

## Queensland



### Explanatory Notes for SL 1999 No. 56

#### *Fisheries Act 1994*

## **FISHERIES (SPANNER CRAB) MANAGEMENT PLAN 1999**

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### **Short title**

*Fisheries (Spanner Crab) Management Plan 1999.*

### **Authorising law**

The management plan is made under the provisions of the *Fisheries Act 1994* (“**the Act**”), in particular section 32.

### **Policy objectives of the management plan and the reasons for them**

The policy objectives of the plan are to—

- (a) ensure spanner crab stocks are used in an ecologically sustainable way; and
- (b) manage the fishery to give optimal, but sustainable, community benefit; and
- (c) manage the commercial fishery to give optimal, but sustainable, economic efficiency.; and
- (d) ensure a fair division of access to spanner crabs among commercial, recreational and Aboriginal and Torres Strait Islander fishers; and
- (e) monitor and review the commercial spanner crab catch.

These objectives have been adopted to assist the Queensland Fisheries Management Authority (QFMA) in delivering fisheries management which is consistent with the Principles of Ecologically Sustainable Development, which is defined in section 25(4) of the Act as—

- (a) maintenance of biodiversity and the ecological processes on which fisheries resources depend; and
- (b) maintenance and improvement of the total quality of present and future life.

**Ways in which the objectives are to be achieved by the management plan and why this is reasonable and appropriate**

The policy objectives will be achieved by the management plan by continuing certain provisions that are presently in the *Fisheries Regulation 1995* (“**the Regulation**”) such as the following—

- (a) the majority of the current management arrangements for the recreational spanner crab fishery; and
- (b) management arrangements for the commercial spanner crab fishery concerning the spawning closure, minimum size restriction and prohibition on taking and possessing berried females spanner crabs; and
- (c) the daily catch quota of spanner crabs for managed area B of the fishery; and
- (d) an annual quota for spanner crabs for managed area A of the fishery.

In addition, the management plan includes new fisheries management provisions, primarily the introduction of Individual Transferable Quotas (ITQs) for managed area A.

These arrangements are considered to be reasonable and appropriate ways of achieving the plan’s objectives. The reasons for this are that the provisions provide for the sustainability of spanner crabs through the imposition of an overall annual quota which may be taken, together with providing for fair access amongst the various fishing sectors and within the sectors by means such as the allocation of ITQs. The management

arrangements contained in the plan are consistent with fisheries management approaches world wide.

### **Consistency of the management plan with the policy objectives of the authorising law**

The management plan provides for a range of management measures to ensure the sustainability of spanner crab resources. It was developed through a clearly defined process involving an expertise based QFMA, a community and industry based Crab Fisheries Management Advisory Committee (CrabMAC) and through public consultation.

Through this process, the following objectives of the Act will be met—

- (a) sustainability of the resource, through the application of management measures available under the plan and current fisheries legislation;
- (b) achieving optimum community, economic and other benefits by ensuring the interests of all stakeholders are reflected in the plan;
- (c) equity in access through the selective application of input and output controls provided under the Act, including licensing powers, temporal and spatial based fishing closures, apparatus controls and quota allocation/restrictions.

### **Consistency with other legislation**

The proposed legislation is not inconsistent with the policy objectives of other legislation.

### **Alternatives**

The alternatives for achieving the policy objectives are—

- (a) no regulation; or
- (b) self regulation; or
- (c) retaining current arrangements as reflected in the Regulation.

These alternatives are not considered to be effective in meeting the policy objectives of the management plan for a number of reasons.

These reasons are explained in detail in the regulatory impact statement.

### **Assessment of the benefits and costs of implementation**

Extensive consideration is given to the benefits and costs of implementing the management plan in the regulatory impact statement.

### **Fundamental legislative principles**

The management plan is consistent with fundamental legislative principles as set out in the *Legislative Standards Act 1992*.

The plan does not extinguish the right for Aborigines and Torres Strait Islanders to take, use or keep fisheries resources in accordance with Aboriginal tradition or under Island custom.

### **Consultation**

An extensive consultation program has been pursued in the formulation of the content of this management plan. This process culminated in the release of both a regulatory impact statement and consultation draft of the *Fisheries (Spanner Crab) Management Plan 1999* for a formal period of public consultation, in December 1998. A copy of both the regulatory impact statement and the draft management plan were forwarded to all persons holding primary commercial fishing boat licences authorising operations in the spanner crab fishery with an invitation to provide comment. The availability of the regulatory impact statement was also advertised in local and regional newspapers where industry participants are concentrated and submissions invited from interested parties.

The consultation processes followed prior to the release of the draft management plan are outlined in the regulatory impact statement. In summary, this process involved extensive consultation with all stakeholders through a clearly defined process involving an expert based QFMA and its community and industry based Crab Fisheries Management Advisory Committee (CrabMAC). These stakeholders include—

- (a) Commercial Fishers; and

- (b) Recreational Fishers; and
- (c) Indigenous Fishers; and
- (d) Sunfish; and
- (e) Queensland Seafood Marketers Association; and
- (f) Queensland Commercial Fishermen's Organisation; and
- (g) Conservationists.

### **Results of consultation**

In the main, there is agreement from a majority of key stakeholder groups in relation to the management plan. The Queensland Commercial Fishermen's Organisation supports the management plan.

The QFMA, Department of Primary Industries and the Great Barrier Reef Marine Park Authority support the plan.

Sunfish generally supports the management plan, but has suggested that the proposed ITQ allocation formula appears to be inequitable.

The Queensland Spanner Crab Operator's Association (QSCOA) does not support the plan generally and, in particular, the concept of allocation of individual transferable quota (ITQ) to operators in the fishery as a management approach. However, the QSCOA does not represent all spanner crab licence holders. The QSCOA has suggested that current management arrangements for the spanner crab fishery (competitive annual quota and daily catch limits) be maintained.

As a result of submissions received by the QFMA to both the regulatory impact statement and the draft management plan, the following policy changes were incorporated in the final management plan(

- (a) the period for the closed season in the fishery was amended to run from midnight on 20 November to midnight on 20 December instead of from midday to midday on those dates in order to enable fishing activities at the start and end of the season to be for full days instead of half days; and
- (b) a requirement was added to the management plan for operators of carrier boats in managed area B to keep crabs in containers and to identify the crabs so as to reflect a similar provision that was

proposed for managed area A of the fishery; and

- (c) a period of suspension of 1 year for a first offence and 1 to 5 years for a second or subsequent offences associated with convictions for serious fisheries offences involving breaches of quota was added to the plan in response to concerns raised by fishers and enforcement staff.

No further policy changes were considered necessary or appropriate as a result of the consultation process.

## NOTES ON PROVISIONS

*Section 1*—sets out the short title of the management plan.

*Section 2*—provides for certain sections to commence on the day the plan is notified in the Government Gazette and for the remaining sections of the plan to commence on 1 June 1999. This is intended to allow a six week period for the QFMA to assess applications for ITQ units and to issue ITQ certificates prior to the commencement of the substantive provisions of the plan on 1 June 1999.

*Section 3*—describes the fishery to which the plan applies by reference to schedule 1.

*Section 4*—sets out the objectives of the plan, and by reference to schedule 2 outlines how the objectives will be achieved and how the achievement of the objectives is to be measured and reviewed.

*Section 5*—indicates that the aids to interpretation and definitions used throughout the plan are outlined in schedule 3.

*Section 6*—declares the period from midnight on 20 November to midnight on 20 December every year to be a closed season for spanner crabs.

*Section 7*—prohibits the taking and possessing of spanner crabs during the closed season declared in section 6. Sections 6 and 7 are designed to attract the operation of section 77 of the Act which provides that it is an offence to unlawfully contravene a closed season declaration.

*Section 8*—provides limited exemptions to the prohibition outlined in section 7.

*Section 9*—establishes that the regulated fish declarations in sections 10 and 11 apply to everybody.

*Section 10*—provides that spanner crabs of less than certain sizes are regulated fish and that taking or possessing those spanner crabs is prohibited.

*Section 11*—provides that an egg-bearing female spanner crab is a regulated fish and that the taking or possessing of these spanner crabs is prohibited.

*Section 12*—provides that more than 20 spanner crabs are regulated fish for recreational fishers and that taking and possessing more than 20 spanner crabs by recreational fishers is prohibited. This provision sets the limit for the number of spanner crabs that may be taken or possessed by recreational fishers, at any one time. Sections 10, 11 and 12 are designed to attract the operation of section 78 of the Act which provides that it is an offence to unlawfully take, possess or sell a regulated fish.

*Section 13*—indicates that the provisions in part 4 of the plan apply to commercial spanner crab fishing in managed area A. The geographic region covered by managed area A is defined in the dictionary in part 3 of schedule 3.

*Section 14*—sets out the requirements for commercial spanner crab fishing in managed area A. Essentially, only persons holding or acting under a C2 licence which has unused ITQ units associated with it are authorised to take spanner crabs for trade or commerce in this area.

*Section 15*—sets out certain restrictions which apply to the QFMA in writing the fishery symbol ‘C2’ on a primary licence. Subsection (1) prevents the issue of any new commercial spanner crab licences for managed area A prior to 1 June 2001. Subsection (2) restricts the issue of new commercial spanner crab licences for managed area A after that date, to persons to whom an ITQ transfer has been approved.

*Section 16*—provides that spanner crabs may only be taken in managed area A with the use of dillies, which meet the requirements in sections 17 to 20 of the plan.

*Section 17*—sets the limit for the number of dillies that may be used at a time, and the limit for the number of dillies that may be set on a line, in managed area A.

*Section 18*—sets limits on the size of the frame and drop of net, for dillies used in managed area A.

*Section 19*—sets the requirements for mesh sizes for dillies used in managed area A.

*Section 20*—outlines the ways in which dillies used in managed area A must be identified.

*Section 21*—sets the annual quota for spanner crabs in managed area A.

*Section 22*—establishes that the quota year for managed area A is to run

from 1 June to 31 May the following year, each year.

*Section 23*—establishes that an ITQ unit is an authority. This means that an ITQ unit is to be subject to those provisions relating to authorities in part 5 division 3 of the Act.

*Section 24*—provides that the QFMA must not issue any ITQ units after 1 June 1999.

*Section 25*—provides that ITQ units can only be expressed as a whole amount.

*Section 26*—establishes the minimum number of ITQ units that may be held by a C2 licence holder.

*Section 27*—provides that, subject to certain conditions, each ITQ unit authorises its holder to take a particular weight of spanner crabs in a quota year. That weight is deemed to be the holder's entitlement under the unit for the year.

*Section 28*—establishes the circumstances where an ITQ unit holder's entitlement is deemed to be used for a quota year.

*Section 29*—provides that unused entitlement to take spanner crabs under ITQ units in a year can not be carried forward to another year.

*Section 30*—provides that the QFMA must issue an ITQ certificate to each ITQ unit holder for each quota year. This section also outlines the details that must be stated on an ITQ certificate.

*Section 31*—establishes that sections 32 to 38 of the management plan prescribe the conditions for the granting by the QFMA of an application to transfer ITQ units.

*Section 32*—provides that transfers of ITQ units for applications made before 2 June 2001 may only be to C2 licence holders and that the QFMA must not approve applications that would lead to a transferee holding more than 4000 ITQ units.

*Section 33*—provides that for a transfer of ITQ units to be approved by the QFMA, the proposed transferee must hold a licence with the 'C2' fishery symbol on it or the QFMA must have approved an application for the granting of a 'C2' fishery symbol to the transferee.

*Section 34*—provides that the transferor's and transferee's ITQ certificates may be amended by the QFMA, on application, to reflect a

proposed transfer of ITQ units.

*Section 35*—provides that the transferee must not have committed a serious fisheries offence in the 2 years before the application for transfer of ITQ units is made.

*Section 36*—provides that at least 5 ITQ units must be transferred at a time.

*Section 37*—provides that the QFMA must not approve a transfer of ITQ units that would result in an applicant holding between 1 and 17 ITQ units.

*Section 38*—requires that the whole amount of fees for ITQ units must be paid prior to a transfer of the units being approved.

*Section 39*—provides that the entitlement of a transferee under a transferred ITQ unit is the unused entitlement of the transferor prior to transfer.

*Section 40*—imposes a restriction on the issue of any new carrier boat licences in managed area A.

*Section 41*—imposes certain requirements on the person in control of a carrier boat and creates an offence where any of these requirements are not met.

*Section 42*—provides that a primary boat used in managed area A of the fishery must not be longer than 20 m.

*Section 43*—provides that a tender boat used in managed area A of the fishery must not be longer than 7 m and must not be used more than 800 m from its associated primary boat.

*Section 44*—provides that the permitted distance for an assistant fisher to be under the direction of a commercial fisher in managed area A of the fishery is 800 m.

*Section 45*—provides that part 5 of the management plan applies only to the taking of spanner crabs for trade or commerce in managed area B and the possession of spanner crabs so taken. The geographic area covered by managed area B is set out in the dictionary in schedule 3.

*Section 46*—provides that only persons who are commercial fishers, assistant fishers or operating under a crew licence and fishing under a primary licence with a 'C3' fishery symbol on it may take spanner crabs for trade or commerce in managed area B.

*Section 47*—provides for certain restrictions which apply to the QFMA in writing the fishery symbol ‘C3’ on a primary licence.

*Section 48*—provides that spanner crabs may only be taken in managed area B with the use of dillies which comply with the requirements in sections 49 to 52 of the plan.

*Section 49*—sets the limit for the number of dillies that may be used at a time, and the limit for the number of dillies that may be set on a line, in managed area B.

*Section 50*—sets limits on the size of the frame and drop of net, for dillies used in managed area B.

*Section 51*—sets the requirements for mesh sizes for dillies used in managed area B.

*Section 52*—outlines the ways in which dillies used in managed area B must be identified.

*Section 53*—sets the daily quota of spanner crabs that may be taken or possessed under a C3 licence; makes certain provisions about the counting of containers and establishes the method for calculation of the number of containers where crabs are not held in containers.

*Section 54*—prohibits the taking of more spanner crabs in managed area B than the daily quota.

*Section 55*—provides for an exemption to the daily quota for managed area B where more spanner crabs than are allowed by the quota are unintentionally taken and the crabs are not intentionally or recklessly injured or damaged and are immediately returned to the water.

*Section 56*—places certain restrictions on the issue of carrier boat licences by QFMA for managed area B.

*Section 57*—provides that the QFMA may issue an approval to carry spanner crabs taken in managed area B or to allow spanner crabs taken in managed area B to be carried.

*Section 58*—provides that only the holder of a carrier boat licence may apply for an approval to carry spanner crabs under section 57.

*Section 59*—requires the QFMA to refuse an application for an approval to carry spanner crabs if more than 2 such approvals are already in force. The section further provides that an approval may only be granted for a term

of at least 48 hours, but no more than 1 year and must not end after the term of the holder's carrier boat licence.

*Section 60*—provides the requirements for carrying spanner crabs that have been taken in managed area B.

*Section 61*—imposes certain requirements on the person in control of a carrier boat to identify spanner crabs and creates an offence where any of these requirements are not met.

*Section 62*—provides that spanner crabs taken in managed area B may only be brought ashore on the mainland west of longitude 151(45' east.

*Section 63*—provides that the person in control of a commercial fishing boat that has been used to take spanner crabs in managed area B or who intends to take spanner crabs in managed area B must give notice to the QFMA that the boat is entering or leaving the area.

*Section 64*—provides that a primary boat longer than 20 m must not be used in managed area B.

*Section 65*—provides that a tender boat used in managed area B must not be longer than 7 m or used more than 800 m from its associated primary boat.

*Section 66*—provides that the permitted distance for an assistant fisher to be under the direction of a commercial fisher in managed area B is 800 m.

*Section 67*—provides that part 6 of the management plan applies only to the taking or possession of spanner crabs by recreational fishers.

*Section 68*—specifies the apparatus that may be used by a recreational fisher to take spanner crabs, and provides that the apparatus must comply with the requirements in sections 69 to 73 of the plan.

*Section 69*—provides that no more than 4 crab apparatus, alone or in combination, may be used by a recreational fisher at a time.

*Section 70*—sets specifications for collapsible traps used by recreational fishers.

*Section 71*—sets specifications for the frame of an inverted dilly used by recreational fishers.

*Section 72*—establishes that an inverted dilly used by a recreational fisher must have a net that must be multifilament.

*Section 73*—outlines the requirements for identifying crab apparatus used by recreational fishers.

*Section 74*—provides that the management plan does not limit an Aborigine's or Torres Strait Islander's right to take, use or keep spanner crabs under Aboriginal tradition or Island custom.

*Section 75*—requires the QFMA to conduct an annual review to fix the annual quota of spanner crabs that may be taken in managed area A for the following year. The section further provides that the review must be completed before 1 March in each year.

*Section 76*—provides that the QFMA must make rules (review rules) relating to the fixing of annual quota for managed area A and that the rules must be given to each 'C2' licence holder before the review commences.

*Section 77*—requires the QFMA to notify all 'C2' licence holders of the outcome of the annual review stating whether or not the QFMA proposes to amend the annual quota and if so, by how much.

*Section 78*—provides that the QFMA must, by 1 June 2001, start a review (the dilly review) of the provisions of the plan relating to the number of dillies that may be used on a line in managed area A.

*Section 79*—provides that the QFMA must conduct a general review of the management plan to be started within 5 years of its notification, but no later than 9 years after notification.

*Section 80*—outlines the consultation and procedural requirements to be followed by the QFMA when conducting a general review under section 79 or a dilly review under section 78.

*Section 81*—describes the process that must be followed by the QFMA in order to amend or repeal the management plan.

*Section 82*—prohibits a person who has taken a spanner crab in managed area A or B from taking a spanner crab in the other managed area without bringing the first crab ashore. This provision is designed to ensure that the effectiveness of quota management arrangements in managed area A or in managed area B are not compromised by persons claiming that spanner crabs have been taken in one area when, in fact, the crabs have been taken in the other area.

*Section 83*—specifies certain conditions which apply to the holders of buyer licences.

*Section 84*—lists certain offences that are deemed to be serious fisheries offences for the purposes of the Act. This means that the QFMA may, under section 67(1)(b) of the Act, consider suspension or cancellation of authorities held by persons convicted of such offences.

*Section 85*—provides for certain criteria to apply to the suspension of certain authorities held by persons convicted of serious fisheries offences, including various periods of suspension associated with the holder's first, second and third or subsequent convictions.

*Section 86*—establishes that ITQ units may also be suspended where the fees in respect of the units have not been paid. The ITQ units may be suspended until the whole of the fees are paid.

*Section 87*—defines a number of terms used in Division 1 of Part 10. This Division outlines who ITQ units are to be issued to, how the number to be issued is to be calculated and when they are to take effect.

*Section 88*—imposes an obligation on the QFMA to issue ITQ units to all eligible licence holders on or before 1 June 1999. The number of ITQ units is to be worked out under sections 90 to 95. QFMA is taken to have complied with this obligation if it gives each eligible licence holder an ITQ certificate for the first quota year and records the details of the ITQ units in the register it keeps under section 73 of the Act.

*Section 89*—provides that ITQ units take effect on 1 June 1999.

*Section 90*—provides that the amount of ITQ units to be issued to each eligible licence holder must be worked out in accordance with section 91, but that regardless of the amount worked out the minimum amount to be issued to each licence holder is 18 units.

*Section 91*—sets out the formula to be used by the QFMA to work out the amounts of ITQ units.

*Section 92*—provides that sections 93 to 95 set out how the reported catch to be used by the QFMA in the formula under section 91 is to be fixed.

*Section 93*—requires that the reported catch be fixed either from certain logbook returns provided to the QFMA or from other specified documents in certain cases.

*Section 94*—provides for an adjustment of the reported catch for spanner crab licences in some circumstances where the licence was transferred to the

current holder after 31 December 1989 but before 22 January 1994. This provision recognises that a number of licence holders obtained licences during that period which had proportionally less catch of spanner crabs recorded against them prior to the holders starting to fish under the licences than after. Adjustment of recorded catches in these circumstances relevant to key dates in the history of the management of the fishery, such as investment warnings issued by the QFMA, is achieved by this section and is designed to ensure that these licence holders are not disadvantaged.

*Section 95*—requires that the QFMA must not adjust reported catches of spanner crabs to take account of the areas where the crabs were taken or their seasonal abundance. This section ensures that the reported catches of spanner crabs across the area of the fishery and from year to year are treated equally.

*Section 96*—provides that primary licences with ‘C2’, ‘C4’, ‘C5’ or ‘C6’ fishery symbols on them as at 1 June 1999 are taken to have only 1 ‘C2’ fishery symbol on them and a ‘C3’ fishery symbol for each ‘C2’ or ‘C6’ written on them.

*Section 97*—provides that approvals given by the QFMA for ‘C2’, ‘C4’, ‘C5’ or ‘C6’ fishery symbols to be written on a primary licence as at 1 June 1999 are taken to be approvals for only 1 ‘C2’ fishery symbol and a ‘C3’ fishery symbol for each ‘C2’ or ‘C6’ fishery symbol to which the approval relates.

*Section 98*—provides that primary licences with ‘C3’ fishery symbols on them as at 1 June 1999 continue under the plan with the ‘C3’ symbol on them.

*Section 99*—provides that approvals given by the QFMA for ‘C3’ fishery symbols to be written on primary licences as at 1 June 1999 continue under the plan.

*Section 100*—provides that carrier boat licences that allowed the carrying of spanner crabs taken in managed area A held immediately before 1 June 1999 continue in force under the plan for that area.

## ENDNOTES

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