

## Queensland



### Explanatory Notes for SL 2003 No. 212

#### *Fisheries Act 1994*

## **FISHERIES (CORAL REEF FIN FISH) MANAGEMENT PLAN 2003**

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### **EXPLANATORY NOTES**

#### **GENERAL OUTLINE**

##### **Short Title**

The short title of the subordinate legislation is the *Fisheries (Coral Reef Fin Fish) Management Plan 2003* (the Plan).

##### **Authorising law**

Section 32 of the *Fisheries Act 1994* (the Act) provides that the chief executive may make a management plan for a fishery and that it is subordinate legislation.

Section 33(1) of the Act provides that before making a management plan, the chief executive must prepare a draft plan and take reasonable steps to engage in consultation about it.

Section 34 of the Act provides that a management plan does not have effect until it is approved by the Governor in Council.

##### **Policy objectives of the legislation and reasons for the objectives**

The species for the coral reef fin fish fishery (the fishery) comprise demersal (bottom dwelling) fish, with the principal species being coral

trout, red emperor and red throat emperor. Fish targeted in the fishery come from the following families—

- Cods, groupers and trout (Family Serranidae);
- Tropical snappers and sea perches (Family Lutjanidae);
- Emperors (Family Lethrinidae);
- Wrasses (Family Labridae);
- Parrot fish (Family Scaridae);
- Surgeon fish (Family Acanthuridae);
- Sweetlips (Family Haemulidae); and
- Fusiliers and banana fish (Family Caesionidae).

The objective of the Plan is to provide for the use, conservation and enhancement of the community's coral reef fin fish resources through the management of commercial and recreational fishing (including commercial fishing tours) and indigenous fishing in a way that seeks to apply and balance the principles of ecologically sustainable development and promote ecologically sustainable development.

The objective of the amendment to the (*Gulf of Carpentaria Inshore Fin Fish*) Management Plan 1999 is to update the species listed as “coral reef fin fish” (being fish excluded from the application of the Gulf Plan) so that the list is consistent with the Plan.

Coral reef fin fish are taken by commercial, recreational and indigenous fishers and are highly regarded for their eating quality, recreational experience and cultural importance. They also form an important part of the reef visitors' experience, for example, by featuring in underwater viewing, diving and photography. An important consideration in the management of the fishery is that its species live in waters that are primarily within the Great Barrier Reef Marine Park (GBRMP). In 1981, the World Heritage Committee included the GBRMP in the United Nations (UN) Educational Scientific and Cultural Organisation World Heritage List. The purpose of the listing is to ensure that the outstanding universal values (natural and cultural properties) of the GBRMP are protected against the threat of damage in a rapidly developing world. Australia is a co-signatory to the International Convention on Ecological Sustainable Development and to the UN Code of Conduct on Responsible Fishing Practices.

Management arrangements for the fishery require reform. Over the past several years there has been growing concern expressed by all sectors regarding the status of the fishery. Most managers, stakeholders and researchers agree that the fishery was fully exploited at its 1996 effort levels. A warning against further investment and increased effort in the fishery, due to a review of its management arrangements, was issued on 19 May 1997 (the investment and effort warning). For sustainable use of fish stocks to be demonstrated, it must be shown that the fishery does not lead to unacceptable declines in either target stocks or those stocks that are taken as by-catch or discarded and that the fishery does not impact negatively on the ecosystem in which it operates. The problems now apparent in the fishery relate to its stocks only—there is no evidence that the fishery has any significant negative environmental or ecological consequences.

Some of the fishery's species, such as the common coral trout and some parrot fish, are relatively robust to fishing pressure, due to their life cycle and behavioural characteristics. However the majority, such as cods and tropical snappers, are particularly vulnerable to fishing pressure due to their biological characteristics such as early growth to maximum size, long life, relatively large size at sexual maturity, sex changing reproductive strategy and low natural mortality. Further, most species taken in the fishery come from deeper waters and are likely to have poor post-release survival rates.

Change in catch per unit of fishing effort (CPUE), for example, kilograms of fish caught per boat day, is commonly used in fisheries management as an indicator of the status of the fishery and the targeted stocks. Although CPUE data for the commercial sector of the fishery as a whole shows no consistently positive or negative trend in catch rates, this may disguise trends of declining catch rates of the principal target fish species, coral trout and red throat emperor, which together comprise approximately 65% of the total catch.

With respect to coral trout, the independent expert panel's *Report to the Chair, Great Barrier Reef Marine Park Authority on the Draft Management Plan for the Coral Reef Fin Fish Fishery* (August 2000) observed that—

“declines in gross coral trout CPUE demonstrate a pronounced and disturbing declining trend during the 1990s with substantial drops in CPUE for some regions”.

The panel, recognising the need for caution in interpreting these trends, reported that—

“nevertheless, the CPUE data is indicative of a substantial decline in coral trout abundance”.

The panel further reported that—

“due to an ability to maintain catch rates by moving from reef to reef, CPUE will not reliably demonstrate a decline in abundance until that decline becomes so widespread and substantial as to depress catch rates on a large number of reefs. In addition gross CPUE data alone will not identify serial depletion of reefs”.

The Department of Primary Industries’ (DPI) report, *Queensland Fisheries Resources—Current Condition and Recent Trends 1988 to 2000*, (published 2002) observed that since 1995, there has been some evidence of a decline both in the total catch and CPUE of red throat emperor. In addition, some localised stocks, for example those offshore from Townsville, appear to have declined substantially over the past 2–3 decades.

Another indicator of the status of a harvested fish stock is the average size of fish in the population and long-term trends in the number of fish. DPI researchers studying trends in common coral trout populations on the Great Barrier Reef reported in 2000 that there had been a significant reduction in both average length and the percentage of larger fish in populations between the early 1980s and the late 1990s. The researchers concluded that the results of the study for at least part of the Great Barrier Reef, suggested growth overfishing of common coral trout (where fish are captured at too small a size to maximise the total weight that can be optimally taken from a fishery) and that the strong downward trends in densities of common coral trout in recent years, combined with present low densities of fish and high levels of fishing effort, were a cause for concern.

### **The way the policy objectives will be achieved by the legislation and why this is reasonable and appropriate**

The Plan will achieve the policy objectives by—

- **Amending current and introducing new minimum and maximum size limits to ensure the sustainability of coral reef fish species**

The minimum and maximum size limits apply to all users and provide fundamental protection for reef fish stocks from capture prior until they

reach a size where they have been able to contribute in a significant way to reproductive processes.

- **Specifying humphead Maori wrasse, potato cod, barramundi cod, red bass, chinaman fish, paddletail and Queensland groper as no-take species.**

Potato cod, humphead Maori wrasse, barramundi cod and Queensland groper are regarded as rare in nature and are iconic to the Great Barrier Reef. The intention is to provide these important and vulnerable species absolute protection from fishing under the Plan. Protection of juvenile stocks of Red bass, Chinaman fish and paddletail would require setting a relatively long minimum fish size limit. However, this would exacerbate the ciguatera poisoning risk posed by these species to consumers, as the risk is higher in larger fish. A total ban on their capture is a more appropriate means of protecting these species.

- **Phasing in three 9-day closed waters declarations to protect spawning aggregations of coral reef fish at peak times**

The Plan proposes to close waters to fishing for coral reef fin fish during peak times around the new moon when many coral reef fin fish species aggregate on reefs to spawn. Spawning aggregations make fish particularly susceptible to targeted fishing activities, which particularly makes the more sought after species vulnerable to overexploitation during these times.

- **Amending current and creating new bag limits for coral reef fin fish.**

The Plan proposes restrictions on the bag limits for recreational fishers to provide fundamental protection for fish stocks by removing the potential to take large quantities of fish. Where data was available, maximum bag limits have been set at a level that is equal to or higher than the numbers of fish taken on 90% of all angler trips.

- **Limiting the type and number of fishing apparatus available for use**

While a number of the proposals in the Plan address the issue of excess capacity (latent effort) in the fishery, there is significant potential for

increased effort, particularly in relation to the commercial fishery, if the numbers of fishing lines and the numbers of hooks that can be used on fishing lines are not restricted. In addition, net fishing, which is regarded as an impractical means of taking coral reef fin fish and as an unsustainable practice in the areas the fish exist, is to be prohibited.

- **Changing the fishery symbol on commercial fishing boat licences that signifies an entitlement to take coral reef fin fish commercially and providing for criteria that existing licence holders must meet to obtain the new fishery symbol**

This fishery, like many others in the world, displays considerable evidence of over capacity particularly in the commercial fishing sector in terms of the number of licences endorsed to participate in the fishery and the size of boats that may be used. Such capacity has been converted to real fishing effort and catch in recent years, which is regarded as unsustainable in the longer term.

The proposed Plan (and a consequential amendment to the *Fisheries Regulation 1995*) removes the entitlement to take coral reef fin fish from existing east coast line fishery licences that have never participated in the coral reef fin fish fishery or have participated in a very limited way. This is achieved through a decision making process to decide, on the basis of prescribed criteria, which licences are eligible to obtain a new fishery symbol (RQ) symbolising an entitlement to take coral reef fin fish commercially. The Plan also prohibits the issue of any further entitlements to take coral reef fin fish commercially, other than in the ways provided under the Plan.

- **Setting a precautionary total allowable catch (TAC) for the commercial coral reef fin fish fishery of no more than 3061 tonnes and allocating individual transferable quotas (ITQs) to commercial licences in the fishery**

Commercial landings of coral reef fin fish increased by more than 40% between 1996 and 2001 and have continued to increase despite the release of the investment and effort expansion warning.

The proposed Plan sets a TAC for the commercial fishery of 3061 tonnes and to allocate ITQs in the form of amounts of catch in whole weight of fish (line units) to holders of RQ licences. Both the TAC and ITQs are separated into the species groupings for coral trout, red throat emperor and

the remaining coral reef fin fish species. The Plan proposes an allocation process that uses the past levels of catch under individual licences to determine the number of each line units to be issued to the licence holder, in addition to a base allocation to each eligible licence holder.

The introduction of the TAC and ITQs system from 1 July 2004 will ensure that stocks are harvested on a sustainable basis, current catch sharing arrangements between fishery sectors are maintained and that catch sharing arrangements are established within the commercial sector based on historic participation in the fishery.

- **Introducing a notification and a tagging system to support the commercial quota scheme and restrictions on the form in which recreationally caught coral reef fin fish species may be landed.**

Successful monitoring and compliance strategies in a catch based quota system are crucial to its success. The proposed notification system will improve monitoring capability and enforcement outcomes and will support the integrity of the commercial quota. The requirements for commercially caught coral reef fin fish to be tagged and kept whole until reaching the processor on land addresses concerns of illegal commercial activity. In addition to tagging of commercially caught fish, the requirement for recreationally caught fish to be identified by the removal of a pectoral fish deters the unlawful entry of these fish into the market place.

- **Requiring recreationally caught fish to be retained as whole fish at sea, or satisfy a minimum fillet size**

By restricting the extent to which coral reef fin fish may be processed at sea, the Plan enhances the integrity of the commercial quota system and the provisions limiting on the size, number and species of fish that may be taken.

### **Consistency with the authorising law**

The Plan is consistent with the main purpose of the Act to provide for the use, conservation and enhancement of the community's fisheries resources and fish habitats in a way that seeks to—

- apply and balance the principles of ecologically sustainable development; and
- promote ecologically sustainable development.

The Plan's main purpose is to provide for the management of the community's coral reef fin fish fishery in a way that achieves the main purpose of the Act.

### **Alternatives to the subordinate legislation**

The following alternative approaches to the proposed measures were considered as part of the Regulatory Impact Statement (RIS) process—

- no legislative intervention;
- self regulation;
- alternative legislation; and
- retaining current management arrangements.

These approaches would not provide for the sustainable development and use of coral reef fin fish stocks or would do so in a less efficient or unnecessarily restrictive manner.

- **No legislative intervention**

The need for government involvement in fisheries management stems primarily from the open access nature of fisheries resources. Experience worldwide has shown that where there is open access to fisheries resources, there is little incentive for individuals harvesting the resource to conserve fish stocks. As these stocks become fully utilised, competition between users often leads to resource depletion or economic inefficiency. Left unmanaged, the resulting increase in fishing effort is reflected in lower individual catches in all fishing sectors, over-capitalisation and reduced financial returns in the commercial fishing industry. It also places at risk the satisfaction of recreational fishers and custom and tradition of indigenous groups.

The role of government is to ensure that fisheries resources are used in an ecologically sustainable manner. In doing so, government has the responsibility of ensuring that the basis for sharing the resource among all users is clearly defined and is accepted as fair. Ensuring that the allocation of fisheries resources and their level of utilisation are consistent with the



needs of present and future generations has been shown worldwide to require effective legislative intervention.

- **Self-management**

Self-management is not considered a viable alternative for achieving the policy objectives. The same difficulties outlined for the option of no intervention would still exist, with added complications.

Self-management would rely on licence holders restricting themselves to an amount of catch or fishing effort that they have decided is appropriate. This alternative is unlikely to achieve the desired result unless all licence holders are compelled to comply with appropriate restrictions. For this reason, in most circumstances, self-management in a fisheries context has been rejected by all governments in Australia and overseas.

The actual extent and form of regulatory intervention does vary and in response to geographic differences in stocks and their users. It is recognised that user groups do promote and use various self-management interventions, including the increasing use of codes of practice. However, an appropriate regulatory framework is considered essential for effective management arrangements.

- **Retaining current management arrangements**

Current arrangements use traditional input controls on fish sizes and possession limits, area and seasonal closures and controls on fishing apparatus. These controls on their own have not been effective in providing for sustainable use of stocks, have not contained commercial fishing as evidenced in the trend of increased effort in recent years and are threatening the long-term viability of the industry, through increasing fishing pressure and an increased demand for access to coral reef fin fish, coupled with improved technology and efficiency in fishing operations. In addition, profitability at present catch levels for the average operator in the fishery may become marginal as fishing effort increases at a greater rate than catch.

### **Costs and benefits in implementing the subordinate legislation**

The proposed Plan will impact to some degree on certain parts of the community, such as commercial and recreational fishers. However, overall

the community will benefit through the better management of the community's coral reef fin fish fisheries resources and in safeguarding the sustainability of those resources. The sustainable management of fisheries resources is important to a number of rural communities that have an association with recreational fishing and a range of industries such as commercial fishing and tourism.

### **Benefits to Government**

The primary benefit expected to government is an enhanced capacity to reflect ecologically sustainable development principles in fishery management in Queensland. Additionally, the Plan will deliver a greater range of management mechanisms and an increased capacity for management interventions responsive to the needs of the coral reef fin fish fisheries resources.

### **Costs to Government**

Costs to government in the implementation of the proposed Plan have been estimated at \$1.73M in the first year with a recurrent cost in present value terms of approximately \$1.43M in each subsequent year. The majority of those costs are associated with management of the commercial sector and are comprised principally of costs of—

- quota monitoring and catch reporting design;
- increased compliance resources;
- costs of appeals to the Fisheries Tribunal against administrative decisions;
- fishery monitoring and assessment;
- public notification and information;
- commercial fish tagging; and
- annual independent audit.

### **Benefits to industry**

Industry can expect greater certainty in the sustainability of fisheries resources. Also, long-term profitability and increased capacity for financial and strategic planning by commercial fishers are possible because of the

increased certainty. The benefits to commercial operators and related small businesses will be enhanced where the resource can be protected and its sustainability ensured. As a result, regional economies dependent on fishing will also benefit.

### **Cost to industry**

The cost to industry is in the additional limitations to be imposed on current operators. Currently, commercial fishers operating in the coral reef fin fish fishery are taking well in excess of the proposed total allowable catch for the fishery and this is considered to be an unsustainable situation. However, the proposed restrictions including imposing a TAC and allocating ITQ's are essential to the sustainable management of the fishery.

### **Benefits to the community**

The community can expect improved management and protection of its coral reef fin fish resources. Increased community confidence in fishery managers and resource users is also a major benefit. Greater protection of the resource will also protect and enhance associated traditional and cultural rights of indigenous people.

### **Costs to the community**

Some limitations on access to certain fish stocks, for example the number of fish that may be taken by recreational fishers, will result from the proposed amendments. These restrictions however, should be weighed against the corresponding measures that will apply to commercial fishers and the overall sustainability of the resource in question.

### **Consistency with fundamental legislative principles**

Does the subordinate legislation have sufficient regard to the rights and liberties of individuals?

Section 4(2)(a) of the *Legislative Standards Act 1992* (LSA) provides that the fundamental legislative principles require legislation to have sufficient regard to the rights and liberties of individuals.

Section 4(3)(i) of the LSA provides that whether legislation has sufficient regard to the rights and liberties of individuals depends, for

example whether it provides for the compulsorily acquisition of property, upon the payment of fair compensation.

- **Changes to entitlements under existing authorities**

It is agreed among stakeholders that coral reef fin fish stocks are already fully exploited across all sectors. The 1997 investment and effort warning advised of a review of the management arrangements for the fishery and specifically warned against further investment or increases in effort until this was completed.

The reforms under the Plan that change existing licences entitlements are essential to achieve the objective of an ecologically sustainable fishery for current and future generations of Queenslanders. The Plan, while removing the entitlement to take coral reef fin fish from licences with minimal or no relevant fishing history, does so in a way that has sufficient regard to individual licence holder's rights and liberties when balanced against the interests of managing the community's coral reef fin fish resources in an ecologically sustainable way. The licences that will not satisfy the criteria to obtain the new RQ fishery symbol are those for which no, or very minimal, fishing history has been expended in the history of the fishery, at least prior to the 1997 effort and investment warning.

The change is to a possible future right, rather than to one that has been exercised to any significant degree, with appropriate emphasis on the period before the warning. The Plan provides for objective, fair criteria and a fair and transparent decision making process (including appeal rights) to discern those licence holders that continue to be entitled to take coral reef fin fish. Eligibility for the amendment to include the RQ fishery symbol on licences will be based on minimum catch levels being taken in certain past periods. The required catch level of 500kg per annum sets the minimum requirement at a low level. Holders of licences that do not qualify for the RQ symbol retain their existing line fishery symbol and can continue to fish for other line-caught species.

- **Regard to the payment of fair compensation if property is compulsorily acquired**

It may be argued that the change to the entitlement previously available under licences that fail the criteria is a loss of a right akin to a property right, if the ambit of the meaning of "property" in the LSA is broadly interpreted. However, the *Fisheries Act 1994* (the Act) clearly

contemplates that changes may be justified to the rights conferred by authorities, in appropriate circumstances. Section 40 of the Act expressly provides that no compensation is payable if this occurs, although a regulation or management plan may provide for this.

A fishing licence and its attendant entitlement, while it may have some of the characteristics of property, is a creature of the statute which creates it, and can be modified in accordance with the process set out in law. The right in question is a permissive condition conferred as part of the licence, which continues to confer a very significant entitlement to fish in the other line fisheries, or other fisheries for which it is endorsed. There is no “acquisition” in the sense of a corresponding benefit being transferred to government or some other party, nor is the licence itself being extinguished.

Holders of these licences are not regarded as having more than minimal commercial reliance on the fishery and it is not proposed to compensate for what is effectively a change that removes the right to expand their actual practice into the coral reef fin fish fishery, when the loss of this option is balanced against the imperative of achieving sustainability in the fishery itself.

- **Level of maximum penalties**

Section 41 of the Act provides that a management plan can provide for a maximum penalty of not more than 500 penalty units. While the level of maximum penalties in the Plan may be regarded as relatively high for subordinate legislation (100 penalty units), it is considered the need for effective deterrence and the importance of the provisions to which the penalties relate justify the higher penalties, while having sufficient regard to the rights and liberties of individuals.

Wherever possible, the Plan’s obligations and prohibitions relate to the existing offences under the Act, for example—

- the offence for contravening the closed waters provisions in Chapter 2, part 1 of the Plan is found in section 77 of the Act;
- the offence for contravening the regulated fish declarations in chapter 3, part 2 of the Plan is found in section 78 of the Act; and
- the provisions regulating commercial fishing under the Plan are conditions of the authorities issued under the Act, or are prescribed as fishery provisions for the fishery, so that

contravention is a breach of section 85 and/or 86 of the Regulation.

However, the challenge of managing a multi species fishery under a commercial quota and restrictions on the size, number and species of coral reef fin fish that may be taken by fishers has necessitated the introduction of three new offences.

Clauses 135 and 140 restrict the way coral reef fin fish can be processed on board a boat by recreational fishers or tour operators so that the identification of fish species, numbers or size can not be concealed, for example by the way it has been filleted. The ability of inspectors to be able to identify, measure and count fish found on recreational and charter fishing boat is imperative to the success of the regulated fish declarations.

The second element of clauses 135 and 140 is the requirement for a recreationally caught coral reef fin fish to have a pectoral fin removed before it is stored on the boat. The intention is to secure the effectiveness of the commercial quota by providing a means by which the fish can be indelibly marked as being caught recreationally and therefore, a fish outside the lawful commercial quota.

Clauses 136 and 141 prohibit a recreationally caught coral reef fin fish being brought ashore from a recreational or charter fishing boat in live form, other than a fish other than a principal species fish, for display in a personal aquarium. Live coral reef fin fish are the most commercially valuable and cannot be subject to the requirement to remove a pectoral fin.

These restrictions are crucial to deter the unlawful, but potentially lucrative, trade in recreationally caught coral reef fin fish in the domestic market and to aid enforcement of the regulated fish declarations. The seriousness of these offences and the need for effective deterrence, is reflected in the maximum penalty of 100 penalty units.

The third class of offence is created by section 154 of the Plan. The provision requires traders in coral reef fin fish to ensure the fish is tagged in the required way while it is in the trader's possession. Untagged coral reef fin fish possessed in the market place may indicate trade in coral reef fin fish outside the lawful quota. Traceability of fish requires the tagging requirement to begin as soon as the fish is taken and to continue throughout the chain of its buyers until it reaches its end consumer. As traders, other than the first wholesale buyer, are not required to hold an authority under the Act, it is necessary to enforce this obligation by summary prosecution for contravention.

To effectively deter unlawful trade in coral reef fin fish and reflect the seriousness of an offence that may undermine the achievement of a sustainable commercial coral reef fin fish fishery, the maximum penalty has been set at 100 penalty units.

## **CONSULTATION**

### **Community and industry**

Extensive consultation has been undertaken in the development of the Plan summarised below—

- 1996—a discussion paper on management of coral reef fish species was released for public comment and a series of public meetings held in the major East Coast fishing ports about the contents of the discussion paper;
- 1997—an issues paper on treatment of excess fishing capacity in the coral reef fin fish fishery was circulated to commercial fishers;
- June 1999—release of an draft management plan for public comment and a series of public meetings held in the major east coast fishing ports about the draft management plan;
- 2002—release of a further draft management plan, regulatory impact statement and draft public benefit test report and a series of public displays held in the major East Coast fishing ports.

The most recent consultation process attracted in excess of 500 persons to the displays whilst in excess of 1,260 formal responses to the 2002 draft plan were lodged.

### **Queensland government agencies**

The Department of the Premier and Cabinet, Queensland Treasury, Department of State Development, Department of Employment, Training and Industrial relations and Tourism Queensland were specifically consulted in the development of the Plan

### **Office of the Queensland Parliamentary Counsel**

The Office of the Queensland Parliamentary Counsel drafted the Plan.

## **Commonwealth government**

The Great Barrier Reef Marine Park Authority (GBRMPA) was consulted through representation on the management advisory committee for this fishery (Reef MAC), as well as through a series of meetings during the development of the Plan.

## **RESULTS OF CONSULTATION**

### **Community and Industry**

In excess of 1260 formal submissions were received from individuals and stakeholder organisations in response to the consultation draft of the Plan, RIS and draft Public Benefit Test Report.

Overall, the vast majority of responses strongly supported the need for immediate intervention in the fishery as present measures were seen as inadequate to provide for sustainable management of the resources. However, respondents held different views on what measures were best suited for that outcome and how they might be modified at the margin to achieve a better solution.

Details of the results of consultation on the key proposals are set out below—

### **Fish species covered by the Plan**

Several additional species of coral reef fin fish have been included in the Plan as a result of consultation. The Cooperative Research Centre for the Great Barrier Reef provided details of a number of refinements to the species list that have been adopted. Representations from the Queensland Seafood Industry Association (QSIA), ECOFISH (a Cairns based organisation), and a combined submission of all L8 fishery symbol (Multiple Hook Fishery) holders proposed that target species in the L8 Fishery not included in consultation draft of the Plan be added. This has the effect of placing the 'L8' fishery entirely within the scope of the Plan, where previously only a proportion of the species were included. This is regarded as a positive step with all affected parties in agreement with the change. No responses were received opposing this strategy.



### **Minimum and maximum fish size limits**

The RIS and consultation draft of the Plan proposed minimum and maximum size limits for certain coral reef fin fish based on the biological principle that at least 50% of the stock should have reached sexual maturity, or in the absence of biological information, a precautionary limit of either 25 or 35 centimetres. This meant minimum size limits for cods were proposed at 35cm and previously unregulated species at 25cm. No size limits were proposed for some species.

Responses to RIS were largely supportive of the proposed size limits with 76% of respondents agreeing to the use of size limits for fish stock protection. A general criticism of the draft Plan was that the size limit regime was very complex, with a great deal of variation in applicable limits, and required simplification.

Reef MAC considered this issue. It recognised merit in a more simplified approach but was reluctant to recommend changes as extensive as some respondents may have sought, the principal reason being the importance of providing protection of fish at their juvenile life stages and for those species that are vulnerable due to sex change or longevity.

Reef Mac's recommended simplification of the proposed size limits has been adopted so that—

- all species have at least a 25cm size limit minimum except fusiliers, which are a commonly used bait fish, with an exemption for licensed aquarium fish fishers from the 25cm limit;
- consolidating a number of existing size limits on small cods, coral trout, red throat emperor, long nosed emperor and job fishes at a 38 cm limit; and
- setting a limit of 30cm for all tusk fish.

QSIA, ECOFISH, SUNFISH, the charter fishing tour industry and other respondents opposed increasing the size limit for red emperor from 45cm to 55 cm. This opposition was based on the effect on catch numbers and the prospect of post-capture mortality of fish taken from deeper waters on release. Evidence has long been available to show that red emperor mature at the much larger size of 55cm. Landings of smaller sized fish represent catches of specimens that have not reached maturity and spawned. Retention of the 45cm minimum size limit is not considered desirable to the long-term sustainability of this species. The proposition that high levels of post-capture mortality occur with this species is not accepted.

Maximum size limits were proposed to be set to protect large valuable fish where it is known that those fish contribute proportionately more to the reproductive potential of the stock or are highly vulnerable to capture. Some respondents, particularly recreational spear fishers, opposed the maximum size on blue-spot trout, which is proposed for protection by 50cm minimum and 80cm maximum size limits. Research has shown that blue-spot trout change sex from female to male in a small window at around approximately 80cm and concerns exist that the sex ratio of this species could be adversely affected by fishing pressure without the proposed maximum size limit.

### **Spawning season closures**

Three 9-day periods have been proposed as closed seasons to the taking of coral reef fish in the months of September/October, November and December each year around the new moon period.

The RIS had sought comment on a GBRMPA report that concluded that an annual temporal spawning closure to protect reef fish species should extend over three months, from October to December each year. Only 32% of respondents were supportive of this approach. The most frequent comment associated with this matter was support for the previously identified 9-day closure periods around the optimal moon phases. These shorter closures had been considered in previous consultation processes about measures for conservation of coral reef fish.

The proposed 9-day closure periods had been selected in an attempt to minimise the impact on stakeholders, particularly those who rely on the fishery for their income during these months while allowing for protection of spawning fish during their most vulnerable times. The proposed closures will particularly affect the charter fishing industry. Commercial and recreational fishing representative organisations were not supportive of the closed seasons, citing the absence of evidence of any appreciable benefits of the measure. Discussions with commercial and recreational sector representatives indicate that they did not view the introduction of these short closures over the moon phases as a significant impost as fishers in each group had alternative activities available to pursue at those times. Conservation groups favoured the use of spawning season closures throughout the three-month period. GBRMPA was in favour of the shorter closures around the moon phases.

Related reef fish species elsewhere in the world aggregate in significant number during spawning periods and are highly vulnerable to fishing

pressure. Reef fish species aggregate to spawn on the Great Barrier Reef but there have been no observations of aggregations of a similar size elsewhere. The Plan's provision for short closures during the key spawning periods is considered necessary and appropriate.

### **No-take species**

The consultation draft of the Plan proposed to regulate humphead Maori wrasse, potato cod and barramundi cod as no-take species. These species are regarded as being rare in nature and iconic to the Great Barrier Reef.

Responses were divided on this course of action for each species. There were no objections to the prohibition on capture of potato cod from any sources. Recreational and commercial fishing representative organisations were opposed to the prohibitions on Maori wrasse and barramundi cod, arguing that these species faced no threat of extinction under present fishing pressures in Queensland, and were of the view that the iconic value placed on these fish was inappropriate. Representatives of conservation interests and GBRMPA supported the prohibition, in view of the iconic values attributed to these fish on the Great Barrier Reef and the depleted state of international resources of these fish.

Respondents were supportive of the addition of Queensland Groper to the three no-take species proposed in the RIS. Presently, Queensland Groper has a minimum size limit of 35cm, a maximum size limit of 120cm, and a possession limit of one fish per person. It is proposed to include this species in the no-take group for its iconic value.

Protection of juvenile stocks of Red bass, Chinaman fish, paddletail would require setting a relatively long minimum fish size limit. However, this would exacerbate the ciguatera poisoning risk posed by these species to consumers. A total ban on their capture is a more appropriate means of protecting these species.

### **Bag limits**

The Plan proposes new bag limits largely in line with the consultation draft and RIS proposals. More than 60% of respondents to the RIS favoured the use of bag limits to protect fish stocks. This support was drawn equally from all sectors. Only 12 respondents supported the retention of existing limits whilst opinions differed as to whether individual species limits were too high or too low.

SUNFISH considered the variation between bag limits for particular fish to be too complex and proposed a bag limit of 30 of any combination of coral reef fin fish, or the retention of existing limits, as an alternative. QSIA indicated that the proposed individual and total limits still allowed considerable opportunity for abuse, for illegal commercial activity and for continued expansion of catch by the recreational sector, and recommended a limit of fish per boat be added to the package. The Worldwide Fund for Nature and the Australian Marine Conservation Society indicated that the proposed total limit was too generous and should be further reduced.

In most cases current possession limits applying to recreational fishers are rarely reached and have little effect on the total recreational harvest. Respondents sought a simplification of bag limits. Reef MAC supported the need for simplification but was of the view that the limits proposed were quantitatively based and should largely be continued. The result is that the possession limits proposed in the Plan have been simplified where possible.

Restructuring of the commercial line fishing fleet to address excess fishing capacity and new management arrangement for the commercial fishery

### **Dealing with latent (excess) fishing capacity**

The Plan proposes the introduction of a new fishery symbol required for commercial fishing boat licence holders to be entitled to take coral reef fin fish and that the catch and fishing effort of those remaining licensed boats be strictly managed at levels reflecting pre 1997 catches, by way of three categories of individual catch quotas for coral trout, red throat emperor and other species.

Of the 1700 commercial fishing licences attached to boats authorised to take coral reef fin fish in Queensland waters, approximately 300-400 boats operated prior to 1997, and continue to operate in the fishery at a commercial level. The remaining operators had not worked or had very limited involvement in the fishery prior to 1997, although as many as 300 licence holders substantially increased their effort after the 1997 effort and investment warning.

A majority of responses to the RIS supported the need to reduce excess fishing capacity (85%—individuals, 95%—groups) and to introduce restrictions to fishing licences in the commercial fishing sector

(67%—individuals, 93%—groups). Most of the opposition to restricting licences came from individual respondents from the commercial sector.

The QSIA proposed modification so that—

- the criteria for licences to be eligible to obtain the RQ symbol be applied equally to both L2 and L3 fishing authorities; and
- the Plan provide for structural adjustment for persons who may have acquired licences after the 1999 consultation draft was released.

Other respondents argued that the restriction would devalue their licences and sought compensation for their loss as part of the adjustment process.

While the differing views have been taken into account, no major change has been proposed to the criteria. Based on catch history data, only a small number of licences would be excluded from the fishery if the entry criteria were to be applied equally to both L2 and L3 operations as suggested by QSIA. L2 fishing authorities, when first issued in 1993, were granted on the basis of having demonstrated a significant commercial level of fishing activity in the fishery, while L3 authorities were intended to allow small personal catches to be taken by commercial fishers (due to concerns that the legislation at the time prohibited commercial fishers acting in one fishery from taking fish by line for their own non-commercial use) and were not the subject of any qualifying criteria.

Noting that the vast majority of fishers had not used or had only lightly used their licences in this fishery prior to the effort warning, the payment of adjustment assistance has not been proposed. This is discussed in detail in the section relating to fundamental legislative principles.

The QSIA and other respondents proposed that provision be made in the Plan to adjust the criteria for obtaining RQ fishery symbols applicable to individuals due to personal circumstances. Additional provisions have been included to adjust the applicable criteria where holders acquired licences shortly before the release of the investment and effort warning and for situations where a significant disruption of fishing activity has arisen due to loss of boat, illness or death of the licence holder or immediate family.

It is estimated number that approximately 400 licences will be amended to include the RQ fishery symbol under the Plan.

### **Managing the catch and fishing effort of the resultant fleet**

The RIS and 2002 consultation draft proposed a series of measures designed to contain catch of the remaining commercial operators in the fishery to the 1996 levels. This was to be achieved by first determining the actual past catch levels of each licence holder and establishing their average catch by a specified formula, and allocating a number of boat fishing day quotas as represented by that catch. Boat days were unitised to enable the total number of days to be varied to reflect actual catches under changing fishing technology and to adjust future yearly catches over 1996 levels in their subsequent years. Essentially the scheme comprised a limit on boat fishing days combined with an annual total allowable catch.

Respondents were divided on the use of a fishing days system combined with a TAC. A majority of individual respondents (67%) supported the approach. Further analysis by category showed that this net outcome was comprised of strong support from recreational fishers but strongly opposed by commercial fishers to whom the scheme would apply.

Submissions from peak stakeholder groups were also divided. QSIA lodged a comprehensive submission arguing that the days based system was flawed as it did not provide an effective cap on catches of key species such as coral trout nor did it offer the appropriate level of security to industry. The QSIA submitted the approach proposed in the RIS and consultation draft had been comprehensively rejected by industry, drawing attention to industry comment and media reporting during the public comment period.

SUNFISH also rejected the “fishing days” based quota system and favoured the introduction of a TAC on the commercial sector with individual transferable quotas. They considered that a fishing effort-based scheme was not the most effective way to reduce latent effort and commercial catches.

ECOFISH and the Queensland Seafood Marketers’ Association supported the views of QSIA and Sunfish.

The Worldwide Fund for Nature Australia supported the adoption of the (input) days based system but proposed that the number of days be set to the lower fishing catch levels achieved by the commercial sector in 1995. They cited concerns for uncertainty in stock assessments, low grade fish discarding, potential for concentration of ownership of quota and the subsuming of ecosystem issues by catch quota management approaches as

the basis for their concerns. The Australian Marine Conservation Society similarly preferred the days-based proposal listing similar concerns.

GBRMPA supported the days-based proposal and recommended the adoption of a TAC for coral trout in addition to an overall TAC for the fishery.

In summary, views about the best approach to the management of commercial catches in this fishery have polarised into two groups—fishing stakeholder interests and non-fishing stakeholder interests. All agree on the need for significant upgrading of the controls on the total catch, but differ in approach—one supporting direct catch controls and the other supporting the use of controls on fishing days as a proxy for catch controls.

Autonomous output based controls over input controls are preferred where circumstances allow. In the case of coral reef finfish, the principal difficulties raised by respondents opposed to a catch quota lay in setting a TAC that could be demonstrated to be sustainable and in enforcing quotas for such highly valued species. Under input controls, the problem of identifying a sustainable catch level continues to exist, although not as entrenched as in a catch quota. There are significant difficulties in ensuring the integrity of catch quotas for this fishery, necessitating additional resourcing of that function and at additional cost.

The Plan has adopted a partial compromise of the two positions that emerged from consultation. It is fundamentally based on input controls (such as size and bag limits, seasonal and Great Barrier Reef Marine Park closures, limited entry licensing) but incorporates a catch based individual transferable quota system to directly control and restrict the catch of the commercial sector. The retention of the input controls is in recognition that that there is still far from sufficient knowledge about the sustainable level of catch for the fishery to be managed solely under a catch quota regime for the foreseeable future.

### **Format of landed fish**

The Plan proposes that all recreational fishers be required to retain fish in a whole form or in accordance with a prescribed fillet size of no less than 40cm. In cases where fish are filleted, the entire skin, unscaled, must be left on the fillet for identification to improve the integrity of size and possession limits. The Plan also provides that two fillets equal one fish. This approach was supported by 67% of individual respondents and by a similar proportion in responses from groups.

SUNFISH did not support the approach, being concerned primarily that the concession for clients on extended charter fishing to fillet their fish was unfair when all other fishers had to comply. Other major representative bodies supported the proposal or expressed no view.

It is not proposed to vary the approach from the RIS other than to provide better definition of how a fillet is measured.

The Plan also provides that fishers on extended commercial fishing tours be able to fillet their fish with certain packaging requirements. This approach attracted some criticism from a range of stakeholder interests critical of the concession to clients of charter operators. However, filleting and packaging of catch is one of the services provided by charter operators to their clients. The level of compliance with regulation is expected to be high.

### **Apparatus available for use**

It is proposed that most fish species covered by the Plan only be taken by handline or rod and line. Recreational fishers only may also use a hand held spear or spear gun to take coral reef fish. It is also proposed that a person be limited to the use of a maximum of 6 hooks in any configuration and use not more than 3 lines at any time. This proposal is consistent with current fishing practices but reduces the number apparatus presently allowed for use.

Provision has been for those licensed fishers using multiple hook apparatus in offshore waters beyond the 200metre depth contour to continue to do so.

The vast majority of respondents in every category supported the proposed apparatus rules.

### **Aquarium fish authority holders**

The commercial taking of fish for display purposes (aquarium fish) has been recognised in the Plan by proposing by allowing holders of those authorities to take and possess coral reef fish for display and broodstock only.

The vast majority of respondents supported this approach.



**Serious fisheries offences**

The Plan provides for number of new serious fisheries offences under the Act. Under the Act, convictions of licence holders for serious fisheries offences can be a ground for licence suspension or cancellation.

The vast majority of respondents supported the serious fisheries offence proposals. The QSIA drew attention to the need for inclusion of catch quota offences and the Plan incorporates these changes.

**Fishery evaluation and review**

The Plan contains provisions that mandate its evaluation and review for its achievement of its main purpose.

Respondents largely supported the measures proposed, whilst some minor refinements suggested by scientists have been adopted. The QSIA expressed a view that the review event designed to address localised stock depletions (which is more likely to occur near population centres) is a product of marine park zoning strategies concentrating fishing activity in these locations and should be dealt with by those marine park management agencies. Whilst zoning strategies may contribute towards concentrating fishing effort in some locations, the principal source of the problem is the accessibility of these locations to a large number of fishers and it is considered appropriate that this be reviewed under the Plan.

**Queensland Government**

There is general support for the subordinate legislation across Queensland government agencies. The Department of State Development's Business Regulation and Reform Unit advised that RIS obligations were met for the Plan.

## NOTES ON PROVISIONS

### CHAPTER 1—PRELIMINARY

#### PART 1—INTRODUCTION

##### **Short title**

Clause 1 provides that the short title of the legislation is the *Fisheries (Coral Reef Fin Fish) Management Plan 2003* (the Plan).

##### **Commencement**

Clause 2 provides for commencement. The new regulated fish declarations commence 3 months after the notification day. The slightly delayed commencement will allow information explaining the changes to be disseminated and for fishers to adapt their practices.

The Plan creates a new fishery symbol, the RQ fishery symbol, denoting an entitlement to take coral reef fin fish by line under a commercial fishing boat licence. The Plan also provides for the decision making process by which eligibility for the RQ fishery symbol is to be determined from among existing line fishery licence holders. To allow the decision-making process to take place, the Plan's provisions about fishing under the RQ fishery symbol will not commence until 3 months after the gazettal of the Plan. Until this time, fishers will continue to operate under existing fishery symbols provided under schedule 12 of the *Fisheries Regulation 1995* (the Regulation).

The Plan creates a new system of individual transferable quotas, known collectively as line units, allocated to RQ licence holders within a total allowable catch for the fishery of coral trout, red throat emperor and the remaining species. The requirements to fish using quota will commence on 1 July 2004. This is to allow the decision-making processes to allocate line units to RQ licence holders to occur.

## **Application of Plan**

Clause 3 provides for the application of the Plan. Section 32(1)(a) of the *Fisheries Act 1994* (the Act) provides that the chief executive may make a management plan for a fishery. Section 7 of the Act provides for a definition of “fishery” that includes activities specified by reference to any or all of certain things, including species of fish. The Plan applies to the fishery, defined by reference to the activities of taking, possessing and using coral reef fin fish.

The Plan does not extend to commercial fishing under authorities with an L4, L5 or L9 fishery symbols. These fishers operate in the Gulf of Carpentaria in a State/Commonwealth Joint Authority fishery managed under Queensland law. Commercial fishing under these fishery symbols is regulated under the Regulation, in particular, schedule 12, parts 4 and 5.

## **Main purpose of plan and its achievement**

Clause 4 provides that the purpose of the Plan is to provide for the use, conservation of the community’s coral reef fin fish resources. This is to be achieved by managing fishing for coral reef fin fish by commercial, recreational and indigenous fishers in a way that seeks to achieve the main purpose of the Act.

Section 3 of the Act provides that this is to provide for the use, conservation and enhancement of the community’s fisheries resources and fish habitats in a way that seeks to—

- (a) apply and balance the principles of ecologically sustainable development; and
- (b) promote ecologically sustainable development.

In balancing the principles, each principle is to be given the relative emphasis appropriate in the circumstances.

“Ecologically sustainable development” means using, conserving and enhancing the community’s fisheries resources and fish habitats so that—

- (a) the ecological processes on which life depends are maintained; and
- (b) the total quality of life, both now and in the future, can be improved.

“Principles of ecologically sustainable development” means the following principles—

- (a) enhancing individual and community wellbeing through economic development that safeguards the wellbeing of future generations;
- (b) providing fairness within and between generations;
- (c) protecting biological diversity, ecological processes and life-support systems;
- (d) in making decisions, effectively integrating fairness and short and long-term economic, environmental and social considerations;
- (e) considering the global dimension of environmental impacts of actions and policies;
- (f) considering the need to maintain and enhance competition, in an environmentally sound way;
- (g) considering the need to develop a strong, growing and diversified economy that can enhance the capacity for environmental protection;
- (h) that decisions and actions should provide for broad community involvement on issues affecting them;
- (i) the precautionary principle.

“Precautionary principle” means the principle that, if there is a threat of serious or irreversible environmental damage, lack of scientific certainty should not be used as a reason to postpone measures to prevent environment degradation, or possible environmental degradation, because of the threat.

Schedule 1 of the Plan then provides more specifically for how the main purpose is to be achieved and how this achievement must be measured. It contains a series of review events, which if they occur, compel a review of the Plan’s efficacy in achieving its main purpose. These events provide tangible milestones against which the Plan’s achievement of its purpose can be measured and, if necessary, corrected by amendment or other action.

## **PART 2—INTERPRETATION**

### **Interpretation**

Clause 5 provides for how terms and phrases in the Plan are to be interpreted. Terms have the same meaning as under the *Fisheries Regulation 1995* (the Regulation), except where the Plan specifically defines the term differently.

### **Scientific names of coral reef fin fish**

Clause 6 provides for the meaning of the term “coral reef fin fish”. The exhaustive list of coral reef fin fish species that are included under the Plan, by both common and scientific name, may be found in schedule 2. The clause also provides references for the scientific publications used to describe the coral reef fin fish listed in schedule 2.

## **CHAPTER 2—CLOSED WATERS AND REGULATED FISH DECLARATIONS**

### **PART 1—CLOSED WATERS**

#### **Closure**

Clause 7 provides for closed waters under the Plan. The waters described in 7(1) are essentially all the tidal waters of Queensland in which the coral reef fin fish stocks are found, other than the Gulf of Carpentaria. The waters are approximately the eastern seaboard off Queensland from the tip of Cape York south to the point at Indian Head on Fraser Island. The waters are closed for 6 days prior to and 2 days following the new moon (that is, a total period of 9 days) during the lunar cycles in late September/October to December in 2004–2008.

Most species of coral reef fin fish aggregate to spawn on reefs during the new moon phase. The purpose of the provision is to protect spawning aggregations from fishing during their most vulnerable time.

**Prohibited activities**

Clause 8 provides that it is prohibited for any person to—

- take a coral reef fin fish from closed waters;
- possess a coral reef fin fish if it was taken from closed waters; and
- possess a coral reef fin fish on board a boat in the closure area, even if it was not taken from the waters during the closure.

Section 77 of the Act provides that a person who unlawfully contravenes a closed waters declaration commits an offence punishable by a maximum penalty of 1000 penalty units. The last prohibited activity is essential to ensure the integrity of the closed waters provision is maintained. It would be virtually impossible for enforcement officers to distinguish between fish taken prior to and after the commencement of the closure period if they could be possessed on boats in closed waters, which could potentially undermine the effectiveness of the provision.

**PART 2—REGULATED FISH*****Division 1—Fish regulated fish by number***

The regulation of coral reef fin fish species by number (commonly referred to as bag limits) is intended to conserve heavily harvested species, spread catch levels fairly among fishers and generally ease pressure on fish stocks.

The Plan limits the number of individual species that may be taken, as well as providing an overall limit total of 20 coral reef fin fish of any combination. Where information was available, bag limits have been set at a level that is equal to or higher than the numbers of fish taken on 90% of all angler trips.

**Fish regulated by number—sch 4, pt 1**

Clause 9 provides for the coral reef fin fish that are regulated by number under the Plan for recreational fishers, including those participating under a commercial fishing tour, tour operators and crew.

Schedule 4, part 1 contains the bag limits relevant to particular coral reef fin fish. In addition to the limits for individual fish, there is an overall additional restriction limiting the amount of coral reef fin fish (other than fusiliers) that can be taken to 20. Fusiliers have been included under the Plan, although they are not regulated by number. The intent is to ensure fusiliers are only taken by the line fishing method in reef habitats. However, fusiliers are a commonly used bait fish and it is not intended to restrict the number that may be taken, either individually or as part of the combined limit.

Fish regulated by number have been grouped so that fish from closely related species that have the similar physical structures are listed under the commonly used names for fishes of that type. For example, “cods and gropers” is defined to include all species of cods and gropers under the Plan. Wherever possible, the defined generic term is used, for example in the schedules providing for regulated fish numbers and sizes. This is intended to make the regulated fish provisions as easy and consistent as possible for fishers to follow, as it is to be expected that fishers will at least be able to identify a fish as being of a particular type.

**Exemption for recreational fishers on particular commercial fishing tours**

Clause 10 relaxes the general rules regulating fish by number for recreational fishers on commercial fishing tours of more than 3 days duration. This recognises that these tours are often significantly longer than usual recreational fishing trips. The provision allows fishers participating on a tour to effectively double the number of each coral reef fin fish that may be taken or possessed on or after the fourth day of the tour, with the total combined limit being expanded to 40 between the fourth and seventh day of the same tour and to 60 on the eighth day or more. The concession on bag limits is appropriate at present, as levels of catch and effort from fishing tours overall is still comparatively small.

***Division 2—fish regulated fish by size*****Fish regulated by size—sch 4, pt 2**

Clause 11 provides for the regulation of coral reef fin fish by size. The size limits apply to all fishers under the Plan. Consequential amendments to the Regulation will apply size limits to commercial fishers in the Gulf of Carpentaria, acting under L4, L5 and L9 fishery symbols.

The declaration of minimum and maximum size restrictions for coral reef fin fish that may be taken in the fishery is intended to ensure a reasonable proportion of fish stocks are protected from mortality through fishing. Where adequate scientific information was available on the biology of a species, the minimum length has been set so that at least half the fish of that species would have reached reproductive maturity before they reach legal size.

Maximum size limits are set to protect large, valuable, individual fish where it is known that such fish contribute proportionately more to the reproductive potential of the stock, or are highly vulnerable to capture.

Where there is little or no available biological scientific information about a species, a precautionary approach has been taken in proposing a minimum size limit of 25cm. This includes some species within the following families—

- Lutjanids (snappers and sea perch);
- Lethrinids (emperors); and
- Haemulids (sweetlips).

However, other species within these families have proposed minimum or maximum size limits determined in accordance with the principle that at least half are likely to reach reproductive maturity at the minimum size. Recent information on the biology of many cod and groper species suggests that size of fish is not an indication of their age or maturity and that many of the smaller cods, for example, bommie cods, could be very old. As a result, the Plan generally prescribes a minimum size limit of 38cm to protect extremely vulnerable cod and groper species. Some cods will have a longer minimum size, as is species appropriate. Also a maximum size limit of 1m is proposed for certain cod species.



Size limits are as consistent as possible to make compliance as easy as possible. The majority of fish have a minimum size limit of either 25cm or 38cm.

### **Exemption for particular commercial fishers**

Clause 12 provides an exception for commercial aquarium fishers to take coral reef fin fish less than the prescribed size limit of 25cm. The commercial aquarium fishery is a relatively minor contributor to the fishery's catch of the coral reef fin fish and the species taken by these fishers tend to be not heavily fished by other users of the fishery.

### *Division 3—fish regulated fish by species*

#### **Fish regulated by species**

Clause 13 applies to all commercial and recreational fishers under the Plan. The following fish are regulated by species and cannot be taken or possessed—

- barramundi cod;
- potato cod;
- humphead Maori wrasse;
- Queensland groper;
- red bass
- chinaman fish; and
- paddletail;

Potato cod, humphead Maori wrasse, barramundi cod and Queensland groper are regarded as rare in nature and are iconic to the Great Barrier Reef. The intention is to provide these important and vulnerable species absolute protection from fishing under the Plan.

Protection of juvenile stocks of Red bass, Chinaman fish and paddletail would require setting a relatively long minimum fish size limit. However, this would exacerbate the ciguatera poisoning risk posed by these species to consumers, which is higher in larger fish. A total ban on their capture is a more appropriate means of protecting these species.

## **CHAPTER 3—COMMERCIAL FISHERY**

### **PART 1—FISHERY SYMBOLS**

Section 44 of the Regulation provides that a person acting under an authority with a fishery symbol written on it may take fish only in the commercial fishery that symbol signifies and if the fishery provisions for that symbol or authority conditions so dictate may only—

- take fish in the area for that fishery;
- take the fish permitted in that fishery;
- use the permitted fishing apparatus; and
- take fish in accordance with other fishery provisions for that fishery.

Prior to these reforms, coral reef fin fish could be taken along with other fin fish under the L1, L2, L3, L6, L7 and L8 fishery symbols under schedule 12 of the Regulation. While these fishery symbols will continue to allow many fin fish to be taken by line under the Regulation, the Plan itself, particularly through the introduction of the new ‘RQ’ fishery symbol, will replace the effect of these symbols in respect of coral reef fin fish.

Consequential amendments to the Regulation will exclude coral reef fin fish from the permitted fish under the L1, L2, L3, L6, L7 and L8 fishery symbol. The only other fishery symbols for the fishery that provide for the taking of coral reef fin fish commercially under the Plan are those for the aquarium fish fishery.

#### *Division 1—General provisions*

#### **Fishery symbols for commercial fishery**

Clause 14 provides that the fishery symbols for the coral reef fin fish fishery are—

- the ‘RQ’ fishery symbol, which may be endorsed on certain existing commercial fishing boat licences in accordance with the Plan; and

- the ‘A1’ and ‘A2’ fishery symbols, which constitute the symbols for the commercial aquarium fishery.

### **Restrictions on writing ‘RQ’ fishery symbol**

Clause 15 provides that the only circumstances in which the chief executive can endorse the new RQ fishery symbol on a licence are—

- in accordance with the procedure and requirements set out in divisions 2 and 3 of the Plan;
- if the licence is replacing a previously endorsed authority. Under section 71 of the Act, this occurs upon application of the authority holder when the authority is lost, damaged or destroyed; or
- if the authority is the renewal of an authority that had the RQ fishery symbol written on it. Under section 56 of the Act, renewal may occur upon application by an authority holder.

The purpose is to restrict the number of licences with an entitlement to take coral reef fin fish commercially to those that are amended to include an RQ fishery symbol under the Plan. This is necessary to control the threat to sustainability posed by any future increase in catch or fishing effort in the fishery. It does not mean that new participants cannot enter the fishery, however to do so, entrants will need to acquire an existing RQ licence, so that there is no net increase in the numbers of entitlements.

## ***Division 2—Obtaining RQ fishery symbol***

### ***Subdivision 1—Preliminary***

#### **Simplified outline of div 2**

Clause 16 explains the process by which licences may be endorsed with an RQ fishery symbol under the Plan, by way of a simplified outline of division 2. The process begins with a preliminary administrative assessment of each current licence with an East Coast line fishery symbol. There is no need for an application to be made by licence holders.

The assessment decides whether at least a minimum level of coral reef fin fish were taken under the licence during certain past periods. The

minimum levels have been conservatively set, so that a licence that has a history that demonstrates more than that regarded as a commercially insignificant or non-existent level of participation in the coral reef fin fish fishery will satisfy the criteria. Also, allowances have been made to vary the periods in which the minimum amounts must be taken as a result of certain special circumstances.

Preliminary assessment notices are sent to licence holders explaining the decision proposed on the basis of the first consideration of the prescribed criteria. The notice must also specify the grounds on which reconsideration of the preliminary assessment can be sought and explain the process and documentation required.

If a licence holder does not wish to have the preliminary assessment reconsidered, they may simply do nothing and after 6 weeks the preliminary notice is taken to be the notice of the final decision. This represents the decision attracting the right to appeal to the Fisheries Tribunal on the grounds specified under section 196 of the Act.

As the endorsement of a licence with an RQ fishery symbol also confers an entitlement to apply for line units under the Plan, at the same time as making the amendment, holders will be give a catch history notice which will detail the chief executive's assessment of the catch taken under that licence in the ways relevant to the allocation of line units. The purpose of sending a catch history notice at this stage is to give licence holders as much information as early as possible to assist them in making application for line units under the Plan.

## **Definitions for div 2**

Clause 17 provides definitions of some of the terms and phrases used in division 2.

### **Meaning of “event-based special circumstance”**

Clause 18 provides for what is meant by the phrase “event-based special circumstance” in division 2. To have experienced an event-based special circumstance, at least one of the current holders of the licence must have held the licence during certain specified periods where, for at least 6 continuous months, no fishing occurred at all under any symbol on the licence due to one or more of the following—

- specified personal circumstances, for example a prolonged period of illness of the holder or close family member; or
- before 19 May 1997, the fishing boat for the licence was destroyed or at least could not have been used for a commercial fishing purpose, provided that it was at least 6 months before the boat was returned to a useable state; or
- after 19 May 1997, the fishing boat for the licence was destroyed or rendered unfit for commercial use but only if due to an unforeseen event beyond the holder's control.

The periods during which the event must have occurred are for which the catch history of eligible licences is assessed (known as the “prescribed periods”) under the criteria necessary to obtain an RQ fishery symbol.

The significance of 19 May 1997 is that it marks the release by the former Queensland Fisheries Management Authority of the investment and effort warning about the fishery. The warning put existing and potential commercial fishers in the fishery on notice that its management arrangements were under review, advised against expansion of investment due to the review and cautioned that changes in fishing effort and/or investment may not be taken into account in future management changes for the fishery. The circumstances that constitute an event based special circumstance after the date of the investment warning are more stringent, excluding boats made unusable for discretionary reasons, such as upgrades or remodelling, for example, to include live fish tanks.

### **Meaning of “recent entrant special circumstance”**

Clause 19 defines the meaning of the second special circumstance—the “recent entrant special circumstance”. A person's circumstances will fall within the ambit of the provision if the person was named as a holder for the first time in the period from 1 January 1996 up to the release of the warning on 19 May 1997. However, a person will not be a recent entrant if another person who presently holds the RQ licence had held that licence prior to this time.

The first criteria that must be established to obtain the RQ fishery symbol requires a minimum amount (equivalent to 500kg per annum) of coral reef fin fish to have been taken under the licence in at least 2 periods before 19 May 1997. A recent entrant in these circumstances acquired the licence without knowledge of investment warning. The purpose of the provision is to recognise that because these holders did not hold the licence

for at least 2 of the prescribed periods for the first criteria, they have not had the opportunity to establish their representative fishing pattern in a way that allows the criteria to be applied to their individual circumstances.

### **Meaning of “seasonal effect special circumstance”**

Clause 20 provides for the third special circumstance. The intent is similar to the recent entrant special circumstance. However to recognise that some fishers operate in the coral reef fin fish seasonally, it provides a different period in which the licence must have been first acquired by the current holder, where the fishing patterns since it was acquired demonstrate that fish were taken predominantly in the second half of each year. The different period is to recognise, that for a licence with a seasonal fishing pattern in the second half of the year, the new holder would not have had the opportunity to fish for two seasons in the prescribed period for the first criteria.

### **Effect of transfer of licence to corporation for ss 18–20**

Clause 21 provides for the relatively common situation where a licence previously held by a natural person is transferred to a corporation, in which the person or a close family member holds an interest as shareholder or director, or vice versa. The intent of the provision is to disregard such a transfer for the purpose of applying the special circumstances to licence holders. Without this provision, for example, a licence previously held by an individual who experienced an event based special circumstance but who subsequently transferred the licence to a family company would not qualify.

## ***Subdivision 2—Relevant licences and criteria***

### **Application of div 2 to relevant licences**

Clause 22 identifies those licences eligible to be assessed against the criteria for amendment to include the RQ fishery symbol (relevant licences). They are primary commercial fishing boat licences, which, on the notification day, had an L1, L2, L3, L6, L7 or L8 fishery symbol endorsed on them. These are the east coast line fishery symbols for which, after 3 months, the entitlement in respect of coral reef fin fish will be

replaced by the RQ fishery symbol. There are approximately 1300 licences of this description.

### **Criteria to be met for relevant licence**

Clause 23 provides for the criteria that the chief executive must be satisfied are met for a relevant licence before the chief executive must amend that licence by endorsing it with an RQ fishery symbol. For relevant licences that have, or include, an L3 fishery symbol, there are 2 sets of criteria that must be met. Other relevant licences need only meet the second criteria.

The L2/L3 fishery area is the Great Barrier Reef Marine Park, from which approximately 95% of total harvest of coral reef fin fish is taken. L2 fishery symbols were written on licences in 1993 and 1994 after a decision making process that included requirements for at least a minimum level of fishing effort to have been demonstrated under the licence. As these licences have previously undergone a review of entitlement based on effort levels from this period, consultation on the Plan proceeded on the basis that the early effort history for L2 licences would not be revisited. However, in the period after the investment warning all licences, including L3 licences, are subject to the same criteria. This history is also considered an important measure of the level of prior involvement in the fishery.

### **First criteria**

Clause 24 provides for the first criteria that an L3 licence must satisfy. The criteria is that the minimum amounts of coral reef fin fish were taken lawfully under any of the licence's L1, L2, L3, L6, L7 or L8 fishery symbols collectively in at least 2 prescribed periods. Three of the 4 prescribed periods are the calendar years 1994, 1995 and 1996. In these periods, at least 500 kilograms of coral reef fin fish must have been lawfully taken. The year 1997 has been separated into two prescribed periods, prior to and after the release of the investment warning. In these periods, the minimum amount of 500kg has been proportionately applied—190 kg must have been taken in the first prescribed period for 1997 and 310 kg for the longer, second period in 1997.

One of the messages of the investment warning was that increases in effort would not advantage licence holders in future management decisions based on effort history. However, despite this, commercial fishing effort in the fishery, particularly in the L2/L3 fishery area, has risen markedly in

recent years. It is to be expected that the fishing history of most current licences will bear out this trend. The first criterion, by requiring minimum catch amounts to have been taken in at least two of the prescribed periods before the investment warning, ensures that representative fishing history before and after the investment warning and the marked upsurge in effort in the late 1990's, is taken into account in allocating L3 licence holders fair future access to the fishery.

### **Second criteria**

Clause 25 provides for the second criterion of which the that the chief executive must be satisfied is met for a relevant licence before the chief executive must amend the licence to endorse it with the RQ fishery symbol. The second criterion assesses fishing history after the investment warning. For licences that do not have an L3 fishery symbol, this is the only criterion.

For L3 licences, the provision provides for the order in which the two criteria are to be applied by the chief executive. The second criteria is only applied if the chief executive has already decided the licence meets the first criteria.

As for the first criteria, the requirements are that the chief executive is satisfied that in at least 2 prescribed periods (all of which occur after the investment warning), at least 500 kilograms of coral reef fin fish were lawfully taken collectively under the L1, L2, L3, L6, L7 or L8 fishery symbols written on the licence. For the prescribed period that is the balance of 1997 after the date of the investment warning, the 500kg minimum amount has been proportionately reduced to 310 kilograms.

### ***Subdivision 3—First consideration by chief executive***

#### **First consideration of relevant licences by chief executive**

Clause 26 provides for the administrative decision making process to apply the criteria to relevant licences. The requirement to hold an RQ licence to take coral reef fin fish will commence 3 months after gazettal to allow for the decision making process to occur. The provision imposes a requirement on the chief executive to ensure decisions are made before the expiry of 3 months. In practice, it is intended that the first step in the decision making process, the issuing of preliminary assessment notices,



will occur as soon as possible after the notification day to maximise the time available for reconsideration requests.

The provision limits the information that can be considered by the chief executive in deciding whether the criteria are met to logbook information only (except in the case of information believed to be a false record of catches or of unlawfully taken catches, for which other information or documents can be considered to assess the truth of the logbook information, in accordance with clause 27). Logbook information means the information in the compulsory statistical returns that have been required to be kept and given to the chief executive (or formerly to the Queensland Fisheries Management Authority) about the licence and the chief executive's electronic databases used to store information about the returns. The information in the logbooks is a relatively contemporaneous record and, in most cases, is considered to have integrity. The provision is intended to ensure that it is only the logbook data given in compliance with obligations under the Act that is now used to assess catch history for relevant licences. It is considered that the probative value of other information that may be available to holders now is low when measured against the accuracy and relevance of the logbook information.

The keeping and giving of logbooks as required is a compulsory obligation under section 188 of the Act. Particularly in the years in the earlier prescribed periods, it was not uncommon for logbooks to be sent slightly later than the time specified in the chief executive's requirements. For example, although the requirement may have been to send in a logbook within 28 days from the end of a particular period, this did not always occur. The Plan allows for logbook data submitted later than strictly required to be considered provided it was received, in most cases, within 1 year after the prescribed period to which it related. In the case of the year 2001, logbooks received up until 6 months later will be considered, given the consultation and release in 2002 of the draft Plan containing details of the proposed changes to access arrangements.

### **Interpretation of unlawful, ambiguous or incomplete logbook information**

Clause 27 provides for how false, ambiguous or incomplete logbook information is to be considered by the chief executive in applying the criteria. The logbooks required quite specific data to be recorded, for example, required details may have included the species of fish caught, the area, time and date of fishing and the fishery symbol under which fishing

occurred. Of course, the logbook was also required to be a factually accurate account of the catch taken under the licence.

However, the logbooks were not always in a manner that was complete or clear. For example, in recording the fish caught, a fisher may have used a common or generic name for fish of similar species. One of the most common examples would be a logbook entry recording catch as “mixed reef fish” or “unspecified reef”.

In some limited cases, there may be reasonable doubt about the legitimacy of the catch recorded in logbook information (including catch in logbook information reasonably believed to be fictional). For the purposes of the criteria, the relevant issue is whether the fish was a coral reef fin fish and whether it was in fact lawfully taken under the licence as indicated in the logbook information.

The provision is intended to allow false, ambiguous or incomplete data to be either—

- disregarded, if it is not capable of interpretation in a reasonable way. For example, a logbook approved for use in the line as well as the net fishery may record daily catch simply as “fish”. In the absence of other information, it may not be reasonable to interpret the fish as being coral reef fin fish in the preliminary assessment, given the multitude of fish species that could have been caught under the licence’s fishery symbols;
- disregarded, if the chief executive reasonably believes the logbook information shows catch that was not, in fact taken at all or that was not taken lawfully. In assessing the veracity of the logbook information, the chief executive may have regard to any other information held or obtained. For example, if information received by the chief executive from an external agency, such as Coastwatch, contradicts logbook information, the chief executive can take this into account in deciding whether to disregard the logbook data on the basis does not accurately record lawfully taken catch. This is a proviso to the general proposition under clause 26, which is that it is only the logbook information itself that the chief executive may have regard to in applying the criteria.
- where more than one interpretation is reasonable, catch must be interpreted as coral reef fin fish. For example, catch recorded as “mixed reef fish” may be reasonably interpreted as being coral

reef fin fish, even though it may also be reasonably open to interpretation as being another type of fin fish. Similarly, if the entry for “fish” appears in a logbook used exclusively for the line fishery, it would be open to reasonable interpretation as being coral reef fin fish.

The provision is intended benefit the holder and ensure that wherever it is reasonably open to do so from the logbook information, that recorded catch is counted as coral reef fin fish when applying the criteria.

#### ***Subdivision 4—Preliminary notice and application for reconsideration***

##### **Chief executive to give preliminary notice**

Clause 28 provides for the giving of a preliminary notice by the chief executive to each holder of a relevant licence for which, after assessing the logbook information, the chief executive is not reasonably satisfied meets the applicable criteria.

##### **Requirements for preliminary notice**

Clause 29 provides for the content of the preliminary notice. The notice must state the chief executive’s view that the criteria are not met and advise the following information relevant to the assessment—

- the amount of coral reef fin fish assessed as being taken under the licence during the from logbook information during the prescribed periods; and
- the amount coral reef fin fish recorded in logbook information that has been disregarded because the chief executive reasonably believes the information does not record catch that was in fact lawfully taken and the documents or information the chief executive had regard to in arriving at this belief;
- the amount of unidentified fish (the amount of fish recorded in logbook information as being taken under the relevant licence, but not identified as coral reef fin fish generally or as a particular species of coral reef fin fish) that the chief executive has reasonably interpreted was coral reef fin fish for the purpose of this division. The purpose of this requirement is to give the holder the complete picture of the information that has been used

so that they are as informed as possible when deciding whether to request reconsideration.

The notice must also state information about the next steps in the process, namely—

- that the holder may ask, in writing, for the assessment notified in the preliminary notice to be reconsidered;
- the grounds on which reconsideration may be made. These fall into 3 categories—
  - that an amount of catch recorded as coral reef fin fish in logbook information, or that could be reasonably interpreted as being coral reef fin fish, was overlooked in error, or was or disregarded in the preliminary assessment on the ground it could not be reasonable interpreted; and/or
  - that an amount of catch recorded as coral reef fin fish in logbook information, or that could be reasonably interpreted as being coral reef fin fish, was disregarded in the preliminary assessment because the chief executive reasonable believed that the catch recorded in the logbook information was not in fact lawfully taken;
  - that the holder's circumstances fall within the prescribed special circumstances.
  - that there is a six week deadline for making the reconsideration request; and
  - that if the holder does not lodge a reconsideration request within that time—
  - the preliminary notice will become the final decision notice;
  - the final notice will attract the appeal rights under section 196 of the Act; and
  - how the appeal right may be exercised.

### **Applying for reconsideration**

Clause 30 provides for how a holder may request reconsideration of the preliminary notice. The holder is obliged to state which of the available grounds for reconsideration the holder relies upon and if this includes a special circumstance or that recorded fish disregarded as a false record was

legitimate, include any supporting documentation that the holder wishes the chief executive to take into account. For example, if an event based special circumstance is relied on, documentation may include medical certificates or insurance records.

### **Chief executive to decide whether reason for reconsideration established**

Clause 31 obliges the chief executive to decide requests for reconsideration as soon as possible. If the chief executive requires further information to decide the request, the chief executive can ask the holder for that information to be provided within at least 14 days. If, after reconsidering the matter, the chief executive is still not satisfied the necessary criteria are met, the chief executive must give notice to this effect to the holder. This represents the final decision and is appellable to the Fisheries Tribunal on the grounds set out under the Act.

### **Information chief executive may consider in deciding whether reason for reconsideration is established**

Clause 32 limits the information that the chief executive can take into account in deciding whether a reason for reconsideration exists.

For catch disregarded because the catch recorded in logbook information was considered illegitimate, the holder may submit any information they choose to establish the veracity of the data. The weight given to the information will be a matter for the chief executive in deciding the request, taking into account all the circumstances and information to hand.

For reconsideration requests reliant on special circumstances, the provision requires the chief executive to also have regard to other information submitted by the holder to support the holder's claim that the special circumstance existed.

## ***Subdivision 5—Reconsideration and adjustment of criteria***

### **Criteria reapplied if reason for reconsideration established**

Clause 33 provides for how the chief executive must reassess relevant licences under the division if satisfied the grounds for reconsideration is made out. If the ground was that coral reef fin fish recorded in logbook

information were not counted as such in the first assessment because of a miscalculation, inability to reasonable interpret or belief the entry was not legitimate, then the same criteria as the first assessment are simply reapplied, with the additional coral reef fin fish amount included.

If the ground is one of the special circumstances, then the adjusted criteria are applied.

In reapplying the criteria or in applying the adjusted criteria, it is only the logbook information and any other information supplied at the chief executive's request that may be taken into account. The intent is not to allow additional catches other than those recorded in the logbook information.

However, in the case of fish disregarded on the basis the logbook catches were not taken or were not taken lawfully, the information that may be taken into account extends to other material used by the chief executive or supplied by the holder that is relevant to the issue of the veracity of the records.

After the criteria or adjusted criteria are applied, the chief executive makes the final decision about whether the criteria are met by the licence and sends to the holder—

- if the decision is that the holder's licence does satisfy the criteria—a notice advising that the licence has been amended by endorsing it with an RQ fishery symbol and a catch history notice for the RQ licence; or
- if the decision is that the holder's licence fails to satisfy the criteria—a decision notice including the reasons for the decision; and
- information about the right of appeal and how to exercise it.

### **Adjusted criteria for event-based special circumstance**

Clause 34 provides for the adjusted criteria applicable to a holder whose licence satisfies the event based special circumstance. The criteria are set out in schedule 5. Schedule 5, item 2 provides for the effect of the adjusted criteria if the event occurred for at least 9 of the 12 months in 1994, 1995, 1996, 1998, 1999, 2000 or 2001. In this case, the prescribed period used to assess whether the minimum catch of coral reef fin fish is adjusted to be the most favourable to the holder from the following—

- the year affected by the event; or
- the year immediately before the event began, but not a year earlier than 1990; or
- the year immediately after the event stopped, but not a year after 2001.

For example, if a holder was affected by an event based special circumstance that began on 1 January 1995 and existed through to November 1995 then in reapplying the criteria the amount of coral reef fin fish taken to have been caught under the licence for 1995 will be the highest of—

- the catch of coral reef fin fish decided from the logbook information for December 1995;
- the catch of coral reef fin fish decided from the logbook information for 1994; or
- the catch of coral reef fin fish decided from the logbook information for 1996.

If the event affected 3 months or less of the 12 months in 1994, 1995, 1996, 1998, 1999, 2000 or 2001 then the catch of coral reef fin fish decided from the logbook information for the unaffected part of the year is rateably increased as if it were the catch for the whole of the year.

In the example, if the event occurred from July–December in 1995 then the catch for 1995 is taken to be that which would have been taken had the amount of coral reef fin fish taken in 6 months, been taken in 12 months.

Schedule 5, items 3 and 4 provide for how the criteria are to be adjusted where the event based special circumstance affected the licence holder in 1997.

Item 3 provides that for the first prescribed period during 1997, that is, 1 January 1997—19 May 1997, the catch of coral reef fin fish is rateably increased if despite the event's occurrence, there was a period of at least a month free from the event.

If there was not at least one month unaffected by the event, then the amount of coral reef fin fish taken to be the amount for the first prescribed period in 1997 is the highest of—

- the catch of coral reef fin fish decided from the logbook information as having been taken under the licence between 1 January 1997 and 19 May 1997; or

- the catch of coral reef fin fish decided from the logbook information for the period 1 January to 19 May in the first year before 1997 not affected by the event, but not a year before 1990; or
- the catch of coral reef fin fish decided from the logbook information for the period 1 January to 19 May in the first year after 1997 not affected by the event, but not after 2001.

Item 4 provides that for the second prescribed period during 1997, that is, 20 May 1997–31 December 1997, the catch of coral reef fin fish is rateably increased if despite the event's occurrence, there at least 2 months free from the event.

If there was not at least two months unaffected by the event, then the amount of coral reef fin fish taken to be the amount caught under the licence for the second prescribed period in 1997 is the highest of—

- the catch of coral reef fin fish decided from the logbook information as having been taken under the licence between 20 May 1997 to 31 December 1997; or
- the catch of coral reef fin fish decided from the logbook information for the period 20 May 1997 to 31 December 1997 in the first year before 1997 not affected by the event, but not before 1990; or
- the catch of coral reef fin fish decided from the logbook information for the period 20 May 1997 to 31 December 1997 in the first year after 1997 not affected by the event, but not after 2001.

Item 5 of schedule 5 is the provision that has the effect of setting the limit of the years that can be substituted under items 1–3 to the span of years between 1990 and 2001.

### **Adjusted first criteria for recent entrant special circumstance**

Clause 35 provides for the way the criteria are to be adjusted for holders who have established the recent entrant special circumstance. Because of the special circumstance, recent entrants hold licences that may not be representative of that holder's fishing pattern under the licence in the years leading up to the investment warning. For this reason, the first criterion is adjusted so that the prescribed periods are changed to periods after the year in which the investment warning was released. The second criterion is



applied unchanged. This means that a year applied to the first and second criteria for a holder who has a recent entrant special circumstance may be the same.

### **Adjusted first criteria for seasonal effect special circumstance**

Clause 36 provides for the way the criteria are to be adjusted. Again, the effect is that the criteria are applied to changed prescribed periods that are after the holder acquired the licence.

### ***Subdivision 6—Amendment notice and amendment of licences***

#### **Chief executive to amend licences and give amendment notice**

Clause 37 provides for the final step that the chief executive must carry out after reapplying the criteria and being satisfied that the criteria are met. The chief executive must amend the licence by adding the RQ fishery symbol and must give the holder notice to that effect as well as a catch history notice.

#### **Requirement for amendment notice**

Clause 38 provides for the content of the amendment notice that must be given. The notice must advise the holder that the criteria are met, that the licence now has an RQ fishery symbol and that until such time as the licence itself is formally changed to reflect the amendment, the amendment notice must be available for immediate inspection at all times the holder or another authorised person is fishing in the coral reef fin fish fishery under the licence.

#### **Taking or possessing coral reef fin fish under amended licence**

Clause 39 provides that the amendment notice will constitute evidence that the licence has an RQ fishery symbol effective from the day the notice is received by the holder until such time as the licence itself can be amended, for example when it comes up for annual renewal. The intention of this provision is to allow holders to commence fishing under the RQ fishery symbol as quickly and with as least administrative burden as possible.

***Division 3—Changing fishery symbol ‘RQ’ to another authority*****Definition for div 3**

Clause 40 provides for the meaning of an eligible licence for this division.

**Application to change fishery symbol ‘RQ’ to another primary licence of holder**

Clause 41 allows a holder of more than one primary commercial fishing boat licence endorsed fish in the east coast line fisheries (the line licence), of which only one has the RQ fishery symbol (the RQ licence), the option of requesting a licence amendment to the line licence to include the RQ fishery symbol. The intent is to allow holders the option of consolidating line and coral reef fin fish fishery symbols onto one licence.

**How chief executive must deal with application**

Clause 42 provides for the conditions that must be met for such an amendment to be approved by the chief executive. The holder must give written notice surrendering the entire licence that has the RQ symbol before the chief executive may write the RQ symbol on the line licence. The reason is to ensure that there is no net increase in the number of licences with an entitlement to take coral reef fin fish commercially.

**PART 2—LINE UNITS*****Division 1—General*****Simplified outline of pt 2**

Clause 43 provides a simplified outline for part 2. Subclause 43(2) explains that the Plan creates 3 new authorities, known collectively as line units that are individual transferable quotas as well as a quota for the fishery. A “CT unit” denotes an individual transferable quota that allows

the taking of a certain amount of the coral trout. A “RTE unit” denotes an individual transferable quota that allows the taking of a certain amount of red throat emperor, while OS line units are an individual transferable quota that allows the taking of a particular amount of the remainder of “other species” coral reef fin fish available to commercial fishers.

The purpose of creating authorities to manage a quota specific to coral trout and red throat emperor is that these two species together make up the majority of the commercial harvest. Also, due to the higher commercial value placed on these species, to include them as part of one quota for all coral reef fin fish would inevitably result in even further pressure on stocks, through selective targeting of these species. While this is still a possibility for species included in the quota created by OS line units, it is considered that the commercial value of the other species is relatively comparable. The Plan also includes a trigger for a review of its provisions if a trend of markedly increased catch of one species within those managed under the OS line units develops.

Subclause 43(3) explains that the effect of the part is to entitle holders of RQ licences to apply for line units to be issued to the holder, in respect of that licence. While the RQ licence and the line units are separate authorities under the Act, they have a clear relationship. Both must be held for a person to be entitled to take coral reef fin fish commercially, the licence history determines the number of line units issued and the primary boat that may be used under both authorities is the same. Effectively, the line units and the RQ licence held by the same person together form a package that confers the total entitlement that the holder has in respect of the fishery.

Subclause 43(4) explains that it is the provisions of division 3 that regulate how applications for the issue of line units are to be decided by the chief executive.

Subclauses 43(5) and 43(6) explain that the Plan establishes an overall cap on the total entitlements under all line units. If after the issue of all line units under the Plan, those maximum levels are exceeded, subclause 43(6) explains that the chief executive must amend the Plan to reduce the whole weight of fish that may be taken under a unit, so that the total amount for the fishery is within the cap.

The overall maximum level of 3061 tonnes is a precautionary level that is representative of the fishery’s catch levels in the years leading up to the investment warning. This was selected as an appropriate benchmark for setting the quota for the fishery, as catches in the years immediately prior to

the investment warning are regarded representing a sustainable level of catch and effort. It is not possible to predict with certainty, the exact number of line units that will be issued under the Plan, due to variables such as special circumstances and appeals. If the number of units issued confers entitlements exceeding the amounts set by reference to the level considered appropriate based on known information, the Plan contains a correcting mechanism, through the requirement to amend it to reduce the value of each unit to bring the level back to the maximum. The Plan sets the value of each unit as 1 kilogram of the whole weight of fish. If the amendment is required, this is what will be rateably reduced.

### **Definitions for pt 2**

Clause 44 provides definitions of key terms and phrases used in the part.

#### **Meaning of “event-based special circumstance”**

Clause 45 provides for the meaning of the event based special circumstance for the purpose of issuing line units. The meaning is similar to clause 18. However, the difference is that if there was at least one calendar year between 1994 and 1996 and between 1998 and 2001 in which an event was not occurring, the event based special circumstance is not made out. The reason is that only a single year of catch for a relevant RQ licence from each of these two spans of years is required to apply the allocation formula in the intended way.

#### **Meaning of “recent entrant special circumstance”**

Clause 46 provides for the meaning of the recent entrant special circumstance for the part. The meaning is the same as explained under clause 19.

#### **Effect of transfer of licence to corporation for ss 54 and 55**

Clause 47 provides that the continuum of a licence holding is not broken, for the purpose of the special circumstances, where a transfer occurred from a holder who was a natural person to a corporation in which the holder or a close family member is a director or shareholder. The intent and effect are as explained in respect of clause 21.

## ***Division 2—General provisions about line units***

### **Nature of line unit**

Clause 48 states that each line unit is an authority for the purpose of the Act, the entitlement of which is provided under division 5, as well as being a quota for the fishery.

### **General condition for issue of line units**

Clause 49 provides that the only circumstance in which a line unit may come into existence is to be issued under chapter 3, part 2 of the Plan.

### **When line unit is “issued”**

Clause 50 provides that a line unit is issued when it is documented in a line unit certificate. Because of the numbers of line units held by a holder, it is impractical to issue a paper authority for each of them. The line unit certificate is a single document that evidences the collective line unit holding of each holder.

## ***Division 3—Issue of Line Units***

### ***Subdivision 1—Number of line units to be issued to eligible holders***

#### **Purpose of subdiv 1**

Clause 51 provides that the purpose of division 3, subdivision 1 is to provide for how applications for line units must be decided. The number of line units that are issued is the holder’s quota entitlement in respect of each of the holder’s RQ licences.

#### **Number of line units to be issued to eligible holders**

Clause 52 provides that a holder’s quota entitlement is made up of the following numbers of line units—

- a base allocation of 800 CT line units, 400 RTE units and 800 OS line units; and

- an additional individual entitlement worked out in accordance with clause 53.

### **Working out number of additional line units**

Clause 53 provides that the additional entitlement is worked out in accordance with a formula.

The variable in the formula is the holder's line unit factor. The effect of the formula is to determine the number of line units that an eligible licence holder must be issued in addition to the base allocation, from the total amounts made available for allocation.

The factor "B" in the formula represents the estimated sum of the line unit factors for all licences with a line unit factor greater than 0, applied in respect of each of the three categories of line units separately.

The total available catch amounts to be allocated through this particular step of the formula are those represented by the factor "C". These figures represent the total maximum entitlement for each of the three line unit categories for the fishery available to be allocated, however with a reduction of approximately 10% to accommodate further line units issued on the grounds of special circumstances and Fisheries Tribunal appeals, and less the estimated total base allocation to all eligible licences.

Those licences with a line unit factor less than 0 will not receive additional line units as a result of the application of the formula in this provision. Holders of licences with a line unit factor greater than 0 will be entitled to an issue of additional line units as well as the base allocation. The effect of the formula is that the additional line units are worked out based on the holder's ranking relative to all other eligible licences, represented by the line unit factor.

### **Working out line unit factor**

Clause 54 provides a formula used to ascertain the line unit factor for eligible holders. The line unit factor represents the relative order, from lowest to highest, of the allocation of line units eligible licence holders would have received, without a base allocation being made. Holders of licences with a line unit factor less than 0 would have received line units equivalent to an amount of fish less than that conferred by the base allocation that is instead provided under clause 52. Line unit factors higher

than 0 show the order in which licences would have received line units without the effect of the base allocations made under clause 52(a).

Each holder's line unit factor is worked out by dividing the average standardised catch for the licence by the estimated total of the standardised catches for all eligible licences, to determine the proportion of the total catch for each of the three categories of line unit, less the amounts set aside for the base allocation to all licences.

### **Average catch amount**

Clause 55 provides for how the average catch for a licence is worked out. It is the average of the standardised catch of coral trout, red throat emperor and remaining species taken under the RQ licence or former licences (licences with relevant line history that were consolidated into a single licence that became the RQ licence) in the two highest years out of any of the highest years between 1994-1996, 1997 and any of the highest years between 1998—2001.

### **Standardised catch amount**

Clause 56 provides for how the standardised catch amounts for a licence are determined. A formula works out a holder's catch under the licence in a particular year as a fraction of the catch of the fishery as a whole. The proportion is then used to standardise the catch amount so that it reflects the amount taken under that licence in a year as a relative proportion of the fishery catch measured against the total allowable catch.

For example a holder whose licence was used to take 10 tonnes of coral trout in the same year in which the total of coral trout taken year in the fishery was 2000 tonnes will have that catch standardised against the total amount of coral trout available for allocation under the plan, which is 1350 tonnes. The standardised catch amount for the year for that licence will be .005 of 1350 tonnes, or 6.75 tonnes.

### **Interpretation of unlawful, ambiguous or incomplete relevant logbook information**

Clause 57 provides for the interpretation of unlawful, ambiguous or incomplete logbook information about the recorded catch for a licence in a way most favourable to the holder. This is similar to clause 27, however,

here the level of detail required to be decided is not just whether the information reasonably shows a fish recorded as coral reef fin fish, but whether it reasonably shows the fish to be a coral trout, red throat emperor or other species of coral reef fin fish.

Clause 57 reflects this by providing specific rules on how ambiguous data about unidentified fish must be interpreted. Unidentified fish means a fish not identified as coral reef fin fish, a particular species of coral reef fin fish or a particular group of species of coral reef fin fish. If a logbook entry for a particular day records catch by reference to the common name for a species of coral trout, such as an entry for “coral trout” or “leopard trout”, or refers to catch by the collective term “trout” it is not considered reasonable to assume unidentified fish recorded on that day are also a species of coral trout. This is because it is considered more likely that if the fish taken was a coral trout, the practice of recording the fish as trout or coral trout would be followed consistently in the logbook information for that day.

If the chief executive forms the view, bases on any information held or obtained by the chief executive that the logbook purports to record catches of coral reef fin fish that were not lawfully taken, for example, catches that the chief executive believes are fictional, the chief executive must disregard the information.

### ***Subdivision 2—Catch history notice***

#### **Chief executive to give catch history notice**

Clause 58 provides for the obligation of the chief executive to send licence holders a “catch history notice” in respect of the licence at the same time the notice notifying of the amendment to include the RQ fishery symbol on the licence is sent.

#### **Requirements for catch history notice**

Clause 59 provides for the content of the catch history notice. This includes notice of—

- the right of the holder to make application of for an issue of line units to the holder in respect of each RQ licence held;



- the amount of catch of coral trout, red throat emperor and other coral reef fin fish the chief executive has decided was recorded in logbook information for 1994—2001 as being taken under the L1, L2, L3, L6, L7 and L8 fishery symbols for the licence;
- the amount of unidentified fish in logbook information interpreted as being coral trout, red throat emperor or other coral reef fin fish under clause 57;
- the amount of unidentified sweetlips or emperor in logbook information, meaning catch recorded as “sweetlips” or “emperor” interpreted by the chief executive as being red throat emperor;
- the amount of any catch recorded in logbooks disregarded as being a false record and any information used to arrive at this belief;
- information about the grounds on which the holder can ask the chief executive to use the adjusted allocation provisions in deciding the holder’s line unit application; and
- the requirement to lodge the line unit application between 2 February and 14 March 2004.

The reasons that logbook information about unidentified sweetlips or emperor is to be interpreted as being red throat emperor is included is that it is likely that most holders will consider this to be the most favourable interpretation, as it will maximise the number or RTE units for which they are eligible. However, if a holder would prefer this catch to be included in the recorded catch of “other coral reef fin fish”, they have the opportunity to have this catch applied differently in making their line unit application.

The grounds for adjusting the allocation are—

- that a special circumstances for line unit applicant exists—this means the event based special circumstance or the recent entrant special circumstance; or
- the establishment to the reasonable satisfaction of the chief executive that logbook information showing unidentified fish that was not included as coral reef fin fish in the catch history notice, or that was included as a coral reef fin fish other than a coral trout or red throat emperor, was a coral reef fin fish or a coral trout/red throat emperor. The provision only applies to fish recorded in logbook information. In deciding whether the catch was coral

reef fin fish or more particularly coral trout or red throat emperor, the logbook information can be interpreted in conjunction with supplied copies of docket given by fishers to wholesale buyers of their catch under section 86 of the Act; or

- that catch disregarded as being a false record was legitimately taken under the licence in the way reflected in the log book information.

### *Subdivision 3—Application for issue of line units*

#### **Application for issue of line units**

Clause 60 provides a right of application for the issue of line units to holders of RQ licences. The application must be made between 2 February and 15 March 2004. The need for applications to be made within this time frame is to allow decisions to be made after the identity of RQ licence holders is known but sufficiently early after this occurs to allow line units to be issued before first line year, commencing 1 July 2004.

However, if applicants miss the cut off date for lodgement, the chief executive retains the discretion to consider late applications, if the reason for the delay was beyond the holder's control. The provision also obliges applicants to nominate which, if any, of the grounds for adjusted allocation they rely upon and to supply all supporting documentation. The need for clear and complete applications is important given the tight timeframe available for applications to be decided.

#### **Deciding application for issue of line units**

Clause 61 provides for how applications for line units are to be decided by the chief executive. Decisions must be made as soon as practicable, noting that line units are required to take coral reef fin fish commercially from 1 July 2004. Decisions must be made with reference to logbook information, copies of docket given to wholesale buyers under section 86 of the Act, or other information about special circumstances given by the holder at the chief executive's request. The provision does not allow catch other than that recorded in logbook information to be considered, however in deciding on the most reasonable and favourable interpretation of logbook information copies of docket supplied by the applicant can be

considered, along with any other information supplied at the specific request of the chief executive.

Information other than logbook information or docketts can also be used in relation to applications based on the legitimacy of records about disregarded fish.

The provision also provides for how line units are issued following the chief executive's decision. The holder is given—

- a decision notice, including information about the holder's right to appeal the decision to the Fisheries Tribunal;
- a line unit certificate, which acts as the evidence of the line units issued and their conditions;
- a unique notice identity number. This is a number that must be quoted in order to give notices about line units to the telecommunications provider nominated by the chief executive to receive them on the chief executive's behalf. The number is allocated to safeguard the security of the information that may be given and accessed via the provider under the Plan; and
- tags for use under the line units once fishing under the units and RQ licence commences in the first line year.

### **Allocation provisions to be applied if reason for reconsideration is established**

Clause 62 provides for a varied process for deciding the line unit application where one of the reasons for adjusted allocation is established. If the ground is one of the special circumstances, different allocation provisions are to be applied, in accordance with clauses 63 or 64. For the other grounds, which are those relating to the interpretation of logbook information, about fish that is ambiguous or incomplete, the same allocation provisions are reapplied.

### **Adjusted allocation provisions for event-based special circumstances**

Clause 63 provides for the adjusted criteria applied where there is an event based special circumstance for the holder. The intention is that for the purpose of deciding the year in which the highest recorded catch amount was taken to determine the average catch under clause 55, the year either before or after the year mentioned in clause 55 that was not affected by the

event is to be substituted, for whichever year the catch was higher. However, the years available to be substituted are limited to the years between 1990 and 2001.

For example, if a holder was affected by illness that precluded the holder from fishing under any symbol on the licence for the whole of 1994, then the span of years from which the highest year is to be selected under clause 55(2) is expanded to include 1993.

If no catch was taken for the whole of 1994-2001 due to the event, the provision provides that the average catch for the licence is that from the year immediately before or after the event, but only between 1990 and 2001.

### **Adjusted allocation provisions for recent entrant special circumstance**

Clause 64 provides for the adjusted criteria to be applied where the recent entrant special circumstance has been established. Here, the circumstance means that the holder did not have the opportunity to demonstrate 2 full years of fishing under the licence because they first acquired it less than 2 years before the date of the investment warning. In this case, the highest standardised catch for the licence from either the year 1997, the year 1998 or any year between 1999-2001 is to be substituted for the periods before the year of the investment warning.

### **Particular applications for line units must be decided before the start of the 1st line year**

Clause 65 provides that applications received in the normal time period for lodgement must be decided before the start first line year. This should be read in conjunction with clause 61 that requires applications to be decided as soon as practicable after they are received. For late applications, for example, where an RQ licence was received after 15 March 2004 as the result of an appeal, every effort will be made to decide the applications before the start of the line year, however this may not always be possible.

### ***Division 4—Reduction in entitlement of line units***

#### **Application of div 4**

Clause 66 provides that division 4 applies where, after the completion of the allocation of line units under division 3, including those issued after all appeals have been decided and any Fisheries Tribunal directions complied with, exceeds any of the following caps—

- 1350 tonnes of coral trout under issued CT line units;
- 700 tonnes of red throat emperor under issued RTE line units; or
- 1011 tonnes of other coral reef fin fish under OS line units.

The caps are the maximum amounts for the three types of quota units within the parameters of the TAC.

#### **Chief executive to amend entitlements**

Clause 67 provides that if line unit entitlement exceeds the total allowable catch levels set for any of CT line units, RTE line units or OS line units, clause 69 of the Plan must be amended by changing the value of the relevant line unit category, so that the total entitlements are brought back to no more than the maximum levels.

#### **Notice and taking of effect of reduction in entitlement**

Clause 68 provides that if an amendment of the Plan is made under clause 67, then each holder is to be sent a new line unit certificate reflecting the change in entitlement.

### ***Division 5—Line unit entitlement and use***

#### **Meaning of “entitlement” of line unit holder**

Clause 69 provides for what is meant by the entitlement of a line unit holder. At the outset, each line unit represents an entitlement to take 1 kilogram in whole weight of the coral reef fin fish relevant to the units relevant to the units in a line year.

However, to recognise that to fish commercially in the fishery, both types of authority—line units and the related RQ licence, must be held by the holder, the provision provides that the entitlement will only apply while the holder holds the RQ licence identified in the line unit certificate. For example, if a holder's RQ licence is suspended the entitlement under line units related to that licence will not apply unless and until after the suspension ends.

### **When line unit entitlement is “used” for a line year**

Clause 70 provides for the use of the entitlement under line units. This occurs progressively throughout a line year as the coral reef fin fish are taken. The entitlement is used after the amount of the relevant coral reef fin fish equivalent to 1kg of whole weight are taken. In practice, the entitlement of multiple line units will be used throughout a day's fishing. The unit is used either by the holder, where the commercial fisher is also the RQ licence/ line unit holder, or by another commercial fisher, who is operating the boat under an RQ licence held by another, for example as an employee of the licence holder.

The entitlement of a line unit reverts to an unused status at the start of each line year.

### **No carrying forward of unused entitlement**

Clause 71 provides that if, at the end of a line year, the total entitlement of all the line units held by a holder has not been fully expended, it is taken to have been fully expended. If unused entitlements were permitted to carry forward into the next line year, in addition to the recurrent entitlement under the line units, the entitlement could exceed the total allowable catch for the fishery.

### **Line unit certificates**

Clause 72 provides for the annual issue of line unit certificates to holders as soon as possible before the start of each line year on 1 July. A holder receives a line unit certificate for the line units held in relation to each of the holder's RQ licences. The large number of line units that are held by persons under the Plan render it impractical to issue an individual authority for each one. The line unit certificate is one document evidencing the total

number of line units held by a holder, including their conditions, and the relationship between the units and the RQ licence that they relate to.

### **Evidentiary provisions for line unit certificates**

Clause 73 provides that the line unit certificate may be used as evidence of the number of line units held by the holder at the time the certificate was issued and their conditions. The provision is necessary to give the certificate the status as an official record of the line units issued by the chief executive to a person. It is anticipated that the evidence may be used, for example, in legal proceedings to enforce compliance with conditions, as well as being a useful document for parties engaged in line unit transactions.

### ***Division 6—Evidentiary aids for use of entitlement***

#### **Transshipment notice and landed fish notice are evidence of use of entitlement**

Clause 74 provides for how the use of the entitlement of a holder's line units is to be determined.

The nature of the fishery is that fishing trips are often of relatively long duration and there are variables in the amounts and multitude of species taken. The fishery covers an enormous area. It is not possible for the chief executive to record use of quota while a fishing trip is occurring. The provision is intended to place the control, but also the responsibility, for the monitoring and reporting the progressive use of quota on the holder. The focus of the use of quota is the amount of fish landed (or to be landed via a designated carrier boat) that were taken from a primary commercial fishing boat that is attached to the RQ licence, or its related tender boats.

A landed catch notice details the amount of coral reef fin fish relevant to each of CT units (coral trout), RTE units (red throat emperor) and OS units (other coral reef fin fish) that have been landed from a commercial fishing boat from which the fish was actually taken, or its primary or tender. In practice, many fishers use tender commercial fishing boats to take fish, while the primary boat acts as the carrier/support boat. The amounts reported in the landed catch notice are deducted from the entitlement of the holder's line units upon receipt of the notice.

A transshipment notice is required where the fish taken under the RQ licence and line units are to be landed by a transport boat rather than the primary or tender boat. In this case, the notice detailing the catch is given as close as possible to the time the fish are moved at sea from the fishing boat to the transport boat. This is because it is often weeks before transport vessels return to port and the fish are landed. This timeframe is too long to allow quota usage to be adequately monitored.

The transshipment notice and the landed catch notice are both evidence of the use of the line unit holder's entitlement. The responsibility of giving the notices always rests with the line unit holder, whether or not the person is in charge of the commercial fishing boat used under the RQ licence and units. However, in recognition of the common practice of engaging commercial fishers to run boats on behalf of the holder, the provision allows a commercial fisher controlling the boat to give the notice on the holder's behalf.

### *Division 7—Transfer of line units*

#### **Purpose and application of div 7**

Clause 75 states that the purpose of division 7 is to provide for—

- the conditions of which the chief executive must be satisfied before an application from a holder to transfer line units to someone else may be approved; and
- the entitlement of the transferee after transfer

#### **Only whole line units may be transferred**

Clause 76 provides that only whole line units can be transferred.

#### **Eligibility of transferee**

Clause 77 is intended to ensure that line units can be transferred only to another RQ licence holder. One of the main goals of the Plan is to contain commercial effort at no more than the maximum total allowable catch set for the fishery. This requires a finite number of RQ licences to exist and for the quota created for the fishery through the line unit certificate to circulate only between that number of licence holders.



**Application for line unit certificate changes required**

Clause 78 is intended to provide for the administrative mechanics of line unit transfers. As it is the line unit certificate that collectively evidences a person's total line unit holding, it is this document that will reflect the changes to numbers and entitlement when line units are transferred between holders. The provision requires parties to a proposed line unit transaction to ask for changes in the details recorded in the certificates that reflect the transfer.

Clause 78(2) is necessary because of the recurrent annual entitlement conferred by line units. If a transfer is applied for during a line year, the entitlement of at least some of the units will have been used. Given that there is no designated sequence in which line units are used, it is for the parties to specify whether the transfer is of line units with a used or unused entitlement, or if a combination, the numbers of line units proposed to be transferred that are used/unused.

**Required minimum line units are transfer**

Clause 79 is intended to prevent transfers that would leave the transferor with less than the prescribed minimum levels for line units. The provision is necessary to prevent fracturing of effort holdings across the fishery. If this were allowed to occur, the result would be that a large number of entitlement holders would emerge, however the entitlement conferred would be very small. A large commercial fleet with minimal entitlements creates a friction that could lead to individual quota breaches.

However, if the transferor intended to leave the fishery altogether, as evidenced by a voluntary application for the removal of the RQ fishery symbol from the licence and the application to transfer all line units, the chief executive may approve the request.

**When transfer of line units takes effect**

Clause 80 provides that if an application to transfer line units is approved, it takes effect for the remainder of the line year. This provision is necessary to reflect the level of entitlement remaining under transferred line units for the rest of the current line year.

**Entitlement of transferee**

Clause 81 provides for the entitlement of the transferee to whom line units are transferred. For the line year in which the transfer was made, this is whatever the transfer's entitlement was when the transfer was approved. For example, if 100 CT line units are transferred, each giving an entitlement to take 1kg whole weight coral trout, of which 38kg have already been taken in the line year, the transferee takes 100 CT line units, 38 with an entitlement to take no coral trout in the year and 62 with an total entitlement to take 62kg of coral trout in that year.

Clause 81(b) provides for the entitlement of the transferee in the following line year. The entitlement reverts to the entitlement the transferor would have had under the line units. In the example, this would revert to a total entitlement of 100 kilograms of coral trout.

Clause 81(2) provides that where part of the entitlement has been used under a particular line unit to be transferred, the whole of the entitlement is taken to be fully expended. In the example, if 99.5kg of coral trout had been taken under the 100 CT units on the date the transfer of units had been approved, the transfer would be taken to be of 100 CT units with a fully expended entitlement for the year—the 500 grams remaining under the 100th unit would be taken to be used.

***Division 8—Changing RQ licence line units relate to*****Application to substitute RQ licence to which line units relate**

Clause 82 allows a line unit holder to apply to the chief executive change the RQ licence to which the units relate. The initial issue of line units to a holder is made in respect of each eligible RQ licence that person holds. The history of that licence is relevant to determining the number of line units issued. The boat licence and units then form a package, with the line units limiting the amount of coral reef fin fish that may be taken while using the primary boat or its tender identified in the related RQ primary and tender commercial fishing boat licences.

The purpose of the provision is to expressly provide for a mechanism by which holders can change the licence from that they were first issued in respect of. This change is to be applied for and subject to restrictions, in a way similar to transfers.

**How chief executive must deal with application**

Clause 83 provides the chief executive with a discretion to approve the application, and if approved, to issue new line unit certificates to reflect the change. As in the case of a transfer, there are restrictions on approving the application so that at least a minimum number of line units must be retained in respect of each licence, unless the RQ licence is surrendered and all the line units are changed to the other RQ licence.

***Division 9—Tags*****Chief executive must issue tags**

Clause 84 obliges the chief executive to estimate the maximum number of tags (1 per fish) that a line unit holder would need in a line year if they used their total entitlement under units, and issue the tags with the line unit certificate before the start of each line year.

The “tags” are plastic tags scripted with a unique number in a series. A tag must be attached to a fish taken under a line unit, or accompany the fish where they are retained live. A tag is a means to allow each fish taken lawfully under the quota for the fishery through the line unit system to be instantly identified from the time is caught, throughout the market place until it reaches its end consumer or is otherwise disposed of.

**Additional or replacement tags**

Clause 85 provides for how a line unit holder can obtain additional or replacement tags throughout a line year. The reason that this requires an application to be made and considered is that the estimated number of tags was insufficient for the holder’s quota entitlement must be legitimate. If additional tags were available as of right, there could be the potential for the tag system to be undermined through improper use of surplus tags.

***Division 10—Change of notice identity number*****Change of notice identity number**

Clause 86 provides for how a line unit holder may change the notice identity number assigned to them. As discussed, the notice identify number is a confidential code that aids holder's security in the giving of notices reporting the use of quota entitlement under the Plan, by verifying the authority of the giver of the notice through the quotation of the notice identity number. The concept is similar to the personal identification numbers commonly used in automated banking.

A holder may request, in writing, a change to their notice identity number at any time. To ensure that no two notice identity numbers are the same, a holder cannot nominate his or her own notice identity number, rather it is assigned by the chief executive and is confidential to the holder.

**PART 3—CONDITIONS FOR PARTICULAR AUTHORITIES**

Section 60 of the Act provides that, in addition to the conditions imposed on an authority by the chief executive, the authority is subject to the conditions imposed by regulation or management plan.

***Division 1—Fishing under fishery symbol 'A1' or 'A2'*****Application of div 1**

Clause 87 provides that the division applies to taking or possessing coral reef fin fish under the 'A1' or 'A2' symbols.

The provisions in the division are the conditions to which an authority with one of these symbols is subject. To remove any doubt, the clause expressly states that the division is subject to the regulated fish and closed waters declarations in Chapter 2 of the Plan.

The 'A1' or 'A2' symbols denote the commercial aquarium fish fishery. Schedule 15 part 1 of the Regulation contains the fishery provisions for the aquarium fish fishery as they apply to fish, other than coral reef fin fish.

### **Area for fishery symbol 'A1' or 'A2'**

Clause 88 provides the area for the symbols by reference to latitude and longitude. The area is essentially the east coast of Queensland from the tip of Cape York.

### **Where coral reef fin fish may be taken**

Clause 89 provides that the symbols permits coral reef fin fish to be taken from the fishery area.

### **What coral reef fin fish may be taken**

Clause 90 provides that any coral reef fin fish may be taken. This is subject to the regulated fish declarations applicable to persons acting under these symbols. For example, the symbols do not allow a person to take humphead Maori wrasse, barramundi cod, potato cod, Queensland groper, red bass, paddletail and chinaman fish as these are coral reef fin fish regulated by species and no person may take or possess them under the Plan.

### **Permitted ways of taking fish**

Clause 91 provides conditions for the A1 and A2 symbols about the apparatus that must be used to take coral reef fin fish under the Plan. The permitted apparatus are consistent with those permitted for the symbol under schedule 15 of the regulation.

### **General conditions for taking fish**

Clause 92 provides general conditions applicable to an authority with an A1 or A2 fishery symbol. These duplicate the conditions under the Regulation for these symbols.

### **Selling fish**

Clause 93 provides that it is a condition of the authority with an A1 or A2 fishery symbol that coral reef fin fish taken are sold only for display or for use as broodstock in aquaculture.

### **Using fishing lines**

Clause 94 allows a fishing line to be used to take coral reef fin fish under the symbol only if it has a single, barbless hook.

### **Using cast nets**

Clause 95 restricts the dimensions of a cast net that may be used to take coral reef fin fish under the symbol

### **Using scoop nets**

Clause 96 restricts the dimensions of scoop net that may be used to take coral reef fin fish under the symbol.

### **Using seine nets**

Clause 97 restricts the dimensions of a seine net that may be used to take coral reef fin fish under the symbol, as well as requiring the fisher to be close enough to supervise the net's operation while is being used.

## ***Division 2—Fishing under fishery symbol 'RQ'***

### ***Subdivision 1—Preliminary***

#### **Purpose of subdiv 1–3**

Clause 98 explains that subdivisions 1–3 of division 2 prescribe conditions to two classes of authority issues under the Act. Section 60 of the Act provides that, in addition to the conditions imposed on an authority by the chief executive, and authority is subject to the conditions imposed by regulation or management plan. The authorities are a commercial fishing boat licence (primary or tender) with an RQ fishery symbol and a

commercial fisher licence, where the fisher holding the licence is acting under a RQ licence.

Section 54 of the Regulation provides that a commercial fishing boat licence holder may use or allow someone else to use, the boat identified in the licence to take fish for trade or commerce. This is subject to restrictions, including that the person in control of the boat must be a licenced commercial fisher or assistant fisher under direction and that the boat may be used in a commercial fishery only if the fishery symbol for the fishery is written on the licence.

This is complemented by section 52 of the Regulation that provides that a commercial fisher may—

- use or possess commercial fishing apparatus;
- take fish for trade or commerce but only while using a commercial fishing boat;
- possess fish lawfully taken for trade or commerce while using a commercial fishing boat; and
- sell fish lawfully taken for trade or commerce while using a commercial fishing boat to a buyer or someone else who may buy the fish under an authority.

The net effect of these provisions is that a commercial fisher who does not also hold an RQ licence may operate a commercial fishing boat under an RQ licence held by someone else in the commercial coral reef fin fish fishery with a high degree of autonomy.

The intention of applying the conditions applicable under the RQ fishery symbol also to a commercial fisher licence, where the fisher is acting under an RQ licence, is to ensure that the holder of the commercial fishing boat licence under which coral reef fin fish are taken and the commercial fisher controlling the boat under the authority of the commercial fisher licence are each responsible for complying with the conditions.

Clause 98 also expressly points out that the permissive conditions in the subdivisions are subject to the regulated fish and closed waters declarations in chapter 2, such as regulated fish declarations for fish by species and size.

### **Area for ‘RQ’ fishery symbol**

Clause 99 provides for the area for the RQ fishery symbol, pursuant to section 44(1)(b) of the Regulation. The RQ fishery symbol replaces the

previous entitlement of the L1, L2, L3, L6, L7 or L8 fishery symbol on the commercial boat licences in respect of the commercial coral reef fin fish fishery. These symbols continue to operate under the fishery provisions in schedule 12 of Regulation in respect of the other line fisheries, and have areas stated for them.

The intention of clause 99 is to provide different areas from which coral reef fin fish may be taken under the RQ symbol, depending on which of the L1, L2, L3, L6, L7 or L8 symbols are also written on the licence. For example, an RQ licence that also has only an L3 fishery symbol means that the only area from which coral reef fin fish can be taken under the RQ symbol is the same as the L3 fishery area.

### ***Subdivision 1—General requirements about taking coral reef fin fish***

#### **Where coral reef fin fish may be taken**

Clause 100 provides that coral reef fin fish may be taken from the areas provided under the clause.

#### **What coral reef fin fish may be taken**

Clause 101 provides that generally any coral reef fin fish may be taken, subject to the quota entitlement requirements in subdivision 4—line units. This is also subject to the regulated fish and closed waters declarations applicable to commercial fishers in chapter 2. The ‘L8’ fishery symbols have previously been excluded from taking coral trout or red emperor. Where the ‘RQ’ fishery symbol is being used in the ‘L8’ area, the Plan continues this restriction.

#### **Permitted ways of taking fish (other than under RQ(L8) licence)**

Clause 102 provides the permitted ways, pursuant to section 44(3) of the Regulation, that coral reef fin fish may be taken under an RQ licence, other than when it is being used in the L8 area. The permitted ways are by fishing lines or rods, with an overarching restrictions that not more than 3 lines can be used by a person from a commercial fishing boat at a time, with any combination of up to 6 hooks or lures attached to the lines.



**Permitted ways of taking fish—RQ(L8) licence**

Clause 103 provides the permitted ways coral reef fin fish may be taken under an RQ licence in the L8 fishery area. The area is distinguished by its location—it is the waters below 200m in a certain zone. Consistent with the fishery provisions for the ‘L8’ fishery symbol, the permitted ways are by bottom set line or drop line, with an attendance requirement for a person to stay within 100 metres of the line while it is in use.

**Using drop lines—RQ(L8) licence**

Clause 104 provides specifically for the use of drop lines under the ‘RQ’ symbol in the “L8” fishery area. This provisions reflects the different line fishing method used in deepwater and provides for the maximum number of hooks and lines that may be used, as well as the requirement for a marked float to allow the primary boat responsible for the drop line to be easily identified, for example by a fisheries inspector.

**Using bottom set lines—RQ(L8) licence**

Clause 105 provides specifically for the use of bottom set lines under the ‘RQ’ symbol in the “L8” fishery area, with restrictions on the number of lines and hooks that can be used at a time and requirement for a marked float to allow the primary boat responsible for the drop line to be easily identified, for example by a fisheries inspector.

**Prohibitions to allow identification or counting of coral reef fin fish**

Clause 106 restricts the extent to which coral reef fin fish possessed on board a commercial fishing boat under an RQ licence may be processed. There are two main reasons for this—

- Integrity of the commercial catch quota—Identification of fish at sea is one of the major challenges to successfully manage a multi species fishery, like the coral reef fin fish fishery, under a catch quota. Fish that are processed, for example filleted, are very difficult to distinguish by species, with the potential to seriously undermine enforcement of the quota based on individual catch quotas of particular species or group of species;

- Integrity of the regulated fish declarations—The enforceability of the regulated fish declarations under chapter 2 of the Plan depend heavily on the ability to identify fish type and size.

While many operators in the commercial coral reef fin fish fishery have already changed their practice to suit the more lucrative market for live or whole fish, it is recognised that some operators may still predominately fillet at sea. However, the quota system and regulated fish declarations are two of the most important management measures for the fishery under the Plan. A person acting under an ‘RQ’ fishery symbol must observe the condition that the coral reef fin fish on board a boat be either whole or with only its gills and gut removed.

The only instance in which a person can possess filleted coral reef fin fish on a commercial fishing boat under an RQ licence is where this is permitted by a separate authority—“a filleting permit”. Filleting permits are a new type of authority created under the Plan.

The chief executive will have the discretion to issue filleting permits on a case-by- case basis. The intention is that filleting be permitted in the fishery by exception, not rule.

### ***Subdivision 3—Use of commercial fishing boats***

#### **Using primary boats**

Clause 107 preserves the length restriction of 20 metres on primary commercial fishing boats applicable under the Regulation in other line fisheries in the coral reef fin fish fishery. The exceptions under section 43(2) and (3) of the Regulation is also applicable under the Plan—these are boats longer than 20 metres authorised on a licence existing before the commencement of the length restriction and boats replacing such a pre-existing boat for a licence.

#### **Using tender boats**

Clause 108 provides the conditions for a tender commercial fishing boat licence that has an RQ fishery symbol written on it. The conditions restrict the distance between which a tender boat can be used from its primary boat, in a way consistent with the fishery provisions for the L1, L2, L3, L6, L7 and L8 fishery symbols in schedule 12 of the Regulation.

**Permitted distance for assistant fisher to be under direction**

Clause 109 imposes a condition that an assistant fisher acting under direction of a commercial fisher while they are on separate boats be no more than 5 nautical miles away (800 metres in the 'L8' fishery area). This is consistent with existing restrictions under the Regulation, however with a change to allow the two classes of fisher to be on boats any distance apart provided they are on the same reef.

***Subdivision 4—Line units*****Purpose and application of subdiv 4**

Clause 110 explains that the subdivision provides for conditions imposed on a line unit and a commercial fisher licence, where the commercial fisher is acting under a line unit held by someone else. The application of the conditions to both authorities reflects the common practice by which commercial fishers act under the commercial boat licences/quota entitlement of someone else and is intended to ensure the quota holder and the fisher in control of the boat each have a licence conditions requiring them to comply with the provisions.

**Definitions for subdiv 4**

Clause 111 provides the definitions relevant to the subdivision. A 'prescribed person' means the holder of the line unit and/or the commercial fisher in control of the primary or tender boat being used under the line unit. An 'authorised boat' is the primary and/or its tender commercial fishing boat under the RQ licence noted in the line unit certificate.

**Requirements for taking fish or possessing fish on board authorised boat**

Clause 112 imposes the conditions requiring a prescribed person to have sufficient unused line units of the relevant type to take and possess an amount of coral reef fin fish on an authorised boat on a given day. Compliance with the notice requirements and the procedure for tagging catch is also provided under the subdivision as further conditions for taking or possessing the fish.

**Requirement for bringing fish ashore**

Clause 113 provides that a prescribed person must not land coral reef fin fish unless either a prior notice or transshipment notice has been given in respect of the fish.

**Requirement for possessing fish**

Clause 114 obliges a prescribed person who possesses coral reef fin fish to ensure the fish are tagged in the required way. The provision makes it clear that the obligation applies to the prescribed person, even if they did not personally take the fish. For example, if a crew member on a tender boat takes fish, it is still the overall responsibility of the licenced fisher to ensure the fish are correctly tagged while they are stored on the primary boat.

**Prior notice**

Clause 115 deals with the prior notice. The purpose of this notice is to allow sufficient information about impending landings coral reef fin fish to be given to the chief executive to facilitate best application of monitoring and enforcement resources. Details that must be given in the prior notice are those relevant to this decision—the place, date and estimated time of landing and the size of the catch on board the boat.

The nature of the commercial fleet in the fishery is that there are multiple landing points covering a large geographical distance. Some landing points, for example, those in far north Queensland, are also quite remote. To allow sufficient time for inspectors to meet boats at the specified place of landing, the prior notice must be given no later than 4pm on the day before the fish are to be landed. In recognition that unknown factors, such as late weather changes, may require a change to the intended landing details, prior notices can be amended up to three hours before fish are brought ashore. However, to avoid any possibility of changes being made at the last moment, for example, in a way intended to frustrate the opportunity for random inspections, no amendments to the details can be made once a boat has already returned to its mainland mooring.

**Transshipment notice**

Clause 116 provides for when and how a transshipment notice must be given and what details it must contain. A transshipment notice is required where coral reef fin fish are not being carried ashore by the boat (or its related primary/tender boat), but by a licenced carrier boat or a transport ship registered under the *Transport Operations (Marine Safety) Act 1994*.

The purpose of a transshipment notice is to provide information about use of quota entitlement under a holder's line units. The chief executive can use the transshipment notice as evidence of the whole weight of coral reef fin fish taken under line units in a line year. Unlike the landed fish notice, the information must be given as soon as possible after the fish are moved onto the boat that will eventually carry them to the landing place, rather than after they are landed. This is because dedicated transport vessels often spend a long period at sea, meaning there may be considerable time before the coral reef fin fish taken from a commercial fishing boat are landed. To effectively manage the quota, information about use of an individual's entitlement must be timelier than if the obligation was delayed until after landing.

While the obligation to comply with the transshipment notice obligation properly rests with the line unit holder, the provision allows the holder to meet the obligation if another person gives the notice on the holder's behalf.

**Landed fish notice**

Clause 117 applies in respect of coral reef fin fish taken from, and brought ashore by means of, a primary commercial fishing boat or its related tender boat. A landed fish notice must be given in all cases coral reef fin fish taken from a commercial fishery are brought ashore, whether by means of the fishing boat or an unrelated transport vessel.

The purpose of this notice is the same as the transshipment notice—it obliges the holder to supply information about the amount of coral reef fin fish taken under the holder's line units to the chief executive to be used by the chief executive to record the use of the entitlement as it occurs throughout the line year.

To ensure accuracy of information, the details of the weight of the relevant coral reef fin fish for the units must be measured using certified scales. Coral reef fin fish are usually sold at the place they are landed to buyers, so the weighing obligation under this provision reflects existing

common practice. As a further means of ensuring the accuracy of information, the provision obliges the holder/commercial fisher to keep coral reef fin fish in their custody and control until after the landed fish notice has been given.

### **Requirement to tag fish**

Clause 118 provides for the tagging obligations of a prescribed person, as a condition of that person's line units and/or commercial fisher licence. Tagging catch provides an instant means of identifying fish taken under the quota. The inverse is that an untagged coral reef fin fish, *prima facie*, indicates a fish taken outside the quota, for example by a recreational fisher. Given the numbers of fish involved, this is a vital enforcement tool, both as a means of identifying fish and as a deterrent to unlawful activity.

The provision reflects the importance of tagging to achieving compliance with the quota by making the obligations conditions of an authority.

### **Use of tags by holder**

Clause 119 provides that the tags issued to the holder must be used once only and in accordance with their numerical sequence. The information about the tag numbers used must be recorded in logbook information and also in the daily record kept by the person in charge of the commercial fishing boat about the day's catch. The requirements in this provision allow tags to be used as a means of verifying information given in notices under the subdivision and the accuracy of the logbooks and daily fishing records required to be kept.

### **Notices to chief executive under this subdivision**

Clause 120 provides for how the prior notice, transshipment notice and landed fish notice must be given. The notices are easy to give—they are by telephone to a telecommunications provider nominated by the chief executive by gazette notice.

The system is intended to use interactive voice response technology that prompts the giver to supply the details required under the notice. By ensuring that the quota holder is responsible for providing timely

information about the use of the holder's entitlement it is intended to create a user friendly system with a high degree of integrity and compliance.

#### ***Division 4—General provisions about guidelines***

##### **Application of div 4**

Clause 121 provides that division 4 applies if the chief executive makes guidelines about how the notices about the use of line units may be given.

##### **Notification**

Clause 122 obliges the chief executive to publish the guidelines in the gazette as soon as possible and to then table them in the Legislative Assembly within 14 sitting days of gazettal.

##### **Inspection**

Clause 123 ensures that guidelines are a public document by requiring them to be freely available for inspection at the head office of the Department of Primary Industries, Primary Industries Building, 80m Ann Street, Brisbane during office hours, Monday to Friday.

##### **Admissibility of guidelines in proceedings**

Clause 124 allows guidelines to be admitted in evidence in prosecutions under the Act to which a failure to give a required notice subject of the guideline is alleged.

## **PART 4—CONDITIONS FOR BOAT LICENCES**

##### **Restriction on amending RQ licence to modify or replace boat**

Clause 125 provides for when a request to amend an RQ licence by replacing the previous boat with a larger boat must be refused. As an increase in the size of a boat that can be used to take coral reef fin fish

commercially generates a net increase in effort, especially when coupled with the greater efficiencies offered by new boats. As a result, an application to replace a boat with a much larger boat is very unlikely to be approved under current Queensland Fisheries Service policies.

This provision sets the parameters in which a request to amend an RQ licence by introducing a bigger boat must be refused. There are three ranges—

- a licence for an existing boat of 10m length or less can not have an amendment request approved if it would change the boat to one more than 10m long;
- a licence for an existing boat of 10–14m in length can not have an amendment request approved if it would change the boat to one more than 14 m long; and
- a licence for an existing boat of more than 14m in length can not have an amendment request approved if it would change the boat to a boat that is any greater in length than the existing boat.

Where the boat to be replaced is within these size ranges, the chief executive retains the discretion to decide whether to approve the request depending on the circumstances. The provision expires on 1 July 2004 as, with the introduction of the quota for the fishery under line units, the input control measure about increased boat sizes will be less important to achieving sustainability. After the provision expires, amendment requests will be decided on a case-by-case basis.

### **Conditions of RQ licences about transshipping**

Clause 126 provides a prohibition on the practice of transshipping coral reef fin fish between commercial fishing boats from unrelated fishing operations. If boats under different licences are able to pool catch at sea and use one boat to carry fish ashore, it will greatly increase the overall effective fishing effort in the fishery, particularly given the emphasis on live fish in this fishery. Also, if boats are permitted to have catch on board taken under other RQ licences/line units, it will undermine the enforceability of the quota.

The effect is that coral reef fin fish must either be brought ashore from the primary boat or associated tender boat from which they were taken, or for dead fish, by a licenced carrier boat or transport vessel north of Clump Point, in accordance with section 172 of the Regulation.



**Conditions of particular tender licences**

Clause 127 provides a transshipping prohibition in the same way as clause 126, in respect of fish taken from a tender boat under an RQ licence.

**No new carrier boat licences**

Clause 128 removes the discretion to issue any new carrier boat licences under section 51 of the Regulation that permit carriage of coral reef fin fish. However, carrier boat licences existing prior to the Plan may be the subject of a renewal application by the same holder on the same terms. The provision adds a new condition to existing carrier boat licences preventing that carriage of live coral reef fin fish, unless the carrier boat is also a licenced commercial fishing boat. In this case, the boat can carry live coral reef fin fish taken by that boat or an associated tender boat.

If the number of boats available in the fishery for the purpose of running catch ashore directly from fishing reefs were allowed to increase, the fishing effort in the fishery would also increase—there would simply be more fishing time available to primary and tender boats. Curtailment of expansion is even more vital in the high value, live fish component of the fishery.

**PART 5—FILLETING PERMITS****Chief executive may issue filleting permits**

Clause 129 provides a discretion for the chief executive to issue a filleting permit, to applicants who hold RQ licences.

**What filleting permit authorises**

Clause 130 provides for what is authorised by a fillet permit. Filleting permits are required if coral reef fin fish are to be filleted on board commercial fishing boats, as discussed in relation to clause 106.

## **CHAPTER 4—OTHER FISHING**

### **PART 1—COMMERCIAL FISHING TOURS**

#### **Application of pt 1**

Clause 131 provides that the provisions in the part regulating the fishing charter sector in the coral reef fin fish fishery apply to all tidal waters, but are subject to the closed waters and regulated fish declarations (size, number and species) in chapter 2.

#### **What fish may be taken**

Clause 132 provides that as long as the tour is conducted under a general fisheries permit issued under section 35 of the Regulation, any coral reef fin fish may be taken by the tour participants and crew, subject to regulated fish and closed waters declarations.

#### **Permitted ways of taking fish**

Clause 133 restricts the type and amount of fishing gear that may be used by a person on a tour to fishing lines or rods with up to 6 hooks and/or lures attached to no more than 3 lines. Fishers and crew on a tour can also use spears and spear guns to take coral reef fin fish.

#### **General conditions of taking coral reef fin fish**

Clause 134 provides that if the general fisheries permit for the tour has a condition that restricts the tour to a particular area, coral reef fin fish may only be taken from that area.

#### **Prohibitions to allow identification or counting of coral reef fin fish**

Clause 135 provides restrictions the extent to which coral reef fin fish taken by persons on the tour may be processed. Generally, fish must be retained whole or gilled and gutted or for tours lasting less than 2 days, filleted in accordance with subsection 2. The limited allowance for filleting recognises that there is a finite storage capacity on board charter boats that makes it difficult to accommodate large coral reef fin fish in whole or gilled

and gutted form. This inconvenience must be balanced against the need to ensure coral reef fin fish taken during the tour can be easily counted and identified by inspectors monitoring compliance with the regulated fish declarations. Fishers on shorter tours may only possess a fillet on board a boat if it is at least 40 cm long and the skin and scales are left on the fish, or if the fillet is about to be eaten by people on board.

Chinese footballer (also commonly known as blue spot trout) cannot be possessed filleted on board a boat under any circumstances. This prohibition is necessary to preserve the integrity of the 80cm maximum size limit for these fish.

For tours of more than 2 days duration, storage limitations are even more pressing. Fillets can be possessed provided the skin and scales are left on, to aid identification, the fillets from each fish are packed together, to allow the total numbers of fish to be counted, and the packages are labelled with the common name of the fish.

A fish brought ashore and filleted cannot be returned to a boat unless the restrictions for filleting on board boats engaged in shorter tours are observed.

Also, once a fish has died, but before it is stored, a pectoral fin must be removed. The purpose of this requirement, to be applied to all recreational fishers, is similar to that of tagging for the commercial sector. The removal of the fin indelibly marks a fish as being caught recreationally, deterring unlawful commercial dealings in these fish.

### **Prohibition on bringing live coral reef fin fish ashore**

Clause 136 prohibits a recreational fisher landing live coral reef fin fish. This is necessary to deter unlawful commercial dealings in the most valuable form of coral reef fin fish. However, an exception is the practice of some recreational fishers collecting specimens for personal aquariums. This exception does not apply to coral trout or red throat emperor, the principal commercial species.

Clauses 135 and 136 are offence provisions, and their importance in supporting the enforceability of the regulated fish declarations and deterring the unlawful trade in recreational fish is reflected in the maximum penalty of 100 penalty units for contravention.

## **PART 2—RECREATIONAL FISHING**

### **Application of pt 2**

Clause 137 provides that this part regulates the recreational fishery for coral reef fin fish under the Plan, and applies to all recreational fishers, including those participating in a commercial fishing tour, in all tidal waters.

As in the parts regulating the commercial fishery and commercial fishing tours, the provision expressly provides that the part is subject to the regulated fish declarations applying to recreational fishers (size, number and species) as well as the closed waters declarations.

### **What fish may be taken**

Clause 138 provides that a recreational fisher may take any coral reef fin fish, subject to regulated fish and closed waters declarations.

### **Permitted ways of taking coral reef fin fish**

Clause 139 restricts the type and amount of fishing gear that may be used by a recreational fisher to fishing lines or rods with up to 6 hooks and/or lures attached to no more than 3 lines. Recreational fishers may also use spears and spear gun to take coral reef fin fish.

### **Prohibitions to allow identification or counting of coral reef fin fish**

Clause 140 provides restrictions on the extent to which coral reef fin fish taken by recreational fishers may be processed. Generally, fish must be retained whole or gilled and gutted or filleted in accordance with subsection 2 (including where the recreational fisher is on a commercial fishing tour of 2 days or less). The limited allowance for filleting recognises that there is a limited storage capacity on board recreational and charter boats that makes it difficult to accommodate large coral reef fin fish in whole or gilled and gutted form. This inconvenience must be balanced against the need to ensure coral reef fin fish taken recreationally can be easily counted and identified by inspectors monitoring compliance with the regulated fish declarations. The general rule is that recreational fishers may only possess a fillet while on board a boat if it is at least 40 cm long and the

skin and scales are left on the fish, or if the fillet is about to be eaten, or the boat is not a fishing boat but a commercial transport vessel such as an island to mainland ferry.

Chinese footballer (also commonly known as blue spot trout) cannot be possessed filleted on board a boat under any circumstances. This prohibition is necessary to preserve the integrity of the 80cm maximum size limit for these fish.

For recreational fishers on commercial fishing tours of more than 2 days duration, storage limitations are even more pressing. Recreational fishers on extended commercial fishing tours can possess filleted coral reef fin fish provided the skin and scales are left on, to aid identification, the fillets from each fish are packed together, to allow the total numbers of fish to be counted, and the packages are labelled with the common name of the fish.

A fish brought ashore and filleted can not be returned to a boat unless the general restrictions for fillets possessed on board boats to aid identification and counting of fish are observed—the fillet must be at least 40cm and with the skin and scales attached.

Also, once a fish has died, but before it is stored, a pectoral fin must be removed. The purpose of this requirement, to be applied to all recreational fishers, is similar to that of tagging for the commercial sector. The removal of the fin indelibly marks a fish as being caught recreationally, deterring unlawful commercial dealings in these fish.

### **Prohibition on bringing live coral reef fin fish ashore**

Clause 141 prohibits a recreational fisher landing live coral reef fin fish. This is necessary to deter unlawful commercial dealings in the most valuable form of coral reef fin fish. However, an exception is the practice of some recreational fishers collecting specimens for personal aquariums. This exception does not apply to coral trout or red throat emperor, the principal commercial species

Clauses 140 and 141 are offence provisions, and their importance in supporting the enforceability of the regulated fish declarations and deterring the unlawful trade in recreational fish is reflected in the maximum penalty of 100 penalty units for contravention.

## **PART 3—ABORIGINAL AND TORRES STRAIT ISLANDER FISHING**

### **Aboriginal and Torres Strait Islander rights not affected**

Clause 142 provides that the Plan is not intended to limit the rights of Aborigines and Torres Strait Islanders to take, use or keep coral reef fin fish in accordance with Aboriginal tradition or Islander custom.

## **CHAPTER 5—MISCELLANEOUS PROVISIONS**

### **PART 1—REVIEW OF PLAN**

#### *Division 1—Reviews required*

Section 39 of the Act provides that one of the only two ways in which a management plan may be amended is if the chief executive has conducted a review of the Plan, or part of the Plan to which the amendment relates, the result of which included a proposal to make the amendment and that the Plan may provide for how the review must be conducted.

#### **General review**

Clause 143 provides for a general obligation to review the appropriateness of the Plan between 5 and 9 years after it is made, and of the regulated fish declarations at least every 5 years.

#### **Review of average annual catch of coral reef fin fish**

Clause 144 provides an obligation to review the Plan within at least 4 years to decide whether there has been consistent localised depletion in coral reef fin fish stocks close to population centres, and if so, whether in the chief executive's reasonable opinion, the average annual catch in the

area is sustainable. If it is not, the Plan must be amended so that the catch in the area is sustainable.

### **Ongoing review of entitlements under line units**

Clause 145 provides for an ongoing obligation for the chief executive to conduct a biennial review of the level of the total allowable catch under line units in two aspects—

- a) to decide whether the total allowable catch of each of coral trout, red throat emperor and the other coral reef fin fish is ecologically sustainable; and
- b) if it is, whether the total allowable catch is otherwise appropriate when assessed against the Plan's main purpose.

If the result of the review in (a) is that one of more of the total allowable catches is not ecologically sustainable, the Plan must be amended to take measures to achieve sustainable entitlements.

If the result of the review in (b) is that one of more of the total allowable catches is not appropriate, the Plan may be amended to take measures to achieve appropriate levels.

### **Review of total line unit entitlements**

Clause 146 provides for an obligation on the chief executive to review the appropriateness of total level of entitlements actually available to the commercial sector if, straight after the issue of line units under the Plan (including any appeals to the Fisheries Tribunal) is completed, the entitlements conferred by the units is less than the total allowable catch.

If the chief executive forms the reasonable opinion that the level is inappropriate, the chief executive may amend the Plan to increase the entitlement of a CT, RTE or OS line unit prescribed by the Plan, but the level must not be increased if the result would be a total allowable catch higher than the maximum prescribed levels for units, being—

- 1350t of coral trout under all CT units; 700t of red throat emperor under all RTE units; and
- 1011t of other coral reef fin fish under all OS line units.

**Review of catch under OS line units**

Clause 147 provides for an obligation on the chief executive to review the Plan to decide whether in the chief executive's reasonable opinion, the catch of a species or catch of a family group, is ecologically sustainable, if in any line year the catch of a species or family under the OS line units is 10% higher than it was in the first line year. If the result of the review is that the catch is not ecologically sustainable, the Plan must be amended, or other steps taken to achieve ecological sustainability in the catch.

The purpose of this review is to monitor increases in catch of a species or family managed together with other coral reef fin fish under OS line units. One of the main issues with a multi species quota, such as OS units, is dissuading the practice of "high grading". This is where one species managed collectively under the quota is subject to increased harvest due to market demand or product values, while other species taken are discarded dead or alive to allow the more marketable species to be retained. This review will alert the chief executive to possible examples of high grading of species or group of species managed under the OS line units.

The provision provides that the chief executive must amend the Plan and/or take other steps to achieve sustainability. The reason the provision allows other steps to be taken is to ensure the broadest range of responses is available, depending on what is appropriate in the circumstances.

***Division 2—Consultation for review*****Consultation for review**

Clause 148 is a standard provision in management plans under the Act that provides for a consultative and public review process for the conduct of reviews.



## **PART 2—OFFENCES AND CRITERIA FOR SUSPENSION AND CANCELLATION**

### *Division 1—Prescribed serious fisheries offences*

#### **Serious fisheries offences**

Clause 149 provides for the offences under the Plan that are to be prescribed as serious fisheries offences for the Act. The significance of a serious fisheries offence is that conviction of the offence is one of the two grounds under section 67 of the Act on which the chief executive may decide that the person's authority or authorities should be suspended or cancelled.

The serious fisheries offences relate provisions for which compliance by authority holders is considered critical to the success of the Plan in achieving its main purpose. In recognition of the fishery's unique position within the Great Barrier Reef Marine Park, contravention of the fishing restrictions under the Commonwealth legislation will also be regarded as a serious fisheries offence for the Queensland Act.

### *Division 2—Prescribed suspension and cancellation criteria*

#### **Criteria for suspending authorities**

Clause 150 provides the criteria which the chief executive must have regard in deciding whether to suspend a commercial fisher, assistant fisher or commercial fishing boat licence or aquarium fish fishery authority of a holder who has been convicted of a serious fisheries offence for the Plan. The criteria are periods of suspension that increase depending on the number of convictions of that holder for a serious fisheries offence against the Plan.

#### **Criteria for suspending line units**

Clause 151 prescribes criteria to which the chief executive must have regard in deciding whether to suspend line units on the ground under section 67(1)(a) of the Act—that the suspension is necessary or desirable

for the best management, use protection or development of coral reef fin fish resources.

The provision applies where the line unit holder's entitlement is exceeded in a line year or the holder's RQ licence to which the line units relate is suspended. For the first circumstance, the intention of the provision is to provide the option of suspending a number of line units with an entitlement equivalent to that exceeded in one year to be removed from the fishery in the following year, by way of an administrative decision to suspend line units in the best interests of the management of the fishery. It is anticipated that this option may be taken, possibly as an alternative to prosecution, in the case of minor quota overruns, which the circumstances suggest may have been a result of inadvertence, and for which the objects of the Plan can be satisfied by a correction in the quota available to the holder in the following year.

Where the holder's RQ licence has been suspended, the intention of prescribing criteria to impose a corresponding suspension of line units, reflects the relationship between the two authorities under the Plan. If a holder has no current entitlement to use a commercial fishing boat in the fishery, it is considered in the best interests of the fishery to also remove the related quota entitlement for the period of suspension.

### **Criteria for cancelling line units**

Clause 152 provides the criteria to which the chief executive must have regard in deciding whether to cancel line units on the ground the holder has been convicted of a serious fisheries offence involving a contravention of the holder's quota under line units equal to or greater than 500 kg of coral reef fin fish. Such a conviction would be in the highest order of quota offences and an offender convicted of an offence of this magnitude may be regarded as a serious threat to the fishery. While it is recognised that cancellation of line units is a decision that would have a significant impact on that holder's entitlement, it is considered that the main purpose of the Plan necessitates the inclusion of this criteria under the Plan.

## **PART 3—GENERAL PROVISIONS**

### **Possession of coral reef fin fish in trade or commerce after fish brought ashore—buyers**

Clause 153 provides the tagging obligations of buyers, licences under section 50 of the regulation, who possesses a coral reef fin fish for a commercial purpose. The tagging system must be sustained from harvest, throughout the chain of possession, up until the fish is eventually passed to the end consumer. The tagging obligations of buyers revolve essentially around the need to ensure that the coral reef fin fish they possess have been and continue to be tagged in the required way.

### **Possession of coral reef fin fish in trade or commerce after fish brought ashore—persons other than authority holders**

Clause 154 provides for the continuation of the tagging system by imposing the same obligation on other persons who possess coral reef fin fish for a commercial purpose, even though they do not require an authority under the Act to possess the fish. Because these persons are not authority holders, the obligation is to be enforced by summary proceedings with a maximum penalty of 100 penalty units. The provision will most frequently apply to buyers (other than the first licenced buyer covered by clause 153) and retailers of coral reef fin fish.

The obligation is to ensure fish are tagged, or for live or processed fish, that the tags for the fish are kept until after the fish passes to its end consumer or is otherwise disposed of. The primary need for the provision is to act as a means of exposing and deterring the commercial exploitation of coral reef fin fish taken unlawfully outside the quota system under the Plan.

### **Statistical returns and information about coral reef fin fish**

Clause 155 provides for the classes of persons who must keep and give to the chief executive information about their activities in the fishery. For RQ licence/line unit holders, the obligation is to give logbooks in the required way and form about fishing under those authorities. The provision also identifies licenced buyers of coral reef fin fish as persons from whom information may be sought.

Accurate information about the fishery is crucial to its management. The logbook program about fishing has been administered in many fisheries under the Act for some time. The extension to coral reef fin fish buyers will, for example, enhance the Plan's ability to provide effective quota enforcement, providing an independent source of information about the coral reef fin fish taken from the fishery by the commercial sector.

### **Daily record of use of boat identified on RQ licence**

Clause 156 provides a separate obligation on the person actually in control of a commercial fishing boat to keep a daily record about specified matters. The daily record must be completed as soon as possible after the day's fishing concludes and must particularise—

- date;
- where most of the day's catch was taken;
- the numbers of fish, using common names or other language that allows the number of each species or species group to be identified; and
- the first and last number of the tags sequence used to tag the day's catch.

The daily record ensures a summary of the fish taken under line units and RQ licences is available for immediate inspection by fisheries inspectors at sea, by the person actually responsible for the fishing, who may not be the RQ licence/line unit holder responsible for the logbook information. In practice, it is anticipated that if the person in control records the logbook information daily and keeps the log on board the boat it will be possible for the one document to act as both the logbook and daily record.

### **Counting fillets as whole fish**

Clause 157 provides for how fillets are to be equated to numbers of fish for the Plan, for example in applying the regulated fish declarations by number. Every two fillets (whether the fillet is a whole fillet or a smaller piece) is to be taken to be one fish. It is very difficult to reconstruct a fish by determining which are its fillets. This provision is intended to ensure the Plan's provisions restricting the numbers of fish that may be taken or

possessed is not undermined by this difficulty. The provision reflects the most common filleting method of 2 fillets per fish.

## **CHAPTER 6—TRANSITIONAL PROVISIONS**

### **Existing approval to replace boat**

Clause 158 provides that existing approvals to replace a boat identified under an RQ licence are not subject to the restrictions on maximum size ranges being introduced under clause 125, provided the licence amendment to give effect to the approval complies with any conditions imposed and occurs within a specified time.

### **Existing approval of temporary boat**

Clause 159 is similar to clause 158, however it applies to boats approved to be used under an amendment to the RQ licence for a temporary period only. Provided the temporary boat is no longer than the boat it replaced, and the amendment occurs in the first year, the restrictions on approvals under clause 125 do not apply. This provision reflects approvals given to use a boat as a temporary measure, for example because the former boat was destroyed and a new replacement boat is undergoing construction.

### **Primary licence QFV 121 78I**

Clause 160 applies to a particular licence, acquired on the genuine but mistaken belief that it had a history of legitimate fishing for coral reef fin fish. However, while the licence had been used in the L1 area prior to the current holder's acquisition of it, this had been occurring in error as the licence was for the L3 fishery. Many of the fish recorded in the logbook information for the L3 licence are reef fish that occur in the more southern waters of the L1 fishery area, but are not coral reef fin fish.

When the holder acquired the licence, the holder was supplied with the licence history, which showed catch amounts as if they were taken under the L3 fishery symbol. The anomaly in the way the licence had been used previously was not detected at this time. The holder then used the licence heavily in the L3 fishery after it was acquired.

As a result, the L3 licence has limited recorded catch of coral reef fin fish prior to its acquisition by the current holder. This would adversely affect the decisions made in respect of the licence in applying the criteria for the RQ symbol and in allocating line units. Given the bona fide mistake made by the holders and fisheries agencies about the correct fishery symbol under which catch recorded for the licence were taken, and the current holder's level of actual participation in the L3 fishery area, the provision provides that all reef fish taken under the licence are to regarded as coral reef fin fish taken under the L3 fishery symbol on the licence.

### **Expiry of ch 6**

Clause 161 provides that the transitional provisions in this part expire after 3 years.

## **CHAPTER 7—AMENDMENT OF THE FISHERIES (GULF OF CARPENTARIA INSHORE FIN FISH) MANAGEMENT PLAN 1999**

### **Plan amended in ch 7**

Clause 162 provides that the chapter amends the *Fisheries (Gulf of Carpentaria Inshore Fin Fish) Management Plan 1999* (the Gulf Plan).

### **Amendment of sch 4 (Aids to interpretation and definitions)**

Clause 163 makes the consequential amendments to the Gulf Plan necessary as a result of the making of this Plan. The Gulf Plan already excludes coral reef fin fish from its application. The main effect of the amendment is to update the list of species meant by coral reef fin fish under the Gulf Plan so that is consistent with this Plan and the Regulation.

## **SCHEDULE 1**

### **HOW MAIN PURPOSE IS TO BE ACHIEVED**

Schedule 1 provides for how the Plan will achieve its main purpose and the information that is to be used to measure its achievement, such as the compulsory logbook program, departmental and independent scientific assessments and voluntary surveys of recreational fishers.

The schedule also provides for the events that will trigger an obligation to review the achievement of the main purpose of the Plan. The reviews relate to—

- certain changes in fish abundance, size and age distribution in specified time frames;
- an increase of the catch by the recreational sector of more than 10% in any 4 year period;
- an increase in commercial or recreational fishing on charter tours of more than 20% in a year in designated regions when compared to the previous year;
- a consistent decrease annually for at least 3 years in the catch of coral trout, red throat emperor or other coral reef fin fish in the fishery as a whole;
- more than a 10% increase in the bycatch of fish regulated by species in any 4 year period;
- significant decrease in participation in charter fishing tours;
- an increase in the rate of contraventions of the Plan or in community dissatisfaction about how the fishery is being managed or about fishing opportunities;
- decrease in economic efficiency in the fishery;
- a lack of information being received by the chief executive about the recreational sector (from whom information is collected voluntarily);
- information that is received by the chief executive is inaccurate; and

- a significant decrease in the level of compliance with the compulsory logbook program for commercial sector and wholesale buyers;

## **SCHEDULE 2**

### **CORAL REEF FIN FISH**

Schedule 2 provides the list of species regarded as coral reef fin fish under the Plan, both by common name or names and scientific name. The scientific references for the schedule are located in clause 6. The species are listed under subheadings identifying related fish, for example “cods and groper”. Where the term “group of species” is used in the Plan, it means any of the groups under a subheading in the schedule. Where a term such as “species of cod or groper” is used, it means any of the fish identified under the subheading for the species.

## **SCHEDULE 3**

### **PERIODS FOR CLOSED WATERS**

Schedule 3 lists the periods in which waters are closed under the Plan. The periods represent 9 days around the new moon, closed to protect the spawning aggregations of coral reef fin fish known to frequent coral reefs at this time.



## **SCHEDULE 4**

### **REGULATED FISH**

Schedule 4 provides the detail for the regulated fish declarations by number and size under the Plan.

## **SCHEDULE 5**

### **ADJUSTED CRITERIA FOR EVENT BASED SPECIAL CIRCUMSTANCES**

Schedule 5 provides for the adjusted criteria as a result of an event based special circumstance for a relevant licence holder, discussed in detail in relation to clause 34.

## **SCHEDULE 6**

### **TOTAL CATCH OF CORAL REEF FIN FISH FOR ALLOCATION OF LINE UNITS**

Schedule 6 provides for what is meant by the factor "TC" or total catch of coral reef fin fish for the formula used to work out the number of CT line units, RTE line units and OS line units in clause 56(2). The numbers have been worked out on logbook information held by the chief executive. As the numbers represent the denominator against which individuals catch histories are assessed, it is important that the numbers be certain and consistent when the units are allocated.

## **SCHEDULE 7**

### **WHOLE WEIGHT**

Schedule 7 provides a formula to work out how the weight of a fillet or other part of a processed fish is to be converted to a weight representing the whole weight of the fish recorded fish in logbook information. The whole weight of recorded catch is relevant to applying the RQ criteria and in deciding the number of line units to be issued to RQ licence holders under the Plan.

## **SCHEDULE 8**

### **DICTIONARY**

Schedule 8 is the dictionary defining the terms used throughout the Plan.

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#### **ENDNOTES**

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