

EXPLANATORY STATEMENT

LEGISLATIVE INSTRUMENT

Issued by the Authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991
Northern Prawn Fishery Management Plan 1995

Direction No. NPDF 126.
Prohibition on Fishing (Prior to Seasons)

The Direction is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Subsection 17(5A) of the *Fisheries Management Act 1991* (the Management Act) provides, inter alia, that a plan of management made under the Management Act may provide for the Australian Fisheries Management Authority (AFMA), after such consultation as set out in the plan of management, to direct that fishing is not to be engaged in the fishery, or a particular part of the fishery, during a particular period or periods.

Subsection 17(5B) of the Management Act provides that a direction under Subsection 17(5A) in relation to a particular part of the fishery may identify the part concerned in any way or ways, including by reference to a particular area, a particular species or type of fish, a particular kind or quantity of fishing equipment, a particular method of fishing, or any combination of the above.

Subsection 25(3) of the Plan provides that, before AFMA issues a direction, it must consult with the Northern Prawn Fishery Management Advisory Committee (NORMAC) about the content of the direction unless the direction is issued in circumstances of an emergency.

The Fishery

The fishery extends from the northern coast of Western Australia, the coast of the Northern Territory and the coast of Queensland in the Gulf of Carpentaria, to the outer limit of the Australian fishing zone. The fishery is for prawns and 4 major ecologically related species (namely squid, scampi, bugs and scallops). There are 2 fishing seasons in the fishery, bounded by closures. The area of the fishery overlaps the areas of a number of fisheries for other species that are managed by the States and the Territory.

The fishery is managed by limiting the amount of fishing effort that is employed by the persons permitted by the Plan to fish in the fishery (operators). These limitations are known generically as input controls and are used in the fishery to address both biological and economic objectives for the fishery. The specific types of inputs that are controlled in the fishery are the amount of fishing time (limited by closures of all or parts of the fishery), the amounts and types of fishing equipment, the number of boats in the fishery and the specifications of those boats.

Direction No. NPDF 126 imposes prohibitions on pre-season fishing in the area of the fishery. The definition of "fishing" in the *Fisheries Management Act 1991* includes searching for and attempting to search for fish. Prohibitions on fishing (searching) are implemented for several reasons. Firstly, intensive vessel activity and acoustic searching for banana prawn schools may disperse schools of prawns prior to the start of the season. Secondly, prohibitions on fishing are a necessary compliance mechanism because there is some risk of illegal fishing when schools are located. Thirdly, it is likely that pre-season searching would increase the overall costs associated with harvesting banana prawns. Fourthly, preventing pre-season searching also provides a fairness and equity measure because, depending upon the home port of vessels, differing periods of pre-season access for searching could confer differential advantage when the season opens.

The Direction provides for what is known as the “VMS Start” of the first fishing season. Using the Vessel Monitoring System (VMS), vessels will be allowed to enter the Gulf of Carpentaria early but will be excluded from navigating within approximately 30 nautical miles (nm) from the coast. During the eight hours prior to the start of the season boats can either remain outside the 30 nm line or be in a designated assembly area as specified in Schedule 3. Designated steaming tracks to access the assembly areas are specified in Schedule 5. This way of managing the start of the season using VMS is cost effective and provides a mechanism to allow the fleet to disperse on the eastern side of the Gulf of Carpentaria, rather than having them congregate in two areas for the season start as was the arrangement in previous years before the “VMS Start” was introduced.

In addition, the Direction incorporates a procedure to allow applications to be made for two types of exemptions rather than one. Schedule 4 provides for an exemption to Schedule 1 and exemptions will always be approved where navigation is required because of vessel breakdown, distress, medical emergency, cyclone or weather warning, or to access an anchorage where no transit corridor has been provided. Schedule 6 provides for an exemption for Schedule 2 and will only be considered for approval in exceptional circumstances. The second type of exemption is required to ensure that during the eight hour period prior to the start of the season that boats are either in an assembly area or outside the 30nm line as all the transit corridors disappear at that time.

Direction No. NPDF 126 replaces Direction No. NPDF 114 and has the effect of adjusting the prohibitions to make them consistent with the new season dates and transit arrangements that are being implemented in the fishery.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Business Cost Calculator (BCC) or Regulation Impact Statement (RIS) is not required on the basis that the Direction is of a minor or machinery nature and does not substantially alter existing arrangements (ID 10113).

Consultation

AFMA consulted with the Northern Prawn Fisheries Management Advisory Committee (NORMAC) prior to making the Direction and NORMAC supports the making of the Direction.

The Act does not specify any condition as needing to be met before the power to make the Direction may be exercised.

Details of the Direction are set out below:

- Clause 1** Clause 1 provides for the determination to be cited as Direction No. NPDF 126
- Clause 2** Clause 2 provides for the commencement of the Direction.
- Clause 3** Clause 3 states to whom the Direction applies.
- Clause 4** Clause 4 sets out the period of application for this Direction.
- Clause 5** Clause 5 provides for the interpretation of the Direction. In particular, the section defines the matters to which the prohibitions apply and the measurement of time for the purposes of the Direction and also adopts defined terms used in the Plan. The note indicates that terms defined in the Management Act have the same meaning in the Direction.
- Clause 6** Clause 6 prohibits fishing in the areas described in Schedules 1 and 2 except for assembly areas described in Schedule 3.
- Clause 7** Clause 7 prohibits the carriage of trawling equipment in areas listed in Schedules 2, 3 and 5 during specified times prior to the commencement of the first fishing season.
- Clause 8** Clause 8 provides an exemption to section 6 for persons who are conducting gear trials in accordance with Direction NPDF 124, or who apply for and receive an

exemption before entering an area in accordance with the method described in Schedule 4 or 6, or are transiting the closure using a designated steaming track as specified in Schedule 5.

Clause 9 Clause 9 provides an exemption to section 7 for persons who carry trawling equipment in a specified manner, or who are conducting gear trials in accordance with Direction NPF 124.

Clause 10 Clause 10 provides an exemption to sections 6 and 7 for persons fishing in accordance with another plan of management in force under the Management Act or State or Territory law applying in the area of the fishery.

Clause 11 Clause 11 revokes Direction No. NPF 114.

Schedule 1 describes the prohibited area for the Gulf of Carpentaria.

Schedule 2 describes the prohibited area for the Vessel Monitoring System controlled start.

Schedule 3 describes the exempt assembly areas where vessels may navigate with fishing gear stowed.

Schedule 4 describes the procedure for making applications for exemptions from the prohibitions on navigation contained in section 6 for Schedule 1, specifies certain circumstances in which exemptions will always be approved, and provides for the review of any decision to refuse to grant an exemption by a senior AFMA officer who did not participate in the making of the original decision.

Schedule 5 describes the designated steaming tracks referred to in clauses 6, 7, 8 and 9.

Schedule 6 describes the procedure for making applications for exemptions from the prohibitions on navigation contained in section 5 for Schedule 2, specifies exceptional circumstances in which exemptions will always be approved, and provides for the review of any decision to refuse to grant an exemption by a senior AFMA officer who did not participate in the making of the original decision.

NPF 126.