



Queensland

Fisheries Management Plans Amendment Management Plan (No. 1) 2006

Explanatory Notes for SL 2006 No. 25

made under the

Fisheries Act 1994

1 Short title

Fisheries Management Plans Amendment Management Plan (No. 1) 2006 (the amendment plan).

2 Provision of Act under which legislation is made

Fisheries Act 1994 (the Act), sections 32 (Making management plans), 34 (Management plan must be approved by Governor in Council) and 39 (Amendment of management plan).

3 Policy objectives of the legislation

The main objectives of the amendment plan are to—

- ensure fisheries management plans are consistent with the licensing and fees reform package, implemented by concurrent amendments to the *Fisheries Regulation 1995* (the Regulation) (see *Fisheries and Other Legislation Amendment Regulation (No.1) 2006* (the *Fisheries Amendment Regulation 2006*). The licensing and fees reforms enhance the proprietary characteristics of statutory fishing rights, provide a fair and logical basis for how

the rights are valued and paid for and deliver competition reforms; and

- remove legislative restrictions currently impeding the ability of fishers to fully exercise their fishing rights and the ability to structure their businesses and operations to remain viable.

The amendment plan also seeks to—

- provide greater durability, certainty and divisibility in the characteristics of licences and individual transferable quotas for fisheries under management plans; and
- provide greater clarity and consistency in the way each fishery is identified by its management plan; and
- avoid duplication in definitions and aids to interpretation between management plans and the regulation; and
- extend the Stocked Impoundment Scheme to Storm King Dam.

4 Reasons for the policy objectives

The amendment plan is, in part, made as a consequence of the *Fisheries Amendment Regulation 2006*, the explanatory note for which sets out in detail the reasons for the licensing and fees reforms it implements.

The fishing rights and operational efficiency-related reforms were identified during the extended consultation associated with the May 2005 Regulatory Impact Statement, Proposed changes to fisheries licensing and fee arrangements, undertaken for the implementation of the new licensing and fee regime.

These complementary reforms will provide a significantly enhanced environment for investment and remove a range of impediments to business viability no longer necessary in achieving the main purpose of the Act. Their removal is urgently needed to enable fishers to better structure their business operations so they can remain viable.

5 The way in which the policy objectives are to be achieved by the legislation and why this way of achieving them is reasonable and appropriate

The amendment plan achieves its objectives by—

- providing a link to the new process under section 47 of the regulation, that allows licence holders to apply to subdivide fishery symbols from their licences and move them to another licence of the same type they, or another person holds;
- discontinuing licensing requirements for assistant fishers, crew, tender boats, commercial fish storing businesses and freshwater fishing charter businesses, removing separate nominee authorities (adult eel fishery) and carrier boat approvals (spanner crab fishery);
- removing minimum quota holdings so that holders have the option of disposing of all quota in a fishery without the need to also relinquish the related boat licence;
- providing greater administrative efficiency by removing the need to reissue effort unit, line unit, SM unit and ITQ unit certificates annually;
- providing for a clearer distinction between ownership features of effort/quotas and the use of the entitlement conferred by ownership;
- providing for partial unloading of fish taken under line units in the reef line fishery;
- providing greater scope for individual circumstances to be taken into account in assessing whether there has been a sufficient degree of correlation between the numbers of fish reported in the prior notice and unloaded fish notice in the reef line fishery;
- accommodating boats that have returned for the start of the reef line fishery closures but have been unable to unload (such as a result of Port congestion) by changing the prohibition on possessing coral reef fin fish on commercial boats during the closures;
- restoring the right to take fish for a recreational purpose in the coral reef fin fishery (subject to the inclusion of the fish in quota reporting) and trawl fishery during commercial trips;
- allowing for the content of quota reports to be tailored to the fishing practices of individual operations to minimize the time needed to give the report using the Automated Interactive Voice Response (AIVR) telephone system;

- removing the link between a person's holding of quota authorities and a specified boat licence in the reef line, spanner crab and east coast trawl fisheries to allow holders to elect to use any or all boats authorised under the holder's licences for the fishery;
- removing the requirement to surrender a percentage of effort units before a transfer of units may be registered or a trawler upgrade approved in the East Coast Trawl Fishery;
- adding Storm King Dam to the Stocked Impoundment Permit Scheme for the recreational freshwater fishery;
- removing redundant provisions that provide information about the description and known status of the fishery at the time the management plans were made and adopting a clearer approach in all plans in naming and defining each fishery and the scope of each plan's application;
- reducing duplication between definitions and interpretative provisions of the regulation and management plans by providing that unless specified differently in the plans, terms used in them have the same meaning as given by the regulation;
- making terminology changes consequential on the *Fisheries Amendment Regulation 2006*; and
- making necessary drafting enhancements, such as removing spent provisions, updating cross references etc.

6 How the legislation is consistency with the policy objectives of the authorising law

The amendment plan is consistent with the main purpose of the Act, applying and balancing the principles of ecological sustainable development so that management arrangements for fisheries are as least restrictive as possible, licensing and administration processes are streamlined, the competitive environment is maximised and effective sustainability measures are reinforced.

7 Any reasonable alternative way of achieving the policy objectives (including the option of not making the subordinate legislation) and why the alternative was not adopted

It is considered that there are no practical alternatives to the proposals as they are essential consequential amendments to the *Fisheries Amendment Regulation 2006* that either remove or amend existing legislative provisions.

8 Brief assessment of the benefits and costs of implementing the legislation

The Government has invested \$2.800M in the development of a new fisheries licensing system and upgrading fisheries information technology. Approximately \$0.100M will be spent on a further series of port visits and extension material to assist stakeholders adapt to the new licensing system and its administration.

The proposed amendments provide a significant net public benefit. The range of initiatives in this package provide for a more secure, flexible, profitable and viable fishing industry including so that—

- fishers' rights will be better recognised and protected;
- licences unnecessary for achieving the main purpose of the Act will be removed;
- restrictions on businesses being able to be structures according to individual needs will be removed; and
- restrictions on trading fishery symbols and authorities will be removed.

This reduces regulation, the cost of doing business and undue interference in fishing operations. It is considered that employment opportunities and job security in the fishing industry will be enhanced. In general, the changes proposed in this submission will provide a significantly enhanced environment for investment into commercial, recreational and charter fishing sectors which is a positive development for regional communities. As such it is considered that the proposed legislation is generally beneficial and there will be a net public benefit from its implementation.

9 Brief assessment of the consistency of the legislation with fundamental legislative principles

The amendment management plan is consistent with fundamental legislative principles. While unnecessary authorities are removed, the activities previously authorised may still be done, either without any need to hold an authority (for example, charter fishing in inland waters) or by extending the authorisation of a related authority (for example, commercial fisher licences will now authorise assistant fishers and the effect of primary and tender commercial fishing boat licences has been amalgamated into a single licence).

10 The way consultation was carried out, an outline of the results of consultation and a brief explanation of any changes made as a result of the consultation

No Regulatory Impact Statement (RIS) was required for the amendment plan. However, many provisions in the amending plan are consequential to the *Fisheries Amendment Regulation 2006* for which a RIS and extensive consultation was carried out.

The RIS and a draft Public Benefit Test were mailed out to 7,500 licence and permit holders, industry representatives, Fishery Management Advisory Committee members, fish stocking groups and government agencies. The consultation documents were also posted on the department's web site. An additional 500 copies were mailed out on request and a further 1,000 copies were distributed at port meetings.

In response to requests made by the community and key stakeholder groups, the timeframe for formal responses to the RIS was extended from 1 July 2005 to 31 July 2005. Five hundred and fifty one written submissions were received.

A series of 16 port meetings were held between 21 May and 8 June 2005 at key ports from the Gulf of Carpentaria to the NSW–Queensland border and a number of meetings were held over the same period with peak industry bodies. Following the first round of port visits, the views of the stakeholders attending the port visits were collated into a 'Draft Outcomes of the First Round of Port Meetings' document which was subsequently mailed out to the same stakeholders as the RIS and also posted on the DPI&F website.

A second round of 16 port visits was held between 12 September and 6 October 2005. At these meetings, the opportunity was taken to discuss with stakeholders—

- a phasing in of the proposed fees over five years;
- the proprietary nature of fishing rights and how, from the perspective of fishers, these rights could be better defined and protected; and
- confirmation of the record of the first round of port visits as an accurate reflection of the issues raised.

During the consultation period, departmental officers met with all key peak industry bodies including the Queensland Seafood Industry Association (QSIA), Sunfish, the Independent Trawler Association, Ecofish, the Queensland Charter Fishing Association and the Queensland Seafood Marketers Association. Officers also attended and briefed the Queensland Fisheries Joint Authority, CrabMAC, TrawlMAC, HarvestMAC, ReefMAC and GulfMAC, three QSIA board meetings and the Sunfish board meeting. The Great Barrier Reef Marine Park Authority (GBRMPA) was also consulted.

Whilst stakeholders were supportive of the legislation, it was by agreed by stakeholders and the government that there was need for greater recognition of fishing rights and a range of restrictions impacting on fishers operational flexibility and viability should be removed from both the Regulation and across management plans.

The amendment plan implements a range of mechanisms to increase the value and flexibility of fishing rights through the removal of restrictions on their use and trading and removes restrictions on operational flexibility identified during the extended consultation process. These changes have been assessed (by the Departments of Primary Industries and Fisheries and State Development and Innovation) as not requiring a separate and additional consultation process, are beneficial to stakeholders and have no impact on the sustainability of the resource.

Notes on Provisions

Part 1 Preliminary

1 Short title

Clause 1 Provides that the short title of the legislation is the *Fisheries Management Plans Amendment Management Plan (No. 1) 2006* (the amendment plan).

2 Commencement

Clause 2 Provides that the amendment plan commences on 1 July 2006.

Part 2 Amendment of Fisheries (Coral Reef Fin Fish) Management Plan 2003

3 Regulation amended in pt 2

Clause 3 Identifies the management plan being amended in part 2 as the *Fisheries (Coral Reef Fin Fish) Management Plan 2003* (the CRFF Plan).

4 Replacement of s 2 (Commencement)

Clause 4 Replaces a spent provision that deferred the commencement of some provision of the CRFF Plan after it was made in 2003. The deferred provisions have now commenced.

New section 2 (What is the reef line fishery) defines the fishery as fishing activities related to coral reef fin fish. Section 7 of the Act provides for the meaning of a fishery, which includes activities by way of fishing specified by a species of fish.

5 Amendment of s 3 (Application of Plan)

Clause 5 Amends section 3, which provides for the application of the plan to the taking, possessing and other uses of coral reef fin fish. The amendment removes the definition of the fishery as being these activities, as the definition of the reef line fishery is now provided by section 2.

6 Amendment of s 4 (Main purpose of plan and its achievement)

Clause 6 Changes references from ‘commercial fishing tours’ in section 4 to ‘charter fishing trips’ to better describe the activity.

7 Amendment of s 5 (Interpretation)

Clause 7 Amends the existing example for section 5(2) to identify the particular sections in the division being referred to.

8 Omission of ss 6, 127, 158 and 159

Clause 8 Omits sections 6, 127, 158 and 159 from the CRFF Plan.

Section 6 provided for the scientific names of coral reef fin fish listed in schedule 2. As the same meanings for the common and scientific names of coral reef fin fish are provided by the regulation and section 5 of the CRFF Plan already allows the regulation meaning to extend to the CRFF Plan, the unnecessary duplication is being removed.

Section 127 prescribed a transshipment condition for tender licences. The effect of this condition is being retained as a prescribed condition for RQ licences under section 126 of the CRFF Plan. However, as the use of both primary and tender boats is to be authorised by a single commercial fishing boat licence, the provision applying conditions to tender boat licences is no longer required.

Sections 158 and 159 were spent transitional provisions.

9 Amendment of s 8 (Prohibited activities)

Clause 9 Amends section 8 to—

- reflect the change in terminology from ‘commercial fishing tours’ to ‘charter fishing trips’;

- provide a new exemption to the general prohibition against possessing coral reef fish on board a commercial fishing boat in closed waters;
 - the three, nine-day closures each year protect spawning aggregations of coral reef fin fish. Not only is it prohibited to take or possess coral reef fin fish from closed waters during these periods, it is also prohibited to possess them on board a boat in the waters, irrespective of whether the fish were taken before the closure began or from outside the closure area;
 - the result of consultation with industry was that some accommodation should be made for commercial fishers returning to a landing place with coral reef fin fish taken before the start of the closure where it is impractical to complete unloading of catch prior to the start of the closure, for example, due to congestion at port;
 - the amendment addresses this by allowing coral reef fin fish to be possessed on a commercial boat for the reef line fishery within an unloading area for the purpose of unloading, provided that catch was taken before the closure started and otherwise in compliance with the fishery rules; and
- renumbering the existing section due to the insertion of new subsection 8(3).

10 Amendment of s 9 (Fish regulated by number—sch 4, pt 1)

Clause 10 Amends section 9 to reflect the change in terminology from ‘commercial fishing tours’ to ‘charter fishing trips’.

11 Amendment of s 10 (Exemption for recreational fishers on particular commercial fishing tours)

Clause 11 Amends section 10 to reflect the change in terminology from ‘commercial fishing tours’ to ‘charter fishing trips’. However, unless otherwise approved under a general fisheries permit, the increased bag limit applied to recreational fishers on extended charter fishing trips will apply only to trips conducted under a charter fishing licence.

12 Amendment of s 15 (Restrictions on writing 'RQ' fishery symbol)

Clause 12 amends section 15 to—

- refer to the writing of the 'RQ' fishery symbol on a commercial fishing boat licence, rather than the broader term 'authority'. This amendment is consequential to the *Fisheries Amendment Regulation 2006* which provides that fishery symbols may be written only on commercial fishing boat licences, or for fisheries under schedule 15 of the regulation or the eel fishery under the *Fisheries (Freshwater) Management Plan 1999*, a commercial fishing boat licence or commercial harvest fishery licence;
- omit section 15(b) which provided for the writing of 'RQ' fishery symbols on licences through the allocation process under divisions 2 and 3, as the has been completed; and
- provide for a new circumstance in which an 'RQ' fishery symbol may be written on a commercial fishing boat licence—the approval of a fishery symbol movement application under section 47 of the regulation. This provision was introduced by the *Fisheries Amendment Regulation 2006* to allow fishery symbols, which represent a right to access particular commercial fisheries under a licence, to be divided from the licence and traded to another licence holder. This facility better reflects the proprietary nature of commercial fishing boat (and commercial harvest fishery) licences.

13 Amendment of s 22 (Application of div 2 to relevant licences)

Clause 13 Amends section 22 by replacing the reference to 'primary licence' with 'commercial fishing boat licence'. The *Fisheries Amendment Regulation 2006* provides for the amalgamation of two types of boat licences, the primary commercial fishing boat licence and the tender commercial fishing boat licence, into a single commercial fishing boat licence that authorises the use of both primary and tender boats. The retention of separate licences is not necessary to achieve the purposes of the Act and is an unnecessary financial and administrative burden.

The consequential amendment to the CRFF Plan reflects the change to the single commercial fishing boat licence, however the effect of the section is not otherwise affected.

14 Amendment of ss 36B and 37

Clause 14 Amends sections 36B and 37 to reflect the absorption of the separate authorisation provided by a tender licence into the single commercial fishing boat licence.

15 Omission of ch 3, pt 1, div 3 (Changing fishery symbol 'RQ' to another authority)

Clause 15 Omits chapter 3, part 1, division 3 of the CRFF Plan. The division provided for a particular process enabling an RQ fishery symbol to be moved from one commercial fishing boat licence to another held by the same person. This enabled the quota allocated to a specific licence to be taken using a boat authorised under another licence, which did not already have the RQ fishery symbol. The precondition to the approval of the application was the surrender of the first licence.

The *Fisheries Amendment Regulation 2006* inserts new section 47 which provides a general process from moving fishery symbols between licences, including where the licences are held by the same person, removing the need for this division.

16 Amendment of s 43 (Simplified outline of pt 2)

Clause 16 Amends section 43 by omitting the subsection that referred to chapter 3, part 1, division 3, because that division has been omitted.

17 Amendment of s 48 (Nature of a line unit)

Clause 17 Amends section 48 by replacing the references to the 'fishery' with the now-named 'reef line fishery' the meaning for which is provided by new section 2 (What is the reef line fishery).

18 Amendment of s 69 (Meaning of *entitlement* of line unit holder)

Clause 18 Amends section 69 to ensure a person's entitlement to use line units will be preserved while any RQ boat licence is also held. Under the unamended section, a person's line unit holding is linked to a single licence, meaning that only the boat for that licence may be used. The change is intended to allow the owner of multiple licences to elect which

one or more of the holder's RQ licensed boats will be used on any given fishing trip under line units.

19 Amendment of s 70 (When line unit entitlement is *used* for a line year)

Clause 19 Amends section 70 to reflect the change allowing any of the holder's RQ licences to be used in the reef line fishery in conjunction with the holder's line units.

20 Amendment of s 71 (No carrying forward of unused entitlement)

Clause 20 Amends section 71 so that it no longer refers to a particular licence as being the one related to line units.

21 Amendment of s 72 (Line unit certificates)

Clause 21 Amends section 72 to—

- provide for the issue of a single line unit certificate for all line units held by each holder and to remove the requirement for the certificate to be re-issued annually. The certificate evidences the ownership features of line units, which will not change unless the holder disposes of or acquires additional line units. In this event, the necessary changes to the certificate will be made;
- omit the requirement to identify a primary boat as the only boat which may be used to take fish under the units. Any primary boat and its tenders under any RQ licence held by the line unit owner may be used; and
- renumber the section as a result of these changes.

22 Amendment of s 73 (Evidentiary provision for line unit certificate)

Clause 22 Amends section 73 to clarify that the point of time at which the certificate evidences the line units held by the holder is at the time the certificate was issued, changed or replaced.

23 Replacement of s 75 (Purpose and application of div 7)

Clause 23 Replaces section 75 which is a statement of purpose for division 7. The change is to refer to the circumstances in which line units may or may not of the Act, which refers to the circumstances, rather than conditions, under a management plan that may affect its transferability.

It also divides the division into subdivisions, providing for section 75 to be located in new subdivision 1 (When line units may or may not be transferred).

24 Replacement of ss 78 and 79

Clause 24 Replaces section 78 and omits section 79. The replacement section 78 (Line unit certificate changes required) is located in new subdivision 2 (Other provisions about line unit transfers). By specifying that registration of line unit transfers it is achieved through the chief executive amending, cancelling or transferring line unit certificates, the new section provides more completely for the administrative process by which the registration is given effect.

Section 79 provided an obligation to relinquish the RQ licence if the holder wishes to dispose of all line units. Effectively, this represented a minimum quota holding of at least 1 line unit. The intention of the change is to remove restriction and ensure units are readily transferable, providing greater flexibility for fishers and security of their holdings.

25 Amendment of s 81 (Entitlement of transferee)

Clause 25 Amends section 81 for consistency with the Act, which provides for the chief executive to register, rather than approve, transfers on application.

26 Omission of ch 3, pt 2, div 8 (Substituting 'RQ' licence to which line units relate)

Clause 26 Omits chapter 3, part 2, division 8 of the CRFF Plan. The division provided a process to change the single 'RQ' licence related to a person's line unit holding to another 'RQ' licence held by the unit holder. A person would utilise this process to allow a primary boat to be used to take their quota that was different from that in respect of which the quota was initially allocated. It is no longer necessary as the amendment plan

provides for quota to be used in conjunction with any 'RQ' licence held by the line unit holder.

27 Amendment of s 98 (Application of subdiv 1–3)

Clause 27 Makes a minor amendment to section 98 to change the abbreviation for subdivisions to 'sdivs'.

28 Amendment of s 108 (Using tender boats)

Clause 28 Omits sections 108(3) and (4) which are unnecessary due to the discontinuation of tender commercial fishing boat licences.

29 Amendment of s 110 (Purpose of subdiv 4)

Clause 29 Amends section 110 firstly, to change the abbreviation for 'subdivision' used in the heading and secondly, to omit the reference to an assistant fisher licence. The requirement for assistant fishers to hold a licence is being removed as it is not required to meet the purpose of the Act. The authorisation of an assistant fisher will be provided directly under a commercial fisher's licence, provided they are acting under the control or direction of the commercial fisher when undertaking the authorised activities.

30 Amendment of s 111 (Definitions for subdiv 4)

Clause 30 Amends section 111 to change the abbreviation used for 'subdivision' in the heading. The clause also makes changes beneficial to fishers, as a result of consultation with industry, to make the reporting obligations of commercial fishers in the reef line fishery easier to comply with and as workable as possible by—

- omitting the definition of 'complying number'. This represented a variation of no more than 1% allowed between the number of fish that were reported in the prior notice and the number on board at the time of landing. The new definition of a 'complying number' is explained in relation to clause 32;
- allowing for partial unloading of catch, in certain circumstances. Under the unamended CRFF Plan, the entire catch had to be unloaded before that boat could be used to start another fishing

trip. The unloading rules underpin the effective monitoring and enforcement of the coral reef fin fish quotas. However, it is recognised that it may be impracticable or economically unfavourable for fishers to comply with this at all times, for example, where a suitable buyer is not available during times of high supply; and

- allowing for the content of prior notices to be tailored to the practices of particular fishing operations, to reduce the amount of time and cost expended in giving the information through the AIVR system.

31 Amendment of s 112 (Requirements for taking or possessing fish on authorised boat)

Clause 31 Omits sections 112(2) and 112(4), which precluded a fisher in the commercial reef line fishery from taking coral reef fin fish for recreational purposes during a commercial trip. The fishery is managed under quotas that cap the total weight of coral reef fin fish that may be taken annually. It would be difficult to distinguish whether fish taken on a primarily commercial trip were genuinely to be retained for a private purpose. However, the result of industry consultation is that the practice of taking a few extra fish home for the private enjoyment of fishing families is valued.

While the amendment ensures fishers can elect to do this, the fisher must ensure the recreational rules are complied with, such as bag limits. The catch will also be subject to reporting obligations and will be deducted from the relevant line unit entitlement, removing any incentive for unauthorised commercial catch to avoid reporting catch under quota.

32 Amendment of s 116 (General requirements after prior notice given)

Clause 32 Introduces the new meaning of complying number, discussed in relation to clause 30. While a high degree of diligence and accuracy in reported catch numbers is expected and breaches will continue to be enforced, the purpose of the amendment is to replace the meaning of 'complying number' from being no more than a 1% difference in all cases with a number that can, in all the circumstances, be regarded as being close to the number stated in the prior notice.

The new concept has a greater capacity for the circumstances of the particular case to be taken into account in assessing whether there has been compliance. For example, where the number of live fish reported in the prior notice is very high, the margin to be expected due to genuine human error may be greater.

33 Amendment of s 117 (Additional requirements if prior notice stated fish will be unloaded)

Clause 33 Amends section 117 to provide an exception to the requirement to unload all catch from a trip after landing before resuming fishing, as explained in relation to clause 30. While the rule is being modified to accommodate partial unloads, the requirement to give a notice advising details of the product being retained on board (a ‘retained fish notice’) ensures that quota use can still be effectively monitored.

34 Amendment of s 123 (Notices to chief executive under this subdivision)

Clause 34 Amends section 123 to add the new ‘retained fish notice’ as a notice that must be given using the AIVR system.

35 Amendment of s 126 (Conditions of RQ licences about transshipping)

Clause 35 Amends section 126 to retain the effect of omitted section 127 (clause 8), which prescribed conditions on transshipping coral reef fin fish between tender boats and other boats. The transshipping conditions will apply to tender and primary boats in the same way as conditions of the single commercial fishing boat licences.

36 Amendment of s 128 (No new carrier boat licences)

Clause 36 Omits section 128(4), which provided that one of the only ways in which a new carrier boat licence could be issued for the reef line fishery was through renewal of a previous licence. The *Fisheries Amendment Regulation 2006* provides for the reissue of all existing carrier boat licences with a term that ends only upon the surrender, cancellation or expiration by law of the licence. The intention is to provide maximum certainty for holders by removing the requirement to seek an annual renewal of the

licence. As a result, provision for renewal of these licences within this section is unnecessary.

37 Replacement of ch 4, pts 1 and 2

Clause 37 Replaces chapter 4, parts 1 and 2 which contained provisions about recreational fishing and charter fishing respectively in the reef line fishery. Charter fishing is part of the recreational fishery and the provisions of parts 1 and 2 are already very similar. The intention is to consolidate those parts into a single set of provisions. The substantive fishing rules applying to the recreational sectors (including charter) of the fishery are not otherwise affected.

38 Omission of ch 4, pt 3, hdg (Aboriginal and Torres Strait Islander fishing)

Clause 38 Omits the heading to the separate part 3 that provides for traditional fishing by Aborigines and Torres Strait Islanders. Chapter 3 will continue to provide for the recreational (including charter) and Aboriginal and Torres Strait Islander sectors of the fishery, but this will no longer be separated into 3 parts.

39 Amendment of s 149 (Serious fisheries offences)

Clause 39 Amends section 149 to refer to the ‘reef line fishery’ which is now described under section 2, rather than the ‘fishery’ generally. It also updates a cross reference to the *Great Barrier Reef Marine Park Regulations 1975* (Cwlth) as a result of the renumbering of that regulation.

40 Amendment of s 150 (Criteria for suspending authorities)

Clause 40 Amends section 150 to remove the reference to an ‘assistant fisher licence’ which is being discontinued. Persons can, without a separate licence, continue to act as an assistant fisher, provided they are either under the direction or instruction (depending on the activity being undertaken) of a licensed commercial fisher.

41 Amendment of s 151 (Criteria for suspending line units)

Clause 41 Amends section 151(2)(a) to remove the reference to a line unit holder taking excess quota 'under the holder's RQ licence'. The relevant authority in this context is the line unit and the additional reference to the licence is superfluous.

The clause also amends section 151(2)(b) so that it applies if any of the holder's RQ licences are suspended. This follows from the change allowing the holder to use line units in conjunction with any one or more of the holder's RQ licences, rather than only the specified licence.

42 Amendment of s 155 (Records to be kept about imports of coral reef fin fish)

Clause 42 Amends section 155 to update the terminology from 'commercial fishing tour' to 'charter fishing trip'.

43 Amendment of s 160 (Primary licence QFV 121 78I)

Clause 43 Amends section 22 by replacing the references to 'primary licence' with 'commercial fishing boat licence'.

44 Amendment of sch 1 (How main purpose is to be achieved)

Clause 44 Amends schedule 1 to update the terminology used from 'fishery' to 'reef line fishery' and from 'commercial fishing tour' to 'charter fishing trip'. The substantive effect of schedule 1 is not otherwise affected.

45 Omission of sch 2 (Coral reef fin fish)

Clause 45 Omits schedule 2 which provides for the common and scientific names of coral reef fin fish, which is one of the characteristics by which the reef line fishery is defined. The same meaning of coral reef fin fish is provided for under the regulation and applies to the CRFF plan under section 5. The schedule is being omitted to avoid unnecessary duplication in fisheries subordinate legislation.

46 Amendment of sch 8 (Dictionary)

Clause 46 Amends schedule 8 (Dictionary) to give effect to the new terms introduced by the amendment plan, as well as modifying the definitions for some existing terms as a consequence of the amendment plan. Some redundant terms are also being omitted.

Part 3 Amendment of Fisheries (East Coast Trawl) Management Plan 1999**47 Regulation amended in pt 3**

Clause 47 Provides that part 3 of the amendment plan amends the *Fisheries (East Coast Trawl) Plan 1999* (the Trawl Plan).

48 Replacement of ss 2 and 3

Clause 48 Replaces section 2, which is a spent provision dealing with the initial commencement of some provisions of the Trawl Plan. It also replaces section 3 which identifies the fishery by reference to the descriptive information about it in schedule 1 and provides for the application of the plan to the fishery.

Section 7 of the Fisheries Act provides for the meaning of a fishery, as including activities by way of fishing, as well as providing examples of how those activities may be referenced, such as by species of fish, types of fish, an area and a way of fishing.

At the time the Trawl Plan was made, the Act also provided for a requirement for each management plan to include a description of the fishery and its known status. This requirement has since been omitted, as much of the information is non-legislative in character and quickly becomes out of date.

The amendment plan takes the opportunity to omit the provisions that provide the description and known status of the east coast trawl fishery in 1999. The replacements provisions take a clearer approach, consistent with all fisheries management plans, in defining each fishery by reference to the fishing activities relevant to it, providing a meaningful name for the fishery

and providing for application of the plan to the activities of taking, possessing or using fish taken from the fishery.

New section 2 (What is the east coast trawl fishery) identifies the east coast trawl fishery by reference to a specified fishing activity—fishing by the use of trawl nets, the species fished—(both the targeted fish (principal fish) and the incidental catch that may be retained (permitted fish)) and by area—the east coast of Queensland.

New section 3 (Application of plan) provides that the Trawl Plan applies in relation to the taking, possessing and other uses of principal and permitted fish.

49 Amendment of s 4 (Objectives)

Clause 49 Amends section 4 to update the reference to the ‘fishery’ with a reference to the ‘east coast trawl fishery’, as defined in section 2.

50 Amendment of s 6 (Aids to interpretation and definitions—sch 7)

Clause 50 amends section 6 to shorten the heading to ‘Interpretation’. The clause also inserts two new subsections that provide that, unless specified to the contrary, the definitions of terms and aids to interpretation in the regulation also apply to the Trawl Plan. While the same provision was included in the *Fisheries (Coral Reef Fin Fish) Plan 2003*, earlier management plans previously have not provided for this. The intention is to avoid repeating the same definitions and interpretative aids in each management plan, where the meaning is the same as that already provided for by the regulation.

The advantages of this approach are that the possibility of unintended, slight inconsistencies arising in definitions of the same terms in different plans is avoided and that it is easier for users to locate the meaning of widely used terms if they are provided for in one place.

51 Replacement of ch 2, pt 1, div 1, hdg (Closures for all of the fishery’s waters)

Clause 51 Amends the heading of the division to update the name of the fishery to the ‘east coast trawl fishery’, as defined in section 2.

52 Amendment of ss 9, 10, 31, 38, 39, 74, 86, 93, 123, 223, 227 and 231

Clause 52 Amends each of the provisions to update the name of the fishery to refer to the ‘east coast trawl fishery’.

53 Amendment of s 32 (Who may fish)

Clause 53 Amends section 32 by—

- updating the name of the fishery to the ‘east coast trawl fishery’;
- removing the reference to a person acting under a crew licence due to the discontinuation of this licence; and
- removing the provision for effort units as being for a particular licence. Previously, each effort unit was linked to one trawl licence only, meaning that only one trawler could be used for all fishing days and steaming days under the holder’s effort units. The intention is for the owner of multiple licences to be free to elect which one or more of their trawlers for the relevant area of the fishery are to be used, providing greater operational flexibility to the holder.

54 Replacement of s 33 (Assistant fishers and persons acting under a crew licence)

Clause 54 Replaces section 33, which restricts the way assistant fishers and commercial fishers may operate in the east coast trawl fishery. Replacement section 33 (Assistant fishers) retains the effect of the replaced provision but amends the way it is applied as a result of the removal of the concept of crew and the related licensing requirements for crew and assistant fishers.

55 Amendment of s 37 (Restrictions)

Clause 55 Amends section 37 by—

- replacing the reference to a ‘primary licence’ with ‘commercial fishing boat licence’ as a result of the amalgamation of primary and tender boat licences; and
- providing for a new circumstance in which fishery symbols for the east coast trawl fishery may be written on a commercial

fishing boat licence—the approval of a fishery symbol movement application under section 47 of the regulation. The effect of this new feature of the right held by licence holders allows holders to deal with fishery symbols independently of licences (as explained in relation to clause 12).

56 Amendment of s 41 (Purpose of BRD)

Clause 56 Amends section 41 to update the name of the fishery to the ‘east coast trawl fishery’.

57 Amendment of s 76 (When effort unit is issued)

Clause 57 Amends section 76 by including the replacement and changing of an effort unit certificate to include the unit as a way an effort unit is issued, to better reflects the administrative process the section describes.

58 Replacement of ss 97 and 98

Clause 58 Replaces sections 97 and 98 which respectively provided for the entitlement generated by an effort unit and when the entitlement became used. The replacement provisions also deal with these matters, with some changes.

59 New section 97 Meaning of entitlement of effort unit holder

The formula by which an effort unit entitlement is converted into fishing days depends on the number of hull units of the trawler identified in the licence used with the effort units. A trawler with more hull units has a greater fishing capacity and the effort units will convert to fewer fishing days than for a trawler with less hull units.

Under the unamended Trawl Plan, it was possible to make this calculation in advance, as only one trawler was eligible for use with any set of effort units, so that the relevant number of hull units was known. As a result of the amendment to section 32 explained in relation to clause 53, the holder will have greater flexibility in managing the use of effort unit entitlement, with the ability to elect to use any one or more of the trawlers licensed for the holder in the east coast trawl fishery.

In consequence of this beneficial change, section 97 has been re-cast to provide for an entitlement to trawl in an effort year in the fishery until all effort units are used. The vessel monitoring system (VMS) automatically detects which boats are being used in the fishery on a given day. For example, if a holder has three 'T1 licences' and elects to use all of those 3 trawlers on a given day, the number of effort units expended will be that needed to entitle each of those boats to use 1 fishing day.

As a matter of administrative practice, effort unit holders are sent periodic statements about the number of fishing days they have used and have remaining.

Also, the provision for an additional authorisation to use 4 steaming days for each boat has been relocated from section 98 to section 97 as it is more accurately described as part of the entitlement of an effort unit holder, rather than as part of the usage of the entitlement.

60 New section 98 When effort units are used for an effort year

New section 98 reflects the manner in which the use of an effort unit is determined. The section provides a simple formula to work out how many units have been expended by using a trawler on a fishing day. The fishing day, represented by the number 1, is divided by the effort unit conversion factor of the boat used, to give the number of effort units expended.

61 Amendment of s 99 (Provisions for working out use of entitlement)

Clause 59 Amends section 99 to—

- reflect that there will no longer be a particular trawler identified on an effort unit certificate; and
- remove any doubt that fishing days are used before steaming days during an effort year.

62 Amendment of s 101 (Effort unit certificates)

Clause 60 Amends section 101 by—

- removing the requirement to re-issue effort unit certificates annually. This reduces administrative cost, as in practice a certificate will require changing or reissuing only if a particular it

records changes, for example to replace a lost or damaged certificate or where the holder disposes or acquires effort units;

- removing the requirement to identify one trawler as that relating to the effort units;
- removing the requirement to include the number of fishing days the effort units entitle the holder to trawl in the east coast trawl fishery in a year on the effort unit certificate. The intention is that the certificate be the primary document evidencing the ownership of effort units. Statements about the progressive use of the entitlement generated by units, represented as fishing days, are to be provided by separate notice, as a matter of administrative practice;
- identify how many of the effort units are 'T1' effort units, that is, units that may be used in the 'T1' area of the fishery and how many are 'T2' units. Whether a unit is a 'T1' or 'T2' unit depends on whether the licence in respect of which the units were first issued was a 'T1' or 'T2' licence.

63 Insertion of new s 101A

Clause 61 Inserts new section 101A (Evidentiary provision for effort unit certificate). While each effort unit is a quota and an authority, holders of multiple units only receive a single certificate. New section 101A ensures that the certificate can be used as evidence of the ownership of effort units by the holder at the time it was initially issued, as well as when it may later have been changed or replaced, for example as the result of the disposition or acquisition of effort units.

64 Amendment of s 102 (VMS detection or manual reporting)

Clause 62 Amends section 102 which provides for the relevance of VMS detection in evidencing the use of fishing and steaming days for a holder's effort units. The amendment allows the use of any of the holder's licensed trawlers, authorised for the relevant fishery area. If a boat under any of the holder's 'T1' licences are detected by VMS in the 'T1 area' of the east coast trawl fishery at any time on a day, the detection is evidence the boat has used a fishing or steaming day for the 'T1' effort units. The same provision is made for detection of a boat under a 'T2' licence in the 'T2' or 'M1 area', as these are both areas in which 'T2' boats may trawl.

65 Amendment of s 102A (Absence of VMS detection or reporting)

Clause 63 Amends section 102A so that a failure to have a working VMS device or, in substitution, to manually report a trawler's location, is evidence that the 'T1' or 'T2' boat was being used in the relevant area of the east coast trawl fishery.

Other than the change to accommodate the possibility that any number of the holder's trawlers may be being used under effort units, the amendment does not change current obligations.

66 Insertion of new s 102B

Clause 64 Inserts new section 102B (Particular notice is evidence of unused entitlement) which provides an evidentiary basis for the statements issued periodically to effort unit holders, either for information or at the holder's request, advising the assessment of the usage of entitlement during an effort year.

67 Amendment of s 105 (Exception-moving boat without fishing)

Clause 65 amends section 105 to update the name of the fishery to the 'east coast trawl fishery'.

68 Amendment of ss 105A and 106

Clause 66 Amends sections 105A and 106 to update the name of the fishery to the 'east coast trawl fishery'.

69 Replacement of ch 3, pt 6, div 8 (Transfer conditions for effort units)

Clause 67 Provides a replacement chapter 3, part 6, division 8 (When effort units may or may not be transferred) and new chapter 3, part 6, division 8A (Applications to register transfers of effort units) to—

- separate the procedural and substantive provisions about transfer into separate divisions;

- recast the heading of division 8 so that its provisions are expressed as circumstances affecting transferability of effort units rather than preconditions of transfer. This better reflects section 65 of the Act which provides for the registration of a transfer if the authority satisfies circumstances provided under a regulation or management plan;
- remove section 112 (No transfer applications before first effort year)—as the first effort year has past, this provision is spent;
- remove section 116 that required a minimum quota holding of 50 effort units to be retained after any transfer. The intention of the change is to remove the restriction and ensure units are readily transferable, providing greater flexibility for fishers and security of their holdings;
- remove section 117 (Effort unit surrender requirement if licence transferred) and section 118 (Effort unit surrender requirement if licence not transferred)—the omission of these sections removes disincentives to the trade of effort units and recognises that transferability is an important feature of the right of ownership;
- expressly state that ‘T1’ and ‘T2’ effort units may be transferred to anyone who also holds a commercial fishing boat licence with the same fishery symbol. The significance of the fishery symbol is that it denotes which area of the east coast the trawler can operate; and
- improve the procedural aspects of effort unit transfers by:
 - improving the timeliness and reducing the cost of short term transfers by removing the need to formally change effort unit certificates where the transfer is temporary; and
 - expressly stating that it is by amending, replacing and cancelling effort unit certificates that permanent transfers are given effect.

70 Amendment of s 119 (Entitlement)

Clause 68 Amends section 119 for consistency with the Act, which provides for the chief executive to register, rather than approve, of transfers on application.

71 Replacement of ss 132 and 133

Clause 69 Omits and replaces section 132, which provided for effort unit surrender requirements where trawlers authorised under boat licences for the ‘M1’/‘T1’ or ‘T2’ fisheries were sought to be modified or replaced by the holder.

This was introduced in an earlier phase of the effort unit system to offset the increase in effort in the fishery caused by the greater efficiencies of new or modified boats. The effort unit surrender requirement is being removed. However, replacement section 132 (Restriction for ‘M1’, ‘T1’ or ‘T2’ licences) maintains an overall limit on the maximum capacity of replaced or modified trawlers.

The clause also omits and replaces section 133, which provided a requirement to surrender an ‘M2’ licence where an application was made to modify or replace a trawler under another ‘M2’ licence. Similarly, the purpose was to offset the increases in effort occasioned by the introduction of new or improved trawlers. Replacement section 133 (Restriction for ‘M2’ licences) retains the requirement to surrender another ‘M2’ licence if the new or modified boat will have a greater number of hull units than the former boat. Otherwise, a modification or replacement may be approved on application, without a prescribed requirement to first surrender another licence.

These provisions were impeding restructuring of the fishing fleet and the upgrading of fishing boats which adds significantly to the cost of maintenance and operation of existing vessels. The removal of these restrictions will enable fishers to make the necessary adjustments to their business to remain viable and competitive.

72 Omission of ch 4, pt 6, div 3 (Miscellaneous)

Clause 70 Omits chapter 4, part 6 division 3 to—

- omit section 201 (Only named commercial fisher may use boat)—this limitation on the exercise of the right conferred by ‘T7’ licence holders has been reviewed as being of little utility; and
- omit section 202 (Prohibition on transfer of ‘T7’ licences)—the inability to transfer a ‘T7’ licence detracts from the proprietary nature of commercial fishing boat licences.

73 Amendment of s 233 (Restrictions on processing scallops on commercial fishing boat)

Clause 71 Amends section 233 to omit references to licences, or classes of licences, that have been discontinued by the *Fisheries Amendment Regulation 2006*.

74 Amendment of s 235 (Serious fisheries offences)

Clause 72 Amends section 235 to update the cross reference to the definition of 'serious fisheries offence' and to change the way section 235(d) is worded.

75 Insertion of new ch 6

Clause 73 Inserts new chapter 6 (section 239 (Transitional provision for *Fisheries Management Plans Amendment Management Plan (No.1) 2006*), which provides for the transition to new effort units certificates upon the commencement of the amendment plan. At commencement of the new provisions on 1 July 2006, former effort unit certificates will cease to have effect. The changes to new effort unit certificates are to the content and presentation and do not change the number of effort units held by each person.

76 Omission of sch 1 (The fishery)

Clause 74 Omits schedule 1 which described the east coast trawl fishery at the time the Trawl Plan was made in 1999. These provisions are non-legislative in character and the information is no longer current. New sections 2 and 3 now provide for the meaning of the east coast trawl fishery and the application of the Trawl Plan.

77 Amendment of sch 2 (How the objectives are to be achieved)

Clause 75 Updates the name of the fishery to the 'east coast trawl fishery', now defined under section 2.

78 Amendment of sch 5 (Effort unit conversion factor for boats)

Clause 76 Edits the table in schedule 5 so that it no longer applies in determining the amount of effort unit surrenders required before applications for trawler replacements and licence transfers may proceed, as the surrender requirements are being removed.

79 Amendment of sch 7 (Aids to interpretation and definitions)

Clause 77 Amends section 7 to—

- remove definitions or aids to interpretation that are the same as those provided under the regulation. The amendment made to section 6 allows these definitions to apply equally to the Trawl Plan, without the need for duplication;
- remove definitions of terms that are no longer of relevance, such as definitions for types of licences that have been discontinued;
- insert new definitions to reflect that effort units may be either ‘T1’ or ‘T2’ effort units; and
- make miscellaneous minor updates to terminology and cross referencing.

**Part 4 Amendment of Fisheries (Freshwater)
Management Plan 1999****80 Regulation amended in pt 4**

Clause 78 Provides that part 4 of the amendment plan amends the *Fisheries (Freshwater) Management Plan 1999* (the Freshwater Plan).

81 Replacement of ss 2 and 3

Clause 79 Replaces section 2, which is a spent provision dealing with the initial commencement of the provisions of the Freshwater Plan and section 3 which identifies the fishery by reference to the descriptive information

about it in schedule 1 and provides for the application of the plan to the fishery.

Section 7 of the Fisheries Act provides for the meaning of a fishery, as including activities by way of fishing, as well as providing examples of how those activities may be referenced, such as by species of fish, types of fish, an area and a way of fishing.

At the time the Freshwater Plan was made, the Act also provided for a requirement for each management plan to include a description of the fishery and its known status. This requirement has since been omitted, as much of the information non-legislative in character, and quickly becomes out of date.

The amendment plan takes the opportunity to omit the provisions that provide the description and known status of the freshwater fishery in 1999. The replacement provisions take a clear approach, consistent with all fisheries management plans, in defining each fishery by reference to the fishing activities relevant to it, providing a meaningful name for the fishery and providing for application of the plan to the activities of taking, possessing or using fish taken from the fishery.

New section 2 (What is the freshwater fishery) names the freshwater fishery and defines it by a characteristic of the fish—all freshwater species—and by area—non-tidal waters of Queensland.

New section 3 (Application of plan) provides for the application of the Freshwater Plan, which applies by reference to the taking, possessing and other uses of freshwater fish.

82 Amendment of s 5 (Aids to interpretation and definitions—sch 8)

Clause 80 Amends section 5 to shorten the heading to ‘Interpretation’. The clause also inserts two new subsections that provide that, unless specified to the contrary, the definitions of terms and aids to interpretation in the regulation also apply to the Freshwater Plan. While the same provision was included in the *Fisheries (Coral Reef Fin Fish) Plan 2003*, earlier management plans previously have not provided for this.

The objective is to avoid the need to repeat definitions and interpretative aids in each management plan, where the meaning is the same as that already provided for in the regulation. The advantages of this approach are that the possibility of unintended, slight inconsistencies arising in

definitions of the same terms in different plans is avoided and that it is easier for users to locate the meaning of widely used terms if they are provided for in one place.

83 Replacement of s 46 (Meaning of eel authority)

Clause 81 Replaces section 46 as a consequence of the licensing reforms implemented by the *Fisheries Amendment Regulation 2006*. The number and types of authorities issued are being streamlined, unnecessary authorities are being discontinued and related authorities amalgamated into one.

An example of this is the conversion of the ‘authority to take’ into a commercial harvest fishery licence, which shares many of the proprietary characteristics of commercial fishing boat licences. New section 46 (Meaning of eel licence) reflects this change for the eel fishery, previously managed by a system of ‘authorities to take’, by instead defining the ‘eel licence’, a type of commercial harvest fishery licence.

84 Replacement of s 47 (Who may take eels)

Clause 82 Replaces section 47 with a new section and inserts a new section 47A, also as a consequence of the licensing reforms. Under the unamended Freshwater Plan, if the holder of an eel authority was unable to exercise his or her entitlement, due to physical incapacity, an additional authority, a ‘nominee authority’ was required to be obtained by application to the chief executive before another could act in the holder’s place.

New section 47 (Who may take eels) provides the right to take eels to only an eel licence holder or an approved nominee. For sustainability, only one person may act under an eel licence at a given time.

New section 47A (Obtaining nominee approval) allows for the nomination to be achieved by written approval, rather than by the issue of an additional authority, where the holder becomes temporarily incapacitated.

85 Amendment of ss 49 and 73

Clause 83 amends section 49 and 73 to update the reference from an ‘eel authority’ to an ‘eel licence’, as a result of the conversion of all authorities to take into commercial harvest fishery licences.

86 Replacement of s 50 (Selling eels under authority)

Clause 84 Replaces section 50 to extend and clarify the meaning of the section. New section 50 (Selling or processing eels under eel licence) allows an approved nominee to sell and process eels taken under an eel licence. However, only one person may act at a time. The provision also makes it clear that the authorisation of the eel licence includes necessary processing and continues the exception to the general requirement that fish must be sold from fisher to a licensed buyer, allowing eels to be sold to any buyer, due to the unique nature of the eel market.

87 Replacement of pt 8, div 3, hdg (Eel authorities)

Clause 85 Replaces the heading to part 8, division 3 from 'Eel authorities' to 'Eel licences'.

88 Amendment of s 51 (Restriction on writing fishery symbol 'E' on authorities)

Clause 86 Amends section 51 to omit provision for the renewal of eel licences. The transitional arrangements for the amendment plan provide for an ongoing term for eel licence, which will end only upon its suspension, cancellation or expiry under the Act. As a result, provision for renewal of these licences is unnecessary.

89 Replacement of ss 52 and 53

Clause 87 Replaces sections 52 and 53. Section 52 is omitted completely as it provided for the separate nominee eel authority that is being discontinued. New section 52 (Eel licences are not transferable) retains the effect of former section 53 by providing for the non-transferability of eel licences, for the sustainability of the fishery, while changing the reference from 'eel authority' to 'eel licence'.

90 Amendment of s 66 (Number of traps that may be used)

Clause 88 Amends section 66 to update the terminology from 'eel authority' to 'eel licence'.

91 Insertion of new pt 12

Clause 89 Inserts new part 12, to remove the requirement to renew a licence annually providing for the term of existing eel authorities to be changed to an ongoing term which will end only upon the eel licence's suspension, cancellation or expiry under the Act. An ongoing term is intended to provide greater certainty for holders.

92 Omission of sch 1 (The freshwater fishery)

Clause 90 Omits schedule 1 which described the freshwater fishery at the time the Freshwater Plan was made in 1999. These provisions are non-legislative in character and the information is no longer current. New sections 2 and 3 provide for the meaning of the freshwater fishery and the application of the Freshwater Plan.

Amendment of sch 8 (Aids to interpretation and definitions)

Clause 91 inserts a new impoundment on the Stocked Impoundment Permit Scheme and amends the definitions or aids to interpretation in schedule 8 of the Freshwater plan to—

- provide for a new addition to the successful stocked impoundment scheme at Storm King Dam;
- remove definitions or aid to interpretation that are the same as those provided under the regulation. The amendment made to section 5 now provides for these definitions to apply also to the Freshwater Plan; and
- provide definitions for 'approved nominee' and 'freshwater fishery', new terms introduced by the amendment plan.

Part 5 Amendment of Fisheries (Gulf of Carpentaria) Inshore Fin Fish Management Plan 1999

93 Regulation amended in pt 5

Clause 92 provides that part 5 of the amendment plan amends the *Fisheries (Gulf of Carpentaria) Inshore Fin Fish Management Plan 1999* (the Gulf Plan).

94 Replacement of ss 2 and 3

Clause 93 Replaces section 2, which is a spent provision dealing with the initial commencement of the provisions of the Gulf Plan and section 3 which identifies the fishery by reference to the descriptive information about it in schedule 1 and provides for the application of the plan to the fishery.

Section 7 of the Fisheries Act provides for the meaning of a fishery, as including activities by way of fishing, as well as providing examples of how those activities may be referenced, such as by species of fish, types of fish, an area and a way of fishing.

At the time the Gulf Plan was made, the Act also provided for a requirement for each management plan to include a description of the fishery and its known status. This requirement has since been omitted, as much of the information is non-legislative in character and quickly becomes out of date.

The amendment plan takes the opportunity to omit the provisions that provide the description and known status of the gulf inshore fin fish fishery in 1999. The replacement provisions take a clear approach, consistent with all fisheries management plans, in defining each fishery by reference to the fishing activities relevant to it, providing a meaningful name for the fishery and providing for application of the plan to the activities of taking, possessing or using fish taken from the fishery.

New sections 2 (What is the gulf inshore fin fish fishery) names the ‘gulf inshore fin fish fishery’ and defines it by reference to the characteristics of the fish—‘gulf fin fish’, meaning any fin fish other than coral reef fin fish—and by area—waters of the Gulf of Carpentaria. The commercial

coral reef fin fish fishery in the Gulf of Carpentaria is managed under the regulation.

New section 3 provides for the application of the Gulf Plan, which applies by reference to the taking, possessing and other uses of gulf fin fish.

95 Amendment of s 4 (Objectives of the plan and their achievement)

Clause 94 amends section 4 to update the reference from ‘inshore fin fish’ to ‘gulf fin fish’.

96 Amendment of s 5 (Aids to interpretation and definitions—sch 4)

Clause 95 amends section 5 to shorten the heading to ‘Interpretation’. The clause also inserts two new subsections that provide that unless specified to the contrary, the definitions of terms and aids to interpretation in the regulation will also apply to the Gulf Plan. While the same provision was included in the *Fisheries (Coral Reef Fin Fish) Plan 2003*, earlier management plans previously had not provided for this.

The objective is to avoid the need to repeat definitions and interpretative aids in each management plan, where the meaning is the same as that already provided for in the regulation. The advantages of this approach are that the possibility of unintended, slight inconsistencies arising in definitions of the same terms in different plans is avoided and that it is easier for users to locate the meaning of widely used terms if they are provided for in one place.

97 Amendment of ss 8 to 11A, 13, 14, 17, 19, 20, 21, 25 to 27, 38 to 41, 51 to 54, 63 to 65, 76, 79, 84, 88, 92, pt 6, div 4 hdg and sch 3

Clause 96 Amends a number of provisions to update the reference to ‘fin fish’ to ‘gulf fin fish’.

98 Amendment of ss 10, 23, 36, 49, 60, 67, 69 and 70

Clause 97 Amends a number of provisions by replacing the reference to ‘primary licence’ with ‘commercial fishing boat licence’. The *Fisheries*

Amendment Regulation 2006 has the effect of amalgamating two licences, the primary commercial fishing boat licence and the tender commercial fishing boat licence, into the single commercial fishing boat licence authorising the use of both primary and tender boats. This intention is to remove an unnecessary layer of licensing, in furtherance of national competition policy objectives. This consequential amendment reflects the change to the single commercial fishing boat licence system, however the effect of the sections is not otherwise affected.

99 Amendment of s 21 (Who may fish for trade or commerce)

Clause 98 Amends section 21 to change the reference to ‘primary licence’ with ‘commercial fishing boat licence’ and to remove the reference to a ‘person acting under a crew licence’. The *Fisheries Amendment Regulation 2006* has the effect of amalgamating two licences, the primary commercial fishing boat licence and the tender commercial fishing boat licence, into the single commercial fishing boat licence, authorising the use of both primary and tender boats. It also discontinues crew licences, with the authorisation being provided directly under the commercial fisher licence for assistant fishers.

100 Amendment of s 22 (Restrictions on writing fishery symbols on authorities)

Clause 99 amends section 22 to—

- to provide for a new circumstance in which the fishery symbol for the inshore gulf fin fish fishery may be written on a commercial fishing boat licence—the approval of a fishery symbol movement application under section 47 of the regulation. This provision was introduced by the *Fisheries Amendment Regulation 2006* to allow fishery symbols, which denote the right to access particular commercial fisheries under a licence to be divided from the licence and traded to another licence holder. This facility enhances the proprietary nature of commercial fishing boat (and commercial harvest fishery) licence and is a significant enhancement to the flexibility and value of those rights;
- change the reference to ‘primary licence’ with ‘commercial fishing boat licence’;

- change the reference from ‘authorities’ to the more specific term ‘licences’, as this is the only type of authority to which the section applies.

101 Amendment of ss 17, 25, 27, 38, 51, 53, 63(1) and 65(1)

Clause 100 amends a number of sections to change the reference to ‘Fin fish’ with ‘gulf fin fish’.

102 Amendment of s 68 (VMS equipment conditions—installation and registration)

Clause 101 amends section 68 to change the reference to ‘primary licence’ with ‘commercial fishing boat licence’ and to update a is the section number of a cross-referenced provision.

103 Amendment of ss 78, and 91 and sch 2

Clause 102 Amends sections 78, 91 and schedule 2 to change the reference to ‘fishery’ with ‘gulf inshore fin fish fishery’, the meaning of which is provided for under new section 2.

104 Amendment of s 86 (General prohibitions)

Clause 103 amends section 86 to—

- change the reference to ‘fin fish’ with ‘gulf fin fish’, the meaning of which is provided under new section 2;
- change the reference to ‘commercial fishing tours’ with ‘charter fishing trips’. This terminology change is being made throughout fisheries subordinate legislation to better describe the activity; and
- remove a definition for the section that is now unnecessary as the term is already defined in the regulation and so will apply to the Gulf Plan by virtue of section 5.

105 Amendment of s 92 (Serious fisheries offences)

Clause 104 Amends section 92 to update the cross reference to the definition of ‘serious fisheries offence’ as being in the schedule to the Gulf Plan. The reference to ‘the fishery’ is also updated to ‘the gulf inshore fin fish fishery’.

106 Omission of sch 1 (The fishery)

Clause 105 Omits schedule 1 which described the gulf fishery and its known status at the time the Gulf Plan was made in 1999. These provisions are non-legislative in character and the information is no longer current. New sections 2 and 3 provide for the meaning of the inshore gulf fin fish fishery and the application of the Gulf Plan.

107 Amendment of sch 2 (How the objectives are to be achieved)

Clause 106 amends schedule 2 to update terminology from ‘fin fish’ to ‘gulf fin fish’ and to use the name of the fishery where appropriate.

108 Amendment of sch 4 (Aids to interpretation and definitions)

Clause 107 Makes consequential amendments to the definitions or aids to interpretation in schedule 4 of the Gulf Plan, predominantly to remove definitions or aids to interpretation that are the same as those provided under the regulation. The amendment made to section 5 now provides for these definitions to apply also to the Gulf Plan.

The objective is to avoid the need to repeat definitions and interpretative aids in each management plan, where the meaning is the same as that already provided for in the regulation. The advantages of this approach are that the possibility of unintended, slight inconsistencies arising in definitions of the same terms in different plans is avoided and that it is easier for users to locate the meaning of widely used terms if they are provided for in one place.

Part 5 Amendment of Fisheries (Spanner Crab) Management Plan 1999

109 Regulation amended in pt 6

Clause 108 Provides that part 6 amends the *Fisheries (Spanner Crab) Management Plan 1999* (the Spanner Crab Plan).

110 Replacement of ss 2 and 3

Clause 109 Replaces section 2, which is a spent provision dealing with the initial commencement of the provisions of the Spanner Crab Plan and section 3, which identifies the fishery by reference to the descriptive information about it in schedule 1 and provides for the application of the plan to the fishery.

Section 7 of the Fisheries Act provides for the meaning of a fishery, as including activities by way of fishing, as well as providing examples of how those activities may be referenced, such as by species of fish, types of fish, an area and a way of fishing.

At the time the Spanner Crab Plan was made, the Act also provided for a requirement for each management plan to include a description of the fishery and its known status. This requirement has since been omitted, as much of the information is non-legislative in character and quickly becomes out of date.

The amendment plan takes the opportunity to omit the provisions that provide the description and known status of the spanner crab fishery in 1999. The replacement provisions take a clear approach, consistent with all fisheries management plans, in defining each fishery by reference to the fishing activities relevant to it, providing a meaningful name for the fishery and providing for application of the plan to the activities of taking, possessing or using fish taken from the fishery

New section 2 (What is the spanner crab fishery) names the ‘spanner crab fishery’ and defines it as fishing activities for spanner crabs and by the area of Queensland waters in which that fishing activity is to be undertaken.

New section 3 (Application of Plan) provides for the application of the Spanner Crab Plan, to the taking, possessing and other uses of spanner crabs.

111 Amendment of ss 4, 81 and 84 and sch 2

Clause 110 amends sections 4, 81, 84 and schedule 2 to change the references from ‘fishery’ to the now-named ‘spanner crab fishery’.

112 Amendment of s 5 (Aids to interpretation and definitions-sch 3)

Clause 111 amends section 5 to shorten the heading to ‘Interpretation’. The clause also inserts two new subsections that provide that unless specified to the contrary, the definitions of terms and aids to interpretation in the regulation also apply to the Spanner Crab Plan. While the same provision was included in the *Fisheries (Coral Reef Fin Fish) Plan 2003*, earlier management plans previously had not provided for this.

The objective is to avoid the need to repeat definitions and interpretative aids in each management plan, where the meaning is the same as that already provided for in the regulation. The advantages of this approach are that the possibility of unintended, slight inconsistencies arising in definitions of the same terms in different plans is avoided and that it is easier for users to locate the meaning of widely used terms if they are provided for in one place.

113 Amendment of ss 14 and 46

Clause 112 Amends sections 14 and 46 by deleting the reference to persons acting under a crew licence. The *Fisheries Amendment Regulation 2006* has discontinued crew licences, with the authorisation to crew being provided directly under the commercial fisher licence. The intention is to remove unnecessary licensing requirements, not necessary in achieving the purpose of the Act.

114 Replacement of s 15 (Restrictions on writing 'C2' fishery symbol on authorities)

Clause 113 Inserts replacement section 15 (Restrictions on writing ‘C2’ fishery symbol on licence) to provide for an additional circumstance in which a ‘C2’ fishery symbol may be written on a commercial fishing boat licence—the approval of a fishery symbol movement application under section 47 of the regulation.

This provision was introduced by the *Fisheries Amendment Regulation 2006* to allow fishery symbols, which denote the right to access particular commercial fisheries under a licence to be divided from the licence and traded to another licence holder. This facility enhances the proprietary nature of commercial fishing boat (and commercial harvest fishery) licence.

While this is a significant enhancement to the flexibility and value of fishing licences, it is less likely to be utilised within the Spanner Crab fishery. Unlike many other fisheries that prohibit the writing of new fishery symbols as a sustainability strategy, thereby making existing symbols inherently valuable, new 'C2' fishery symbols are still obtainable from the chief executive under section 15(a) when ITQ units are acquired.

115 Replacement of s 27 (Meaning of entitlement of ITQ unit holder)

Clause 114 Inserts replacement section 27 (Meaning of entitlement of ITQ unit holder) that provides for the entitlement conferred by an ITQ unit. The changes are to—

- remove the reference to the ITQ unit certificate as providing for the entitlement under ITQ The certificate is intended to evidence the ownership of quota authorities, which will not change unless the holder disposes of acquires additional ITQ units; and
- remove the link between ITQ units and any particular C2 licence. The entitlement can be used in conjunction with any one or more 'C2' licence held by the quota holder.

Section 27 also provides that in the spanner crab fishery, the entitlement is worked out simply by dividing the annual quota for the fishery by the number of units held by a particular person.

116 Insertion of new s 28A

Clause 115 Inserts new section 28A (Particular notice is evidence of unused entitlement). The ITQ unit certificate is intended to provide evidence of ownership, rather than of what this entitles the holder to do or how that entitlement is used. As a matter of administrative practice, statements are issued regularly during the quota year to holders informing them of how much of the spanner crab entitlement has been used. The provision provides an evidentiary basis for these statements.

117 Amendment of s 30 (ITQ certificates)

Clause 116 Amends section 30 to remove the requirement to reissue ITQ unit certificates annually. This reduces administrative cost, as in practice a certificate will only require changes or reissue as a need arises, for example to replace a lost or damaged certificate or where the holder disposes or acquires ITQ units. It also removes the requirement to include particulars in the ITQ unit certificate that previously acted as a link between ITQ units and a particular C2 licence or that relate to the entitlement under ITQ units, rather than ownership of them.

118 Insertion of new s 30A

Clause 117 Inserts new section 30A (Evidentiary provision for ITQ certificate). While each ITQ unit is a quota and an authority, they are documented for each holder collectively by the issue of a single ITQ certificate. New section 114 removes any doubt that the certificate can be regarded as evidence of the ownership of ITQ units by the holder at the time it was initially issued, as well as when it may later have been changed or replaced, for example as the result of the disposition or acquisition of ITQ units.

119 Replacement of pt 4, div 4, sdiv 2 (Transfer conditions)

Clause 118 Replaces part 4, division 4, subdivision 2 with a new subdivision 2, headed 'Applications to register ITQ transfers'. The changes are to—

- recast the transfer conditions as circumstances affecting transferability of ITQ units, as section 65 of the Act now provides for the registration of a transfer provided the authority satisfies any circumstances provided under a regulation or management plan about transferability;
- remove section 35, as it is spent;
- remove the provision requiring the transferee to hold a C2 licence, or an approval to hold one. However to use the entitlement conferred by ITQ units, section 27(3) provides that the holder must also hold at least one valid 'C2' licence.

- remove restrictions relating to the offence history of a transferee or the currency of fees payable under the Act from circumstances affecting transferability;
- retain and clarify the process by which permanent transfers are given effect after they are registered, which is by reissuing, cancelling or making changes to the ITQ unit certificate.

120 Amendment of s 39 (Entitlement)

Clause 119 Amends section 39 for consistency with the Act, which provides for the chief executive to register, rather than approve, transfers on application

121 Amendment of s 40 (No more carrier boat licences)

Clause 120 Amends section 40 which has the effect of closing the spanner crab fishery to any new carrier boats for the sustainability of the fishery, by limiting the circumstances in which new licences can be issued to instances where existing licences are replaced or renewed. As for all licences, the *Fisheries Amendment Regulation 2006* removed the requirement to renew licences annually, providing for the reissue of all existing carrier boat licences with a term that ends only upon the surrender, cancellation or expiry under the Act. The intention is to provide greater certainty for holders. The effective prohibition on the issue of new carrier boat licences remains.

122 Amendment of ss 41, 61, 87, 96, 97, 98 and 99

Clause 121 Amends a number of provisions to replace references to certain licences that can now be encapsulated within the single term ‘commercial fishing boat licence’.

123 Replacement of s 47 (Restriction on writing 'C3' fishery symbol on authorities)

Clause 122 Amends section 47 to—

- to provide for a new circumstance in which a ‘C3’ fishery symbol may be written on a commercial fishing boat

licence—the approval of a fishery symbol movement application under section 47 of the regulation; and

- to omit provision for the writing of ‘C3’ fishery symbols upon the renewal of commercial fishing boat licences. As for all licences, the *Fisheries Amendment Regulation 2006* provided for the reissue of all existing commercial fishing boat licences with a term that ends only upon the surrender, cancellation or expiry by law of the licence. There will be no need to renew C2 licences as a result.

124 Amendment of s 56 (Restrictions on issuing)

Clause 123 Amends section 56 to change the wording within the provision to reflect the amalgamation of tender and primary boat licences.

125 Omission of pt 5, div 4, sdiv 2 (Carrier approvals)

Clause 124 Omits part 5, division 4, subdivision 2 that provides for a separate authority, unique to the spanner crab plan that must be obtained before spanner crabs taken in managed area B can be carried under a carrier boat licence.

126 Amendment of s 60 (Requirements for carrying)

Clause 125 Amends section 60 so that the effect of the restriction of omitted part 5, division 4, subdivision 2 is retained without requiring the issue of another authority. This is achieved by providing for the carrier licence to specifically authorise the carrying of the crabs.

127 Amendment of s 83 (Buyer licences-conditions)

Clause 126 Amends section 83 to remove the condition of the spanner crab buyer’s licence requiring the details of the premises at which spanner crabs kept to be entered on the Register of Authorities. The *Fisheries Amendment Regulation 2006* amended the regulation so that the licence does not specify any particular premises.

128 Amendment of s 84 (Serious fisheries offences)

Clause 127 Amends section 84 to update the cross reference to the definition of ‘serious fisheries offence’.

129 Omission of s 86 (Additional criteria for suspending ITQ unit-failure to pay fee)

Clause 128 Omits section 86 which provided for non-payment of ITQ units fees as being a ground for suspending ITQ units. Under the *Fisheries Amendment Regulation 2006*, ITQ unit fees are annual fees, payable quarterly in arrears and are a debt to the State and will be recovered on that basis. It is intended that a process for dealing with unpaid debts will be provided under the Act.

130 Omission of sch 1 (The fishery)

Clause 129 Omits schedule 1 which described the spanner crab fishery and its known status at the time the Gulf Plan was made in 1999. These provisions are non-legislative in character and the information is no longer current. New sections 2 and 3 provide for the meaning of the spanner crab fishery and the application of the Spanner Crab Plan.

131 Amendment of sch 3 (Aids to interpretation and definitions)

Clause 130 amends schedule 3 to—

- omit definitions that are now applied to the Spanner Crab Plan through the aids to interpretation and definitions in the regulation, by virtue of section 5;
- removed definitions of terms that are no longer used;
- provide new definitions for terms, such as the ‘spanner crab fishery’; and
- reflect changes to terminology and authority types in the regulation and Spanner Crab Plan.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Primary Industries and Fisheries.