Authority.<sup>12</sup>
- The stock assessment used data on annual harvests taken by all fishing sectors, commercial catch rates of fish, age-length measures of fish, and biological parameters for fish growth, natural mortality and spawning activity.
- The department confirmed that data used in assessing the stock has been provided by commercial and private fishers through the following 4 data collection programs:
  - Commercial fishing logbooks: The largest source of catch and effort data comes from this source. Commercial fishers and charter operators have been providing this data through a mandatory logbook program since 1988.
  - Boat Ramp Surveys: This program collects data from recreational fishers. It has been conducted across Queensland for more than 12 years, with more than 2,900 surveys conducted statewide each year.
  - Statewide recreational fishing survey: This program also collects data provided by recreational fishers related to fishing participation and catch information. These surveys have been undertaken since 1997, with the most recent survey occurring in 2019.
  - Biological fish sampling: Both commercial and recreational Spanish mackerel fishers contribute samples to the monitoring program. Biological monitoring of Spanish mackerel in Queensland commenced in 1999 and collects information on the length, sex and age of fish harvested by the two fishing sectors.<sup>13</sup>
- An independent review of the 2020 stock assessment was conducted by a former CSIRO fisheries scientist, Dr Neil Klaer. Dr Klaer agreed the data was used appropriately in the assessment and that the assessment model itself was suitable.<sup>14</sup>
- The reviewer questioned the model setting for lower resilience in the ability for Spanish mackerel as a species to bounce back after high fishing pressure and was unable to support model predictions until this uncertainty was resolved. These reservations related to the value for the 'steepness parameter' or how resilient Spanish mackerel are, they did not relate to the validity of the input data for the stock assessment.<sup>15</sup>

<sup>9</sup> Correspondence, Director-General, Department of Agriculture and Fisheries, 27 May 2022. <https://documents.parliament.qld.gov.au/com/SDRIC-F506/GENERALBRI-2D6D/220527%20-%20Robert%20Gee,%20Director-General%20DAF%20-%20Spanish%20mackerel%20stock%20assessment.pdf>

<sup>10</sup> Explanatory notes, p 2; Department of Agriculture and Fisheries, correspondence, 27 May 2022, p 1.

<sup>11</sup> Explanatory notes, p 2.

<sup>12</sup> Department of Agriculture and Fisheries, correspondence, 27 May 2022, p 1.

<sup>13</sup> Department of Agriculture and Fisheries, correspondence, 9 December 2022, pp 1-2.

<sup>14</sup> Department of Agriculture and Fisheries, correspondence, 27 May 2022, p 2.

<sup>15</sup> Department of Agriculture and Fisheries, correspondence, 27 May 2022, p 2.

- Subsequent work conducted by the department in response to Dr Klaer's review showed that his preference for a higher steepness value was not supported by model testing and that the stock assessment had used a more appropriate value.<sup>16</sup>
- The stock assessment and Dr Klaer's review were presented to the Sustainable Fisheries Independent Expert Panel (Expert Panel). In a communique, the Expert Panel commented that while Dr Klaer's comments were justified, the department's response was considered appropriate. Further, given the department's model is more precautionary than the reviewer's, the Expert Panel considered that the most responsible way forward is to accept the stock assessment base case as the most credible scenario and to make management decisions accordingly.<sup>17</sup>
- The department advised that proposed management actions were further supported by an estimate in the recent stock assessment of Spanish mackerel in the Torres Strait as well as longstanding concerns about sustainability, with evidence of a 70 per cent reduction in the number of Spanish mackerel spawning aggregations within 2 decades, a decline in historically important spawning aggregations from waters east of Cairns, a reduction in the size and frequency of spawning aggregations in the Lucinda region and a long-term decline in commercial catch rates.<sup>18</sup>

### 3.3.1 Consultation process

The committee enquired further into the consultation process for management action in the Spanish mackerel fishery. The explanatory notes, and briefing from the department outlined the following key activities:

- The East Coast Spanish Mackerel Working Group was established in early 2021 to provide operational advice on the management of the east coast Spanish mackerel fishery. The group met several times to discuss, amongst other matters, the status of Spanish mackerel stocks and future management arrangements.<sup>19</sup>
- The first phase of public consultation included an online survey and discussion paper in April/May 2022 which were designed to better understand the preferences of stakeholders. 1,486 submissions were received. Feedback identified that fishers would like the shortest rebuilding timeframe (7 years, which would require a total fishery closure) but preferred management measures that would rebuild the stock in 13-16 years.<sup>20</sup>
- The majority of respondents identified as recreational fishers (89 per cent), with submissions also received from commercial fishers (7 per cent), charter fishing operators (4 per cent) and interested community members (8 per cent).<sup>21</sup> Many respondents had multiple interests in the fishery and have therefore identified themselves as aligning with more than one stakeholder group.
- A second round of public consultation was conducted in July/August 2022 and focused on 2 management options (each comprised of several management measures). 781 submissions were received.

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<sup>16</sup> Department of Agriculture and Fisheries, correspondence, 27 May 2022, p 2.

<sup>17</sup> Department of Agriculture and Fisheries, correspondence, 27 May 2022, p 2.

<sup>18</sup> Department of Agriculture and Fisheries, correspondence, 27 May 2022, pp 2-3. To read more about the stock assessments see:

<https://documents.parliament.qld.gov.au/com/SDRIC-F506/GENERALBRI-2D6D/220527%20-%20Robert%20Gee,%20Director-General%20DAF%20-%20Spanish%20mackerel%20stock%20assessment.pdf>

<sup>19</sup> Explanatory notes, p 7.

<sup>20</sup> Explanatory notes, p 7; Department of Agriculture and Fisheries, correspondence, 27 May 2022, p 4.

<sup>21</sup> Explanatory notes, p 7.

- Again, the majority of respondents were recreational fishers (67 per cent), with submissions also received from commercial fishers (8 per cent), charter fishing operators (3 per cent), interested community members (9 per cent), seafood wholesalers and marketers (3 per cent), the hospitality sector (2 per cent), Traditional Owners and fishers (<1 per cent), fishing tackle retailers (2 per cent) and environmental, industry peak body and other non-government organisations (2 per cent).
- It was observed that the majority (69 per cent) of respondents preferred Option 1 over Option 2. Option 1 included the seasonal closures progressed in the Declaration.
- The Sustainable Fisheries Independent Expert Panel, which was established to provide independent expert advice to the Minister on best practice fisheries management and implementation of the Sustainable Fisheries Strategy, was also consulted on the management options.<sup>22</sup>
- Key stakeholders consulted on the management options include: Australian Fishing Trade Association, Australian Marine Conservation Society, Game Fishing Association of Australia, Great Barrier Reef Marine Park Authority, Green Shirts Movement, Gulf of Carpentaria Commercial Fishermen Association, Moreton Bay Seafood Industry Association, Queensland Seafood Industry Association, Sunfish Queensland, The Fisherman’s Portal Inc. and World Wide Fund for Nature.<sup>23</sup>

### 3.4 Impact of not introducing management actions

The explanatory notes provide an overview of alternative management options considered by the department.

Maintaining the status quo was not supported as this would ‘allow unsustainable fishing practices to continue and risk further declines in the Spanish mackerel biomass and possible fishery collapse’:

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 Sustainable Fisheries Strategy, 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.<sup>24</sup>

The explanatory notes also state that a complete fishery closure was not seen as suitable due the severe social and economic impacts on fishers and businesses that depended on Spanish mackerel. A complete closure would also create challenges in monitoring stock recovery as it would halt the collection of fishing data.<sup>25</sup>

### 3.5 Consistency with fundamental legislative principles

Fundamental legislative principles require that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament.<sup>26</sup>

The explanatory notes acknowledge that the Declaration potentially impacts the right to conduct business without interference, because it prevents commercial fishers from taking and possessing Spanish mackerel in certain places at certain times.

The committee is satisfied with the justification provided, that the potential breach by the introduction of management measures is necessary to enable the fishery to recover to a sustainable

<sup>22</sup> Explanatory notes, p 8.

<sup>23</sup> Explanatory notes, p 8.

<sup>24</sup> Explanatory notes, p 4.

<sup>25</sup> Explanatory notes, p 4.

<sup>26</sup> Legislative Standards Act, section 4(2).

level to protect the financial viability of the commercial fishery in the longer term and to sustain the species for future generations.

Further, it is noted that the amendments do not interfere with a commercial fisher's authority to take Spanish mackerel. They must merely comply with the seasonal closures and can continue to take the species under their fishing licence outside of those times.<sup>27</sup>

The explanatory notes do not raise the fundamental legislative principles that legislation should have sufficient regard to Aboriginal tradition and Island custom.<sup>28</sup> However, the issue is addressed from a human rights perspective in the human rights certificate.

### **3.6 Explanatory notes**

The explanatory notes comply with part 4 of the Legislative Standards Act.

### **3.7 Compatibility with human rights**

The committee is satisfied that the subordinate legislation is compatible with human rights.

The committee considered several potential limitations as they relate to the impact of cultural rights of Aboriginal and Torres Strait Islander peoples and property rights.

The committee concluded that cultural rights are not limited by the Declaration as the regulation does not propose to restrict or limit the cultural harvest of Spanish mackerel. The human rights certificate states that the Declaration protects Aboriginal and Torres Strait Islander peoples' cultural rights by supporting the recovery of Spanish mackerel and its availability for cultural harvest.<sup>29</sup>

All persons have the right to own property and not be arbitrarily deprived of it.<sup>30</sup> The human rights certificate notes that the Declaration engages property rights by imposing a time restriction on when a fisher may take Spanish mackerel. This interferes with the fisher's property rights with respect to the use of their fishing licence.<sup>31</sup> The committee agrees that the limitation on the use of a fishing licence is justified as its purpose is to support the pressing need to recover Spanish mackerel stocks, and that this outweighs the limited human rights impact on licence-holders.<sup>32</sup>

### **3.8 Human rights certificate**

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **4 Recommendation**

The committee recommends that the House notes this report.



Chris Whiting MP

**Chair**

**February 2023**

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<sup>27</sup> Explanatory notes, p 7.

<sup>28</sup> Legislative Standards Act, section 4(3)(j).

<sup>29</sup> Human rights certificate, p 2.

<sup>30</sup> Human Rights Act, section 24.

<sup>31</sup> Human rights certificate, p 3.

<sup>32</sup> Human rights certificate, p 4.

**State Development and Regional Industries Committee**

<b>Chair</b>	Mr Chris Whiting MP, Member for Bancroft
<b>Deputy Chair</b>	Mr Jim McDonald MP, Member for Lockyer
<b>Members</b>	Mr Michael Hart MP, Member for Burleigh
	Mr Robbie Katter MP, Member for Traeger
	Mr Jim Madden MP, Member for Ipswich West
	Mr Tom Smith MP, Member for Bundaberg

## **Statement of Reservations**

### **Fisheries (Spanish Mackerel) Amendment Declaration 2022**

**Jim McDonald MP (Deputy Chair) and Michael Hart MP**

Spanish mackerel (*Scomberomorus commerson*) is an important commercial and recreational fish species in Queensland that is prized for its status as a high-quality eating fish and a powerful sports fish. The LNP support a sustainable fishing future and believes not enough consultation with industry has occurred in determining these fishing restrictions.

In 2020, 267 tonnes of Spanish mackerel was taken by commercial fishers and an estimated 183 tonnes was taken by recreational and charter fishers.

Although the East Coast Spanish Mackerel Fishery (the Fishery) operates along the entire Queensland east coast, including in the Great Barrier Reef Marine Park, approximately 40 per cent of Queensland's commercial harvest is taken in the waters north of Townsville.

The Fishery is a quota-managed fishery with a total allowable commercial catch (TACC) limit of 578.013 tonnes split into individual transferable quota units which commercial fishers must hold in the fishery. Only approximately 50 per cent of the TACC has been used each year since its introduction in 2004.

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 State Development and Regional Industries committee recently heard from commercial fishers during a committee inquiry into seafood labelling that there are many reasons why 50 per cent of the TACC has not been achieved; and that the calculations and assumptions used by the department to arrive at an estimate of 17 per cent of unfished biomass are conservative.

Changes to assumptions used in these calculations can produce an outcome of 40 per cent of unfished biomass, which is considered the sustainable goal of the management actions of this *Fisheries (Spanish Mackerel) Amendment Declaration 2022* to support the recovery of Spanish mackerel.



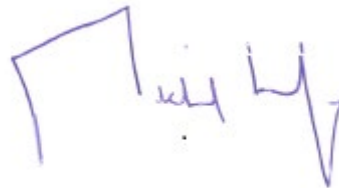
True consultation is a two-way flow of information and data between government and all stakeholders. Regrettably, in this case the government has chosen not to engage in an open and meaningful way and has not accepted the scientific data offered by the fishing industry.

The LNP members of this Committee therefore remain concerned that the government's decision could be based on incomplete science.

Regrettably, this government has stopped listening. This is a situation the LNP is determined to reverse when in government. Real, meaningful consultation is the best way to ensure that best practice management processes are implemented to deliver sustainability and industry certainty.



**Mr Jim McDonald MP**  
**Deputy Chair**  
**Member for Lockyer**



**Mr Michael Hart MP**  
**Member for Burleigh**