

EXPLANATORY STATEMENT

LEGISLATIVE INSTRUMENT

Fisheries Management Act 1991

Northern Prawn Fishery Management Plan Amendment 2006 (No.1)

Subsection 17(1) of the *Fisheries Management Act 1991* (the Act) provides that the Australian Fisheries Management Authority (AFMA) is to determine plans of management for all Commonwealth managed Fisheries.

Subsection 20(1) provides that AFMA may amend a plan of management. The following provides background and an explanation for amendments to the *Northern Prawn Fishery Management Plan 1995* made under subsection 20(1) of the Act.

The Northern Prawn Fishery

Fishing in the Northern Prawn Fishery (NPF) is managed under the provisions of the *Northern Prawn Fishery Management Plan 1995* (the Plan) and associated legislative instruments.

The NPF is located off Australia's northern coast, extending from Cape York Peninsula, Queensland, in the east to Cape Londonderry in Western Australia. The Fishery covers approximately 771,000 square kilometres of the Australian Fishing Zone. The Fishery is managed by the Commonwealth through AFMA under the Plan and OCS fisheries arrangements with Queensland, the Northern Territory and Western Australia.

The main species targeted in the Fishery are banana, tiger and endeavour prawns using prawn trawl apparatus, but the commercial catch also includes other species such as scampi, bugs, scallops, and squid.

The Fishery is managed using input controls including spatial and temporal closures, limited entry and gear restrictions. The closures are put in place to protect nursery areas and juvenile prawns during the fishing seasons, with additional mid-season closures to protect pre-spawning prawns.

To operate, each trawler needs a Class B (boat) Statutory Fishing Right (SFR) and the appropriate number of gear SFRs to cover the amount of net that they wish to use. The gear SFR is set as a specified amount of headrope and footrope length and the total number of gear SFRs in the Fishery is restricted under the Plan to a maximum of 53,844 SFRs. Under the Plan, AFMA may determine the value of gear SFRs (headrope length). From 2005, the value of a gear SFR was determined to be 5.625cm.

Explanations

The described Plan Amendment is in line with AFMA's objectives of ecologically sustainable development, the precautionary principle and to implement efficient and cost-effective fisheries management on behalf of the Commonwealth. The Plan Amendment will not result in any new fees or payments required from operators.

In general terms, the amendments will:

1. state that the collection of live prawns for aquaculture operations must be carried out under a fishing permit issued by AFMA in accordance with the Act;
2. make provisions for AFMA to issue fishing permits for collecting broodstock from the NPF area, of which a maximum of three can be in force at any one time; and
3. allow for AFMA to determine one or more methods by which prawn trawl nets may be used in the NPF and, for each method so determined, the total length of operational headrope that may be used under gear SFRs when that particular method is employed.

With regard to points 1 and 2 above, in 1995, the Commonwealth Government signed an OCS arrangement with Queensland, the Northern Territory and Western Australia which transferred jurisdiction over the NPF to the Commonwealth. Under this agreement, the Commonwealth undertook to make arrangements to permit reasonable access by operators of State-licensed aquaculture facilities to obtain prawn broodstock in the area of the Fishery. Fishing permits could not be issued under the Plan which excluded AFMA from allowing the collection of prawn broodstock under such a permit.

Under current arrangements, collection of broodstock can only occur by using a vessel with a Class B SFR and appropriate number of gear SFRs, or under a scientific permit. Scientific permits can be issued for a maximum period of 6 months in accordance with the Act. While this was sufficient in the early stages of broodstock collection and surveying of the NPF area for broodstock grounds, it is no longer appropriate to issue a scientific permit for commercial aquaculture operations to collect broodstock.

The use of a scientific permit is now considered to be inappropriate as the scientific or experimental component of brood stock collection has finished. The Plan Amendment will now meet AFMA's obligations under the Commonwealth's OCS fisheries arrangements with the States and Northern Territory, which will allow the collection of prawn broodstock by suitably licensed State and Northern Territory operators. The Plan will allow for up to a maximum of three broodstock permits to be active at any one time.

With regard to point 3 above, in accordance with the objectives of the Plan and the Act, AFMA has sought to improve the economic efficiency of the NPF while ensuring the exploitation of the Fishery is conducted in a manner consistent with the principles of ecologically sustainable development. Previously the Act only allowed AFMA to determine total length of operational headrope and made no provision for the determination of method. The intent of this Amendment is to allow fishers to use more cost-effective nets to trawl for prawns. To do so, AFMA contracted gear technologists to determine a conversion factor for the implementation of different trawl net configurations in the NPF, which include:

- twin trawl net configuration;
- quad trawl net configuration; and
- twin tongue trawl net configuration.

Following consultation with gear technologists and approval by NORMAC the conversion factor has been set at a 10 per cent penalty (on gear SFRs) for vessels that convert to quad or tongue nets from existing twin gear. This will ensure effort in the Fishery will remain neutral whilst improving the economic efficiency of operators.

The Amendments

Section 1 provides that the Plan Amendment be cited as the *Northern Prawn Fishery Management Plan Amendment 2006 (No.1)*.

Section 2 provides that the Plan Amendment commences on the day after it is registered.

Section 3 provides that Schedule 1 amends the *Northern Prawn Fishery Management Plan 1995*.

Item 1

Definition of 'collecting broodstock'

Section 3, has been amended to insert a definition of 'collecting broodstock', meaning the collection of live prawns for aquaculture purposes.

Item 2

Use of Commercial Fishing to accord with method mentioned in determination

Paragraph 7(1)(a) has been amended to state that a gear statutory fishing right is a right to use specified commercial fishing for each method mentioned in a determination made under section 7A (if a determination is in force). This provision previously allowed AFMA to determine fishing capacity for only a twin trawl net configuration (the only method allowed).

Item 3

Amendments to the Determination of fishing capacity

Subsection 7A(1) has been amended to state that AFMA may determine one or more methods by which prawn trawl nets may be used in the Northern Prawn Fishery, and for each method determined, the total length of operational headrope. Previously the subsection only allowed AFMA to determine total length of operational headrope and made no provision for the determination of method. The intent of this amendment is to allow fishers to use more cost-effective nets to trawl for prawns.

Through a Determination AFMA will be able to define and legislate three methods that may be used in the Fishery and the operational headrope for each of these methods. The methods that will be determined are:

- twin trawl net configuration;
- quad trawl net configuration; and
- twin tongue trawl net configuration.

Item 4

Determination commencement date no longer restricted

Subsection 7A(3), which stated that a determination under 7A(1) must not commence within 4 months after it is notified in the gazette, has been omitted. Removing this provision allows flexibility and will enable AFMA to apply adaptive management in the Fishery.

Item 5

Allowing AFMA to issue fishing permits for the collection of broodstock in the NPF

The amendment to paragraph 14(3)(a) will allow a person who is, or is acting for the holder of a fishing permit for collecting broodstock from the NPF area, to engage in commercial fishing in the NPF (subparagraph 14(3)(a)(ii)). The amended subsection continues to apply to a person holding or acting on behalf of the holder of a scientific permit (subsection 14(3)(a)(i)). The existing paragraph does not provide for holders of a fishing permit for collecting broodstock to be able to engage in commercial fishing.

Item 6

Method mentioned in Determination to be used when commercially fishing

The amended subsection 14(6) will prescribe that a person may only engage in commercial fishing mentioned in 14(4) or (5) if the person is using a method for trawling mentioned in a determination made under subsection 7A (1). The existing provision only states that a person may fish with prawn nets of a certain headrope and footrope length; and makes no reference to method.

Item 7

Maximum number of fishing permits for the collection of broodstock

The insertion of Section 15A will restrict AFMA to allowing a maximum of 3 fishing permits for the purpose of collecting prawn broodstock in the NPF that can be in force at any one time. This will ensure ecological sustainability of the Fishery as there is a need to limit the catch of prawns by broodstock operators in the Fishery.

Item 8

Trawl nets for method must be certain specifications

The amended paragraph 22(2)(a) will enable AFMA to determine the method of fishing that can occur in the area of the NPF, and for each of these methods determine the total headrope under gear SFRs for the particular method employed.

The existing paragraph states that the holder of a gear or top up statutory fishing right who is engaged in commercial fishing must use no more than 2 prawn trawl nets on a nominated fishing boat.

Items 9 – 10

Fishing permit holder for collection of broodstock must comply with certain conditions

The amended section 23A will specify the conditions with which a holder of a fishing permit for the purposes of broodstock collection must comply. The holder of the fishing permit must also comply with all relevant Directions issued under the Plan. Previously subsection 23A(2) did not exist as the collection of broodstock was carried out using a scientific permit. The insertion of subsection 23A(2) will ensure ecological sustainability of the Fishery by limiting the catch of prawns by broodstock operators in the Fishery. It will also ensure broodstock operators are compliant with the management arrangements for the Fishery.

The previous section 23A only prescribed obligations for holders of fishing permits and made no reference to the holder of fishing permits for collecting broodstock.

Regulation Impact Statement

The Office of Regulation Review has advised that a Regulation Impact Statement is not required for the amendments (reference RIS ID 7961).

Consultation

Section 20 of the Act prescribes that section 17 of the Act applies in relation to amendments to a plan of management in the same way as it applies to the preparation of a new plan of management. Section 17 requires that AFMA must consult with such persons engaged in fishing as appear to be appropriate, and must give due consideration to any representations made to AFMA in connection with the draft Plan. AFMA has met all consultation requirements required of it in the preparation of this instrument.

Following endorsement of the Plan Amendment by the Northern Prawn Fishery Management Advisory Committee (NORMAC) and the AFMA Board to allow for the collection of prawn broodstock under a fishing permit and the use of other trawl net configurations in the NPF, AFMA has undertaken consultation in accordance with sections 17 and 20(5) of the Act.

AFMA wrote to interested persons and SFR holders on 13 April 2006 to advise them of the intention to amend the *Northern Prawn Fishery Management Plan 1995*, and to invite representations to be made on the draft amendments. All parties were given one month to submit comments, from 19 April 2006 to 20 May 2006.

Notification was made via:

- the *Gazette*;
- a public notice in *The Australian* newspaper;
- 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 interested parties; and
- written notification to Aboriginal Land Councils relevant to the area of the NPF

There were no submissions received either supporting or opposing the proposed amendments.

The Department of the Environment and Heritage has advised that the amendments do not require additional assessment under the *Environment Protection and Biodiversity Conservation Act 1999* and has tabled a Notice of Intent to accredit the amended Plan.

Definitions

AFMA means the Australian Fisheries Management Authority.

Australian Fishing Zone means:

- (a) the waters adjacent to Australia within the outer limits of the exclusive economic zone; and
- (b) the waters adjacent to each external Territory within the outer limits of the exclusive economic zone;

but does not include:

- (c) coastal waters of, or waters within the limits of, a State or internal territory; or
- (d) waters that are excepted waters.

Exclusive Economic Zone means the exclusive economic zone, within the meaning of the *Seas and Submerged Lands Act 1973*, adjacent to the coast of Australia or the coast of an external Territory.

footrope, for a prawn trawl net, means the rope to which the netting at the bottom of the net is attached at the mouth of the net.

headrope, for a prawn trawl net, means the rope to which the netting at the top of the net is attached at the mouth of the net.

nominated boat, for a statutory fishing right, means a boat nominated on the certificate for the fishing right under section 19A.

Northern Prawn Fishery means commercial fishing in the Northern Prawn Fishery area.

Statutory Fishing Right a gear statutory fishing right, top up statutory fishing right, or Class B statutory fishing right, for the Northern Prawn Fishery.