FD 4356/17 [1352]
Made by the Minister under section 54.

1. Citation
This instrument is the West Coast Deep Sea Crustacean Managed Fishery Management Plan Amendment 2018.

2. Management plan amended
The amendments in this instrument are to the West Coast Deep Sea Crustacean Managed Fishery Management Plan 2012.

3. Clause 3 amended
In clause 3 delete the definitions “unit” and “unit value” and insert—

unit means a class A, class B, or class C unit;
unit value means the value of a unit in kilograms, as determined in accordance with Schedule 3;

4. Clause 12 amended
In clause 12, delete paragraphs (j), (k), and (l), and insert—

(j) the amount of crystal crab, champagne crab and giant crab (in kilograms) that may be taken under the authority of a licence;

(k) any conditions imposed on the licence by the CEO.

5. Clause 16 amended
In clause 16, delete subclauses (5) to (11) [inclusive] and insert—

(5) The master of an authorised boat must not allow any crystal crab to be on board the boat at any time when the value of the current entitlement of class A units conferred by the licence is less than the total quantity of crystal crab taken or landed from the waters of the Fishery under the authority of that licence.

(6) The master of an authorised boat must not allow any champagne crab to be on board the boat at any time when the value of the current entitlement of class B units conferred by the licence is less than the total quantity of champagne crab taken or landed from the waters of the Fishery under the authority of that licence.

(7) The master of an authorised boat must not allow any giant crab to be on board the boat at any time when the value of the current entitlement of class C units conferred by the licence is less than the total quantity of giant crab taken or landed from the waters of the Fishery under the authority of that licence.

(8) The master of an authorised boat, when that boat is being used in the Fishery, must not allow any fish to be on board that boat other than crustaceans, bycatch, or baitfish.

(9) Subclause (8) does not apply in respect of finfish for which proof of purchase can be immediately provided.

(10) The master of an authorised boat, when that boat is being used in the Fishery, must not allow any fish to be on board that boat other than whole fish.

(11) The master of an authorised boat must not allow any package, container or receptacle of crustaceans or bycatch landed from that boat to contain more than one species of crustacean or bycatch.

(12) The master of an authorised boat must ensure that any scampi or white tailed bug brought on board the boat in the waters of the Fishery east of 126° 58′ east longitude are returned to the water—

(a) within 5 minutes of being brought onto the boat; and

(b) before any other fish trap is pulled.

6. Clause 17 replaced
Delete clause 17 and insert—

17. Capacity of the Fishery
(1) The maximum quantity of crystal crab that may be taken from the Fishery during any licence period is 154,000 kilograms.

(2) The maximum quantity of champagne crab that may be taken from the Fishery during any licence period is 20,020 kilograms.

(3) The maximum quantity of giant crab that may be taken from the Fishery during any licence period is 980 kilograms.
(4) For the purposes of section 59(3) of the Act, before determining a new capacity for crystal crab, champagne crab or giant crab, the Minister—

(a) must take into account advice from the Department’s Director Fisheries Science and Resource Assessment;
(b) must consult all the licence holders who are authorised to fish in the Fishery; and
(c) may consult with any other person, as the Minister considers appropriate.

PART 7—SCHEME OF ENTITLEMENT

18. Conferral of units of entitlement

(1) The entitlement to fish for crystal crab in the Fishery under the authority of a licence will be expressed as a number of class A units conferring an entitlement to take an amount of crystal crab from the waters of the Fishery.

(2) The entitlement to fish for champagne crab under the authority of a licence is to be expressed as a number of class B units conferring an entitlement to take an amount of champagne crab from the waters of the Fishery.

(3) The entitlement to fish for giant crab under the authority of a licence is to be expressed as a number of class C units conferring an entitlement to take an amount of giant crab from the waters of the Fishery.

(4) On 1 January of any year the number of class A units to be conferred by a licence as the usual entitlement of class A units is to be equal to the usual entitlement of class A units conferred by the licence at the close of business on 31 December of the preceding year.

(5) The number of class B units conferred by a licence as the usual entitlement of class B units—

(a) on 1 January 2019, is 200 units; and
(b) on 1 January in any subsequent year, is to be equal to the usual entitlement of class B units conferred by the licence at the close of business on 31 December of the preceding year.

(6) The number of class C units conferred by a licence as the usual entitlement of class C units—

(a) on 1 January 2019, is 20 units; and
(b) on 1 January in any subsequent year, shall be equal to the usual entitlement of class C units conferred by the licence at the close of business on 31 December of the preceding year.

19. Initial conferral of entitlement

(1) Where a licence is granted in accordance with clause 10 the licence shall, at the time it is granted, confer—

(a) in the case of a licence conferring entitlement for Class A units, usual units of entitlement for Class A units conferred by the relevant authorisation at the date of gazettal of this plan; and
(b) in the case of a licence conferring entitlement for Class B units, usual units of entitlement for Class B units conferred by the relevant authorisation at the date of gazettal of this plan.

(2) In this clause—

relevant authorisation means an interim managed fishery permit issued in accordance with the West Coast Deep Sea Crustacean Fishery (Interim) Management Plan 2007 and which is held by the person to be granted a licence.

20. Unit value

(1) The sum of the entitlements to fish for crystal crab, champagne crab or giant crab, as the case may be, that may be conferred by all the licences conferring an entitlement to fish for crystal crab, champagne crab, or giant crab respectively, is to be equal to the respective capacity for crystal crab, champagne crab or giant crab, as specified in clause 17(1), 17(2) or 17(3).

(2) The extent of the entitlement to fish in the Fishery that arises from a unit (the unit value) will be determined in accordance with subclauses (3) and (4) and is limited by reference to a number of kilograms.

(3) Subject to subclause (4), the unit value of—

(a) a class A unit is 22 kilograms of crystal crab;
(b) a class B unit is 14.3 kilograms of champagne crab;
(c) a class C unit is 7 kilograms of giant crab.

(4) If, at any time, the capacity of the Fishery is amended, the unit value will be amended in accordance with Schedule 3.

(5) Where—

(a) a licence is not renewed within the period specified in section 139 of the Act; or
(b) a licence is cancelled; or
(c) the entitlement of a licence is reduced under section 76 of the Act,
and the total number of a class of unit is consequently reduced, the unit value for that class of unit, for the remainder of the relevant licence period, is to be determined in accordance with Schedule 3.

(6) The holder of a licence, or a person acting on that person’s behalf, must not fish in the Fishery at any time when the amount of crystal crab taken from the Fishery is equal to or greater than the value of the current entitlement conferred by that licence, with respect to crystal crab.

(7) The holder of a licence, or a person acting on that person’s behalf, must not fish in the Fishery at any time when the amount of champagne crab taken from the Fishery is equal to or greater than the value of the current entitlement conferred by that licence, with respect to champagne crab.

(8) The holder of a licence, or a person acting on that person’s behalf, must not fish in the Fishery at any time when the amount of giant crab taken from the Fishery is equal to or greater than the value of the current entitlement conferred by that licence, with respect to giant crab.

21. Defence to section 74 in respect of contravening clause 20(6)
(1) It is a defence for an offence against section 74 of the Act in respect of a contravention of clause 20(6), 20(7) or 20(8) for a person to prove that—
   (a) notice of fishing in excess of the value of the entitlement was given to the CEO, in a manner and in a form approved by the CEO, before the crystal crab, champagne crab or giant crab, as the case may be, was processed or moved from the place where the approved processor weighed the crystal crab, champagne crab or giant crab, whichever is the earlier; and
   (b) the amount of crystal crab, champagne crab or giant crab by which the entitlement under the licence was exceeded is not more than—
      (i) 100 kilograms of crystal crab; or
      (ii) 75 kilograms of champagne crab; or
      (iii) 20 kilograms of giant crab, and
   (c) the licence holder, not more than 21 days after taking the crystal crab, champagne crab or giant crab, paid to the Fisheries Research and Development Fund an amount of money equal to the product of the number of kilograms by which the entitlement was exceeded and the prescribed value (per unit weight) for crystal crab, champagne crab or giant crab respectively, as set out in Schedule 9 to the regulations.

22. Grounds for refusal to transfer part of an entitlement
The CEO may refuse to transfer part of an entitlement from one licence to another licence on the grounds that—
   (a) the proposed transfer is not for a whole number of units;
   (b) the value of the current entitlement of class A, class B or class C units conferred by the licence from which the units are to be transferred would, after the transfer, be less than the amount of crystal crab, champagne crab or giant crab respectively already taken under the authority of the licence during the period for which the licence has been granted or renewed;
   (c) if the transfer were given effect the usual entitlement conferred by the licence from which the units are transferred would be less than one unit;
   (d) the total fee has not been paid in respect of the licence from which the units are to be transferred; or
   (e) the CEO is of the opinion that the holder of the licence (from which the units are to be transferred) may be liable to prosecution for an offence which has been prescribed for the purposes of section 224 of the Act.

23. Temporary transfer of 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 value of the current entitlement of class A, class B or class C units that would be conferred by the licence after the transfer would not be less than the total amount of crystal crab, champagne crab or giant crab respectively already taken under the authority of the licence during the period for which the licence has been granted or renewed;
   (b) the transfer is for a whole number of units; and
   (c) the total fee has been paid in respect of the licence from which the units are to be temporarily transferred.

8. Clause 28 amended
In clause 28, delete “ 16(5), 16(9) and 20(6) if,” and insert—
16(5), 16(6) and 16(7) if,

9. Clause 30 amended
In clause 30, delete “ 20(11), 20(12) ” and insert—
10. Schedule 2 amended

Insert in the correct alphabetical place—

Cervantes
All waters bounded by a line commencing at 30° 29.458′ south latitude and 115° 04.218′ east longitude; then extending north-westerly along the geodesic to a point at 30° 29.28′ south latitude and 115° 03.906′ east longitude; then south-westerly along the geodesic to a point at 30° 30.08′ south latitude and 115° 03.18′ east longitude; then due east along the parallel to a point at 30° 30.08′ south latitude and 115° 03.65′ east longitude until its intersection with the high water mark; then north-easterly along the high water mark to the commencement point.

Eastport Canals (Wannanup)
All waters bounded by a line commencing at 32° 36.588′ south latitude and 115° 38.914′ east longitude; then extending north-easterly along the high water mark to a point at 32° 36.504′ south latitude and 115° 38.961′ east longitude; then north-westerly along the geodesic to a point at 32° 36.477′ south latitude and 115° 38.916′ east longitude; then north-westerly along the high water mark to a point at 32° 36.372′ south latitude and 115° 38.703′ east longitude; then due west along the parallel to a point at 32° 36.372′ south latitude and 115° 38.67′ east longitude; then generally south-easterly along the high water mark within the canals to a point at 32° 36.559′ south latitude and 115° 38.868′ east longitude; then south-easterly along the geodesic to the commencement point.

Hillarys Boat Harbour
All waters bounded by a line commencing at 31° 49.442′ south latitude and 115° 44.34′ east longitude; then extending southerly, then westerly along the high water mark within the harbour to a point at 31° 49.432′ south latitude and 115° 43.919′ east longitude; then easterly along the geodesic to a point at 31° 49.419′ south latitude and 115° 44.012′ east longitude; then easterly along the geodesic to the commencement point.

Lancelin
All waters bounded by a line commencing at 31° 00.323′ south latitude and 115° 19.185′ east longitude; then southerly along the geodesic to a point at 31° 00.414′ south latitude and 115° 19.185′ east longitude; then southerly along the geodesic to a point at 31° 01.445′ south latitude and 115° 19.74′ east longitude until its intersection with the high water mark; then generally northerly along the high water mark to the commencement point.

Mandurah Ocean Marina
All waters bounded by a line commencing at 32° 31.504′ south latitude and 115° 42.725′ east longitude; then extending easterly, then northerly along the high water mark within the marina to a point at 32° 31.357′ south latitude and 115° 42.813′ east longitude; then southerly along the geodesic to a point at 32° 31.515′ south latitude and 115° 42.871′ east longitude; then westerly along the high water mark to a point at 32° 31.529′ south latitude and 115° 42.815′ east longitude; then westerly along the geodesic to a point at 32° 31.537′ south latitude and 115° 42.791′ east longitude; then westerly along the high water mark to a point at 32° 31.557′ south latitude and 115° 42.747′ east longitude; then generally northerly along the geodesic to the commencement point.

Mindarie Keys Marina
All waters bounded by a line commencing at 31° 41.431′ south latitude and 115° 42.116′ east longitude; then extending southerly, then north-westerly along the high water mark within the marina to a point at 31° 41.345′ south latitude and 115° 41.862′ east longitude; then southerly along the geodesic to a point at 31° 41.388′ south latitude and 115° 41.951′ east longitude; then generally northerly along the geodesic to the commencement point.

Port Geographe Marina
All waters bounded by a line commencing at 33° 37.88′ south latitude and 115° 23.694′ east longitude; then extending northerly, then easterly along the high water mark within the marina to a point at 33° 37.871′ south latitude and 115° 23.747′ east longitude; then northerly along the geodesic to a point at 33° 37.858′ south latitude and 115° 23.751′ east longitude; then generally westerly along the high water mark to a point at 33° 37.839′ south latitude and 115° 23.35′ east longitude; then north-westerly along the geodesic to a point at 33° 37.815′ south latitude and 115° 23.285′ east longitude; then generally southerly along the high water mark to a point at 33° 37.932′ south latitude and 115° 23.393′ east longitude; then westerly along the geodesic to a point at 33° 37.927′ south latitude and 115° 23.673′ east longitude; then north-easterly along the geodesic to the commencement point.

Safety Bay
All waters bounded by a line commencing at 32° 18.237′ south latitude and 115° 42.10′ east longitude; then extending due south along the meridian to a point at 32° 18.58′ south latitude and 115° 42.10′ east longitude; then due east along the parallel to a point at 32° 18.58′ south latitude and 115° 42.907′ east longitude; then northerly along the geodesic to a point at 32° 18.318′ south latitude and 115° 42.727′ east longitude until it intersects with the high water mark; then westerly along the high water mark to the commencement point.

Two Rocks Marina
All waters bounded by a line commencing at 31° 29.684′ south latitude and 115° 34.787′ east longitude; then extending generally south-easterly, then westerly, then northerly along the high water mark within the marina to a point at 31° 29.706′ south latitude and 115° 34.826′ east longitude; then north-westerly along the geodesic to the commencement point.

11. Schedule 3 replaced
Delete Schedule 3 and insert—

SCHEDULE 3

Unit value

The extent of the entitlement to fish in the Fishery that arises from a unit will be determined using the following formula—

\[
\left( \frac{C}{N} \right) = U
\]

Where—

- C is the relevant capacity for a class of unit, as specified in clause 17(1), 17(2) or 17(3);
- N is the sum of all of the units, pertaining to the respective capacity, as conferred by all the licences at the commencement of the relevant licence period;
- U is the value of a unit, rounded to two decimal places.

Dated: 28 October 2018.

D. KELLY, Minister for Fisheries.