

EXPLANATORY STATEMENT

LEGISLATIVE INSTRUMENT

Issued by the Authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991

Fisheries Management (Northern Prawn Fishery Permanent Closures) Direction 2021

Legislative authority

Subsection 41A(2) of the *Fisheries Management Act 1991* (the Act) provides that the Australian Fisheries Management Authority (AFMA) may, after meeting consultation requirements as set out in subsection 41A(2), direct that fishing is not to be engaged in in the fishery, or a particular part of the fishery, during a particular period or periods. A copy of a direction made by AFMA under subsection 41A(2) must be sent to each holder of a fishing concession, scientific permit or foreign master fishing licence to which the direction relates (see subsection 41A(2A) of the Act).

Subsection 41A(2AA) of the Act provides that a direction under subsection 41A(2) in relation to a particular part of the fishery may identify the part concerned in any way or ways.

Subsection 41A(5) provides the Direction is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Fishery

The Northern Prawn Fishery is an area of waters that extends from the coastline to the edge of the Australian Fishing Zone (200 nm 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 *Northern Prawn Fishery Management Plan 1995* (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 by within the fishing seasons), the amounts and types of fishing equipment and the number of boats in the Fishery.

The Direction

The Direction closes specified areas of the Fishery to fishing. The Direction prohibits fishing in eleven specific areas within the Fishery that provide essential habitats for the juvenile growth phase of penaeid prawns, a major species in the Fishery. Fishing in these areas would not only cause destruction to vital seagrass habitat but would also result in the capture of underdeveloped and undersize prawns.

The Direction also closes two areas to fishing, as they are the sites of research surveys investigating the impact of trawling on the benthos. To avoid confounding the results of this research it is important that these areas remain closed to commercial fishing for the duration of this project.

Consultation

Consistent with subsection 41A(2) and section 17 of the *Legislation Act 2003*, AFMA consulted with both Northern Prawn Fishery Management Advisory Committee (NORMAC) and NPF Industry Pty Ltd (NPMI) regarding the proposed permanent area closures prior to remaking the Direction. NPMI informed AFMA that it supports the permanent area closures. In February 2021, NORMAC was informed of the proposed changes. Seven out of nine NORMAC members provided comments, all in support of the proposed changes. In February 2021, NORMAC and NPMI were sent a draft copy of the Direction.

NPFI is the peak industry body and represents approximately 95% of the concession holders in the Fishery. NPFI keep all concession holders in the Fishery informed on matters relating to the management of the Fishery. NPFI and NORMAC support the permanent areas closures and support the making of the Direction.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required for this instrument consistent with the carve-out agreement with AFMA (OBPR reference 14421) for instruments of a minor or machinery nature.

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

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 **Attachment A**.

Details of the Direction are set out below:

- Section 1** Provides for the Direction to be cited as the *Fisheries Management (Northern Prawn Fishery Permanent Closures) Direction 2021*.
- Section 2** Provides that the Direction commences on the 14th day after it is registered.
- Section 3** Provides that the Direction is made under subsection 41A of the *Fisheries Management Act 1991*.
- Section 4** Defines certain terms for the purpose of the Direction and provides that a term used in the Direction and in the Act has the meaning given in the Act, and a term used in the Direction and in the Plan has the meaning given in the Plan. The term ‘boat’ is defined under the Act, and for the purposes of the Direction. ‘Boat’ is defined in the Direction to mean a boat (as defined in the Act, but that also has the additional characteristics of being a boat) that is licensed to fish in the Northern Prawn Fishery.
- Section 5** Provides the instrument that is specified in Schedule 2 to the Direction is repealed as set out in the applicable items in that Schedule.
- Provides Schedule 1 to the Direction has effect according to its terms.
- Section 6** States that the Direction applies to a holder of a fishing concession in the Northern Prawn Fishery and to a person acting on behalf of the holder.
- Section 7** States that fishing must not be engaged in in the Fishery in the areas specified in Schedule 1 of the Direction.
- Section 8** Provides for an exemption to Section 7.
- Schedule 1** Schedule 1 describes the areas where fishing is prohibited under Section 7.
- Schedule 2** Schedule 2 repeals the *Northern Prawn Fishery (Closures) Direction No. 169*.

Statement of Compatibility with Human Rights

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

Fisheries Management (Northern Prawn Fishery Permanent Closures) Direction 2021

This 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

The *Fisheries Management (Northern Prawn Fishery Permanent Closures) Direction 2021* closes specified areas of the Northern Prawn Fishery (the Fishery) to fishing. The Direction prohibits fishing in eleven specific areas within the Fishery that provide essential habitats for the juvenile growth phase of penaeid prawns, a major species in the Fishery. Fishing in these areas would not only cause destruction to vital seagrass habitat but would also result in the capture of underdeveloped and undersize prawns.

The Direction also closes two areas to fishing, as they are the sites of research surveys investigating the impact of trawling on the benthos. To avoid confounding the results of this research it is important that these areas remain closed to commercial fishing for the duration of this project.

Human rights implications

This Legislative Instrument does not engage 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.