

EXPLANATORY STATEMENT

LEGISLATIVE INSTRUMENT

Issued by the Authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991

Fisheries Management (Northern Prawn Fishery Seasonal Closures) Amendment Direction No. 1 2021

Subsection 41A(2) of the *Fisheries Management Act 1991* (the Management Act) provides that the Australian Fisheries Management Authority (AFMA) may, after consultation with the Management Advisory Committee for the fishery, direct that fishing is not to be engaged in the fishery, or a particular part of the fishery, during a particular period or periods. Prior to making such a direction, AFMA must ensure that each holder of a fishing concession and scientific permit in the relevant fishery is provided with a copy of the direction seven (7) days before that direction takes effect. *Fisheries Management (Northern Prawn Fishery Seasonal Closures) Direction 2021* (the Seasonal Closures Direction) is a direction made on 15 March 2021 under subsection 41A(2) after consultation with the Northern Prawn Fishery Management Advisory Committee (NORMAC) and notification to concession holders of the Northern Prawn Fishery (the Fishery).

Subsection 41A(3) of the Management Act provides that AFMA may, at any time, vary or revoke a direction made under subsection 41A(2). Subsection 41A(4) of the Management Act stipulates that AFMA must ensure a copy of the varied direction is sent to each concession holder in the relevant fishery as soon as possible.

The *Fisheries Management (Northern Prawn Fishery Seasonal Closures) Amendment Direction No. 1 2021* (the Amendment Direction) varies the Seasonal Closures Direction to:

- provide for additional area closures for specified periods within the Fishery.

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

Objectives

The objectives of the Amendment Direction are to provide for additional area closures in the Fishery to protect juvenile tiger prawns, allow sufficient escapement to ensure an adequate spawning biomass of banana prawns and to achieve the maximum economic yield (MEY) from the Fishery.

The Northern Prawn Fishery Harvest Strategy 2014 (Harvest Strategy) includes a MEY-based banana prawn catch trigger, used to calculate the length of the banana prawn fishing season. This trigger is variable and is calculated in-season, based on economic data provided by the peak industry body for the Fishery, NPF Industry Pty Ltd (NPF). The high variability and environmental dependency of banana prawn recruitment results in significant variations in stock availability from year to year.

The Harvest Strategy also includes rules that are agreed by all stakeholders which determine catch levels for the banana prawn fishery. These are called decision rules which require AFMA to consider closing the banana prawn fishery once the MEY threshold is reached. However, these decision rules can only be applied if a ‘representative sample’ of the catch rates for the season across the fleet is reported. All catch data (kg/day, or total catch and total days) for the whole fleet (or greater than 95% of industry members and advisors on the Northern Prawn Fishery Management Advisory Committee) is considered a ‘representative sample’.

The Harvest Strategy requires AFMA to consider closing the banana prawn fishery if a representative sample of the catch rates is not available.

On 6 June 2021, the NPFI informed AFMA that a representative sample of the catch rates for the season across the fleet is not available. Therefore, in accordance with the operational objective of the Harvest Strategy, AFMA considers it appropriate to close the banana prawn fishery to allow sufficient prawn escapement for an adequate spawning biomass of banana prawns that will contribute to the fishery in the next banana prawn fishing season (noting the NPF is still open to target tiger prawns). Accordingly, the Amendment Direction, for the specified periods, closes:

1. the Sweers Island - Mornington Island area to protect juvenile tiger prawns;
2. the Fishery area to all fishing west of 138 degrees (Northern Territory waters); and
3. the Fishery area to daylight trawling east of 138 degrees (Queensland waters).

Outside these closures there is continued access to the tiger prawn fishery until 15 June 2021.

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 *Northern Prawn Fishery Management Plan 1995*. 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 amounts and types of fishing equipment and the number of boats in the Fishery.

Consultation

Variations made under subsection 41A(3) of the Management Act do not require AFMA to consult. However, consistent with section 17 of the Legislation Act, AFMA consulted with NPFI prior to making the Amendment Direction. NPFI is the peak industry body and represents approximately 95 per cent 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 supports the making of the Amendment 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 the **Attachment A**.

Details of the Amendment Direction are set out below:

- Section 1** Provides that the name of the instrument is the *Fisheries Management (Northern Prawn Fishery Seasonal Closures) Amendment Direction No. 1 2021*.
- Section 2** Provides that the instrument commences on 9 June 2021.
- Section 3** Provides that the instrument is made under subsection 41A(3) of the *Fisheries Management Act 1991*.
- Section 4** Gives effect to Schedule 1.
- Schedule 1** Schedule 1 outlines the amendments to the *Fisheries Management (Northern Prawn Fishery Seasonal Closures) Direction 2021*.
- Item 1 of Schedule 1** Insert “subject to subsection 8(5)” before the first word in body of subsection 8(4).
- Item 2 of Schedule 1** Inserts subsections 8(5), 8(6) and 8(7).
- Subsection 8(5) provides that fishing is not to be engaged in in the area defined in Schedule 11, which is the area of Sweers Island – Mornington Island, during the specified period.
- Subsection 8(6) provides that fishing is not to be engaged in in waters west of the meridian of Longitude 138 degrees East during the specified period. This clause prohibits all fishing west of 138 degrees (Northern Territory waters) during the specified period.
- Subsection 8(7) provides that fishing is not to be engaged in in waters east of the meridian of Longitude 138 degrees East during the specified period. The effect of this clause is that fishing will be closed to daylight trawling east of 138 degrees (in Queensland waters) during the specified period.

ATTACHMENT A

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 Seasonal Closures) Amendment Direction No. 1 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 Seasonal Closures) Amendment Direction No. 1 2021* (Amendment Direction) varies the *Fisheries Management (Northern Prawn Fishery Seasonal Closures) Direction 2021* to provide for additional area closures for specified periods within the Fishery.

In particular, the Amendment Direction varies the closure conditions by providing for additional area closures for the last week of the 2021 banana prawn season to allow sufficient escapement from this fishery and to maximise net economic returns to the Australian community. The Amendment Direction, at the specified periods, closes the Sweers Island - Mornington Island area to protect juvenile tiger prawns; closes all waters west of 138 degrees (Northern Territory waters); and prohibits daylight trawling east of 138 degrees (Queensland waters).

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.