North-west Marine Parks Network Management Plan 2018

Section 4.2.3

**CLASS APPROVAL – COMMERCIAL FISHING**

**[EXAMPLE FOR CONSULTATION – 2023]**

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| **Approved Persons** | Persons authorised to take Approved Actions in accordance with a fishing concession or licence under the *Fisheries Management Act 1991* or state fisheries legislation, including employees, servants, agents and contractors of the relevant concession or licence holder. |
| **Approved Actions** | Commercial fishing activities within the North-west Marine Parks Network using Approved Fishing Methods within Approved Zones, by Approved Persons, in accordance with the Conditions of Approval. |
| **Approved Fishing Methods within Approved Zones** | * **Dropline** - in any Special Purpose Zone (Trawl), Multiple Use Zone and Habitat Protection Zone only.
* **Hand collection** (including hookah, scuba and snorkel) - in any Special Purpose Zone (Trawl), Multiple Use Zone and Habitat Protection Zone only.
* **Hand net** (hand, barrier, skimmer, cast, scoop, drag, lift) - in any Special Purpose Zone (Trawl), Multiple Use Zone and Habitat Protection Zone only.
* **Longline** (pelagic) - in any Special Purpose Zone (Trawl), Multiple Use Zone and Habitat Protection Zone only.
* **Minor line** (handline, rod & reel, trolling, squid jig, poling) - in any Special Purpose Zone (Trawl), Multiple Use Zone and Habitat Protection Zone only.
* **Purse seine** - in any Special Purpose Zone (Trawl), Multiple Use Zone and Habitat Protection Zone only.
* **Trap, pot** - in any Special Purpose Zone (Trawl) and Multiple Use Zone only.
* **Trawl** (demersal) - in any Special Purpose Zone (Trawl) only.
* **Trawl** (midwater) - in any Special Purpose Zone (Trawl) only.
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| **Excluded Fishing Methods** | * **Longline (demersal, auto-longline)**
* **Net (demersal)**
* **Net (pelagic)**
* **Trotline**
* Any fishing method not included in the Approved Fishing Methods (above) is excluded from this Class Approval.
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| **Conditions of Approval** | 1. The Approved Actionsmust be conducted in accordance with:
2. the EPBC Act 1999;
3. the EPBC Regulations 2000;
4. the North-west Network Management Plan;
5. any prohibitions, restrictions or determinations made under the EPBC Regulations by the Director of National Parks;
6. *Fisheries Management Act 1991* and/or state fisheries legislation (to the extent those laws are capable of operating concurrently with the laws and instruments described in paragraphs (a) to (d)) including fishery management plans and the requirements of individual fishing concessions or licences; and
7. all other applicable Commonwealth and state laws (to the extent those laws are capable of operating concurrently with the laws and instruments described in paragraphs (a) to (e)).
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| 2. All employees, servants, agents and contractors having operational control of a vessel in the conduct of the Approved Actions must be informed of these Conditions of Approval before taking part in the Approved Actions. |
| 3. A copy of this Class Approval (hard or electronic copy) must be kept on board each vessel used in the conduct of the Approved Actions and must be produced for inspection on request by an Authorised Officer. |
| 4. A navigational chart showing the boundaries of the Approved Zones in which the Approved Actions are being conducted, must be kept or be otherwise accessible on board the vessel.  |
| 5. On request of the Director of National Parks, an Approved Person must make available, within 21 days of receipt of that request, information regarding:1. the total number of days in which the Approved Actions were conducted during a specified period in each Marine Park and zone; and
2. the species caught and the total quantity of each species caught during a specified period in each Marine Park and zone.

***Note:*** *This condition will be satisfied where existing catch log and fishing effort information is available to the Director of National Parks from the Australian Fisheries Management Authority or state fisheries agencies.*  |
| 6. An Approved Person must ensure that an Approved Vessel Monitoring System (VMS) is fitted and operating effectively in a manner approved by the Director of National Parks at all times.***Note*:** *This condition is satisfied where a VMS is fitted and operating in accordance with the Australian Fisheries Management Authority or the relevant state Fisheries Management Agency’s requirements. In the circumstance where a state Fisheries Management Agency does not have VMS requirements, the Australian Fisheries Management Authority standards and requirements are adopted by the Director.****Reason: [Note, this section is provided for clarity during consultation and will not be included in the final class approval]****An approved VMS unit provides assurance the vessel’s data is capable of being hosted by the VMS management software. Ensuring the VMS unit is fitted according to standards and operating effectively is essential for accurate position information and tracking.*  |
|  | 7. If the Vessel Monitoring System Unit stops operating or malfunctions in the Network, the Approved Person must stop fishing immediately, stow and secure fishing gear, and ensure that the Director of National Parks is informed as soon as possible after the Approved Person becomes aware that the Vessel Monitoring System has stopped operating.***Note:*** *There is no requirement to notify the Director of National Parks where the Director has entered into an agreement with the Australian Fisheries Management Authority or relevant state Fisheries Management Agency agencies for sharing VMS data. Where manual reporting has been approved (Condition 8 below), the vessel may continue fishing. If manual reporting has not been approved the vessel must leave the Network directly.****Reason: [Note, this section is provided for clarity during consultation and will not be included in the final class approval]****If a VMS stops operating effectively, Condition 6 is not met, meaning**approval is not granted to be in the Network under this class approval. Notification is required to avoid potential enforcement action. This Condition makes it clear that fishing must stop immediately, with all fishing gear stowed, unless Condition 8 applies.* |
|  | 8. If a Vessel Monitoring System Unit stops operating or malfunctions in the Network, the Director of National Parks may authorise the Approved Person to manually report the vessel’s position, course and speed at periods as deemed appropriate. Where an Approved Person has been authorised to manually report, the vessel can continue fishing in the Network, subject this Class Approval.***Note****:* *This condition is met where the Australian Fisheries Management Authority or the relevant state Fisheries Management Agency has approved manual reporting. The Director of National Parks will not authorise manual reporting if a request has been denied by the Australian Fisheries Management Authority or a state Fisheries Management Agency.* *Where a state Fisheries Management Agency does not have applicable manual reporting requirements, an Approved Person must contact the Director of National Parks for authorisation. The Director of National Parks will apply the Australian Fisheries Management Authority guidelines in allowing manual reporting.****Reason: [Note, this section is provided for clarity during consultation and will not be included in the final class approval]****It is acknowledged that a VMS Unit can malfunction whilst at sea. The Australian Fisheries Management Authority and state Fisheries Management Agencies may allow for manual reporting and fishing to continue in certain cases, subject to application by the Approved Person and authorisation.*  |
|  | 9. An Approved Person must provide access to and make available Vessel Monitoring System data whilst in the Network to the Director of National Parks.***Note:*** *An Approved Person consents to provide VMS data by entering the Network. This condition is satisfied if VMS data is available in ‘real-time’ to the Director of National Parks from the Australian Fisheries Management Authority or relevant state Fisheries Management Agency. Where VMS data is not available through a state Fisheries Management Agency, a signed vessel tracking authorisation is required by the Director of National Parks before entering the Network.****Reason: [Note, this section is provided for clarity during consultation and will not be included in the final class approval]****The purpose of VMS is to accurately track all commercial fishing vessels in the Network to ensure compliance with marine park rules and ensure the Director of National Parks fulfils its statutory obligations. Vessel tracking authorisation is the mechanism to ensure VMS data is available to the Director of National Parks.* |
|  | 10. All gear and/or equipment lost in the Network must be reported to the Director of National Parks within 24 hours after the loss occurs. The report must include approximate location, time and description of what was lost. |

**Commercial fishers in the Network need to be aware of the following North-west Network Management Plan and Director Determination requirements:**

1. Anchoring is allowed in all zones except National Park Zones and Sanctuary Zones (Section 4.2.3.9 of the North-west Network Management Plan).
2. Transiting is allowed in all zones except Sanctuary Zones (Section 4.2.3.8 of the North-west Network Management Plan).

2A. Transiting vessels must have Vessel Monitoring Systems installed and effectively operating. Vessel Monitoring System data must also be available to the Director of National Parks, consistent with the Conditions of Approval, 6 to 9 above (by Determination made by the Director of National Parks).

***Reason: [Note, this section is provided for clarity during consultation and will not be included in the final class approval]***

*Marine parks apply zoning to manage different uses. Some zones allow for fishing, while others do not. The Director of National Parks must know that transiting vessels are not fishing in places they are not approved to do. The North-west Network Management Plan and Director Determinations have specific transiting requirements for commercial fishing vessels (Requirements 1,2,3 and 4), including speed, gear stowage and anchoring. Access to real-time VMS data ensures compliance with these rules and supports enforcement.*

1. Vessels transiting National Park Zones must travel at a speed greater than 5 knots (by Determination made by the Director of National Parks).
2. Fishing gear must be kept stowed and secured at all times during transit through, or while stopping and anchoring in, a zone in which the fishing method is not an Approved Fishing Method for that zone (Section 4.2.3.10 of the North-west Network Management Plan).
3. Fish may only be processed or transhipped within zones in which the fishing method for the taking of that fish is authorised by this Class Approval, unless alternative arrangements are individually authorised by the Director of National Parks (by Determination made by the Director of National Parks).

The Director of National Parks may vary, suspend or cancel this Class Approval at any time, in accordance with Section 4.4.2 of the North-west Network Management Plan.

Contravention of this Class Approval may result in the imposition of civil or criminal penalties and/or the removal of a person or persons from this Approval.

Incidents should be reported immediately to the **24-hour Marine Compliance Duty Officer on 0419 293 465**. For all other enquiries relating to this Class Approval, please contact: marineparks@environment.gov.au

*This Class Approval will come into effect on XX XX XXXX and remain in effect for the term of the North‑west Network Management Plan unless suspended or cancelled sooner by the Director of National Parks.*

***Interpretation***

In the approval and these conditions:

1. **Approved Actions** means the actions described as Approved Actions in this Class Approval.
2. **Approved Fishing Methods:**

***Dropline*** means a line that is vertically set or suspended in the water column between a weight (normally in contact with the seabed) and a vessel or a buoy on the water surface. Baited hooks are attached to the mainline via smaller lines (branch-lines or snoods).

***Hand collection (including hookah, scuba and snorkel)*** means removing species from rocks, crevices, the seafloor or other benthic substrate by hand using dive hookah, self-contained underwater breathing apparatus (scuba) or snorkel.

***Hand net (hand, barrier, skimmer, cast, scoop, drag, lift)*** means a small mesh net that is operated by hand to trap fish including a hand net, barrier net, skimmer net, cast net, scoop net, drag net, lift net.

***Longline (pelagic)*** means a line that is horizontally set near the surface of the water and avoids contact with the seafloor. The main line has a vertical line attached at each end which is connected to buoys on the surface of the water. Baited hooks are attached to the main line via smaller lines (branch-lines or snoods). Buoys are generally used intermittently along the main line to help maintain buoyancy in the water column. The line may be left to drift in the water or anchored by vertical lines to the seafloor.

***Minor line (handline, rod & reel, trolling, squid jig, poling)*** means any line fishing with a small number of hooks, often just one (i.e. handline, rod and reel, squid jigging and pole fishing). Trolling is dragging a lure or baited hook behind a moving vessel and reeling it in (either by hand, reel or winches). Poling is dragging a lure or baited hook on a fixed length of line behind a vessel and flicking or gaffing the fish into the boat. Squid jigging involves vertical lines with several barbless lures being mechanically jigged up and down to attract squid.

***Purse seine*** means a semi-rectangular mesh net with floats along the top and a weighted line along the bottom. A vessel or buoy is used to anchor one end of the net while it is set around a fish aggregation in a circular pattern. The bottom of the net has a cable threaded through it which, when pulled, brings the bottom of the net together like a purse trapping the fish inside. The net is then pulled toward the vessel and the fish are either lifted or pumped on board the vessel.

***Trap, pot(s)*** are made in a variety of shapes and sizes from various materials. They are generally baited to attract fish or crustaceans through one or more entrances or openings. Traps and pots are set on the seafloor and connected to a vertical line with a buoy on the surface of the water.

***Trawl (demersal)*** means a cone-shaped mesh net towed through the water column on or near the seabed that may come into contact with the seabed during use. The net is held open horizontally by otter boards or trawl doors while towing. The bottom of the net opening generally has chains, rubber or steel bobbins and spacers threaded along its length to help reduce snagging by slightly lifting the net off the seafloor. The last section of the net is a cod end where the catch is retained. Long metal cables connect the net and boards to a vessel. The cable length and mesh size varies depending on the species being targeted (fish or prawns). These nets can be towed by one vessel in various configurations such as one or four nets.

***Trawl (midwater)*** means a cone-shaped mesh net towed through the water column that does not come into contact with the seabed at any stage during use. The net is held open horizontally by otter boards or trawl doors while towing. The bottom of the net opening is weighted. The last section of the net is a cod end where the catch is retained. Long metal cables connect the net and boards to a vessel. The cable length and mesh size varies depending on the species being targeted (fish or prawns). These nets can be towed by one vessel in various configurations, such as one or four nets. Note: for the purpose of this Class Approval, if the fishing gear contacts the seabed at any stage, the method will be deemed to be Trawl (demersal).

1. **Approved Person** means a person in the class of persons described as Approved Persons in this Class Approval.
2. **Approved Zones** means a Zone in which the Approved Actions are authorised by this Class Approval to be carried out.
3. **Authorised Officer** means a warden or an inspector under the EPBC Act.
4. **Commercial fishing** has themeaning given by section 390SC(1A) of the EPBC Act: a fishing activity that is engaged in for a commercial purpose, and, to avoid doubt, does not include an activity that constitutes recreational fishing.
5. **Director of National Parks** means Director of National Parks continuing under section 514A of the EPBC Actand includes any agency that succeeds to the functions of the Director of National Parks.
6. **EPBC Act** means the *Environment Protection and Biodiversity Conservation Act 1999* and includes any Act which amends or replaces the EPBC Act.
7. **EPBC Regulations** mean the *Environment Protection and Biodiversity Conservation Regulations 2000* (Cth) and includes any Regulations that amend or replace the EPBC Regulations.
8. **Excluded Fishing Methods:**

***Longline (demersal, auto-longline)*** means a line that is horizontally set along the seafloor between weights to maintain contact with the seafloor. The main line has a vertical line attached at each end which is connected to buoys on the water surface. Baited hooks are attached to the main line via smaller lines (branch-lines or snoods). An auto-longline is a longline where the hooks are baited by a machine rather than manually.

***Net (demersal)*** means a rectangular mesh net anchored to the seafloor with weights. The net may have small floats along the upper line to maintain its shape in the water. Each end has a vertical line that is connected to buoys on the surface of the water.

***Net (pelagic)*** means a rectangular mesh net set near the surface of the water that is not in contact with the seafloor. The net generally has floats along the upper line to maintain buoyancy. Each end is connected to a buoy on the surface of the water. The net can be left to drift or connected to a boat.

***Trotline*** means a line that is horizontally set along the seafloor, similar to a demersal longline. The main line has a vertical line attached at each end which is connected to buoys on the surface of the water. Baited hooks are attached to the main line via smaller lines (branch-lines or snoods). Buoys are used intermittently along the mainline to lift baited hooks away from the seafloor.

1. **Fishing** has the meaning given to that term in section 528 of the EPBC Act, being the same meaning as in the *Fisheries Management Act 1991*.
2. **Fishing concession or licence** means a Statutory Fishing Right, licence, Individual Transferable Quota, permit or other approval issued, under Commonwealth or state fisheries legislation, to a person allowing participation in a commercial fishery.
3. **North-west Marine Parks Network** or **Network** means collectively the Argo-Rowley Terrace, Ashmore Reef, Carnarvon Canyon, Cartier Island, Dampier, Eighty Mile Beach, Gascoyne, Kimberley, Mermaid Reef, Montebello, Ningaloo, Roebuck and Shark Bay Marine Parks established by, and described under, the *Environment Protection and Biodiversity Conservation (Commonwealth Marine Reserves) Proclamation 2013*.
4. **North-west Network Management Plan** means the North-west Marine Parks Network Management Plan 2018 made under section 370 of the EPBC Act.
5. **Speed** means the rate of travel of the vessel calculated in knots by (a) for each consecutive pair of points identified by the boat’s vessel monitoring system, identifying the shortest distance between the pair of points in a straight line; and (b) divide the distance by the time taken by the boat to travel between the two points.
6. **Stowed and Secured** means that all fishing apparatus, including nets and lines, are rendered inoperative in zones where fishing is not authorised, including that the apparatus is inboard the vessel and otherwise completely out of the water or as determined by the Director of National Parks.
7. **Transit or Transiting** means the continuous and expeditious passage through an area. However, passage includes stopping and anchoring, but only in so far as rendered necessary by force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress.
8. **Vessel** means a ship, boat, tender, raft or pontoon or any other thing capable of carrying persons or goods through or on water and includes a floating structure and hovercraft.
9. **Vessel Monitoring System** **(VMS)** means a system in which boats are fitted with an electronic device that can give information about the boats’ course or position, or other such information, being the same meaning as 167B(4) of the *Fisheries Management Act 1991*.

A ***VMS Unit***, also known as an automatic location communicator, is capable of transmitting information via a satellite communication system.

An ***Approved VMS*** means a VMS Unit in a class approved under s.9 of Part 1 of the *Fisheries Management Regulations 2019* or as approved by relevant state Fisheries Management Agencies.

***Operating effectively***, in relation to an Approved VMS, means sending a signal that is in a format that has been approved by AFMA or the relevant state Fisheries Management Agencies and accurately identifies the location of the boat to which the VMS is fitted.

***VMS data*** means any data (whether or not that data is also personal information, within the meaning of the *Privacy Act 1988)* that is, or was generated by, or transmitted by, or stored by the VMS equipment installed in compliance with a condition imposed under this class approval.

***Reason: [Note, this section is provided for clarity during consultation and will not be included in the final class approval]***

*Primary guidance to the Director of National Parks for VMS installation and operation is provided by AFMA. To ensure consistency with both Fisheries and VMS regulatory controls and to support this partnership arrangement, VMS nomenclature described by Commonwealth Fisheries Management legislation has been adopted by the Director of National Parks.*

1. **Zone** means a management zone established by, and described under, Section 3.1 of the North-west Network Management Plan.