

Fish Resources Management Act 1994

KIMBERLEY CRAB MANAGED FISHERY MANAGEMENT PLAN 2018

FD 3717/14 [1218]

Made by the Minister under section 54.

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PART 1 – PRELIMINARY**1. Citation**

This plan is the *Kimberley Crab Managed Fishery Management Plan 2018*.

2. Commencement

This plan will come into operation on 1 November 2018.

3. Interpretation

In this plan, unless the contrary intention appears –

approved ALC means an approved automatic location communicator as defined in regulation 55A;

approved directions has the same meaning as in regulation 55A;

authorised boat means a primary boat or an auxiliary boat;

auxiliary boat means a licensed fishing boat used to fish in connection with fishing from a primary boat, the name and licensed fishing boat number of which is specified on a licence;

blue swimmer crab means fish of that common name described by the scientific classification opposite that name in Division 3 of Schedule 7 to the regulations;

crab means any fish of the Family Portunidae;

crab trap means a device as described in clause 25(2);

current entitlement means the usual entitlement conferred by a licence as –

- (a) increased by any entitlement transferred to the licence; or
- (b) decreased by any entitlement transferred from the licence;

Fishery means the Kimberley Crab Managed Fishery identified in clause 5;

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fishing return means a return as specified in regulation 64;

fishing session means a period of time during a fishing trip when gear is being used in the waters of the Fishery, including any times when gear is being pulled from the water and any part of that gear remains in the water;

fishing trip means a period between when a boat commences travelling through the waters of the Fishery with gear on board for the purposes of undertaking a fishing session and when that boat ceases travelling through the waters of the Fishery with that gear on board after undertaking, or attempting to undertake, a fishing session;

licence means a managed fishery licence authorising a person to fish in the Fishery;

primary boat means a licensed fishing boat that is used to fish under the authority of a licence, the name and licensed fishing boat number of which are specified on a licence;

pull means, in relation to crab traps, to bring crab traps from the seabed to the surface;

total fee means the product of the fee (per unit) and the number of units of usual entitlement conferred by a licence;

unit value means the value of a unit of entitlement, in terms of crab traps, determined in accordance with Schedule 3;

usual entitlement means the entitlement conferred by a licence without regard to any entitlement transferred to or from the licence.

4. Procedure before this plan may be amended or revoked

All the licence holders are the persons to be consulted before this plan is amended or revoked.

PART 2 – THE FISHERY

5. Identification and declaration of the Fishery

(1) The Fishery to which this plan relates is fishing for crab by any means in the waters described in Schedule 1.

(2) The Fishery is a managed fishery, and may be referred to as the Kimberley Crab Managed Fishery.

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PART 3 – LICENCES AND FEES

6. Criteria for the grant of a licence

(1) The criteria to be satisfied before the CEO may grant a person a licence to fish in the Fishery are that –

- (a) on the date of commencement of this plan the person was, or had been, the holder of Exemption Number 2934, 2935 or 2954; and
- (b) an application for the grant of a licence is made only once, on or prior to 1 January 2019.

(2) Notwithstanding subclause (1), the CEO may grant a person a licence to fish in the Fishery if the CEO is satisfied that –

- (a) immediately upon being granted a licence an application will be made under section 140 of the Act to transfer usual units of entitlement to the licence, if it is granted, from another licence; and
- (b) the application referred to in paragraph (a) will be in respect of a total of not less than one unit; and
- (c) in the CEO's opinion, there is no arguable ground in respect of the application referred to in paragraph (a) to refuse to transfer the units of usual entitlement to the licence; and
- (d) the person is a fit and proper person to hold a licence.

7. Duration of licences

A licence expires on 31 October next following the date of grant or renewal.

8. Items that must be specified on a licence

A licence must specify –

- (a) the name and business address of the holder of the licence; and
- (b) the name and licensed fishing boat number of not more than one licensed fishing boat that may be used as a primary boat under the authority of the licence; and
- (c) the name and licensed fishing boat number of not more than three licensed fishing boats that may be used as auxiliary boats under the authority of the licence; and
- (d) the licence number; and
- (e) the date on which the licence was granted or renewed; and
- (f) the date on which the licence expires; and
- (g) the name of the Fishery; and
- (h) the usual entitlement of the licence; and
- (i) the current entitlement of the licence; and
- (j) the unit value in respect of each unit conferred by the licence; and
- (k) any conditions imposed on the licence by the CEO.

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9. Fees

- (1) Where a licence is granted for a period expiring on 31 October 2019, the fee per unit is \$16.98.
- (2) For the purposes of regulation 137(2) the total fee may be paid by instalments as specified in Schedule 2 if -
 - (a) an election to pay by instalments is made by the holder of a licence in accordance with subclause (3); and
 - (b) there is no other fee, charge or levy in respect of the licence which has not been paid at the time the election is received at the head office of the Department.
- (3) An election for the purposes of subclause (2) must be –
 - (a) made in writing;
 - (b) received at an office of the Department on or before 1 November of the year for which the licence is to be renewed; and
 - (c) accompanied by the first instalment plus the surcharge.
- (4) For the purposes of regulation 137(3) the surcharge will be 3.13% of the total fee.

PART 4 – CAPACITY OF FISHERY

10. Capacity of the Fishery

The capacity of the Fishery is 600 crab traps.

PART 5 – SCHEME OF ENTITLEMENT

11. Licence entitlements to equal capacity

The sum of the entitlements to fish for crab in the Fishery that may be conferred by all the licences is to be equal to the capacity of the Fishery.

12. Licence entitlements to be expressed in terms of units

- (1) The entitlement to fish for crab in the Fishery conferred by a licence is to be expressed in terms of units of entitlement.
- (2) The extent of the entitlement to fish for crab in the Fishery that arises from time to time from a unit (the unit value) is determined by the formula specified in Schedule 3.

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13. Conferral of entitlement

Where a licence is granted in accordance with clause 6(1), that licence will, at the time it is granted, confer 400 units of entitlement.

14. Authority of licence of no effect where usual or current entitlement is less than 200 units

The authority conferred by a licence is of no effect at any time when the usual or the current entitlement of the licence is less than 200 units.

15. Prohibition on fishing in excess of current entitlement

A person fishing under the authority of a licence must not fish in the Fishery at any time unless the number of crab traps used under the authority of that licence is less than or equal to the current entitlement to take crabs conferred by that licence.

PART 6 – TRANSFER OF ENTITLEMENT**16. Grounds for refusal to transfer a licence, an entitlement or part of an entitlement**

The CEO may refuse to transfer a licence, an entitlement or part of an entitlement on the grounds that –

- (a) the application is not in respect of a whole number of units;
- (b) the total fee has not been paid; or
- (c) the CEO is of the opinion that the proposed transferor or transferee, or a person acting for or on behalf of the transferor or transferee, may be liable to prosecution for an offence that is prescribed for the purposes of section 224.

17. Temporary transfer of part of an entitlement

A unit of entitlement may be temporarily transferred from one licence to another licence, for a period ending at the time the licence expires, provided that –

- (a) the transfer is for a whole number of units; and
- (b) the total fee in respect of the transferor's licence has been paid.

18. Reduction of entitlement conferred by a licence

(1) Where –

- (a) a person is convicted for an offence against section 74 of the Act relating to exceeding the current entitlement conferred by a licence; and
 - (b) a court has determined the amount by which the entitlement was exceeded,
- the CEO is to reduce the number of units of usual entitlement conferred by the relevant licence.

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(2) For the purposes of subclause (1), the number of units of usual entitlement conferred by the licence is to be reduced by the number of units that exceeded the current entitlement at the time of the offence.

19. Surrender of licence and reallocation of usual entitlement

(1) The criteria to be satisfied before the CEO will increase the usual entitlement conferred by a licence are that –

- (a) an application to increase the usual entitlement conferred by a licence is made by the holder of a licence;
- (b) another licence has been surrendered under section 144 of the Act;
- (c) the person who was the holder of the surrendered licence has consented to the application referred to in paragraph (a); and
- (d) the CEO is of the opinion that the person who was the holder of the surrendered licence is not liable to prosecution for an offence that is prescribed for the purposes of section 224 of the Act.

(2) The entitlement of a licence must not be increased by more than the usual entitlement in respect of the surrendered licence.

(3) Subclause (1) applies once in connection with the surrender of any licence.

(4) For the purposes of subclause (1)(a) a reference to a licence includes a reference to a licence which has been applied for in accordance with clause 6(2) of this plan.

PART 7 – AUTOMATIC LOCATION COMMUNICATORS AND NOMINATIONS

20. Requirement for approved ALC to be installed in a primary boat

(1) A person must not use an authorised boat in the Fishery unless an approved ALC has been installed in the primary boat, has been tested, and is being used, in accordance with the approved directions and is operating effectively.

(2) A person must not fish in the Fishery using an authorised boat at any time when the sleep mode facility of the approved ALC on board the primary boat is in operation.

21. Nomination of intention to fish

(1) The master of a primary boat must ensure that a nomination of intention to fish is made prior to commencing a fishing trip.

(2) A nomination made under subclause (1) must be made by the master by the use of an approved ALC in accordance with the approved directions.

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- (3) Where a nomination of intention to fish is made under subclause (1), the master of the primary boat must specify the –
 - (a) number of the licence which authorises fishing to occur;
 - (b) Fishery in which the fishing will occur;
 - (c) name and contact number of the master of the authorised boat;
 - (d) place of departure; and
 - (e) place of landing.

22. Nomination to land

- (1) The master of a primary boat must ensure that a nomination to land is made prior to landing crab.
- (2) A nomination made under subclause (1) must be made by the master of a primary boat –
 - (a) by the use of an approved ALC in accordance with the approved directions; and
 - (b) not less than 3 hours prior to landing crab.
- (3) Where a nomination to land is made under subclause (1), the master of a primary boat must specify –
 - (a) the Fishery in which the crab will be landed;
 - (b) the place of landing; and
 - (c) the estimated time at which the crab will be landed.
- (4) The master of an authorised boat must not commence landing crab –
 - (a) other than at the place specified; and
 - (b) at a time that is more than 1.5 hours after the time specified, in a nomination made under subclause (1).

23. Nomination to take a boat out of the waters of Western Australia

- (1) Where –
 - (a) an authorised boat is being used to fish in the Fishery under the authority of a licence; and
 - (b) a nomination in accordance with clause 21 is in effect for that boat, the master of the authorised boat must not allow that boat to be taken out of the waters of Western Australia unless a nomination to take that boat out of the waters of Western Australia has been made and is in effect.
- (2) A nomination made under subclause (1) must be made by the master of the primary boat –
 - (a) by the use of an approved ALC in accordance with the approved directions; and

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- (b) not less than 3 hours prior to the boat being taken out of the waters of Western Australia.

PART 8 – GENERAL REGULATION OF FISHING

24. Use of boats

- (1) The master of a primary boat must ensure that an auxiliary boat is not used to fish unless –
- (a) the auxiliary boat returns to the primary boat at least once a day; and
 - (b) the auxiliary boat unloads any catch to the primary boat during a fishing trip.
- (2) Subclause (1)(b) does not apply where a nomination to land has been made pursuant to clause 22 and an auxiliary boat is being used to land crab in accordance with that nomination.
- (3) A person must not fish in the Fishery other than by the use of no more than –
- (a) one primary boat; and
 - (b) three auxiliary boats, specified on a licence.

25. Restrictions on fishing by means of crab trap

- (1) A person fishing in the Fishery under the authority of a licence must not fish by any means other than by crab trap.
- (2) A person must not use a crab trap to fish for crabs in the Fishery unless that crab trap is –
- (a) a rectangular trap that –
 - (i) when measured externally does not exceed 1000 millimetres in length, 600 millimetres in width and 300 millimetres in height; and
 - (ii) is constructed with rigid mesh of not less than 50 millimetres by 75 millimetres in mesh size; and
 - (iii) has no more than 2 openings for crabs to enter the trap; or
 - (b) a round trap that –
 - (i) when measured externally does not exceed 500 millimetres in height and 1200 millimetres in diameter; and
 - (ii) is constructed with flexible nylon mesh of not less than 75 millimetres in mesh size; and
 - (iii) has no more than 4 openings for crabs to enter the trap; or
 - (c) a round trap that –
 - (i) when measured externally does not exceed 500 millimetres in height and 1200 millimetres in diameter; and

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- (ii) is constructed with flexible nylon mesh of not less than 50 millimetres in mesh size; and
 - (iii) has a minimum of 2 escape gaps of not less than 90 millimetres in diameter if of a circular design, or not less than 40 millimetres in height and 120 millimetres in width if of a rectangular design; and
 - (iv) has no more than 4 openings for crabs to enter the trap.
- (3) A person must not use a crab trap to fish for crabs in the Fishery unless that crab trap is attached to –
- (a) a surface float that is branded or stamped in legible characters with the licensed fishing boat number of the authorised boat that is being used to fish in the Fishery; or
 - (b) another crab trap, and a surface float as specified in paragraph (a) is attached at each end of the line of traps.
- (4) A person fishing in the Fishery under the authority of a licence must pull and empty every crab trap at least once in any 48 hour period.
- (5) Subject to subclause (6), the master of an authorised boat must not permit the number of crab traps being carried on that boat to be more than the current entitlement of the licence under which fishing is to be carried out.
- (6) Subclause (5) does not apply where the master of an authorised boat has reported lost crab traps via a nomination made in accordance with clause 26.

26. Requirement to report lost crab traps

- (1) The master of an authorised boat must report any lost or irretrievable crab traps –
- (a) by the use of an approved ALC to the Department, within 24 hours of concluding a fishing trip or prior to the commencement of the next fishing trip; and
 - (b) in the fishing return.
- (2) The master of an authorised boat must ensure that a report in the fishing return specifies –
- (a) the quantity and type of lost or irretrievable crab traps; and
 - (b) the last known location of the lost or irretrievable crab traps.
- (3) If any crab traps referred to in subclause (1) are subsequently found, the master of an authorised boat must report those crab traps to the Department –
- (a) by the use of an approved ALC; and
 - (b) in the fishing return.

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27. CEO may permit fishing by non-specified crab traps

(1) The CEO may, by notice published in the *Gazette*, permit persons fishing in the Fishery to fish by means of crab traps that would otherwise be prohibited by this plan, if, in the opinion of the CEO the use of those crab traps will have economic, environmental or social benefits for the Fishery.

(2) A notice made pursuant to subclause (1) –

- (a) must specify the crab traps that are permitted to be used in the Fishery;
- (b) must specify the period of time for which the notice is in effect;
- (c) may only be made after consultation with all licence holders who are entitled to fish in the Fishery; and
- (d) must take into account any advice received from the Department's Director Fisheries Science and Resource Assessment.

PART 9 – PROHIBITIONS AND OFFENCES

28. Persons prohibited from fishing in the Fishery

(1) A person must not fish in the Fishery other than –

- (a) in accordance with this plan; and
- (b) under the authority of a licence.

(2) Subclause (1) does not apply to a person fishing –

- (a) for crab for a non-commercial purpose in accordance with the Act; or
- (b) under the authority of Exemption Numbers 2856 and 2857; or
- (c) under the authority of an authorisation that authorises fishing in the –
 - (i) Broome Prawn Managed Fishery;
 - (ii) Kimberley Gillnet and Barramundi Managed Fishery;
 - (iii) Kimberley Prawn Managed Fishery; or
 - (iv) West Coast Deep Sea Crustacean Managed Fishery.

29. Prohibition on fishing for crab in an area of the Fishery

A person must not fish for crab at any time in the waters described in Schedule 4 of this plan.

30. Prohibition on possession of crab

(1) A person fishing in the Fishery under the authority of a licence must not –

- (a) be in possession of; or
- (b) consign,
blue swimmer crab of a length less than 135 millimetres.

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(2) A person who catches a blue swimmer crab of a length less than 135 millimetres in length must return that crab to the water immediately.

31. Prohibition on fishing under the authority of more than one licence

(1) A person must not fish in the Fishery under the authority of more than one licence at any one time.

(2) The master of an authorised boat must not commence fishing under the authority of a licence until all crab taken under the authority of another licence have been removed from the authorised boat.

32. Prohibition on selling or dealing with, or attempting to sell or deal with, or possessing, crab

(1) In this clause –

deal with includes handling, storing, transporting, weighing and recording;

otherwise dealt with includes handled, stored, transported, weighed and recorded.

(2) A person must not sell, purchase, or deal with, or attempt to sell, purchase or deal with, or be in possession of, any crab taken from the Fishery, landed or otherwise dealt with in contravention of this plan.

(3) A person must not sell, purchase, or deal with, or attempt to sell, purchase, or deal with, or be in possession of, any crab unless that crab was taken and landed by a person fishing under the authority of a licence.

33. Notice of closure of area of the Fishery

(1) The CEO may, by notice published in the Gazette prohibit fishing by any means in any part of the Fishery for the period specified in the notice if the CEO is of the opinion that –

- (a) the sustainability of fish stocks is at high risk; or
- (b) any threatened, endangered or protected species are at high risk due to fishing activities in the Fishery.

(2) A notice made in accordance with subclause (1) -

- (a) may only be made after consultation with all licence holders;
- (b) must take into account any advice received from the Department's Director Fisheries Science and Resource Assessment;
- (c) may apply at all times or for a specified period; and
- (d) revokes any previous notice made under subclause (1).

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(3) A person must not fish in any part of the Fishery at a time when fishing in that part of the Fishery has been prohibited by a notice made under subclause (1).

34. Offences

A person who contravenes clause 15, 20, 21, 22, 23, 24, 25(1), 25(2), 25(3), 25(4), 25(5), 26, 28(1), 29, 30, 31, 32(2), 32(3) or 33(3) commits an offence.

SCHEDULES

Schedule 1 Description of the Fishery

[clause 5]

All Western Australian waters off the northern coast of Western Australia east of 120° 00' east longitude.

Schedule 2 Fees

[clause 9]

The fee payable in respect of the grant or renewal of a licence may be paid in instalments consisting of –

- (a) the first instalment being 25% of the total fee and due for payment on or before 1 November;
- (b) the second instalment being 25% of the total fee and due for payment on or before 1 February following the day on which the first instalment is paid;
- (c) the third instalment being 50% of the total fee and due for payment on or before 1 May following the day on which the first instalment is paid.

Schedule 3 Unit Value

[clause 12]

The extent of the entitlement to fish for crab in the Fishery that arises from time to time from a unit (the unit value) is determined by the formula:

$$\frac{C}{N} = U$$

where

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C is the capacity of the Fishery;
 N is the total number of units of entitlement conferred by all the licences; and
 U is the unit value, rounded to 2 decimal places

Schedule 4 Closed areas

[clause 29]

- (1) All waters of the Fishery seaward of the coastal waters of the State.
- (2) All waters of the Fishery between 120° 00' east longitude and 123° 15' east longitude.
- (3) All waters of the Fishery south and east of a line commencing at the intersection of the high water mark and the geodesic between a point at 17° 19.65' south latitude and 123° 25.40' east longitude (on the mainland near Fraser River) and a point at 17° 02.14' south latitude and 123° 35.06' east longitude (on the mainland near Point Torment); thence extending north-easterly along the geodesic towards a point at 17° 02.14' south latitude and 123° 35.06' east longitude (on the mainland near Point Torment) until its intersection with the high water mark.
- (4) All waters of the Fishery including rivers, tidal creeks, tributaries and pools, south and west of a line commencing at the intersection of the high water mark and the geodesic between a point at 17° 00.70' south latitude and 123° 39.40' east longitude (on the mainland near Point Torment Creek) and a point at 17° 00.69' south latitude and 123° 39.70' east longitude; thence extending easterly along the geodesic to the intersection of 17° 00.69' south latitude and 123° 39.70' east longitude; thence extending south-easterly along the geodesic to the intersection of 17° 01.14' south latitude and 123° 40.47' east longitude; thence extending southerly along the geodesic towards a point at 17° 01.46' south latitude and 123° 40.48' east longitude until its intersection with the high water mark; and west of line commencing at the intersection of the high water mark and the geodesic between a point at 17° 02.40' south latitude and 123° 40.80' east longitude and a point at 17° 02.80' south latitude and 123° 40.70' east longitude; thence extending southerly along the geodesic towards a point at 17° 02.80' south latitude and 123° 40.70' east longitude until its intersection with the high water mark.
- (5) All waters of the Fishery including rivers, tidal creeks, tributaries and pools, within a radius of five (5) nautical miles of the intersection of 15° 40.30' south latitude and 124° 22.11' east longitude (on Parin Peninsula at Hall Point) and including all the waters of Deception Bay.
- (6) All waters of the Fishery including rivers, tidal creeks, tributaries and pools, south and west of a line commencing at the intersection of the high water mark and the geodesic between a point at 14° 27.45' south latitude and 125° 51.13' east longitude (on the

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mainland at Crystal Head) and a point at 14° 32.34' south latitude and 125° 55.47' east longitude (on the mainland); thence extending south-easterly along the geodesic towards a point at 14° 32.34' south latitude and 125° 55.47' east longitude (on the mainland) until its intersection with the high water mark.

- (7) All waters of the Fishery including rivers, tidal creeks, tributaries and pools, south and east of a line commencing at the intersection of the high water mark and the geodesic between a point at 14° 00.04' south latitude and 126° 41.65' east longitude (on the mainland at Red Bluff) and a point at 14° 08.47' south latitude and 126° 34.10' east longitude (on the mainland at King Harman Point); thence extending south-westerly along the geodesic towards a point at 14° 08.47' south latitude and 126° 34.10' east longitude (on the mainland at King Harman Point) until its intersection with the high water mark.
- (8) All waters of the Fishery including rivers, tidal creeks, tributaries and pools, upstream of a line commencing at the intersection of the high water mark and the geodesic between a point at 15° 10.05' south latitude and 128° 05.93' east longitude (on the mainland at Lyne Point) and a point at 15° 09.41' south latitude and 128° 07.64' east longitude (on Adolphus Island at Rees Point); thence extending easterly along the geodesic towards a point at 15° 09.41' south latitude and 128° 07.64' east longitude (on Adolphus Island at Rees Point) until its intersection with the high water mark; thence generally easterly along the high water mark until its intersection with the parallel between a point at 15° 11.65' south latitude and 128° 11.85' east longitude (on Adolphus Island at Scott Point) and a point at 15° 11.65' south latitude and 128° 13.30' east longitude (on the mainland); thence extending due east along the parallel towards a point at 15° 11.65' south latitude and 128° 13.30' east longitude (on the mainland) until its intersection with the high water mark.

Dated 18 of October 2018

Minister for Fisheries

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