

Prawn Net (Set Pocket) Determination Guidelines (No. 2) 2018

under the

Fisheries Management Act 1994

I, DARREN HALE, Acting Group Director, Commercial Fisheries & Aquaculture, with the delegated authority of the Secretary in pursuance of section 228(1) of the *Fisheries Management Act 1994* (“the Act”), and in pursuance of clauses 35H and 35I of the Appendix to the Fisheries Management (Estuary General Share Management Plan) Regulation 2006, issue these guidelines for the manner in which endorsement holders are to be notified of a preliminary determination and the manner in which priority for the use of prawn nets (set pocket) between endorsement holders is to be determined.

Dated this 20th day of December 2018

DARREN HALE,
Acting Group Director, Commercial Fisheries & Aquaculture,
DPI Fisheries,
Department of Primary Industries
(an office within the Department of Industry)

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1 Name of Guidelines

These Guidelines are the Prawn Net (Set Pocket) Determination Guidelines (No. 2) 2018.

2 Commencement

These Guidelines commence on the date on which they are made.

3 Definitions

(1) In these Guidelines:

allocation order means the order in which items identifying the votes cast by endorsement holders are drawn from the container in which they are placed for a priority determination ballot.

business day means a day other than a Saturday, Sunday or public holiday in New South Wales,

EG Plan means the Appendix to the Fisheries Management (Estuary General Share Management Plan) Regulation 2006.

day of the full moon means the day or days on which full moon will occur in a month, as published by the Bureau of Meteorology at www.bom.gov.au.

digital authority means the digital fishing business endorsement card available via the FisherMobile mobile app

estuary general fishery means the share management fishery of that name, as described in Schedule 1 of the *Fisheries Management Act 1994*.

fishing business means a fishing business that has any Estuary general – prawning shares – Regions 1-7 as a component.

fishing business card has the same meaning as in clause 202 of the Regulation.

fishing business owner means the owner of a fishing business.

fishing period means the period for which a preliminary determination has effect under clause 35H of the EG Plan.

nominated person means a person who has been nominated in writing by the fisheries officer for the waters to which the priority determination applies.

sunset means the time of day at which sunset will occur at the location specified in the priority determination, as calculated by the National Gazetteer of Australian and published by Geoscience Australia at www.ga.gov.au/geodesy/astro/sunrise.jsp.

the Act means the *Fisheries Management Act 1994*.

the Regulation means the *Fisheries Management (General) Regulation 2010*.

vote means each vote cast in a priority determination ballot on behalf of each fishing business as part of the fishing business' ballot allowance, pursuant to clause 35J of the EG Plan, identified by a ball, slip or other identifier.

- (2) Unless otherwise defined in this Instrument, words and expression that are defined in EG Plan and the Regulation have the same meaning in this Instrument.

Note: *ballot allowance, endorsement, endorsement holder, net site, preliminary determination, priority determination, priority determination ballot* and *relevant fishing business* are defined in the EG Plan. *Nominated fisher* is defined in the Regulation.

Note 2: Pursuant to section 11 of the *Interpretation Act 1987*, *Department* and *fisheries officer* have the meanings in the Act.

4 Prawn Net (Set Pocket) Determination Guidelines 2018

These Guidelines supersede the Prawn Net (Set Pocket) Determination Guidelines 2018 dated 26 October 2018. The Prawn Net (Set Pocket) Determination Guidelines 2018 have no effect.

5 Manner of notifying endorsement holders of a preliminary determination made under clause 35H

No later than 10am on the day before the priority determination is due to take place, a fisheries officer who makes a preliminary determination must notify all endorsement holders of that preliminary determination by posting a copy in a conspicuous place for the waters to which that determination applies.

6 Priority Determination – all waters

- (1) **Day:** A priority determination must take place:
- (a) on the day of the full moon, or
 - (b) if the full moon falls on a day that is not a business day, the business day immediately before the day of the full moon.
- (2) **Time:** A priority determination must take place at 10am, unless another time is specified in the preliminary determination.
- (3) **Location:** The priority determination must be made at the location specified in the preliminary determination.
- (4) **Nominated person:**
- (a) Only a nominated person may make a priority determination.

- (b) The nominated person must make the priority determination in the manner specified in these Guidelines.
- (5) **Attendance:** An endorsement holder who wishes to seek priority in a priority determination on behalf of a fishing business for particular waters for a fishing period must:
- (a) attend the priority determination for those waters and that fishing period, and
 - (b) have possession of the fishing business card or digital authority.
- (6) **Fishing business:**
- (a) The endorsement holder participates in the priority determination on behalf of the fishing business owner.
 - (b) If an endorsement holder ceases to be the nominated fisher for a fishing business, the endorsement holder is no longer entitled to rights of priority determined by a priority determination.
 - (c) If a fishing business owner nominates another person to take fish in the fishery on behalf of the fishing business, that person has the rights of priority determined in a priority determination.
- (7) **Notification:**
- (a) No later than 5pm on the day the priority determination took place, the nominated person must post a copy of the priority determination in a conspicuous place at the place at which the priority determination was made.
 - (b) Pursuant to clause 35I(5) of the EG Plan, the nominated person must notify the fisheries officer for the waters to which the priority determination applies of the priority determination:
 - (i) no later than 5pm on the day the priority determination took place, and
 - (ii) by email to the address notified by the fisheries officer, or by delivering a copy of the priority determination to the fisheries officer at the address notified by the fisheries officer.

7 Priority determinations - Myall River

- (1) This clause applies to priority determinations for endorsement holders working in the Myall River.
- (2) The endorsement holder:
 - (a) may place votes in a priority determination ballot for one net site for each fishing business (subject to clause 7(7)), and
 - (b) must place all of the votes comprising their ballot allowance for that fishing business in the priority determination ballot for that site.

- (3) If only one endorsement holder places votes for a net site in a priority determination ballot, the nominated person must make a priority determination allocating priority for that net site for all nights during the fishing period to that endorsement holder.
- (4) If more than one endorsement holder places votes for a net site in a priority determination ballot, the nominated person must conduct a priority determination ballot for the net site to make a priority determination allocating the nights on which an endorsement holder has priority for that net site.
- (5) The nominated person must conduct the priority determination ballot by:
 - (a) by placing items identifying the votes cast by endorsement holders in a container,
 - (b) drawing one item from the container for each night on which a prawn net (set pocket) may be used in the fishing period, and
 - (c) if after all items identifying votes are drawn from the container and there are nights during the fishing period that have not been allocated to endorsement holders, allocating priority between endorsement holders for the additional nights using the allocation order.
- (6) The nominated person must make a priority determination once all nights in a fishing period have been allocated for the net sites.
- (7) For the purposes of this clause:
 - (a) Tamboy net site is to be treated as two sites known as “top” and “backup”,
 - (b) the priority determination ballot will allocate priority alternately between top and backup sites for each night,
 - (c) an endorsement holder cannot hold priority for both top and backup sites for the same fishing business for the same night, and
 - (d) if a priority determination ballot would result in a priority determination allocating priority to the same fishing business for top and backup sites on the same night, the nominated person must disregard that vote and allocate priority for the next vote drawn until priority for both sites is allocated.
- (8)
 - (a) The nominated person may make a priority determination that the endorsement holder allocated priority for Tamboy backup net site who has arrived at the site with the appropriate fishing gear may use the Tamboy top net site, if the endorsement holder allocated priority for Tamboy top net site in the priority determination does not arrive at the site by sunset - or such other time as is determined by a fisheries officer as the setting time for the net (**Additional Tamboy top net site determination**).
 - (b) The Additional Tamboy top net site determination applies only from sunset to sunrise on that day or during the setting time for the net for that day, after which the original priority determination for Tamboy top net site will apply.

- (c) Pursuant to clause 35I(5) of the EG Plan, the nominated person must notify the fisheries officer for the waters to which the Additional Tamboyr top net site determination applies of the priority determination:
 - (i) no later than 5pm on the day after the Additional Tamboyr top net site determination took place, and
 - (ii) by email to the address notified by the fisheries officer, or by delivering a copy of the Additional Tamboyr top net site determination to the fisheries officer at the address notified by the fisheries officer.

8 Priority determinations – Clarence River

- (1) This clause applies to priority determinations for endorsement holders working in the Clarence River.
- (2) The nominated person must conduct a priority determination ballot to make a priority determination allocating priority for a net site for the fishing period to an endorsement holder.
- (3) The nominated person must conduct the priority determination ballot by:
 - (a) placing items identifying the votes cast by endorsement holders in a container,
 - (b) drawing the items from the container until the priority determination is made,
 - (c) allowing each endorsement holder to choose a net site for each fishing business in the order in which the votes are drawn, if that site is not previously chosen by another endorsement holder, and
 - (d) disregarding any subsequent votes drawn for a fishing business once the endorsement holder of that business has chosen a net site.
- (4) The nominated person must make a priority determination once:
 - (a) all endorsement holders participating in the priority determination ballot for a fishing business have chosen a net site, or
 - (b) all net sites are chosen.

9 Priority determinations – other waters

- (1) This clause applies to priority determinations for endorsement holders working in waters other than the Myall River or the Clarence River.
- (2) The nominated person must make a priority determination for a net site, if a majority of endorsement holders who wish to use a prawn (net) set pocket to work that net site request the nominated person to make a priority determination for that net site.
- (3) The nominated person must conduct a priority determination ballot to make a priority determination allocating priority to an endorsement holder for:
 - (a) a net site, and

- (b) nights during the fishing period.
- (4) The nominated person must conduct the priority determination ballot by:
- (a) placing items identifying the votes cast by endorsement holders in a container,
 - (b) drawing items from the container to determine priority by site, allocating the first night for each net site, then the second night for each net site, the third night for each net site, and so on, until the priority determination is made,
 - (c) disregarding any votes drawn for a fishing business once the endorsement holder of that business has a net site for the same night.
- (5) If after all items are drawn from the container there are nights or sites during the fishing period that have not been allocated to endorsement holders, a majority of endorsement holders participating in the draw may elect to require the nominated person to:
- (a) return all items to the container and repeat the priority determination process until all sites and nights have been allocated, or
 - (b) allocate net sites and nights between endorsement holders in accordance with the allocation order disregarding any vote for a fishing business if the endorsement holder of that business has a net site for the same night, or
 - (c) allocate net sites and nights between endorsement holders using the allocation order:
 - (i) disregarding any vote for a fishing business if the endorsement holder of that business has a net site for the same night, and
 - (ii) at the end of each round of allocations based on the allocation order, amend the allocation order by taking the vote of the first endorsement holder to receive an allocation in that set of allocations and placing it in last place in the allocation order, and continuing to allocate using the amended allocation order until all net sites and nights are allocated.
- (6) The nominated person must make a priority determination once all net sites and nights in the fishing period have been allocated.
- (7)
- (a) The nominated person may make a priority determination that another endorsement holder who has arrived at their site with the appropriate fishing gear may use an adjacent site not being used by the endorsement holder allocated priority in the priority determination, if the endorsement holder allocated priority for a net site in the priority determination does not arrive at the site by sunset - or such other time as is determined by a fisheries officer as the setting time for the net (**Additional priority determination**).
 - (b) The Additional priority determination applies only from sunset to sunrise on that day or during the setting time for the net for that day, after which the original priority determination will apply.

- (c) Pursuant to clause 35I(5) of the EG Plan, the nominated person must notify the fisheries officer for the waters to which the Additional priority determination applies of the priority determination:
 - (i) no later than 5pm on the day after the Additional priority determination took place, and
 - (ii) by email to the address notified by the fisheries officer, or by delivering a copy of the Additional priority determination to the fisheries officer at the address notified by the fisheries officer.