

DRAFT – EXPLANATORY STATEMENT

LEGISLATIVE INSTRUMENT

Issued by the Authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991

Northern Prawn Fishery Management Amendment (2023 Measures No. 1) Plan 2023

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

Subsection 20(1) of the Management Act provides that the Authority may at any time amend a plan of management.

The Authority has determined the *Northern Prawn Fishery Management Amendment (2023 Measures No. 1) Plan 2023* (the Plan amendment) to amend the *Northern Prawn Fishery Management Plan 1995* (the Plan).

The Plan amendment is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Objectives

[Note: depending upon final amendments to the management plan following public comment – the objectives may need to be updated]

The Plan amendment aims to: simplify the arrangements under the Plan, reflect the current arrangements in the fishery (including the number of gear and boat statutory fishing rights that currently exist) and objectives of the Management Act, reduce the risk that Northern Prawn Fishery concession holders are not inadvertently prevented from fishing, and facilitate autonomous adjustment of the fishery by removing the minimum gear statutory fishing right holding requirements.

Background on the Fishery

The Fishery is an area of waters that extends from the coastline to the edge of the Australian Fishing Zone (200 nautical miles offshore) north of Western Australia, the Northern Territory and Queensland in the Gulf of Carpentaria. Fishing in the Fishery is for prawns and four major ecologically related species (namely squid, scampi, bugs and scallops). There are two fishing seasons in the Fishery. The area of the Fishery overlaps the areas of a number of fisheries for other species that are managed by Queensland, Western Australia and the Northern Territory.

The Fishery is managed by limiting the amount of fishing effort under the Plan. These limitations are known commonly as ‘input controls’ and are used in the Fishery to address both the biological and economic objectives of the Fishery. The specific types of inputs that are controlled in the Fishery are the amount of fishing time (limited within the fishing seasons), the number of boats that can operate in the Fishery and the types of fishing equipment and quantity of fishing equipment that can be used.

Consultation

[To be completed following public comment period]

Regulation Impact Statement

[Note: depending upon final amendments to the management plan a further assessment whether a Regulation Impact Statement may be needed].

The Office of Best Practice Regulation considered that the proposal is unlikely to have more than a minor regulatory impact and therefore the preparation of a Regulation Impact Statement was not required (Exemption ID OBPR22-03457).

Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

[Note: depending upon final amendments to the management plan a further assessment of compatibility with human rights and freedoms may be needed]

This legislative instrument is compatible with the human rights and freedoms under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in the **Attachment A**.

Contents of the Plan amendment

Details of the Amendment Direction are set out below:

Section 1 Provides that the name of the instrument is the *Northern Prawn Fishery Management Amendment (2023 Measures No. 1) Plan 2023*.

Section 2 Provides that the instrument commences on the day after registration on the Federal Register of Legislation.

Section 3 Provides that the instrument is made under section 20 of the *Fisheries Management Act 1991*.

Section 4 Gives effect to Schedule 1.

Schedule 1 Schedule 1 outlines the amendments to the *Northern Prawn Fishery Management Amendment (2023 Measures No. 1) Plan 2023*.

Item 1 of

Schedule 1 Inserts a section 3 note to ensure that the definitions of certain expressions remain consistent with the *Fisheries Management Act 1991*.

Item 2 of

Schedule 1 Repeals section 3 definition of active Class B statutory fishing right which is no longer applicable as this statutory fishing right has been replaced by boat statutory fishing right.

Item 3 of

Schedule 1 Inserts in section 3 words to specify only the Northern Prawn Fishery.

Item 4 of

Schedule 1 Inserts in section 3 the definition of boat statutory fishing right as it has replaced Class B statutory fishing right.

Item 5 of

Schedule 1 Repeals the definition of by-catch action plan as this has been replaced by bycatch strategy.

Item 6 of

Schedule 1 Inserts section 3 definition of bycatch strategy.

Item 7 of

Schedule 1 Repeals section 3 definitions of certificate, Class B statutory fishing right, and eligible person as these definitions are no longer applicable.

- Item 8 of
Schedule 1** Repeals section 3 definition of Northern Prawn Fishery and substitutes a more explicit definition to include commercial fishing for particular species in the area of the fishery.
- Item 9 of
Schedule 1** Repeals section 3 definitions of old Class A statutory fishing right and old suspense Class A statutory fishing right as these definitions are no longer applicable.
- Item 10 of
Schedule 1** Inserts section 3 definitions of otter board and quad trawl net configurations to ensure that these are properly defined.
- Item 11 of
Schedule 1** Repeals section 3 definitions of statutory fishing right, surplus Class B statutory fishing right and top up statutory fishing right as these definitions no longer applicable.
- Item 12 of
Schedule 1** Inserts section 3 definitions of triple, twin tongue, and twin trawl net configurations to ensure that these are defined.
- Item 13 of
Schedule 1** Repeals the section 3 note as these are defined in other legislation.
- Item 14 of
Schedule 1** Repeals section 3A meaning of commercial fishing the Northern Prawn Fishery area as this is defined elsewhere in the Plan.
- Item 15 of
Schedule 1** Omits section 4 objectives and substitutes words to ensure that the objectives of the Plan are consistent with those in the *Fisheries Management Act 1991*.
- Item 16 of
Schedule 1** Omits words in paragraph 5(a) that contain an outdated reference to a subsection in the *Fisheries Management Act 1991*.
- Item 17 of
Schedule 1** Inserts paragraph 5(aa) after paragraph 5(a) to include a measure about developing and implementing a harvest strategy to assist achieving the objectives.
- Item 18 of
Schedule 1** Inserts a word in paragraph 5(c) to ensure that research is delivered.
- Item 19 of
Schedule 1** Inserts paragraph 5(ea) after paragraph 5(e) to ensure that appropriate data is collected and used to support management of the fishery.
- Item 20 of
Schedule 1** Inserts a word in paragraph 5(f) to ensure that data is appropriate for use.

- Item 21 of
Schedule 1** Repeals paragraph 5(g) and substitutes a new paragraph to ensure the minimisation of impacts due to the operation of the fishery on other species and the environment.
- Item 22 of
Schedule 1** Substitutes words in paragraph 5(h) so that bycatch strategy is referenced rather than by-catch action plan.
- Item 23 of
Schedule 1** Repeals section 7 and substitutes information that; better defines a gear statutory fishing right, includes the correct number of gear statutory fishing rights in the fishery, and updates the default operational headrope length per gear statutory fishing right to be consistent with the current fishing capacity determination.
- Item 24 of
Schedule 1** Omits words contained in a note under subsection 7A(1) as it contains an outdated reference to a section of the *Acts Interpretation Act 1901* and substitutes wording that is consistent with the *Fisheries Management Act 1991* for determining fishing capacity.
- Item 25 of
Schedule 1** Repeals section 8 as top up statutory fishing rights are no longer relevant to the fishery. A new section 8 clause has been included that clarifies operators can, but are not required to, have gear statutory fishing rights nominated to a boat. This change will facilitate autonomous adjustment of the fishery. However, as per the updated section 14, the appropriate number of gear statutory fishing rights will need to be nominated to a vessel for the gear being used to operate in the fishery, that is a boat will need to have gear entitlement attached to a boat statutory fishing right to conduct fishing operations.
- Item 26 of
Schedule 1** Repeals sections 11 to 13 relating to Class B statutory fishing rights and substitutes a new section to implement and facilitate updated terminology from Class B statutory fishing rights to Boat statutory fishing rights without the need to undertake a regrant of the concessions.
- Item 27 of
Schedule 1** Repeals section 14 and substitutes wording that more correctly and better defines who can fish in the Northern Prawn Fishery.
- Item 28 of
Schedule 1** Substitutes wording in paragraph 14A(b) to facilitate updated terminology from Class B statutory fishing right to boat statutory fishing right.
- Item 29 of
Schedule 1** Omits wording in paragraph 15(a) to accurately reflect the number of gear statutory fishing rights that are held in the fishery.
- Item of
Schedule 1** Omits wording in paragraph 15(b) to accurately reflect the number boat statutory fishing rights held in the fishery.
- Item 31 of
Schedule 1** Repeals subsection 16(1) as it relates to the granting of statutory fishing rights during the commencement of the plan and are now defunct. Text is substituted

so that notice period is defined relating to the registration of eligible persons, this ensures that the legislative requirements of the Act are maintained.

***Item 32 of
Schedule 1***

Omits wording in Subsection 16(2) that relates to defunct sections that applied transitional arrangements during the implementation of the plan and substitutes text that ensures that legislative requirements of the Act are maintained.

***Item 33 of
Schedule 1***

Repeals a defunct note under subsection 16(2) that is no longer applicable in the section.

***Item 34 of
Schedule 1***

Repeals the now defunct subsection 16(3) that applied to transitional arrangements during the implementation of the Plan, while maintaining the note as it is still relevant to section 16.

***Item 35 of
Schedule 1***

Repeals the heading of section 16A as provisional grants of statutory fishing rights are now defunct as they applied to transitional arrangements during the implementation of the Plan and substitute a more appropriate heading that maintains the legislative requirements of the Act.

***Item 36 of
Schedule 1***

Omits the word “right” in subsection 16A(1) and substitutes the wording “right for the Northern Prawn Fishery” that more specifically refines the statutory fishing right to the fishery.

***Item 37 of
Schedule 1***

Omits the words “make a provisional grant of the fishing right” in Subsection 16A(1), provisional grants of statutory fishing rights are now defunct as they applied to transitional arrangements during the implementation of the Plan, and substitutes wording that is more appropriate and maintains the legislative requirements of the Act.

***Item 38 of
Schedule 1***

Omits the words “provisional grant” in Subsection 16A(1), provisional grants of statutory fishing rights are now defunct as they applied to transitional arrangements during the implementation of the Plan, and substitutes wording that is more appropriate and maintains the legislative requirements of the Act.

***Item 39 of
Schedule 1***

Omits wording relating to old Class A statutory fishing rights in Subsection 16A(2), which are now defunct as they applied to transitional arrangements during the implementation of the Plan, and substitutes wording relating to gear statutory fishing rights.

***Item 40 of
Schedule 1***

Repeals subsection 16A(3) relating to top up statutory fishing rights as these rights are now defunct as they applied to transitional arrangements during the implementation of the Plan and no longer apply in the fishery.

***Item 41 of
Schedule 1***

Repeals sections 16B to 17B relating to top up statutory fishing rights as these sections are now defunct as they applied to transitional arrangements during the implementation of the Plan and no longer apply in the fishery.

- Item 42 of
Schedule 1** Omits the word “right” in section 16C and substitutes the wording “right for the Northern Prawn Fishery” that more specifically refines the statutory fishing right to the fishery.
- Item 43
Schedule 1** Inserts the wording “right for the Northern Prawn Fishery” in subsection 22(1) to specifically refines the statutory fishing right to the fishery.
- Item 44 of
Schedule 1** Repeals the paragraph 22(1)(ea) and inserts a new paragraph that more accurately reflects the current terminology for bycatch strategy.
- Item 45 of
Schedule 1** Omits the wording in paragraph 22(1)(g) relating to Class B statutory fishing rights and substitutes wording that accurately reflects new terminology for these to gear statutory fishing rights.
- Item 46 of
Schedule 1** Omits the wording in paragraph 22(1)(g) relating to boat’s Class B statutory fishing rights and substitutes wording that reference boat statutory fishing rights.
- Item 47 of
Schedule 1** Omits wording “or top up” in subsection 22(2) as top up statutory fishing rights are now defunct as they applied to transitional arrangements during the implementation of the Plan and no longer apply in the fishery.
- Item 48 of
Schedule 1** Repeals subsection 22(5) as top up statutory fishing rights are now defunct as they applied to transitional arrangements during the implementation of the Plan and no longer apply in the fishery.
- Item 49 of
Schedule 1** Repeals subsection 23A(1) to remove unnecessary information relating to the obligations on holders of fishing permits as these obligations no longer apply.
- Item 50 of
Schedule 1** Omits the numbering for subsection 23A(2) as the wording will apply to the whole of subsection 23(A).
- Item 51 of
Schedule 1** Repeals sections 23B to 24A as these relate to transitional arrangements during the implementation of the Plan and are now redundant.
- Item 52 of
Schedule 1** Repeals sections 29 to 30 as these relate to delegations of powers and functions, which is prescribed under the *Fisheries Management Act 1991*, and transitional arrangements during the implementation of the Plan and are now redundant.
- Item 53 of
Schedule 1** Inserts words into subsection 32(1) to specify the Northern Prawn Fishery.
- Item 54 of
Schedule 1** Repeals sections 33-35 that relate to notifications and transitional arrangements and substitutes new sections to enable; notices being provided by email to

AFMA, and the labelling of Class B statutory fishing rights as boat statutory fishing rights without regranting.

ATTACHMENT A

DRAFT – Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

[Note: depending upon final amendments to the management plan a further assessment of compatibility with human rights and freedoms may be needed]

Northern Prawn Fishery Management Amendment (2023 Measures No. 1) Plan 2023

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Section 20 of the *Fisheries Management Act 1991* (the Act) provides that the Australian Fisheries Management Authority (AFMA) may, at any time amend a plan of management and must undertake the process for undertaking such a process in the same way as they apply to a plan of management prepared under section 17 of the Act..

The *Northern Prawn Fishery Management Amendment (2023 Measures No. 1) Plan 2023* aims to: simplify the arrangements under the Plan, reflect the current arrangements in the fishery (including the number of gear and boat statutory fishing rights that currently exist) and objectives of the Management Act, reduce the risk that Northern Prawn Fishery concession holders are not inadvertently prevented from fishing and facilitate autonomous adjustment of the fishery by removing the minimum gear statutory fishing right holding requirements.

Human rights implications

As this legislative instrument is of a mechanical nature does not impact any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues and is consistent with AFMA's obligation to pursue its statutory objectives.