

Queensland



Explanatory Notes for SL 1999 No. 289

Fisheries Act 1994

FISHERIES (EAST COAST TRAWL) MANAGEMENT PLAN 1999

GENERAL OUTLINE

Short title

Fisheries (East Coast Trawl) Management Plan 1999.

Authorising law

The management plan is made under various provisions of the *Fisheries Act 1994* in particular, Part 5, Division 1, sections 32, 35, 36, 37 and 41 and section 12 of the *Fisheries Regulation 1995*.

Objectives and reasons for the plan

The objectives of the plan are—

- (a) manage the State's trawl fisheries in a way that gives optimal, but sustainable, community benefit; and
- (b) ensure that fisheries resources taken by trawling are taken in an ecologically sustainable way; and
- (c) ensure the sustainability of the fishery's ecological systems ; and
- (d) provide for an economically viable, but ecologically sustainable, trawl fishery; and

- (e) ensure fair access to fisheries resources taken in the fishery, on a sustainable basis, among the following groups and persons in the groups—
 - (i) commercial fishers;
 - (ii) recreational fishers;
 - (iii) Aboriginal and Torres Strait Islander fishers;
 - (iv) other users of the fisheries resources.

Ways in which the objectives are to be achieved in the plan

The plan contains numerous provisions aimed at ensuring that the objectives are achieved. These provisions consist of a range of new management measures that have been developed through an extensive consultative process, as well as a number of existing measures previously in Regulation that are to be continued under the plan.

The major new elements to be included in the plan are new annual trawl closures for the northern and southern parts of the State, extensions to existing trawl closures in Hervey Bay and Moreton Bay to protect winter whiting for the benefit of recreational fishers, variations to minimum size limits for scallops and extension of times when these limits apply, introduction of requirements to use Turtle Excluder Devices (TEDs) and By-catch Reduction Devices (BRDs) to reduce the catch of turtles and other fish in trawl nets, a more restricted range of fish species which may be lawfully caught in trawl nets and retained, introduction of electronic Vessel Monitoring Systems (VMS) to track the position of trawl vessels in the fishery.

These new management measures address a number of issues that are of key importance to the fishery and to the ecosystems in which it occurs. Some measures, such as the annual northern and southern closures have multiple benefits and seek to achieve more than one of the plan's objectives. These closures will minimise trawl impacts on juvenile prawns and scallops enabling them to grow to optimal size prior to capture and therefore provide for a higher return to fishers. They will also reduce the impacts on other non-target fish species and the marine environment.

Minimisation of the impacts of trawling on non-target fish species and other marine animals such as turtles is also to be achieved through the implementation of provisions such as those requiring the use of BRDs and TEDs.

Fisheries management measures already existing within the *Fisheries Regulation 1995* that are to be incorporated into the plan are, primarily, a range of closed waters declarations, regulated fish declarations and restrictions on boats and fishing apparatus that may be used in the fishery.

Specific indicators for the plan's objectives have been included that outline how each objective is to be achieved and measured. The plan also contains a series of review events by which the achievement of the objectives must be measured.

Consistency with the objectives of the authorising law/other legislation

The plan is consistent with the *Fisheries Act 1994* in that it provides for the sustainability of the trawl fishery, while still ensuring fair access by commercial, recreational and indigenous fishers to fisheries resources normally taken by the trawl method.

The plan is consistent with the objectives of the Act of ensuring fisheries resources are used in an ecologically sustainable way, achieving the optimum community, economic and other benefits obtainable from fisheries resources and ensuring access to fisheries resources is fair.

Sections 38A and 45A of the *Fisheries Act 1994* provide for the making of subordinate legislation to protect things that are not fish, such as in the case of the requirement to use TEDs which is aimed at the protection of turtles.

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

Alternatives to the legislation

The alternatives to the plan are as follows—

- (a) not to introduce the management plan; or
- (b) self regulation; or

- (c) retaining the present management arrangements for the State's trawl fisheries as contained in the *Fisheries Regulation 1995*.

These alternatives are not considered to be effective in meeting the policy objectives of the plan for a number of reasons. These reasons are explained in detail in the regulatory impact statement.

Assessment of the benefits and cost of implementation

Extensive consideration is given to the benefits and costs of implementing the plan in the regulatory impact statements. There are obvious difficulties in quantifying the benefits and costs of the regulation as it involves the management and protection of natural resources. The plan does not, however, represent any significant change to fundamental methods of fisheries management that have previously been employed in Queensland.

Consistency with fundamental legislative principles

The plan has regard to the fundamental legislative principles as set out in the *Legislative Standards Act 1992*.

Consultation

There has been significant consultation on the plan with all stakeholders, interested parties and the general public. This consultation process has been undertaken, firstly by the Queensland Fisheries Management Authority and its community and industry based Trawl Management Advisory Committee, Crab Management Advisory Committee and Sub Tropical Finfish Management Advisory Committee. The commercial fishers' representative body, the Queensland Commercial Fishermen's Organisation and Sunfish, the recreational fishers' organisation, have also been included in the consultation process.

Additionally, a regulatory impact statement was prepared by the Queensland Fisheries Management Authority and made available for public comment. All stakeholders were specifically invited to comment on the regulatory impact statement, including commercial fishers, recreational fishers, indigenous fishers, seafood marketers and conservationists.

Results of Consultation

Changes have been made to the proposed plan to accommodate concerns raised by interested parties.

NOTES ON PROVISIONS

Clause 1 provides that the management plan may be cited as the *Fisheries (East Coast Trawl) Management Plan 1999*.

Clause 2 provides that section 11 of the plan which deals with the annual southern closure of the waters mentioned in Schedule 3, section 1 will commence on 1 January 2000. It also provides that section 102(2)(b) and (c) which deals with the use of turtle excluder devices ("TED") in the waters defined in those sections will commence on 1 March 2000. In addition, the section provides that sections 85, 97 and 110 which deal with the use of ground chains for nets will commence on 1 July 2000. Due to the implementation date of the plan, the first southern closure will not commence until 2000. The extension of the fishing area for the compulsory use of TEDs is significant and a commencement of 1 March 2000 will allow industry to install TEDs to their nets. In the event that trawl operators have installed new ground chains that are larger than the proposed mandatory size, the implementation will not be until 1 July 2000, to allow those operators to comply. Pursuant to clause 2, the remaining provisions of the plan are to commence on the notification day.

Clause 3 provides that the plan applies to the fishing for trade or commerce by the use of trawl nets or the possession of permitted fish under the plan in the east coast trawl fishery as set out in Schedule 1, part 1.

Clause 4 states that the objectives of the plan are to manage the fishery so as to ensure the fishery is ecologically sustainable, economically viable, community benefit and ensure fair access to the fishery resources among commercial fishers, recreational fishers, Aboriginal and Torres Strait Islander fishers and other users of the fishery.

Clause 5 provides that each objective is to be achieved in accordance with the method of recording and assessing data as set out in schedule 2 of the plan. The section also provides that if a review event stated in schedule 2 occurs the Authority is to review the achievement of each objective in accordance with the consultation requirements set out in section 170.

Clause 6 notes that schedule 6 parts 1,2,3 and 4 contain provisions that aid interpretation as well as a dictionary of terms used in the plan.

Clause 7 states that a “principal fish” for the application of the provisions of the plan means prawns, scallops, bugs and squid.

Clause 8 states that a “permitted fish” for the application of the provisions of the plan means Balmain bugs, barking crayfish, cuttlefish, goat fish, mantis shrimp, octopus, pinkies, red spot crabs, sharks, syngnathids and whiptails. The section also provides that until 31 October 2000 the term “permitted fish” includes blue swimmer crabs and winter whiting if the taking of those fish is not prohibited under another management plan. The government has committed to reviewing the trawl capture of blue swimmer crabs and winter whiting by 31 October 2000.

Clause 9 states that all waters in the fishery, as set out in schedule 1 part 1, are closed every year, all year. The section also prohibits the use or possession of any trawl net in the closed waters unless the net is used or possessed under an appropriate fishery symbol.

Clause 10 states that all waters in the fishery, as set out in schedule 1 part 1, are closed every year, all year and that the possession or use of a boat under a T1, T2 or T3 fishery symbol in the closed waters is prohibited unless the conditions set out in chapter 3, part 5 that deal with vessel monitoring systems (“VMS”) and manual reporting conditions have been adhered to.

Clause 11 provides that the waters noted in schedule 3, part 1 as defined as the southern closure area are closed waters and that the waters are closed to the use of a boat from midday 20 September to midday 1 November. The section also provides that the waters are closed from midday 1 November to midday 12 December unless the boat is under a T5, T6, T7 or T8 fishery symbol or the Authority has received notice that the boat will not be used and is not used under a M1, T1, T2 or T3 fishery symbol during the period from midday 20 September to midday 1 November. The holder of the licence must give the notice before 13 September immediately before 1

November. It is considered that operators not trawling during 20 September to 1 November should be rewarded and therefore with have exclusive access to the fishery from 1 November to 12 December.

Clause 12 provides that the waters mentioned in schedule 3, sections 2 and 3 constitute the annual northern closure and that they are closed to the use of a boat from midday 15 December to midday 1 March. Also, the waters mentioned in schedule 3, section 3 are closed to the use of a boat from midday 1 March to midday 14 May unless the boat is used under a T8 or T9 fishery symbol or the Authority has received notice that the boat will not be used and is not used under a M1, T1, or T3 fishery symbol during the period from midday 15 December to midday 1 March. The notice must be given by the holder of the licence before 8 December immediately before 1 March. It is considered that operators not trawling during 15 December to 1 March should be rewarded and therefore have exclusive access to the fishery from 1 March to 14 May.

Clause 13 prohibits the use or possession of a trawl net in the waters noted in schedule 3, part 2, referred to as the “scallop replenishment areas” which includes waters within the Hervey Bay region, the Bustard Head region and the Yeppoon region.

Clause 14 provides that the waters within the scallop replenishment areas are closed waters until 1 February 2001.

Clause 15 prohibits the use or possession of any trawl net or a boat under a T1 fishery symbol within the scallop replenishment areas.

Clause 16 provides that the subdivision dealing with the scallop replenishment areas and schedule 2, part 2 expire on 1 February 2001.

Clause 17 provides that specific waters as mentioned in schedule 3, part 3 are closed to the use or possession of any trawl net every year, all year unless otherwise stated in that schedule.

Clause 18 provides that sections 19 to 22 each provide for an exemption for an otherwise prohibited activity. The section also provides that section 76 of the *Justices Act 1886*, which provides that in certain circumstances it shall not be necessary for the complainant to negative a defence, but requires the defendant to prove the affirmative, applies to each exemption. It is

considered that for effective control of the industry and application of these sections it is necessary to require that the fisher provide proof to substantiate a valid catch.

Clause 19 provides an exemption to the prohibition on possession of fish if the person possesses fish taken from outside the closed waters to which the prohibition relates.

Clause 20 provides an exemption to the prohibition on possession of a beam trawl net if the net and any other fishing apparatus normally used with it are stowed and secured.

Clause 21 provides an exemption to the prohibition on possession of an otter trawl net if the net and any other fishing apparatus normally used with it are stowed and secured. The section also states that if the net and any other fishing apparatus are stowed and secured during the daytime only if they are drawn up to a boat and is visible from an aircraft or another boat; the net's cod ends are open; the net's lazy lines are on the blocks. The items are stowed and secured during the night only if the boat carrying them is at anchor in an area marked as an anchorage or boat harbour on a navigational chart; or they are inboard a boat and are stored or suspended from a mast or boom.

Clause 22 provides an exemption to the prohibition on possession or use of a trawl net if the use or possession is only for testing the net or other fishing apparatus normally used with the net; the person in control of the boat used for the testing has given the Authority notice of the testing, the net's cod ends are open; and no fish are taken during the test. The section provides that the notice must be given at least 24 hours before the testing starts; state an area of no more than 1 square n mile where the testing is to happen; and when the testing is to start and end. It also provides that the notice may be oral or written; and given to the Authority by giving it to the Queensland Boating and Fisheries Patrol.

Clause 23 states that any fish that is not a permitted fish is a regulated fish and that the taking or possessing a fish that is not a permitted fish is prohibited.

Clause 24 provides that the fish mentioned in schedule 4 which includes Balmain bugs; bugs and blue swimmer crabs are regulated fish by either number, gender or size.

Clause 25 prohibits and regulates the taking or possessing of Blue swimmer crabs in excess of the number stated opposite the area noted in schedule 4.

Clause 26 prohibits and regulates the taking or possessing of egg bearing female Balmain bugs and bugs and female blue swimmer crabs.

Clause 27 prohibits and regulates the taking or possessing of blue swimmer crabs with a carapace less than 15cm or a body size less than 3.7cm.

Clause 28 prohibits and regulates the taking or possessing of bugs until 31 December 1999 which are less than 6.2 cm and from 1 January 2000 which are less than 7.5cm.

Clause 29 prohibits and regulates the taking or possessing of saucer scallops during the periods from midday 20 December to midday 1 January and from midday 20 September to midday 1 November.

Clause 30 prohibits and regulates the taking or possessing on board a commercial fishing boat of more saucer scallops than the stated percentage in the section. The section provides that from 8 a.m. on 1 January to 8 a.m. on 1 May, the percentage is 7% of saucer scallops that are less than 9 cm and from 8 a.m. on 1 May to 8 a.m. on 1 January, the percentage is 10% of saucer scallops that are less than 9.5 cm. However, the provision also requires that from notification day until 1 January 2000, the percentage is 7% of saucer scallops that are less than 9 cm. This is because under the current provision in the Fisheries Regulation 1995, the size limit has only recently changed to 9 cm and it would not be appropriate for this to change again on notification of the plan. The section also requires that the percentage must be worked out by counting all the saucer scallops of the relevant size and expressing that number as a percentage or by a method of statistical sampling.

Clause 31 states that a fish is a regulated fish if it has been taken from closed waters in contravention of the relevant part of the plan and that possessing the fish is prohibited.

Clause 32 provides that the fishery symbols for the fishery are designated as M1, T1, T2, T3, T5, T6, T7, T8 and T9. The section further provides that the licences for the fishery are designated as M1, T1, T2, T3, T5, T6, T7, T8 and T9.

Clause 33 provides that a person may take or possess fish taken from the fishery only if the person holds a licence for the fishery; or the holder of a licence for the fishery has allowed the person to take or possess fish under the licence; and the person is a commercial or assistant fisher or is acting under a crew licence.

Clause 34 provides that a crew member may use or possess commercial fishing apparatus and take fish for trade or commerce only if the crew member and a commercial fisher are on the same boat; or on different boats but the crew member is on a tender boat that is not a trawler.

Clause 35 expires on 1 January 2001 provides that until that date the Authority may write an M1, T1 or T2 fishery symbol on a primary licence only if the licence is a replacement licence; or it renews the licence; or the symbol is a T1 or T2 fishery symbol and it has given a written approval for the symbol to be written on the licence. The section also provides that from 2 January 2001, the Authority may write these fishery symbols on a primary licence only if the licence is a replacement licence; or it renews the licence. It is also provided that the Authority may write another fishery symbol on a primary licence only if the licence is a replacement licence; or if it renews the licence; or under a written approval by the Authority for the symbol to be written on the licence.

Clause 36 provides that each licence for the fishery is subject to a condition that only permitted fish may be taken under the licence.

Clause 37 states that the condition imposed by section 36 applies to any person acting under a licence for the fishery.

Clause 38 provides that chapter 3, part 3 applies if, the use of bycatch reduction devices (BRD) is a specific licence condition as noted in chapter 4 of the plan and prescribes use of the BRD as a condition of the licence.

Clause 39 states that the purpose of the BRD is to reduce the level of bycatch taken by the use of the net to the lowest level that allows the economically viable use of the net, having regard to the sustainability of the fishery's ecological systems. Providing for the use of the BRD is in accordance with the objectives of the plan as noted in section 4.

Clause 40 provides that the condition imposed by the BRD requirement is that the use of the net must achieve the purpose of the BRD as noted in section 39. It also provides that this condition applies to any person acting under the licence.

Clause 41 provides that section 40 is taken to have been complied with if a recognised BRD device as noted in sections 42 to 46 or a another device is used with the net and it achieves the purpose of section 40.

Clause 42 provides for the dimensions of a recognised BRD known as the square mesh cod end.

Clause 43 provides for the dimensions of a recognised BRD known as the square mesh panel.

Clause 44 provides for the dimensions of a recognised BRD known as the fisheye.

Clause 45 provides for the dimensions of a recognised BRD known as the bigeye.

Clause 46 provides for the dimensions of a recognised BRD known as the radial escape section.

Clause 47 provides for the Authority to monitor and implement current trends in BRD manufacture by allowing it to make guidelines in respect of other accepted BRDs that may be used to achieve the purpose of section 40.

Clause 48 states that a person is taken to have complied with the BRD condition noted in section 41 if the guidelines noted in section 47 are complied with.

Clause 49 provides that chapter 3, part 4 applies if, the use of turtle excluder device (TED) is a specific licence condition as noted in chapter 4 of the plan and prescribes use of the TED as a condition of the licence.

Clause 50 provides that the purpose of a TED is to allow turtles to escape immediately after being taken in the net. Providing for the use of the TED is in accordance with the objectives of the plan as noted in section 4.

Clause 51 provides that the condition imposed by the TED requirement is that the use of the net must achieve the purpose of the TED as noted in section 50. It also provides that this condition applies to any person acting under the licence.

Clause 52 provides that section 51 is taken to have been complied with if a recognised TED device as noted in sections 53 or a another device is used with the net and it achieves the purpose of section 51.

Clause 53 states that the requirements necessary for a device to be classified as a recognised TED. The requirements include a barrier and an opening that allows turtles to escape immediately after being taken in the net, the positioning and size of the barrier and the positioning and size of the opening that must appear in the TED.

Clause 54 provides for the Authority to monitor and implement current trends in TED manufacture by allowing it to make guidelines in respect of other accepted TEDs that may be used to achieve the purpose of section 50.

Clause 55 states that a person is taken to have complied with the TED condition noted in section 51 if the guidelines noted in section 54 are complied with.

Clause 56 introduces additional conditions that apply to T1, T2 and T3 licences. However, the section states that the condition does not apply if the boat identified in the licence is used under a T1 fishery symbol in Moreton Bay; and the boat has not, after the notification day, been used under the fishery symbol outside Moreton Bay.

Clause 57 imposes an obligation on the holder of a licence to have an approved person install approved vessel monitoring system equipment, (“VMS”). In order for the Authority to maintain current and accurate records the particulars of the equipment and the installer must be kept in a register of authorities as detailed in section 73 of the *Fisheries Act 1994*.

Clause 58 imposes an obligation on the control of the boat to ensure that the VMS equipment is used at all times and maintained in working condition. The obligation does not extend to that period where the person has notified the Authority that the boat will not be used for fishing.

Clause 59 provides the Authority with the ability to continually monitor individual boats when the VMS system malfunctions, through division 3 of part 5 by imposing obligations on the person in control of the boat when the person becomes aware of the malfunction.

Clause 60 defines “malfunction” to include a failure to work at all and a failure to work in a way so as to perform the functions of VMS equipment.

Clause 61 is an evidentiary provision which states that a person in control is taken to be aware of the malfunction if the person receives notice by radio, telephone or another form of instantaneous electronic communication from the Authority that the equipment is malfunctioning.

Clause 62 imposes an obligation on the person in control to immediately notify the Authority of the malfunction, unless the person has a reasonable excuse.

Clause 63 applies where there is a malfunction in the VMS equipment and the person in control of the boat uses fishing apparatus from the boat or moves the boat. If so, establishes the “manual reporting condition” which the section requires the person to notify the boat’s position and operation to the Authority by radio, telephone or another form of instantaneous electronic communication at intervals that, in all the circumstances, reasonably acts as a substitute for VMS equipment.

Clause 64 imposes an obligation on the Authority to produce guidelines for compliance with the manual reporting obligation. By so doing the Authority is obligated to ensure that all users of the fishery are aware of their obligations if the VMS equipment malfunctions.

Clause 65 applies if the person complies with the manual reporting conditions and if, to the extent they are relevant, the guidelines and states that compliance with the guidelines will constitute compliance with condition.

Clause 66 imposes obligations on the Authority in respect of the making and compilation of guidelines noted in chapter 3.

Clause 67 provides for the public to be made aware of the requirements imposed by any guideline by requiring the Authority to notify the guideline in the gazette and requiring that the Minister must, within 14 days after the gazettal, table the guideline in the Legislative Assembly as if it were subordinate legislation.

Clause 68 requires the Authority must, if the guideline is a manual reporting guideline, give a copy of it to each person who holds a T1, T2 or T3 licence. The section also requires the Authority, if the guideline is a BRD or TED guideline, to give a copy of it to each person who holds a licence for the fishery.

Clause 69 also ensures that the public have access to the guideline by requiring that the Authority must make a copy of the guideline available for inspection at its office, free of charge, by members of the public during office hours on business days.

Clause 70 introduces the division which provides for the admissibility of a guideline made chapter 3 in certain offence proceedings. The section states that the guideline is not admissible in evidence against a person unless the guideline was gazetted and tabled in the Legislative Assembly or a copy of the guideline was given to the person before the act or omission that is alleged to form the offence was committed.

Clause 71 states that BRD guidelines are admissible in evidence in a proceeding relating to a contravention of the BRD use condition.

Clause 72 states that TED guidelines are admissible in evidence in a proceeding relating to a contravention of the TED use condition.

Clause 73 states that manual reporting guidelines are admissible in evidence in a proceeding relating to a contravention of the manual reporting obligation.

Clause 74 introduces part 7 of chapter 3 which relates to an application for a replacement licence for an M1, T1 or T2 licence.

Clause 75 prohibits the Authority from issuing a replacement licence if, were the licence to be issued, the boat identified in the licence would have more than 70 hull units. This will enable the Authority to monitor and restrict the size of vessels that operate in the fishery. The formula for working out a boat's hull unit appears in schedule 6, part 3, section 29. This is a pre-existing regulation that has been included in the plan.

Clause 76 prohibits the Authority from issuing a replacement licence if, were the licence to be issued, the boat identified in the licence would have a main engine power of more than 300 maximum continuous brake kW. As with the previous section this will enable the Authority to monitor and restrict the size of vessels that operate in the fishery. The formula for working out an engine's maximum continuous brake kW appears in schedule 6, part 3, section 33.

Clause 77 as sections 75 and 76 enables the Authority to monitor and restrict the size of vessels that operate in the fishery by prohibiting the Authority from issuing a replacement licence for a T5, T6, T7, T8 or T9 licence if, were the licence to be issued, the boat identified in the licence

would be longer than 14 m. This is a pre-existing regulation that has been included in the plan.

Clause 78 introduces part 1 of chapter 4 of the plan which deals with specific licence conditions. The section states that part 1 prescribes additional conditions applicable to an M1 licence and any person acting under such a licence.

Clause 79 states that the area that relates to the M1 fishery symbol consists of all tidal waters of Moreton Bay.

Clause 80 provides that in order to attain the objectives as set out in section 4, permitted fish may be taken only by using beam trawl nets or otter trawl nets in accordance with sections 80 to 89.

Clause 81 provides that for a beam trawl net the net must be a maximum of 10m length and that for an otter trawl net the maximum length is 32.5 m. This is a pre-existing regulation that has been included in the plan.

Clause 82 provides that the mesh size of a net must not be less than 38 mm or more than 60 mm. This is a pre-existing regulation that has been included in the plan.

Clause 83 provides that each sweep used on a net must be no longer than 3 m.

Clause 84 provides that the part of a net within 150 rows of mesh from its drawstring must not be covered with netting material, unless the material has a mesh size of at least 38 mm and no more than 60 mm. In addition, the section provides that the bottom half of a net, other than within 150 rows of mesh from its drawstring, must not be completely covered.

Clause 85 restricts the use of ground chains for nets by providing that more than 1 line of ground chain must not be used across the mouth of each net. In addition, the section requires that the links of the ground chain must not have a diameter of more than 10 mm and that the chain must not be used with a weight or an attachment, other than an attachment for joining the chain to the net.

Clause 86 allows for the use of more than 1 net from the same boat but requires that the combined length of beam trawl nets is no longer than 10 m; or the combined length of otter trawl nets is 32.5 m. This is a pre-existing regulation that has been included in the plan.

Clause 87 restricts the size of a primary boat to no longer than 14 m. This is a pre-existing regulation that has been included in the plan.

Clause 88 provides that a BRD must be used with a net used if the net is used in waters described in schedule 3, section 24 and referred to as the Southern Moreton Bay area.

Clause 89 provides that a TED must be used with a net, other than a try net, used under an M1 licence. This is a regulation that has been included in the plan.

Clause 90 introduces part 2 of chapter 4 which deals with additional conditions applicable to a T1 and T3 licence and any person acting under such a licence.

Clause 91 states that the area that relates to the T1 and T3 fishery symbol consists of all tidal waters of east of longitude 142°31.82' east, other than Moreton Bay and the Fisherman Islands area.

Clause 92 provides that for a T1 licence permitted fish may be taken only by using beam trawl nets or otter trawl nets and that for a T3 licence only beam trawl nets may be used. The section also states that scallops may be taken only by using otter trawl nets. It is a requirement set out in this section that a net must not be used unless it and its use complies with sections 90 to 102 and its primary purpose is to take principal fish. An exemption exist in the section which allows for a net to be used for the primary purpose of taking scallops only if it is no longer than 109 m and has a mesh size of at least 75mm. This is a pre-existing regulation that has been included in the plan.

Clause 93 prohibits the use of a beam trawl net which is longer than 10 m and prohibits the use of an otter trawl net which is longer than 32.5 m in the Comboyuro Point and Caloundra Head area; the Hervey Bay area; the Facing Island area; the Keppel Bay area; the Llewellyn Bay area; the Repulse Bay area; the Sinclair Bay area and the Cleveland Bay area. The section also prohibits the use of nets in the Laguna Bay area, which are longer than 18.6 m and have a head rope no longer than 8 m. The section also provides that a net used in the deep water net area must be no longer than 184 m, a beam trawl net used in any other waters must be no longer than 40 m or an otter trawl net used in any other waters must be no longer than 88m. This is a pre-existing regulation that has been included in the plan.

Clause 94 provides that in the areas mentioned in section 93 as well as the deep water net area and waters south of Cape Gloucester a net must have a mesh size of at least 38 mm but no more than 60 mm. It is also provided that a net used in the Laguna Bay area must have a mesh size of at least 28 mm and that a net used in waters north of Cape Gloucester must have a mesh size of at least 45 mm but no more than 60 mm; and a cod end with a mesh size of at least 38 mm and no more than 150 rows of mesh from the drawstring. This is a pre-existing regulation that has been included in the plan.

Clause 95 expressly does not apply to the Laguna Bay area but requires that a sweep used on a net used in the Hervey Bay area must be no longer than 3 m or if used in any other area it must be no longer than 10m.

Clause 96 restricts the type of net style that can be used by requiring that the part of a net within 150 rows of mesh from its drawstring must not be covered with netting material, unless the material has a mesh size of at least 38 mm and no more than 60 mm. The section also requires that the bottom half of a net, other than within 150 rows of mesh from its drawstring, must not be completely covered.

Clause 97 also restricts the type of net style that can be used by prohibiting the use of more than 1 line of ground chain across the mouth of each net. It is also a requirement of the section that the links of the ground chain must not have a diameter of more than 12 mm if the net is used in the deep water net area or 10 mm if the net is used in any other waters.

Clause 98 prohibits the use of more than 1 net from the same boat unless the combined length of a beam trawl net is no longer than 10m or the combined length of an otter trawl net is 32.5 m. This is a pre-existing regulation that has been included in the plan.

Clause 99 sets out requirements relating to the securing of nets so as to ensure that fishers do not use the particular nets in prohibited areas. It provides that a beam trawl net, other than a net that may be used north of Cape Gloucester, on board a boat north of Cape Gloucester must be removed from the gallows or booms and secured.

An otter trawl net, other than a net that may be used north of Cape Gloucester, on board a boat north of Cape Gloucester must be removed from the gallows or booms, detached from the otter boards and secured. This is a pre-existing regulation that has been included in the plan.

Clause 100 prohibits the use of primary boats that are longer than 20m. This is a pre-existing regulation that has been included in the plan.

Clause 101 sets out the conditions as they relate to mesh size, net length, time of day and time of year that if they apply will require a BRD to be used with the net.

Clause 102 lists those waters wherein a TED must be used with a net unless the net is a try net or the net is used in the deep water net area.

Clause 103 introduces part 3 of chapter 3 which prescribes additional conditions to which a T2 licence is subject and applies to a person acting under a licence that has a T2 fishery symbol written on it.

Clause 104 provides that the area for the T2 fishery symbol consists of all tidal waters east of the territorial sea baseline and south of latitude 24°21.40' south.

Clause 105 provides that permitted fish may be taken only by using otter trawl nets and that a net must not be used unless the net and its use complies with sections 105 to 114.

Clause 106 provides that a net must not be used for the primary purpose of taking permitted fish, other than scallops, if it is longer than 88 m; or is used only in the deep water net area and it is longer than 184 m. The section also provides that a net must not be used for the primary purpose of taking permitted fish, other than prawns, if it is longer than 109 m.

Clause 107 provides that a net must not be used for the primary purpose of taking permitted fish, other than scallops, if its mesh size is less than 38 mm or more than 60 mm. The section also states a net must not be used for the primary purpose of taking permitted fish, other than prawns if its mesh size is less than 75 mm. This is a pre-existing regulation that has been included in the plan.

Clause 108 provides that each sweep used on a net must be no longer than 10 m. This is a pre-existing regulation that has been included in the plan.

Clause 109 is identical to section 84 in that it provides that the part of a net within 150 rows of mesh from its drawstring must not be covered with netting material, unless the material has a mesh size of at least 38 mm and no more than 60 mm. As with section 84 the section provides that the bottom half of a net, other than within 150 rows of mesh from its

drawstring, must not be completely covered.

Clause 110 as with section 85, restricts the use of ground chains for nets by providing that more than 1 line of ground chain must not be used across the mouth of each net. In addition, the section requires that the links of the ground chain must not have a diameter of more than 10 mm, unless it is used in deep water net area where the diameter must be no larger than 12mm and that the chain must not be used with a weight or an attachment, other than an attachment for joining the chain to the net.

Clause 111 allows for the use of more than 1 net from the same boat but requires that if the net is used for the primary purpose of taking permitted fish, other than scallops the combined length of the net is no longer than 88 m; or if it is used only in the deep water net area, 184 m or if the if the net is used for the primary purpose of taking permitted fish, other than prawns, 109 m. This is a pre-existing regulation that has been included in the plan.

Clause 112 provides that in respect of a boat operating under a T2 licence a primary boat longer than 20 m must not be used. This is a pre-existing regulation that has been included in the plan.

Clause 113 applies to a net if it has a mesh size of less than 75 mm and states that until 31 December 1999, a BRD must be used with the net if it is no longer than 88 m; and used from 6 a.m. to 6 p.m. This requirement will expire on 31 December 1999. The section also states that from 1 January 2000 to 29 February 2000, a BRD must be used with the net if it is used in waters within 5 n miles out to sea from the mainland shore; or other waters from 6 a.m. to 6 p.m. This requirement will expire on 29 February 2000. It is also a requirement imposed by this section that from 1 March 2000, a BRD must be used with the net.

Clause 114 provides that a TED must be used with a net, other than a try net, used under this part if it is no longer than 88 m; and it is used in waters south of Point Lookout, as defined in the section.

Clause 115 introduces part 4 of chapter 3 which prescribes additional conditions to which a T5 licence is subject and applies to a person acting under a licence that has a T5 fishery symbol written on it.

Clause 116 states that the area that relates to the T5 fishery symbol consists of all tidal waters of the Brisbane River–Victoria Bridge to Juno Point area, the Brisbane River mouth area–north; the Brisbane River mouth area–south; the Noosa River and lakes connected to the Noosa River; the Laguna Bay area; a river or creek south of Double Island Point.

Clause 117 provides that for a T5 licence permitted fish may be taken only by using otter trawl nets in the Laguna Bay area and beam trawl nets in any other waters that for a T3 licence only beam trawl nets may be used. It is a requirement set out in this section that a net must not be used unless it and its use complies with sections 115 to 123.

Clause 118 restricts the length of a beam trawl net to 5m in the Brisbane River Victoria Bridge to Juno Point area; the Brisbane River mouth area–north; the Brisbane River mouth area–south; the Noosa River and lakes connected to it; and any a river or creek. It is a requirement of the section that a net used in the Laguna Bay area must be no longer than 18.6 m and have a head rope no longer than 8 m. This is a pre-existing regulation that has been included in the plan.

Clause 119 provides that a net must have a mesh size of at least 28 mm. It also provides that a net, other than a net used in the Noosa River and lakes connected to it or in Laguna Bay, must have a cod end with a mesh size of at least 25 mm and no more than 100 rows of mesh. Under current regulation the whole net may have a mesh size of at least 25mm.

Clause 120 provides that the part of a net within 100 rows of mesh from its drawstring must not be covered with netting material, unless the material has a mesh size of at least 28 mm. In addition, the section provides that the bottom half of a net, other than within 100 rows of mesh from its drawstring, must not be completely covered. This is a pre-existing regulation that has been included in the plan.

Clause 121 allows for the use of more than 1 beam trawl net from the same boat but requires that if multiple nets are used the combined length of the nets is no longer than 5 m. If more than 1 otter trawl net is used from the same boat the combined length of the nets must be no longer than 18.6 m; and the combined head rope length is no longer than 8 m. This is a pre-existing regulation that has been included in the plan.

Clause 122 provides that in respect of a boat operating under a T5 licence a primary boat longer than 9 m must not be used. This is a pre-existing regulation that has been included in the plan.

Clause 123 provides that a BRD must be used with any net used under a T5 licence.

Clause 124 introduces part 5 of chapter 3 which prescribes additional conditions to which a T6 licence is subject and applies to a person acting under a licence that has a T6 fishery symbol written on it.

Clause 125 states that the area that relates to the T6 fishery symbol consists of all tidal waters in the Great Sandy Strait area; the Hervey Bay area and the rivers and creeks between Double Island Point and the northern bank of the Burrum River.

Clause 126 provides that for a T6 licence permitted fish may be taken only by using beam trawl nets in compliance with sections 124 to 132.

Clause 127 provides that a net used in the Great Sandy Strait area or a river or creek must be no longer than 5 m and that a net used in the Hervey Bay area must be no longer than 10 m. This is a pre-existing regulation that has been included in the plan.

Clause 128 provides that a net used in the Great Sandy Strait area or a river or creek must have a mesh size of at least 28 mm, a net used in the Hervey Bay area must have a mesh size of at least 38 mm but no more than 60 mm and a net other than a net used in the Hervey Bay area, must have a cod end with a mesh size of at least 25 mm and no more than 100 rows of mesh. Under current regulation the whole net may have a mesh size of at least 25mm.

Clause 129 provides that if the net is used in the Great Sandy Strait area or a river or creek the part of a net within 100 rows of mesh from its drawstring must not be covered with netting material, unless the material has a mesh size of at least 28 mm. If the net is used in the Hervey Bay area the material must have a mesh size of at least 38 mm but no more than 60 mm. In addition, the section provides that the bottom half of a net, other than within 100 rows of mesh from its drawstring, must not be completely covered. This is a pre-existing regulation that has been included in the plan.

Clause 130 allows for the use of more than 1 beam trawl net from the same boat but requires that if multiple nets are used in the Great Sandy Strait area or a river or Creek the combined length of the nets is no longer

than 5 or if the nets are used in the Hervey Bay area the combined length of the nets is no longer than 10 m. This is a pre-existing regulation that has been included in the plan.

Clause 131 provides that in respect of a boat operating under a T6 licence a primary boat longer than 9 m must not be used. This is a pre-existing regulation that has been included in the plan.

Clause 132 provides that a BRD must be used with any net used under a T6 licence.

Clause 133 introduces part 6 of chapter 3 which prescribes additional conditions to which a T7 licence is subject and applies to a person acting under a licence that has a T7 fishery symbol written on it.

Clause 134 states that the area that relates to the T6 fishery symbol consists of all tidal waters of rivers and creeks between the northern bank of the Burrum River and Richards Point (Rodds Peninsula).

Clause 135 provides that for a T7 licence permitted fish may be taken only by using beam trawl nets and its use complies with sections 133 to 143.

Clause 136 provides that a net must be no longer than 5 m. This is a pre-existing regulation that has been included in the plan.

Clause 137 provides that a net must have a mesh size of at least 28 mm, and that the net cod end net must have a mesh size of at least 25 mm and no more than 100 rows of mesh. Under current regulation the whole net may have a mesh size of at least 25mm.

Clause 138 provides that if the part of a net within 100 rows of mesh from its drawstring must not be covered with netting material, unless the material has a mesh size of 28 mm. In addition, the section provides that the bottom half of a net, other than within 100 rows of mesh from its drawstring, must not be completely covered. This is a pre-existing regulation that has been included in the plan.

Clause 139 allows for the use of more than 1 net from the same boat but requires that if multiple nets are used the combined length of the nets is no longer than 5m. This is a regulation that has been included in the plan.

Clause 140 provides that in respect of a boat operating under a T7 licence a primary boat longer than 9 m must not be used. This is a pre-existing regulation that has been included in the plan.

Clause 141 provides that a BRD must be used with any net used under a T7 licence.

Clause 142 provides that the effect of the T7 fishery symbol will cease if a condition of the licence states that only a named commercial fisher may, in the fishery, use the boat identified in the licence under the 'T7' fishery symbol to take or possess permitted fish and the holder of the licence or a person acting under the licence is convicted of an offence involving a contravention of the condition. It is also a condition of the licence that, if the licence is renewed, the Authority must not write the symbol on the licence. This is a pre-existing regulation that has been included in the plan.

Clause 143 requires that the Authority must not transfer a T7 licence that only has a T7 fishery symbol written on it and imposes a further condition on a licence that has a T7 fishery symbol and any other fishery symbol written on it which states that the licence may be transferred only if the Authority removes the T7 fishery symbol from the licence. This is a pre-existing regulation that has been included in the plan.

Clause 144 introduces part 7 of chapter 3 which prescribes additional conditions to which a T8 licence is subject and applies to a person acting under a licence that has a T8 fishery symbol written on it.

Clause 145 states that the area that relates to the T6 fishery symbol consists of all tidal waters of the Facing Island area, the Keppel Bay area; the Fitzroy River mouth area; and the rivers and creeks between Richards Point (Rodds Peninsula) and Reef Point, south of Townshend Island.

Clause 146 provides that for a T8 licence permitted fish may be taken only by using beam trawl nets and its use complies with sections 144 to 152.

Clause 147 provides that a net used in the Fitzroy River mouth area or a river or creek must be no longer than 5 m. and that a net used in the Facing Island area or the Keppel Bay area must be no longer than 10 m. This is a pre-existing regulation that has been included in the plan.

Clause 148 provides that a net used in a river or creek must have a mesh size of at least 28 mm, a net used in the Fitzroy River mouth area must have a mesh size of at least 31 mm, a net used in the Facing Island area or the Keppel Bay area must have a mesh size of at least 38 mm but no more than 60 mm and a net used in a river or creek must have a cod end with a mesh size of at least 25 mm and no more than 100 rows of mesh. Under current

regulation the whole net may have a mesh size of at least 25mm.

Clause 149 provides that if it is used in a river or creek the part of a net within 100 rows of mesh from its drawstring must not be covered with netting material, unless the material has a mesh size of 28 mm. In addition, if the net is used in the Fitzroy River mouth area the part of a net within 100 rows of mesh from its drawstring must not be covered with netting material, unless the material has a mesh size of 31 mm. The section also provides that if a net is used in the Facing Island area or the Keppel Bay Area the mesh size must be at least 38 mm but no more than 60 mm. It is also a requirement of the section that the bottom half of a net, other than within 100 rows of mesh from its drawstring, must not be completely covered. This is a pre-existing regulation that has been included in the plan.

Clause 150 allows for the use of more than 1 net from the same boat but requires that if multiple nets are used in the Fitzroy River mouth area or a river or creek the combined length of the nets is no longer than 5m and if the nets are used in the Facing Island area or the Keppel Bay area the combined length of the nets is no longer than 10 m. This is a pre-existing regulation that has been included in the plan.

Clause 151 provides that in respect of a boat operating under a T8 licence a primary boat longer than 9 m must not be used. This is a pre-existing regulation that has been included in the plan.

Clause 152 provides that a BRD must be used with any net used under a T8 licence.

Clause 153 introduces part 8 of chapter 3 which prescribes additional conditions to which a T9 licence is subject and applies to a person acting under a licence that has a T9 fishery symbol written on it.

Clause 154 states that the area that relates to the T9 fishery symbol consists of all tidal waters of the Llewellyn Bay area; the Repulse Bay area; the Sinclair Bay area; the Cleveland Bay area and the rivers and creeks between Reef Point, south of Townshend Island, and the northern tip of Cape York Peninsula.

Clause 155 provides that for a T9 licence permitted fish may be taken only by using beam trawl nets and its use complies with sections 153 to 161.

Clause 156 provides that a net used in a river or creek must be no longer than 5 m. and that a net used in other than in a river or creek must be no longer than 10 m. This is a pre-existing regulation that has been included in the plan.

Clause 157 provides that a net used in a river or creek must have a mesh size of at least 28 mm, a net used net used other than in a river or creek must have a mesh size of at least 38 mm but no more than 60 mm and a net used in a river or creek must have a cod end with a mesh size of at least 25 mm and no more than 100 rows of mesh. Under current regulation the whole net may have a mesh size of at least 25mm.

Clause 158 provides that if is used in a river or creek the part of a net within 100 rows of mesh from its drawstring must not be covered with netting material, unless the material has a mesh size of 28 mm. The section also provides that if a net is used other than in a river or the mesh size must be at least 38 mm but no more than 60 mm. It is also a requirement of the section that the bottom half of a net, other than within 100 rows of mesh from its drawstring, must not be completely covered. This is a pre-existing regulation that has been included in the plan.

Clause 159 allows for the use of more than 1 net from the same boat but requires that if multiple nets are used in used in a river or creek the combined length of the nets is no longer than 5m and if the nets are used other than in a river or creek the combined length of the nets is no longer than 10 m. This is a pre-existing regulation that has been included in the plan.

Clause 160 provides that in respect of a boat operating under a T9 licence a primary boat longer than 9 m must not be used. This is a pre-existing regulation that has been included in the plan.

Clause 161 provides that a BRD must be used with any net used under a T9 licence.

Clause 162 introduces part 1 of chapter 5 which deals with the threshold percentage for declared fisheries resources under section 154 of the *Fisheries Act 1994* which itself deals with the seizure of fisheries resources.

Clause 163 provides that the threshold percentage for saucer scallops is from 8 a.m. on 1 January to 8 a.m. on 1 May, 7% of saucer scallops that are less than 9 cm, from 8 a.m. on 1 May to 8 a.m. on 20 September, 10% of saucer scallops that are less than 9.5 cm, from midday on 20 September to

midday on 1 November, nil; from midday on 1 November to midday on 20 December, 10% of saucer scallops that are less than 9.5 cm and from midday on 20 December to midday on 1 January, nil. This is a pre-existing regulation that has been included in the plan.

Clause 164 provides that the threshold percentage for declared fisheries resources, other than saucer scallops, is 5%. This is a pre-existing regulation that has been included in the plan.

Clause 165 requires the Authority to conduct a review of the plan before 1 January 2002, in order to review the fish regulated by number under section 25 to decide whether each species of permitted fish, other than principal fish, or other species should also be regulated by number.

Clause 166 provides that the Authority must review this plan to decide whether its provisions remain appropriate and that the review must start not before 5 years, but no more than 7 years, after the notification day.

Clause 167 states that in conducting a review under this part, the Authority must take reasonable steps to engage in consultation about this plan, give notice, (defined as publication in the gazette and a newspaper circulating generally throughout the State), of the intended review and give notice of where the results of the review can be obtained.

Clause 168 provides that in order for the Authority to keep the public informed of any intended amendment to the plan, the Authority may amend or repeal the plan only after it has conducted an appropriate review and conformed to the appropriate process, which depending on the circumstances includes a media release or gazettal.

Clause 169 imposes a restriction on the possession of bugs to the extent that if a person possess a bug on a commercial fishing boat and the bug's carapace has been damaged or removed; or the bug is female and eggs have been removed from it the person is liable to a maximum penalty of 300 penalty units. By virtue of section 41 of the *Fisheries Act 1994* a management plan can prescribe a maximum penalty of not more than 500 penalty units. The Department of Primary Industries (the "Department") and the Authority are aware of the Scrutiny of Legislation Committee's (the "Committee") Policy Statement No.2 of 1996 wherein the Committee observed that maximum penalties in subordinate legislation should, in general, be limited, to 20 penalty units. The Department and the Authority are of the view, however, that due to the ramifications of non-compliance

with this and the following two sections and the effect it would have on the objectives of the Plan, non-compliance warrants the imposition of 300 penalty units.

Clause 170 also prescribes maximum penalty of 300 penalty units for breach of any of the conditions the section imposes in respect of the processing of scallops on commercial fishing boats.

Clause 171 imposes a maximum penalty of 500 penalty units on any person who, without reasonable excuse, damages, destroys, marks, removes or interferes with an approved seal on VMS equipment installed under section 57(1).

Clause 172 lists a number of activities which constitute a serious fisheries offence as defined by section 4 of the *Fisheries Act 1994*. The list includes matters such as the contravention of a closed waters declaration under chapter 2, part 1, possessing a regulated fish in contravention of section 31, or contravening the *Marine Parks Act 1982*, trawling in a Great Barrier Reef Marine Park zone under the *Great Barrier Reef Marine Park Act 1975* (Cwlth), other than under the zoning plan for the zone under that Act, contravention of section 182 of the Act; contravening a condition of a licence imposed under chapter 3, part 5 or contravening section 171.

Clause 173 introduces division 3 of part 3 which prescribes certain criteria for suspending a commercial fisher licence or commercial fishing boat licence.

Clause 174 provides that if the licence is a commercial fisher licence, the prescribed criteria are, for the holder's, a first conviction a 3 months to 6 months suspension; or for a second conviction a 1 to 2 years suspension; or for a third or subsequent conviction a 5 years suspension.

Clause 175 provides that if the licence is a commercial fishing boat licence, the prescribed criteria are, for the holder's, a second conviction a 1 month to 3 months suspension; or for a third conviction 1 to 2 years suspension; or for a fourth or subsequent conviction a 5 years suspension.

Clause 176 introduces part 4 of chapter 5 applies if, immediately before the notification day a primary licence had a fishery symbol written on it; or an approval the licence and the symbol or the approval continues in force under this plan.

Clause 177 provides that until 31 December 2000, a person may take permitted fish under a T1 licence as if the licence had an 'M1' fishery symbol written on it as well as the other fishery symbols written on it.

Clause 178 provides that part 4 expires on 31 December 2000.

Schedule 1 contains a description of the fishery including the major species taken, the required fishery symbols, the applicable restrictions and catch levels.

Schedule 2 contains a description of the objectives and how each is to be achieved and measured.

Schedule 3 describes the annual southern and northern closures, the scallop replenishment areas and other specific closures by reference to latitude and longitude points.

Schedule 4 lists the name of each species that is either regulated by number, gender, size and size and time.

Schedule 5 relates specifically to waters where scallops may be processed on a boat and describes the areas by reference to latitude and longitude points.

Schedule 6 contains a number of aids to the interpretation of specific parts of the plan and it includes a definition of the key terms and words used throughout the plan.

ENDNOTES

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