

State Development and Regional Industries Committee

Report No. 50, 57th Parliament

Subordinate legislation tabled on 22 August 2023 – SL No. 80 of 2023

1 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
80	Fisheries Legislation (Spanish Mackerel and Bar Rockcod) Amendment Declaration 2023	22 August 2023	16 November 2023

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

2 Committee consideration of the subordinate legislation

The committee examined the Fisheries Legislation (Spanish Mackerel and Bar Rockcod) Amendment Declaration 2023 (SL No. 80 of 2023). The legislation implements 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. The legislation also introduces a Prescribed Commercial Catch limit for bar rockcod.

The committee did not identify any significant issues regarding the policy to be given effect by the legislation or its consistency with fundamental legislative principles and lawfulness. Explanatory notes tabled with SL No. 80 of 2023 were compliant with the *Legislative Standards Act 1992* (LSA).¹

The human rights certificate tabled with the legislation provided a sufficient level of information to facilitate understanding of the legislation's compatibility with the *Human Rights Act 2019* (HRA).² The committee considered the legislation to be compatible with the HRA and potential limitations to the property rights of commercial fishers to be reasonable and demonstrably justified in the circumstances.

3 Fisheries Legislation (Spanish Mackerel and Bar Rockcod) Amendment Declaration 2023 – SL No. 80

SL No. 80 of 2023 has two objectives:

- to help rebuild the Spanish Mackerel stock in the East Coast Spanish Mackerel Fishery in line with the findings of the 2020 stock assessment
- to maintain sustainable harvest levels for the Bar Rockcod in the Reef Line Fishery following evidence of high levels of fishing in 2021 (more than twice the historic average).³

SL No. 80 builds on the regulations contained within the Fisheries (Spanish Mackerel) Amendment Declaration 2022 which included the introduction of regulated waters and regulated closed periods in

¹ *Legislative Standards Act 1992*, Part 4.

² *Human Rights Act 2019*, s 41.

³ SL No. 80, explanatory notes, pp 1-3.

the Northern and Southern Spanish mackerel waters which were designed to prevent fishing during peak spawning and migrating periods.⁴

SL No. 80 introduces additional restrictions, including:

- reducing the total quota entitlement take for commercial fishers (578.03 tonnes to 165 tonnes)
- reducing the recreational possession limit to one fish per person or 2 fish per boat
- removing the previous additional possession allowances for extended charter trips
- adding a further regulated period for the Northern Spanish Mackerel waters for 2023-25.⁵

The explanatory notes state:

To not make the Amendment Declaration would allow unsustainable fishing practices to continue and risk further declines in the Spanish mackerel biomass, including a possible fishery collapse. This would result in ever greater adverse impacts on fishers from all sectors, Queensland's community, and environment.⁶

SL No. 80 also introduces a total Prescribed Commercial Catch (PCC) limit of 24.67 tonnes for Bar Rockcod. After this limit is reached the commercial fishing of Bar Rockcod will effectively cease. The introduction of the limit is in line with the management actions approved under the Harvest Strategy for the Reef Line Fishery.

The explanatory notes indicate a comprehensive consultation strategy in relation to the amendments. The East Coast Spanish Mackerel Working Group was established in early 2021 to provide operational advice on the management of the fishery. The group met several times and current membership is made up of Fisheries Queensland staff (including the Chair), 5 commercial fishermen, 3 recreational fishermen, and a representative of the Great Barrier Reef Marine Park Authority, Conservation sector, Aboriginal or Torres Strait Islander Community (one each).⁷

In 2022 public consultation took place in two stages. The first round sought to determine stakeholder preferences on possible management measures to rebuild the stock back to a sustainable biomass level. Port visits with dedicated commercial Spanish Mackerel fishers were held in Cairns, Townsville and Mooloolaba. The second round of consultation sought to provide stakeholders with an opportunity to have their say on rebuilding options and a draft harvest strategy, which were developed using feedback from the first round of consultation.⁸

Feedback was also received through nearly 1000 free form written comments and through discussions with fishery stakeholders over the phone, in meetings organised with affected fishers across Queensland's east coast and through responses to emails and letters sent to stakeholders.⁹

The additional restrictions proposed by SL No. 80 of 2023, including the regulated period for the Northern Spanish Mackerel, are in line with the results of the public consultation which favoured a strategy to rebuild stock over 13-14 years.¹⁰

3.1 Fundamental legislative principles

The committee considered the impact of the amendment declaration on the fundamental legislative principle of maintaining the rights and liberties of individuals. This is because the amendment

⁴ SL No. 140 Fisheries (Spanish Mackerel) Amendment Declaration 2022, explanatory notes, p 2.

⁵ SL No. 80, explanatory notes, pp 3-4.

⁶ SL No. 80, explanatory notes, p 4.

⁷ Department of Agriculture and Fisheries, correspondence, 18 October 2023.

⁸ SL No. 80, explanatory notes, p 6.

⁹ SL No. 80, explanatory notes, p 6.

¹⁰ Department of Agriculture and Fisheries, correspondence, 27 September 2023.

declaration restricts ordinary activities and interferes with the conduct of business by reducing quota entitlements (Spanish Mackerel) and introducing a PCC (Bar Rockcod).

Committee comment

The committee is satisfied that SL No. 80 of 2023 has sufficient regard for fundamental legislative principles due to the need to recover the stock levels of both fish and to protect the long-term financial viability of the commercial fisheries.

3.2 Compatibility with *Human Rights Act 2019*

The committee considered the impact of the amendment declaration on the property rights of commercial fishers as the amendment declaration reduces the total quota entitlement of Spanish Mackerel and imposes a PCC for Bar Rockcod.

The human rights certificate justifies the limitation on the basis that it is needed ‘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’.¹¹ The human rights certificate concluded that the need to support both the recovery of Spanish mackerel sustainable biomass level and the ongoing sustainable management of Bar Rockcod outweighs the importance of preserving commercial fishers’ property rights.¹²

Committee comment

The committee is satisfied that SL No. 80 of 2023 is compatible with the *Human Rights Act 2019* and that the potential limitation to the property rights of commercial fishers is reasonable and demonstrably justified in the circumstances.

4 Recommendation

The committee recommends that the House notes this report.



Chris Whiting MP

Chair

November 2023

State Development and Regional Industries Committee

Chair

Deputy Chair

Members

Mr Chris Whiting MP, Member for Bancroft

Mr Jim McDonald MP, Member for Lockyer

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

¹¹ SL No. 80, human rights certificate, p 4.

¹² SL No. 80, human rights certificate, p 5.

Statements of Reservation from members of the LNP Opposition

Mr Jim McDonald MP and Mr Michael Hart MP

The LNP Opposition has serious concerns with how the state government is treating the commercial fishing industry and the small and family businesses that rely on it. We believe the government are mismanaging the fishing industry and gambling with the future of fishers.

Barely three years ago Spanish mackerel was supposed to be a sustainable fishery. Now the government says that it needs to take drastic action because the situation has deteriorated so much that there is only 17 per cent of the original stock assessment. The Opposition wants answers as to what has happened in those three years.

If such drastic action is needed within three years, surely the Opposition must ask the question as to whether the government has botched the management of Spanish mackerel fisheries? The Minister should be open and transparent with the data used to justify these decisions because people deserve to know that decisions are reasonable and not simply massaged to suit other political agendas.

We have been told by commercial fishers across the state that the government was quick to dismiss an independent peer review which said the government's assumptions were incorrect. Commercial fishers told us the government ignored it.

The government also continually refuses to conduct a regulatory impact statement about the effects of changes on the industry including the Spanish mackerel fishery. The LNP has warned the government repeatedly about this.

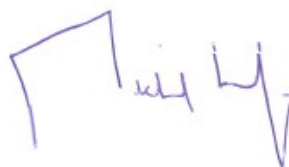
We believe that this government's changes will significantly impact the livelihoods of fishers, their families and the communities where they live. It will drive people out of business and it will impact tourism and hospitality-based businesses, yet to many, it appears that the government has resorted to spin to avoid responsibility.

The Minister has claimed that compensation is not needed because it is a management decision and not a regulatory change. They are hollow words.

The LNP supports taking reasonable measures to protect fish species, but these decisions make it clear this government cannot manage fisheries.



Mr Jim McDonald MP
Deputy Chair
Member for Lockyer



Mr Michael Hart MP
Member for Burleigh



Robbie Katter MP

Member for Traeger

REF: MO

13 November 2023

Mr Chris Whiting MP
Chair, State Development and Regional Industries Committee
Via email: SDRIC@parliament.qld.gov.au

Dear Chair,

RE: Statement of Reservation - Fisheries Legislation (Spanish Mackerel and Bar Rockcod) Amendment Declaration 2023 (SL No. 80 of 2023)

I write to provide a Statement of Reservation to the *Fisheries Legislation (Spanish Mackerel and Bar Rockcod) Amendment Declaration 2023 (SL No. 80 of 2023)*.

SL No. 80 of 2023 implements a range of management actions to “support the recovery of Queensland’s east coast Spanish Mackerel to a sustainable target of 40 per cent of unfished biomass in a 13-14 year rebuilding timeframe”. It also introduces a Prescribed Commercial Catch limit for bar rockcod.

This Statement of Reservation will deal only with the former legislative element, specifically SL No. 80’s introduction of additional Spanish Mackerel fishing restrictions, including:

- reducing the total quota entitlement take for commercial fishers (578.03 tonnes to 165 tonnes);
- reducing the recreational possession limit to one fish per person or 2 fish per boat;
- removing the previous additional possession allowances for extended charter trips;
- adding a further regulated period for the Northern Spanish Mackerel waters for 2023-25.

I am concerned that the Committee has failed to acknowledge, let alone adequately address, alternative evidence provided and opinions expressed during the Queensland Government’s consultative process surrounding SL No. 80.

I would like to indicate my concerns about the Committee’s comment that it “did not identify any significant issues regarding the policy to be given effect by the legislation or its consistency with fundamental legislative principles and lawfulness”.

Finally, I do not agree with the comments that “SL No. 80 of 2023 has sufficient regard for fundamental legislative principles” and that “SL No. 80 of 2023 is compatible with the *Human Rights Act 2019* and that the potential limitation to the property rights of commercial fishers is reasonable and demonstrably justified in the circumstances”.

In my opinion the quasi-consultative process that has occurred in relation to SL No. 80, through the East Coast Spanish Mackerel Working Group since 2021, has been tokenistic and was designed only to provide a mandate to the Queensland Government’s pre-determined policy decision to reduce access for commercial fishers to the East Coast Spanish mackerel fishery.



Robbie Katter MP

Member for Traeger

The motivations behind this policy decision are for the Government of the day to explain, however I am not convinced by the argument – echoed in this Committee report – that the new regulations are justifiable on the basis of environmental protections, and that to “not make the Amendment Declaration would allow unsustainable fishing practices to continue and risk further declines in the Spanish mackerel biomass, including a possible fishery collapse.”

Prima facie acceptance of this statement fails to acknowledge that:

- The commercial fishing sector’s strong, and near-universal, disagreement with the Department of Agricultural Industries Development and Fisheries (DAF) claims that the Spanish Mackerel fishery had declined to an unsustainable biomass;
- The fact the Spanish Mackerel fishery had never been over-fished by the commercial sector on the basis of annual fishing quotas set by DAF;
- The refusal of DAF to acknowledge that, if the fishery was truly overfished and had become unsustainable, this had occurred either as a result of or in conjunction with the commercial fishing quotas it was responsible for setting;
- As of mid-July, 2023, all fishermen were reporting high volumes of the Spanish Mackerel species across Queensland waters;
- The Queensland Seafood Industry Association (QSIA) had in early 2023 commissioned an independent report into how the analysis and modelling of the current Spanish mackerel figures was derived to justify the State Government’s decision, and that this report called into question a number of the scientific modelling features underpinning DAF’s reports into Spanish Mackerel fishery;
- Commercial fishing industry representatives have formally and informally appealed to the Queensland Government to ask that the new East Coast Spanish Mackerel Total Allowable Commercial Catch (TACC) Declaration be withdrawn, or at least delayed so that DAF’s figures and modelling can be examined in relation to QSIA’s independent report.

In my opinion, the Committee should recommend that the Queensland Government immediately engage in genuine consultation with the Queensland commercial fishing industry regarding SL No. 80 and either withdraw or delay the introduction of the new Spanish Mackerel TACC and its associated regulations.

Yours sincerely,

Robbie Katter
Member for Traeger