

EXPLANATORY STATEMENT

Issued by the Authority of the Managing Director of the Australian Fisheries
Management Authority

Northern Prawn Fishery Management Plan Amendment 2005 (No. 05)

Fisheries Management Act 1991

This Amendment is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. This Amendment will commence on the day after it is registered on the Federal Register of Legislative Instruments. A Regulatory Impact Statement is not required for this Amendment (Office of Regulatory Review ID number 6217).

Fishing in the Northern Prawn Fishery (NPF) is managed under the provisions of the Northern Prawn Fishery Management Plan 1995 (the Plan). Schedule 1 (the Schedule), Clause 2 of the Plan defines the area of the NPF.

There is a discrepancy between the description of the area of the NPF as set out in the Schedule of the Plan and as described in the Offshore Constitutional Settlement (OCS) arrangements with the relevant States and Territory.

The OCS arrangement entered into with the Northern Territory (NT) in 1995 clearly defines the NPF as including both coastal waters and waters of the Australian Fishing Zone (AFZ). The Commonwealth, States and Northern Territory have always managed the NPF under the understanding that the Commonwealth has had jurisdiction over all waters to the low water mark. This was the intent of the Plan.

Clause 2 of the Schedule defined the area of the Northern Prawn Fishery as “that part of the Australian fishing zone *adjacent* to the coastal waters from low water...” (emphasis added).

This definition could be misinterpreted as not including the coastal waters of the relevant States and Territory.

Upon realising the potential inconsistency AFMA implemented a Temporary Order on 24 February 2004 (No. 1 of 2004). This Temporary Order amended the definition of the area of the NPF in the Plan to clarify that the NPF includes both coastal waters and the waters of the AFZ. A subsequent Temporary Order, (No 3 of 2004) the same in effect as the first was implemented on 13 August 2004. The Temporary Order will remain in effect until 12 February 2005 or such earlier time as the Plan is amended.

Upon discovery of the ambiguity in the Northern Prawn Fishery Management Plan 1995 AFMA, in consultation with NORMAC prepared a draft Amendment to the Plan to permanently resolve any possible misinterpretation of the intent of the Plan. In the short term a Temporary Order was issued under Section 43 of the Act to give temporary effect to the draft Amendment.

Following agreement by NORMAC and the AFMA Board to amend the Plan to correct the drafting error, AFMA has undertaken consultation in accordance with sections 17 and 20(5) of the Fisheries Management Act 1991.

This consultation process involved advising interested persons of AFMA's intention to amend the Northern Prawn Fishery Management Plan 1995, including an invitation to make representations in connection to the draft Amendment during a one month period of public comment from 27 July 2004 to 29 August 2004.

Notification was made via:

- the *Gazette*;
- public notices in The Australian, The NT News, The West Australian and The Cairns Post;
- AFMA's website;
- written notification to persons and organisations listed in the 'Register of persons concerned about plans of management' under section 17(A) of the Act ;
- written notification to NPF SFR holders; and
- written notification to Aboriginal Land Councils relevant to the area of the NPF

Only one submission was received during the one-month public comment period. This was supportive of the proposed Amendment.

This Amendment corrects the definition of the area of the NPF in the Plan to clarify that the NPF includes coastal waters and the waters of the AFZ, and to make the definition consistent with the definition of the NPF in the OCS.
