

NORTHERN TERRITORY OF AUSTRALIA
MUD CRAB FISHERY MANAGEMENT PLAN AMENDMENT 2010

Subordinate Legislation No. 9 of 2010

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Schedule



NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 9 of 2010*

Mud Crab Fishery Management Plan Amendment 2010

I, Konstantine Vatskalis, Minister for Primary Industry, Fisheries and Resources, under section 25A of the *Fisheries Act*, approve the following amendments to the *Mud Crab Fishery Management Plan*.

Dated 16 June 2010

K. VATSKALIS
Minister for Primary Industry, Fisheries and Resources

* Notified in the *Northern Territory Government Gazette* on 30 June 2010.

1 Citation

This instrument may be cited as the *Mud Crab Fishery Management Plan Amendment 2010*.

2 Commencement

This instrument commences on 1 July 2010.

3 Principal Plan amended

This instrument amends the *Mud Crab Fishery Management Plan*.

4 Amendment of clause 6 (Definitions)

(1) Clause 6, definition ***prescribed offence***

omit

(2) Clause 6

insert (in alphabetical order)

excess pot means any pot in excess of the permitted number of pots.

permitted number, of pots, means the number of pots the licensee is permitted to use under the units of entitlement currently held by the licensee.

prescribed offence means an offence against a provision of this Plan that specifies that a contravention of the provision is a prescribed offence.

unit of entitlement, in relation to pots, means an entitlement to use 30 complying pots.

5 Amendment of clause 10 (Complying float for complying pot)

Clause 10(1)(b)(i)

omit, substitute

- (i) if the pot to which it is attached is used as part of a unit of entitlement – with the unit of entitlement number in Arabic numerals and no other number; or

6 Amendment of Part 4, Division 1 heading

Part 4, Division 1, heading, after "**Licensing**"

insert

, units of entitlement

7 Amendment of clause 14 (Number of licences)

(1) Clause 14, heading

omit, substitute

14 Limitations on licences

(2) After clause 14(2)

insert

(3) It is a condition of each licence that the licensee must not take mud crabs under the licence if less than 2 units of entitlement are attached to the licence at the time.

Example for subclause (3)

Under clause 14B, a licensee can transfer one or both of the units of entitlement that are attached to the licence. If one unit is transferred, the licensee must not fish for mud crabs under the licence until the transferred unit reverts to the licensee or the licensee takes a transfer of another unit from another licensee.

8 New clauses 14A to 14C

After clause 14

insert

14A Unit of entitlement

Subject to a transfer of a unit of entitlement under clause 14B, 2 units of entitlement attach to each licence.

14B Transfer of units

- (1) A unit of entitlement is transferable, but only to a person who holds a licence (including a licence held under a temporary transfer).
- (2) A transfer must be for a period not less than 30 days.
- (3) An application for transfer must be made to the Director in the approved form.

-
- (4) A transfer is not effective until the Director has approved the transfer in writing.

14C Termination of transfer

A transfer of a unit of entitlement terminates on the earlier of the following:

- (a) the date shown on the application for transfer as the expiry date of the transfer;
- (b) the date on which the transferee ceases to hold a licence;
- (c) the end of the financial year in which the transfer took effect.

9 Amendment of clause 18 (Mud crab less than minimum size not to be taken)

- (1) Clause 18

omit

A licensee

substitute

- (1) A licensee

- (2) Clause 18(1), penalty provision

omit

Penalty:

substitute

Maximum penalty:

- (3) After clause 18(1)

insert

- (2) A contravention of subclause (1) is a prescribed offence.

10 Amendment of clause 19 (Commercially unsuitable mud crab not to be taken)

(1) Clause 19

omit

A licensee

substitute

(1) A licensee

(2) Clause 19(1), penalty provision

omit

Penalty:

substitute

Maximum penalty:

(3) After clause 19(1)

insert

(2) A contravention of subclause (1) is a prescribed offence.

11 Repeal and substitution of clause 26

Clause 26

repeal, substitute

26 Permitted number of pots

(1) A licensee must not use more than the permitted number of pots to fish for mud crabs.

Maximum penalty: For a contravention involving the use of not more than 10 excess pots – \$5 000.

For a contravention involving the use of more than 10 excess pots – \$20 000 plus \$500 for each excess pot.

Examples for subclause (1)

If a person is found guilty of overpotting, the maximum penalty is as follows:

(a) for 10 excess pots – \$5 000;

(b) for 11 excess pots – \$20 500;

(c) for 12 excess pots – \$21 000.

- (2) A contravention of subclause (1) involving more than 10 excess pots is a prescribed offence.

12 Amendment of clause 27 (Abandoning pot in water)

- (1) Clause 27(1), penalty provision

omit, substitute

Maximum penalty: \$5 000.

- (2) Clause 27(2)

omit

24 hours

substitute

48 hours

13 Repeal and substitution of clause 28

Clause 28

repeal, substitute

28 Limit on number of pots in possession

- (1) A licensee must not have possession of more than the permitted number of pots while fishing for mud crabs.

Maximum penalty: \$5 000.

- (2) However, a licensee does not commit an offence against subclause (1) only because the licensee has possession of:

(a) excess pots at the licensee's permanent residence; or

(b) not more than 30 excess pots in total, either at the licensee's nominated place or in transit, by the most practicable direct route, between the licensee's permanent residence and the licensee's nominated place.

14 Amendment of clause 31 (Prohibition on use of fishing gear – fishing for bait)

(1) Clause 31(2), penalty provision

omit, substitute

Maximum penalty: \$5 000.

(2) After clause 31(2)

insert

(3) A contravention of subclause (1), involving the use of a gill net, is a prescribed offence.

15 Repeal and substitution of clause 35

Clause 35

repeal, substitute

35 Application of Division

(1) This Division applies if an approved person:

(a) has been found guilty (whether before or after 1 July 2010) of a prescribed offence (the **first offence**); and

(b) subject to subclause (3), is found guilty of another prescribed offence (whether or not of the same type of offence as the first offence) (the **later offence**) committed:

(i) after 1 July 2010; and

(ii) within 5 years after being found guilty of the first offence.

(2) For subclause (1)(a), a prescribed offence includes an offence that, under this Plan as in force on 30 June 2010, was a prescribed offence.

(3) The later offence must be disregarded for subclause (1)(b) if:

(a) the first offence is an offence against clause 19; and

(b) the later offence is an offence against clause 19 that is committed more than 3 years after being found guilty of the first offence.

16 Amendment of clause 36 (Director to revoke or refuse approval)

Clause 36(2)

omit

the person's commission of the later offence

substitute

the revocation under subclause (1)

17 New Part 8

After clause 44

insert

Part 8 Transitional matters for Mud Crab Fishery Management Plan Amendment 2010

45 Prescribed offences

- (1) This clause applies if an approved person:
- (a) was found guilty before 1 July 2010 of a prescribed offence (the **first offence**); and
 - (b) is found guilty after 1 July 2010 of another prescribed offence (whether or not of the same type of offence as the first offence) (the **later offence**) committed:
 - (i) before 1 July 2010; and
 - (ii) within 2 years after being found guilty of the first offence.
- (2) Clauses 35 and 36 continue to apply as if this Plan had not been amended by the 2010 amending plan.
- (3) In this clause:

2010 amending plan means the *Mud Crab Fishery Management Plan Amendment 2010*.

prescribed offence means an offence that, under this Plan as in force immediately before the commencement of the 2010 amending plan, was a prescribed offence.

18 Further amendments

The Schedule has effect.

Schedule

clause 18

Provision	Amendment	
	<i>omit</i>	<i>substitute</i>
clauses 12, 13(1), 17, 21(1) and (2), 22, 23(1) and 24(1)	Penalty:	Maximum penalty:
clause 24(6)	whole penalty provision	Maximum penalty: \$5 000
clauses 25, 29(2), (3) and (4), 30, 32, 33(2), (3) and (4) and 34(1)	Penalty:	Maximum penalty:
clause 34(6)	whole penalty provision	Maximum penalty: \$5 000
clauses 38(1), 39, 41 and 42(1)	Penalty:	Maximum penalty: