

## Explanatory Statement

### Torres Strait Prawn Fishery Management Plan 2008

Section 15A of the *Torres Strait Fisheries Act 1984* (the Act) provides that the Protected Zone Joint Authority (PZJA) may determine written plans of management for each fishery that it manages. The PZJA intends on determining the *Torres Strait Prawn Fishery Management Plan 2008* (the Plan) prior to the commencement of the 2009 fishing season.

#### The Torres Strait Prawn Fishery

The *Torres Strait Fisheries Act 1984* (The Act), establishes the Torres Strait Protected Zone Joint Authority (PZJA) to manage the Torres Strait Fisheries on behalf of the Commonwealth and Queensland and in accordance with the Torres Strait Treaty with Papua New Guinea.

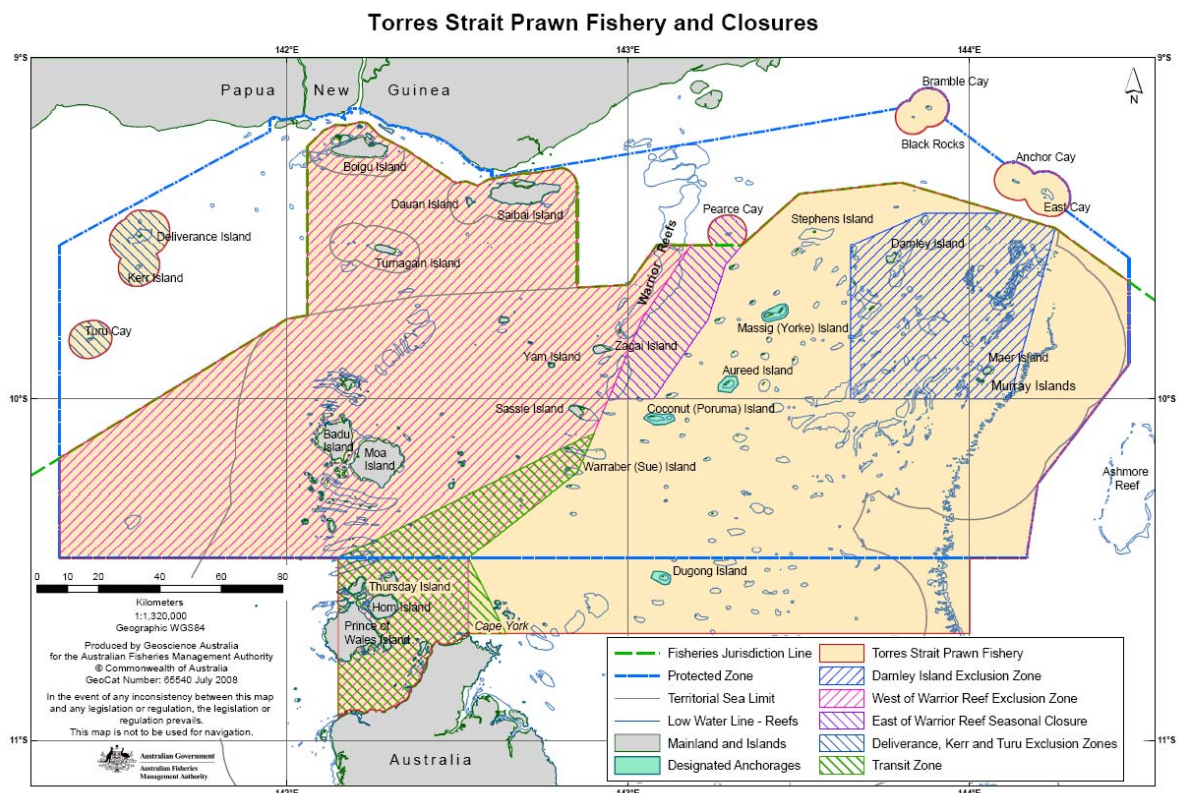
Its members comprise the Commonwealth and Queensland Ministers responsible for fisheries, and the Chairperson of the Torres Strait Regional Authority (TSRA). The Commonwealth Minister is the Chair of the Authority.

The PZJA is responsible for monitoring the condition of the designated fisheries and for the formulation of policies and plans for their management through support from four government agencies, the Australian Fisheries Management Authority, the Queensland Department of Primary Industries and Fisheries, the Department of Agriculture, Fisheries and Forestry, and the Torres Strait Regional Authority. In exercising its functions, the PZJA has regard to the rights and obligations conferred on Australia by the Torres Strait Treaty, in particular the protection of the traditional way of life and livelihood of the Traditional Inhabitants, including the capacity to engage in traditional fishing.

The Act provides for the Torres Strait Fisheries to be managed under the laws of the Commonwealth or Queensland. In October 1996 the PZJA agreed that all commercial fishing activity in Torres Strait would be managed under the laws of the Commonwealth.

#### *Description of the fishery*

The Torres Strait Prawn Fishery (TSPF; Fig. 1) was the second most valuable commercial fishery in the Torres Strait in 2007, with 1,145 tonnes valued at over \$11 m taken in the season. The TSPF is a multi-species prawn fishery which operates in the eastern part of the Torres Strait (Fig. 1). Brown Tiger prawn (*Penaeus esculentus*) and the Blue Endeavour prawn (*Metapenaeus endeavouri*) are the key target species. The Red Spot King prawn (*Penaeus longistylus*) is essentially a by-product species. Fishing is permitted in the TSPF from 1 March to 1 December each year and is limited by a Total Allowable Effort (TAE) which is allocated to license holders in the form of fishing days. On 3 November 2005, the PZJA agreed to introduce a TAE of 9,197 fishing days (rounded to 9,200 days) in light of scientific advice on the number of days to achieve the maximum sustainable yield of tiger prawns, the species considered to be most vulnerable to over-fishing in this multi-species fishery.



**Fig. 1.** The Torres Strait Protected Zone and Torres Strait Prawn Fishery.

## The Torres Strait Prawn Fishery Management Plan

### *Consultation, Determination and Acceptance*

The PZJA has developed the *Torres Strait Prawn Fishery Management Plan 2008* (the Plan) in accordance with section 15A of the Act. The allocation process under the Plan will occur on a one for one basis transferring one fishing day to one unit of fishing capacity. This system seeks to maintain the relative economic position of participants in the fishery by reflecting the relative historic value of their licences. Specifically, each licence holder will retain the same portion of the fishery before and after the Plan is implemented.

The Torres Strait Prawn fishery is a cost recovered fishery. As a result, costs of the Plan will be borne by industry.

While there is no requirement under the Act to conduct consultation in relation to PZJA managed fisheries, the PZJA's management philosophy involves a partnership approach to the management of marine resources under its jurisdiction. In addition, the *Legislative Instruments Act 2003* requires that before a legislative instrument is made, consultation on that instrument must be undertaken. As a result, the development of the Plan has occurred in close consultation with the Torres Strait Prawn Management Advisory Committee (an advisory committee made up of commercial fishery members, traditional inhabitants, environmental groups, research and government members), the Torres Strait Prawn Working Group through a series of meetings since 2003, and wider stakeholders as outlined in the Regulatory Impact Statement that accompanies the Plan. The objectives of the Plan have also been reviewed by the PZJA to tailor them more specifically to the fishery.

The draft Plan, was released for a public consultation period from June 2 to July 2, 2008 and comments received were reviewed and included where appropriate. All entitlement holders were invited to public meetings held on 18 and 19 September in Mooloolaba and Cairns. Senior officials

from PZJA agencies provided an overview of the Plan at the public meetings and answered questions and concerns.

The Plan has been endorsed by the PZJA and is to be determined by the Minister for Agriculture, Fisheries, and Forestry in accordance with s15A of the Act.

### ***Limitations of the current management system***

Current management of the TSPF is regulated through variations to annual fishing licences. The broad limitation of this approach is that it does not promote certainty in the ongoing management environment for the fishery. From an industry perspective there is no guarantee of ongoing access as the PZJA may exercise its discretion in approving the grant of licences, and although rarely used it is possible for the PZJA to vary its management arrangements without consultation. This uncertainty provides few market-based incentives for operators to conserve resources for the long-term.

The current system also lacks short term leasing arrangements. This has the potential to reduce economic efficiency by inhibiting full utilisation of fisheries resources; less active operators who are unable to utilise all of their allocated effort do not have a means to transfer excess effort to other operators. In the 2006 season only 41% of Australian operators fished all of their allocated fishing days, totalling around 4,700 of the available 6,867 days, or 68% of the effort allocated to Australian operators (N.B. 2,070 of the 9,200 days are reserved for PNG operators under catch sharing arrangements). A total of 61 licences were held by Australian operators in 2007, of these, 20% did not fish at all and only 25% of the Australian fleet used greater than 95% of the days allocated to their licence. In total, only 5,253 (66%) of the 7,965 fishing days allocated to Australian licenses were utilised in 2008. This was due largely to the allocation of 1,098 of the days held for PNG operators being leased to Australian operators for the 2007 season.

### ***Management under the TSPF Management Plan***

In order to address the limitations of the current management system, the Plan was developed. The Plan provides a similar system to the previous management arrangements, in that it provides transferable access rights in the form of an input control system limited by an annual Total Allowable Effort (TAE). Under the Plan, fishing capacity will be managed under a unitised system, where effort is divided into Units of Fishing Capacity (UFCs) (as opposed to fishing days under the old management arrangements) and issued to license holders under section 15A(6) of the Act. Each UFC entitles the holder of that UFC to take an equal share of the total allowable effort (TAE) for a season, per UFC. The UFCs persist for the duration of the Plan, unless they are surrendered or cancelled, in which case they will expire.

Under the Plan, the TAE must be determined at least every three years by the PZJA. Further, the PZJA must consult the Torres Strait Prawn Management Advisory Committee (TSPMAC) and consider their views before determining the TAE. The PZJA may also consult and consider the views of other interested persons.

Once determined, Management Plans remain in force for a period of ten years or until revoked, consistent with the *Legislative Instruments Act 2003*.

The Plan will be supported by the *Torres Strait Fisheries Regulations 1985* and any Legislative Instruments issued under s16 of the Act. The Regulations will prescribe matters that are more conveniently specified in the Regulations than in the Plan.

### ***Benefits of the new system under the Plan***

The unitised system under the Plan will provide several benefits over the previous management system. The Plan aims to maintain the sustainability and profitability of the fishery whilst minimising the variation from one year to the next to facilitate business efficiency. Broad benefits/aims of the Plan are to;

- give certainty to industry through the grant of ongoing access in the form of UFCs ( also expressed as a use entitlement). Further, the Plan will provide operators with a clear framework for management decisions; appeals processes and objectives and performance criteria are outlined;
- achieve improved fisheries resource sustainability consistent with the requirements of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) through fishery specific management objectives and granting of UFCs. UFCs will promote more sustainable fishing practices by providing operators with an ongoing stake in the fishery (UFCs are valid for the life of the Plan). More sustainable fishing will improve the cost effectiveness of the fisheries management by potentially reducing compliance issues. Further, the Plan creates provision for changing TAE levels within the fishery as required according to reference points and scientific advice in consultation with the TSPMAC; and
- improve economic efficiency through utilisation of temporary transfer of unused effort through internal leasing arrangements. Under a temporary transfer, the owner of the units would grant to the lessee of the units the right to use the units for the remainder of the present fishing season. Therefore the owner would cease to be the holder of the use entitlement and the lessee would become the holder (for the season). This system will allow operators to transfer unused effort to other TSPF endorsed operators.

## **Content of the Plan**

The basic content of each section of the Plan is outlined below:

### ***PART 1: Preliminary***

**Section 1.1** provides that the Plan may be cited as the *Torres Strait Prawn Fishery Management Plan 2008*.

**Section 1.2** provides that the Plan commences on the day after it is registered.

**Section 1.3** sets out the interpretations of terminology used in the Plan.

**Section 1.4** sets out the area of the fishery, including excluded areas, and the origin for geographical coordinates used within the Plan.

**Sections 1.5 and 1.6** sets out the objectives of the Plan, measures by which the PZJA will attain the objectives and the performance criteria for assessing achievement against the objectives (as required by Section 15A(2) of the Act). These elements of the Plan reflect the objectives set out in section 8 of the Act that are designed in accordance with Australia's obligations to PNG and Torres Strait Islanders under the Treaty and other obligations under the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act). In addition, reporting and review mechanisms are incorporated into the performance criteria. The Plan also includes objectives specific to the TSPF which aim to ensure optimum utilisation of the fishery resources, promote economic efficiency and ensure cost effective fisheries management and minimise negative impacts on the marine environment.

The measures for achieving the objectives address the key issues of sustainability, economic efficiency, impacts on non-target species and the marine environment, the collection and use of fishery data, efficient and cost-effective management and consistency with international obligations.

**Section 1.7** indicates the persons to whom the Plan applies. This includes persons fishing commercially, undertaking research, carrying or carrying and processing species listed under schedule 3.

**Section 1.8** indicates the persons to whom this Plan does not apply - recreational and traditional fishers.

## ***PART 2: Fishing in the fishery***

***Section 2.1*** specifies the minimum requirements for a person to fish commercially, or for developmental or scientific fishing for prawn in the area of the fishery.

***Section 2.2*** indicates that the rules that apply to fishing methods and the catch or incidental capture of bycatch and by-product species are to be set out in instruments for the fishery, formerly known as Fisheries Management Notices.

***Section 2.3*** outlines the usual period of the fishing season and states the provisions for determining an alternative fishing season in a particular year.

***Section 2.4*** specifies the requirement to determine reference points as soon as practicable after the Plan commences, the objectives of these reference points, and how often they should be reviewed. It also indicates that fishery by-product must be monitored by the PZJA and if necessary, reference points to be developed.

***Section 2.5*** sets out the process, including consultation, which the PZJA must undertake when setting the total allowable effort (TAE) for the fishery.

***Section 2.6*** outlines the process which must be undertaken by the PZJA to amend a TAE during a fishing season.

***Section 2.7*** prescribes that the PZJA may determine a total allowable catch (TAC) limit for a particular by-product species for a season or for particular areas of the fishery. This section also sets out the process, including consultation, which the PZJA must undertake when setting a TAC. It also outlines the PZJA's right to determine a specific TAC for a given area of the fishery and how the TAC will be divided among licence and endorsement holders.

***Section 2.8*** outlines the process which must be undertaken by the PZJA to amend a TAC during a fishing season.

***Section 2.9*** prescribes that the PZJA may make instruments, formerly Fisheries Management Notices, to support the Plan.

## ***PART 3: Fishing licenses***

***Section 3.1*** outlines the types of licenses that can be granted within the fishery.

***Section 3.2*** outlines the conditions and requirements in relation to a TSPF boat license and the specifications of the license. It also specifies the maximum number of licenses that may be in force at any one time in the fishery (61).

***Section 3.3*** specifies the process and requirements for the transfer of a fishing license between operators.

***Section 3.4*** specifies the requirements for the grant of a TSPF TPC (Processor-Carrier) license.

***Section 3.5*** provides that TSPF Treaty endorsements may be issued to PNG licensed boats. It also outlines the requirements of these endorsements.

***Section 3.6*** outlines the requirements for the grant of scientific and developmental permits within the fishery.

**Section 3.7** prescribes the methods for nominating a boat to a TSPF boat license.

**Section 3.8** specifies the powers of the PZJA under the Act are not limited by Part 3 of the Plan.

#### ***PART 4: Units of fishing capacity***

**Section 4.1** sets out the formula that will be used initially by the PZJA to convert fishing capacity, currently measured in days, into units. It also indicates the conditions of the conversion.

**Section 4.2** specifies the maximum number of units that may be allocated within the fishery at any one time (9,200), and the division of these units between Australia and PNG.

**Section 4.3** sets out the formula and conditions for converting units to use entitlements before the commencement of each fishing season.

**Section 4.4** sets out the initial process for allocating units to TSPF boat licence holders within the fishery.

**Section 4.5** describes the details that must be included in the allocation certificate and when it must be issued to operators.

**Section 4.6** describes the process and conditions for the transfer of units between TSPF boat licence holders.

**Section 4.7** describes the process and conditions for the temporary transfer of unused units between TSPF boat licence holders.

**Section 4.8** describes the function of a PNG unit of fishing capacity and describes the process for determining the annual number of PNG units available to PNG.

**Section 4.9** describes the process and conditions for the temporary transfer of PNG units from the Australian Government to holders of TSPF Treaty endorsements or TSPF boat licenses.

#### ***PART 5: TSPF Licences and TSPF Treaty endorsements subject to conditions***

**Section 5.1** outlines the general conditions of TSPF licenses and TSPF Treaty endorsements including the requirement to comply with the Plan and any regulations and determinations.

**Section 5.2** specifies the requirements of operators to accurately complete the logbook for the fishery that is defined by the PZJA.

**Section 5.3** specifies the requirements of operators relating to the total amount of use entitlement which a holder is entitled to and any TAC that is in place for the fishery.

**Section 5.4** sets out other obligations on licence and endorsement holders. These include a requirement to:

- fish in accordance with section 16 of the Act;
- comply with the size limits for the taking of prawn and by-product species; and
- comply with the prohibition of taking, processing and carrying certain marine species.

**Section 5.5** sets out the obligations of licence and endorsement holders relating to carrying observers.

**Section 5.6** sets out the obligations of licence and endorsement holders in relation to the fitting and function of a vessel monitoring system (VMS).

**Section 5.7** sets out the obligations of licence and endorsement holders relating to interactions with certain species and communities, particularly threatened, endangered and protected species listed under the *Environmental Protection and Biodiversity Conservation Act 1999*.

**Section 5.8** sets out additional obligations of TSPF treaty endorsement holders.

## ***PART 6: Miscellaneous***

**Section 6.1** specifies the details that must be included in the register as well as the other requirements of the register, including the PZJA's obligation to ensure the register is publicly available.

**Section 6.2** defines the term "decision" and specifies the requirements when requesting the review of such a decision.

**Section 6.3** sets out the interpretation of notices which are distributed to persons or the PZJA and the requirements of these notices, including when notices are considered to have been delivered.

**Section 6.4** sets out the transitional arrangements for the fishery, which will take effect on the commencement of the Plan, until the following 25 February. These arrangements will allow for fishing to continue during this transition period under a system of fishing permits.

## ***Schedules***

**Schedule 1** specifies the area of the fishery.

**Schedule 2** specifies the area of the fishery expressed using coordinates based on WGS84 datum

**Schedule 3** specifies the target and by-product species for the fishery.

**Schedule 4** specifies the size limits for taking, processing and carrying Morton Bay bug.