



Queensland
Government



TORRES STRAIT
PZJA
PROTECTED ZONE
JOINT AUTHORITY



Regulation Impact Statement



TORRES STRAIT PRAWN FISHERY MANAGEMENT PLAN 2008

(Prepared by the Australian Fisheries Management Authority on behalf of
the Torres Strait Protected Zone Joint Authority)

July 2008



TABLE OF CONTENTS

TABLE OF CONTENTS	1
INTRODUCTION.....	3
Description of the fishery.....	3
Condition of the fishery	3
Current Management objectives	4
History of the fishery	5
Catch sharing with Papua New Guinea (PNG)	8
Problem identification.....	10
Management of Protected Zone Joint Authority (PZJA) Fisheries	10
The Torres Strait Protected Zone Joint Authority (PZJA)	10
The Australian Fisheries Management Authority (AFMA).....	10
The Queensland Department of Primary Industries and Fisheries (QDPI&F)	10
The Torres Strait Regional Authority (TSRA).....	11
The Department of Agriculture, Fisheries and Forestry (DAFF)	11
Management of the Torres Strait Prawn Fishery	12
OPTIONS	16
Option 1. Continue the current administrative system for the fishery and grant fishing licences annually (Maintain status quo).	16
Option 2. Implement a Management Plan under the Torres Strait Fisheries Act 1984 that would provide for units of fishing capacity that would be allocated among licence holders, in addition to provision for internal leasing of effort units for the life of the management plan.	17
Unitisation of fishery effort allocations (units of fishing capacity).....	17
‘Internal’ leasing for Australian entitlements	18
Appeal Mechanisms.....	19
Impact analysis.....	21
Affected sectors	21
Community (including traditional and non-traditional inhabitants)	21
Business (industry)	21
Government (PZJA agencies – AFMA, QDPI&F, TSRA and DAFF)	21
Consultation	26
2003/2004 Stakeholder consultation.....	26
2005/2006 Stakeholder consultation.....	26
2007/2008 Stakeholder consultation.....	28
Final stakeholder consultation.....	31



Summary of stakeholder views	32
Conclusion and recommended option.....	32
Attachment A.....	34
Unitisation and allocation of effort in the TSPF	34
Attachment B.....	35
Internal leasing of effort units in the Torres Strait Prawn Fishery (TSPF), via the 'temporary transfer' process.....	35
Attachment C.....	36
PZJA decisions leading to the development of the TSPF management plan	36
At PZJA 22 on 30 April-1 May 2008 the PZJA made the following decision in regard to the Prawn Fishery:	37
Attachment D.....	38
Report on the responses to the TSPF Update Issue One Leasing Feedback Form	38

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INTRODUCTION

This Regulation Impact Statement (RIS) examines the proposed introduction of the *Torres Strait Prawn Fishery Management Plan 2008* (the Plan). The need for new regulation and an analysis of why the Plan is the preferred regulatory option is provided. The proposed option and one alternative were considered and assessed in terms of costs and benefits to the community, business and government. Consultation, implementation and review procedures for the Plan are also described.

Description of the fishery

The Torres Strait Prawn Fishery (Fig. 1) is a multi-species prawn fishery which operates in the eastern part of the Torres Strait. Brown Tiger prawn (*Penaeus esculentus*) and the Blue Endeavour prawn (*Metapenaeus endeavouri*) are the key target species. The Red Spot King prawn (*Melicertus longistylus*) is essentially a by-product species. It is the most valuable commercial fishery in the Torres Strait, with 1,217 tonnes valued at approximately \$13 m landed in 2006, and 1,419 tonnes valued at around \$11 million in 2007 (Table 1). Fishing is permitted from 1 March to 1 December each year.

Fishing is conducted during hours of darkness using otter trawl 'quad gear' that consists of two pairs of nets with each pair towed from a boom on either side of the vessel. Most vessels tow the maximum amount of net allowed per vessel, which is a total of 88 m (headrope plus foot rope length, including try gear). Vessel length is restricted to a maximum of 20 m and the average vessel size is 15 m.

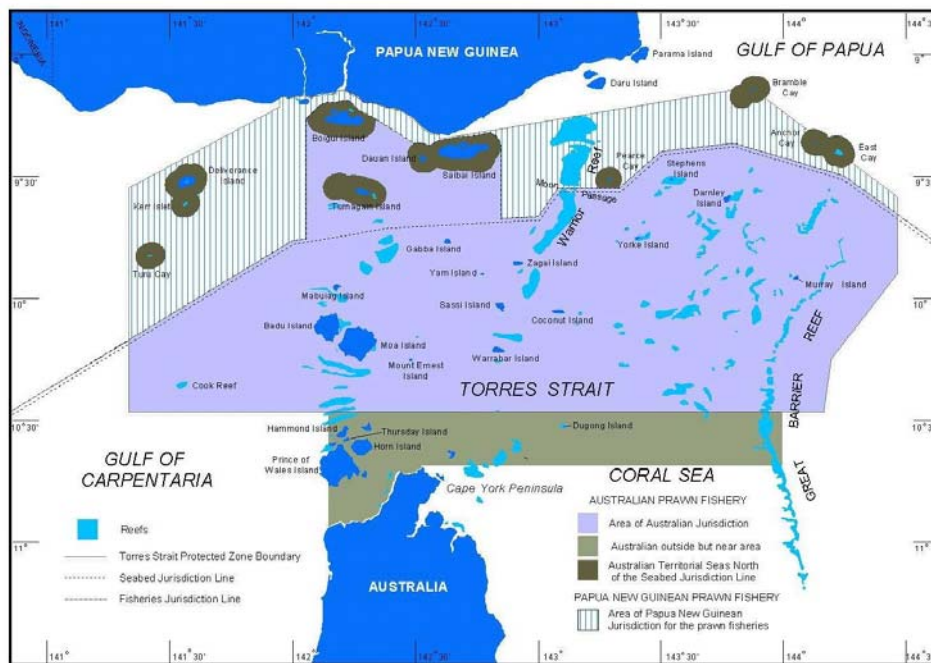


Fig. 1. The Torres Strait Protected Zone and TS Prawn fishery.

Condition of the fishery

The Torres Strait Prawn Fishery would be considered fully exploited if all of the allocated effort of 9,200 nights in the fishery were utilised. However, the fishery has historically



operated at much less than the maximum effort allocated. In the 2006 season only 41% of Australian operators fished all of or close to their allocated fishing nights, totalling around 4,700 of the available 6,867 nights or 68% of the effort allocated to Australian operators (n.b. 2,070 of the 9,200 nights are reserved for PNG operators under catch sharing arrangements). A number of vessels used less than half of their allocated fishing nights while four vessels with large allocations did not fish at all.

In 2007, only 11% (6 vessels) of the Australian fleet utilised all of their allocated fishing days, and 21 vessels (40% of the fleet) used less than 70% of their available days. In 2007 PNG agreed to allow Australia to utilise PNG's 25% allocation (2,070 days for 2007 season) of Australian jurisdiction days under the catch sharing agreement. Consequently, the 2,070 days were offered to Australian operators and 1,098 of these days were accepted. Of the combined days allocated to Australian operators (6,867+1,098), 5,218 were fished in 2007.

The catch since 1999 has declined steadily from 2,200 to 1,149 tonnes in 2007 (Fig. 2). This decline is primarily due to a series of initiatives to reduce the Australian effort in the fishery, however the economics of the fishery including a high cost of fuel, the value of the Australian dollar and lower prices at market, have also contributed to a reduction in profits and, therefore, business decisions to fish elsewhere have been made. Species composition for the 2006 fishing season are shown in Table 1.

Table 1. Prawn catches in the TSPZ for the 2006 and 2007 seasons (1 March to 1 December each year).

Species	2006 Catch (tonnes)	2007 Catch (tonnes)
Blue Endeavour prawns (<i>Metapenaeus endeavour</i>)	548	502
Brown Tiger prawns (<i>Penaeus esculentus</i>)	620	593
Red Spot King prawn (<i>Melicertus longistylus</i>)	43	49
Other	6	5
Total	1,217	1,149

Current Management objectives

Current management objectives for the Torres Strait Prawn Fishery are:

- to control effort in the fishery and provide for catch sharing to occur with PNG;
- to achieve a level of fishing effort which is consistent with conservation and optimum use of the Torres Strait prawn resource; and
- to encourage Traditional Inhabitants of the Torres Strait to participate in the Prawn fishery.



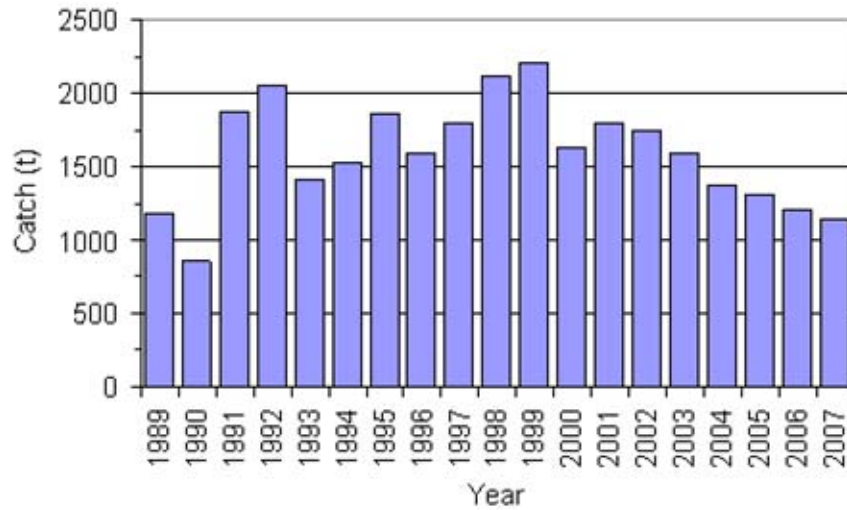


Fig. 2. Annual catch of prawns (including Endeavour, Tiger and King) in the Torres Strait Prawn Fishery 1989-2007.

History of the fishery

Management of the Torres Strait Prawn Fishery (TSPF) as a separate and distinct fishery from the Northern Prawn Fishery (NPF) and the Queensland East Coast Otter Trawl Fishery (ECOTF) only occurred when the Torres Strait Treaty with Papua New Guinea¹ (the Treaty) was ratified by the Australian Parliament in 1985. Through the early development of the fishery before the Treaty, any vessel that held a Queensland trawl licence (almost 1,200 in total) was entitled to fish in the Torres Strait, as this prawn fishery was managed as part of the ECOTF. However, only a small percentage participated in the fishery because of the long distance from their home ports of Cairns and others further south.

At the time the Treaty was ratified, approximately 500 vessels had obtained a licence to operate in the TSPF. The other eligible vessels, approximately 700, did not take up the option of a separate licence. There were concerns raised that there may be a significant increase in the number of vessels into the Torres Strait Protected Zone (TSPZ) as a result of the new management measures adopted for the ECOTF and NPF. Subsequently, the PZJA on 23 October 1987, amongst other restrictions, introduced limited entry management for the prawn fishery in the TSPZ in order to reduce latent effort and prepare for catch sharing provisions of the Treaty. The decision was to limit licensed vessels to those operators who had a previous history in the fishery (Fig. 3).

This management arrangement reduced the number of vessels holding a licence to operate in the TSPF to 150. In addition to this arrangement the PZJA adopted the ECOTF's boat replacement policy. The aim of the new boat replacement policy was to prevent an increase in the total level of fishing effort, which generally accompanies the unrestricted upgrading of vessels. It was considered essential that a stringent boat replacement policy be in place so as to prevent an effective transfer of fishing capacity between the ECOTF and the TSPF. However, the stringent measures were rejected by industry because the boat replacement policy incorporated penalties. Instead, industry supported the adoption of a freeze on



licences. In 1989 a freeze on licence transfer was implemented and by June 1992 around 110 vessels were licensed in the fishery (Fig. 3).

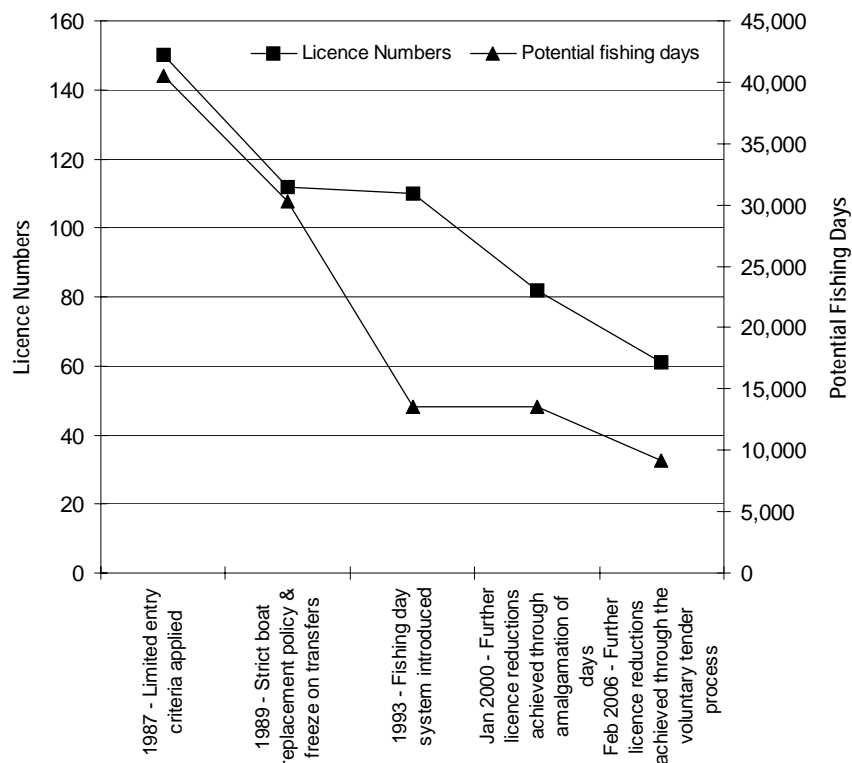


Fig. 3. History of the Torres Strait Prawn Fishery.

Seasonal and area closures have played an important role in guiding the development of the fishery. Seasonal closures have been designed to run in tandem with the ECOTF. The first seasonal closure to trawling in the TSPF and the ECOTF extended from 1 January 1985 to 28 February 1985 and coincided with the time when small, less valuable prawns are recruited into the fishery. This closure was based on consultations with commercial operators and data collected by Queensland fisheries researchers. The closure was particularly successful in increasing the total number and weight of commercially important prawns. A similar rationale was used to close the fishery from 13 December 1985 to 28 February 1986.

In 1986-87 the ECOTF was not closed nor was the TSPF. Northern-based operators were concerned that effort was being aggregated into the first months after the closure, causing a pulse fishing effect. The closure, however, was reintroduced from 15 December 1987 to 1 March 1988. In 1989 the Torres Strait closure period was from 23 December to 15 April, north of 10°13'S and from 23 December to 7 March south of that latitude. This longer closure further optimised prawn catch values while reducing fishing effort. In 1990-91 the Torres Strait was closed to prawn fishing from 1 December to 1 March. These dates were agreed upon by Islanders and the local industry to coincide with the opening of the ECOTF and remain in place to this day (Fig. 4). The combined effect of these closures allows prawns migrating from west to east through the Warrior Reef to reach maturity before they are fished.



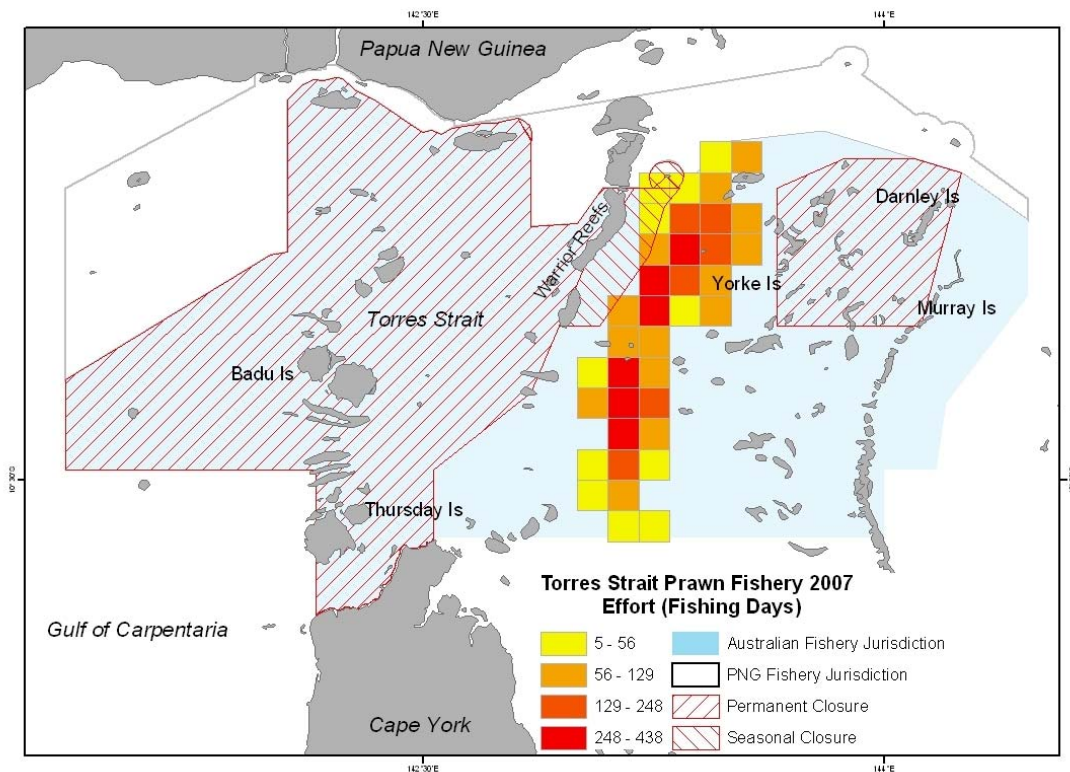


Fig. 4. TSPF area and seasonal closures, and effort distribution in 2007.

Interim management arrangements were approved by the PZJA and introduced for the 1993 season, commencing on 1 March 1993. The interim arrangements were designed to cap effort by allocating each vessel a number of fishing days, which it may operate in the TSPF. This allocation was based on the greatest number of days the vessel fished in the Torres Strait during any one of the previous four financial years ending 1991-92, with an additional allocation for non-fishing time and breakdowns. Following this process the total effort within the TSPF was capped at 13,400 fishing days.

In February 1994, the PZJA approved long-term management arrangements for the TSPF, which extended the provisions of the interim arrangements while including more flexible conditions for the transfer of fishing access days between operators in the fishery. These arrangements were introduced to facilitate the amalgamation of fishing days onto existing licences and accelerate restructuring of the fleet.

Latent or unused effort remained a concern for management and a number of management changes were recently implemented to address the issues.

The PZJA agreed to introduce a total cap of 9,197 days (via a 31.8% pro-rata effort reduction to TSPF entitlement holders), in the prawn fishery when it met by teleconference on 3 November 2005. This decision was taken 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. The stock assessment modelling that produced this estimate has been independently reviewed and found to be robust. It is possible that stock assessment advice will change in the future and the number of days could be more or less than the current estimate for E_{msy} (i.e. fishing effort). Things that may change the



estimate of E_{msy} are changes in fishing practices, spatial or seasonal closures in some areas or a combination of these.

In July 2005 the Australian Government announced that it would offer to fund payments to Australian operators to fully meet its obligations to Papua New Guinea (PNG) under the *Torres Strait Treaty*, without making further calls on fishing entitlements allocated to domestic operators. The Australian Government Department of Agriculture Fisheries and Forestry issued a Request for Tender (RFT) in December 2005, which had the primary objective of surrendering 25% of the 9,197 days allocated in the TSPF for the 2006 season, so that these days could be held in trust to allow for PNG's catch sharing entitlements under the Torres Strait Treaty. In February 2006, it was announced that the tender process had resulted in the removal of sixteen licences from the fishery and the surrender of approximately 25 per cent (2,333 allocated fishing days) of total fishing effort

In accordance with an out-of-session decision of the PZJA, the 9,197 nights was rounded up to an overall effort cap of 9,200 fishing days available in the TSPF for the 2006 season, of which 6,867 fishing days were available to Australian operators, 2,070 fishing days were available to PNG operators and 263 days were held in trust by the Australian Government.

Despite these changes, there was still unused effort in the 2006 season with only 41% of Australian operators fishing all their allocated fishing nights. A number of vessels used less than half of their allocated fishing nights while four vessels with large allocations did not fish at all. Licence holders must hold a minimum number of nights to operate in the fishery. Prior to the 2006 season, the minimum number required was 50 days. Paralleling the total allowable effort reduction in the 2006 season, the minimum number of days required decreased to 34 days.

At the end of June 2007, there were 52 active licences in the fishery and 9 inactive licences that did not have a boat attached to it.

Effort creep will keep putting upward pressure on effective effort and therefore force down the estimate of E_{msy} . This is likely to be pushed along by rationalisation of the fleet following the voluntary tender process funded by the Australian Government. The cap on days in the fishery should continue to be reviewed on an annual basis in light of changing fishing practices in the fishery and in light of additional stock assessment advice.

The PZJA has been moving towards full cost recovery for the management costs associated with running the fishery under the *Fisheries Levy (Torres Strait Prawn Fishery) Regulations 1998*. It is anticipated that the 2009 season will be the first season of full cost recovery after \$500,000 levy relief provided by the Australian Government to support the development of new management arrangements consistent with PZJA policy which include that "the fishery move to a unitised system where future fishing access would be based on a proportion of the sustainable available resource"¹.

Catch sharing with Papua New Guinea (PNG)

The Torres Strait Treaty establishes a Fisheries Jurisdiction Line (FJL) and the Torres Strait Protected Zone (TSPZ) where parties have sovereign rights to the fisheries resource on both sides of the Fisheries Jurisdiction Line. A formula for the sharing of the catch is provided at Article 23 of the Treaty. In broad terms, Australia is entitled to 75% of the sustainable commercial harvest on the Australian side of the FJL and 25% of the catch on the PNG side

¹ \$1.5 million to secure Torres Strait Prawn Fishery's long-term viability, Media Release, Senator the Hon Eric Abetz (DAFF/034A – 9 May 2006).



of the FJL, although there are certain areas of the TSPZ where the catch would be shared on a 50:50 basis.

Australia and PNG meet annually to agree on catch sharing arrangements for all Torres Strait fisheries. Arrangements are generally expressed in an agreed number of vessels and allocated days available to fishers from each jurisdiction. PNG operators who wished to access the PNG share of the fishery on the Australian side of the FJL would be authorised to fish by obtaining a Treaty Endorsement under s20 of the TSF Act.

PNG Treaty Endorsed vessels are required to operate under the same regulations that exist for Australian vessels. In addition, the crew is subject to Australian quarantine, customs and immigration laws and is therefore not permitted to have contact with any Australian inhabitant or set foot on Australian territory.

Licensed PNG prawn boats which are not endorsed under the catch sharing arrangement may transit the Australian area of the TSPF provided their trawling equipment is stowed and secured.

PNG agreed to endorse seven Australian prawn trawlers to operate in the PNG area of jurisdiction in 2007. The Australian Government Department of Agriculture, Fisheries and Forestry (DAFF) conducted an expression of interest (EOI) for Australian licence holders in the Torres Strait Prawn Fishery to ensure a fair and transparent process was used to nominate licences for PNG endorsement. Preliminary conditions of entry were forwarded to DAFF by PNG in February 2007, and tabled at the third meeting of the Torres Strait Prawn Management Advisory Committee (TSPMAC) for comment.

The TSPMAC comments were provided to DAFF, so that final conditions of entry could be negotiated with PNG. The licence holders that were successful in the EOI process were to be advised of the final management conditions by the Australian Government. Provided that the conditions of entry are acceptable to the successful licence holders, their licences were to be nominated for endorsement by the Australian Government during the PNG nomination process.

At the fourth meeting of the TSPMAC, it was noted that negotiations to enable Australian operators to access fishing entitlements within the PNG jurisdiction of the TSPZ had been slow but that revised PNG conditions were subsequently provided. However, due to the delays Australian operators determined that it was not feasible to access the PNG jurisdiction in 2007. The TSPMAC recommended that the Australian Government continue to pursue access to the PNG jurisdiction of the TSPZ for the 2008 fishing season through the bilateral meeting in October, 2007.

Article 25 of the Treaty provides that "if, in any relevant period, a Party does not itself propose to take all the allowable catch of a Protected Zone commercial fishery to which it is entitled, either in its own area or jurisdiction or that of the other Party, the other Party shall have a preferential entitlement to any of the allowable catch of that fishery not taken by the first Party."

In 2006 and 2007, PNG made available its full share of the TSPF to Australian operators and have agreed, in principle, to establish longer term preferential entitlement arrangements so long as PNG is not surrendering its entitlements in the fishery in perpetuity.



PROBLEM IDENTIFICATION

Management of Protected Zone Joint Authority (PZJA) Fisheries

The Torres Strait Protected Zone Joint Authority (PZJA)

The *Torres Strait Fisheries Act 1984*, 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 Chair of the TSRA. The Australian Government 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. 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 *Torres Strait Fisheries Act 1984* 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.

Four agencies actively support the PZJA in the administration of its functions.

The Australian Fisheries Management Authority (AFMA)

AFMA is the Commonwealth Government Fisheries agency. The primary services provided by AFMA to the PZJA are:

- Coordinate the PZJA's consultative mechanism;
- Facilitate the provision of sound scientific data on the condition of the fisheries in support of the PZJA's statutory obligation to keep "constantly under consideration the condition of the fishery";
- Develop and implement regulations to implement the PZJA's policies; and
- Foreign compliance activities.

The Queensland Department of Primary Industries and Fisheries (QDPI&F)

QDPI&F is the responsible Queensland Government fisheries management agency and the primary services provided by QDPI&F to the PZJA are:

- provide advice to the Queensland PZJA member on PZJA fisheries issues and on his / her statutory obligations;
- administer all PZJA licensing functions (including the establishment of a 'register' to record effort or catch entitlements held by individual fishers under a management plan;
- contribute fisheries management expertise (noting that many fishers in the TSPZ are cross endorsed to fish for similar species in Queensland fisheries); and
- domestic compliance activities.



The Torres Strait Regional Authority (TSRA)

The TSRA is a Commonwealth statutory authority forming part of the Government's Indigenous Affairs Portfolio, was established in 1994 in order to strengthen the economic, social and cultural development of the Torres Strait to improve the lifestyle and well-being of indigenous people (Islanders and Aboriginal) living in the Torres Strait.

The primary services provided by the TSRA to the PZJA are:

- provide advice to the TSRA Chair on PZJA fisheries issues and on his / her statutory obligations;
- contribute expertise in relation to traditional fishing in the TSPZ (in particular in relation to the Turtle and Dugong fishery); and
- support and facilitate Islander involvement in the PZJA consultative processes.

The Department of Agriculture, Fisheries and Forestry (DAFF)

DAFF provides the following services to the PZJA:

- provide advice to the Australian Government Minister (and Chair) on PZJA fisheries issues and on his / her statutory obligations;
- manage the bilateral relationship with Papua New Guinea (including to coordinate Australia's participation in the annual Catch Sharing Discussions);
- over-arching responsibility for legislative and regulatory compliance.

The Australian Fisheries Management Authority (AFMA), jointly with its counterparts in Queensland (Queensland Department of Primary Industries and Fisheries, QDPI&F) and to a growing extent, the Torres Strait Regional Authority (TSRA), coordinates and delivers fisheries management, surveillance and enforcement programs in the Torres Strait Protected Zone (TSPZ) on behalf of the PZJA and in accordance with the provisions of the *Torres Strait Fisheries Act 1984* (TSF Act).

The TSPF, managed by the PZJA is not considered overfished, although evidence of overcapitalization is evident. There is increasing community demand for all fisheries to be managed under a system of ecosystem based fisheries management. Developing a framework to alleviate problems of overfishing and overcapitalization and to preserve the marine environment in accordance with reasonable community expectations is a key challenge facing fishery managers.

Excess fishing capacity has been recognised as a major impediment to achieving sound fisheries management outcomes and has generally arisen through the lack of effective property rights. In the absence of secure and transferable access rights there are few safeguards against overcapitalisation and few market-based incentives for operators to conserve resources for the long-term.

In recognition of these challenges, on 14 December 2005, the then Federal Minister for Fisheries, Forestry and Conservation, Senator Ian Macdonald directed² AFMA to cease overfishing, recover overfished stocks and manage broader environmental impacts of fishing. Although the directions do not apply directly to PZJA fisheries, the PZJA has directed the management advisory committees (TSPMAC and TSFMAC) to provide advice on the utility and applicability of the directives to fisheries managed by the PZJA.

² Under section 91 of the FAA the Minister may give directions to AFMA concerning the performance of its functions and exercise of its powers.



Management of the Torres Strait Prawn Fishery

Currently there are a number of management arrangements for the TSPF that may not best pursue the PZJA management objectives, and reduce the Authority's ability to achieve its objectives.

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. Management based solely on variations on licences may also promote some uncertainty for industry.

At an out-of-session meeting of the PZJA on November 15, 2005, the PZJA endorsed the Torres Strait Prawn Fishery strategic assessment recommendations, as follows:

1. DEH to be informed of any proposed amendment to the management regime for the Torres Strait Prawn Fishery to enable DEH to evaluate any impact on the ecological sustainability of the fishery.
2. PZJA to continue to ensure that consultative processes are conducted in a manner that ensures the timely implementation of management responses essential for the sustainability of the fishery.
3. PZJA to develop and apply fishery specific management objectives, performance indicators and performance measures for target, key byproduct, bycatch and protected species and ecosystem impacts. PZJA to ensure that adequate information collection systems are put in place to monitor performance against indicators.
4. PZJA to develop a clear process for determining the reason for a performance measure being triggered and for implementing appropriate management measures within specified timeframes.
5. PZJA to develop within 1 year a strategy and timeframes for implementing any resultant recommendations arising from the formal compliance risk assessment.
6. PZJA to report annually on performance of the fishery against specified objectives and measures, once developed, with the reports to be made publicly available.
7. PZJA will continue to cooperate with other relevant jurisdictions to pursue complementary management and research of shared stocks for all target, byproduct and bycatch species, which may be affected by cross-jurisdictional issues.
8. PZJA, within 12 months, to develop and implement an ongoing robust system to validate effort and catch data on target and byproduct species.
9. PZJA to develop and implement a robust and regular stock assessment process, which estimates key population parameters and quantifies the uncertainty associated with each and provides a basis for risk-based management decisions for each target species, where such an analysis is feasible. For other species, the assessment process will examine the ecological sustainability of the take of target, byproduct and bycatch using qualitative or semi-quantitative risk assessments. Appropriate management responses will be developed to reduce risks to the high-risk species or groups.
10. PZJA to develop and commence by the start of the 2006 fishing season a program to reduce effort to ecologically sustainable levels with clear objectives and timeframes.
11. PZJA will continue to pursue reduction in the amount of bycatch taken in the TSPF through the refinement of bycatch mitigation technology and will investigate methods for increasing the survivability of bycatch species. Any suitable methods identified should be implemented in a timely manner.



12. PZJA to promote research into the impact of the fishery on protected species, including syngnathids and seasnakes, and to take all reasonable steps to reduce protected species interactions.
13. PZJA to develop and implement a spatial management system within the TSPF that takes account of the impacts of fishing on:
 - species and populations identified by the ecological risk assessment process as high risk;
 - important feeding/spawning/breeding/refuge grounds for key target, byproduct and protected species; and
 - benthic habitatsThis spatial management system will be integrated with the regional marine planning process for Northern Australia and will ensure that the entire fishery area is taken into account.

Subsequently, at an out-of-session meeting of the PZJA on December 23, 2005 the PZJA confirmed its previous decision that a total of 9,197 fishing days is considered the maximum amount of effort that should be allowed in the prawn fishery for sustainability reasons. In addition, the PZJA agreed to direct agencies to implement that decision by ensuring that, when each licence is next renewed, the Allocated Fishing Days currently attached, or last attached, as a condition of that licence, be reduced on a pro rata basis such that, if all licences were renewed for the 2006 fishing season, the total allocated fishing days held on all licences would be as close to 9,197 as is possible.

These new arrangements were aimed at providing certainty to industry, giving effect to Australia's fisheries obligations to PNG and Torres Strait Islanders under the Torres Strait Treaty, delivering equitable resource distribution between the commercial and community fishing sectors and achieving improved fisheries resource sustainability consistent with the requirements of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

To introduce a more flexible system of management, the PZJA agreed by teleconference on November 3, 2005 to move the management of the TSPF to modern management arrangements including the adoption of a unitized system where effort levels in the fishery are adjusted in accordance with sustainable catches. Details of the proposed new management arrangements were packaged under a draft management plan and presented to PZJA 20 in October 2006. The management plan included the transition process for moving from the existing system of fishing nights to the new system involving a form of effort units and access as a proportion of the total pool of available fishing nights. This system of management in 2008 should facilitate adjustment of effort up or down. Building decision rules will add security and certainty to the fishery by ensuring that any changes in the cap are made according to clear and pre-determined rules, and with an overall aim of maintaining the sustainability and profitability of the fishery whilst minimising the variation from one year to the next to facilitate business efficiency.

The management plan was sent out for drafting as drafting instructions for a formal management plan under the *Torres Strait Fisheries Act 1984* in July 2007. Subsequently, a public comment period on the Draft Management Plan ran from June 2 to July 2 2008. The PZJA's intention is to have the TSPF operating under the management plan for the 2009 season, starting on March 1st, 2009.

In November 2007, AFMA, on behalf of the PZJA, submitted a report to the then Department of the Environment and Water Resources (DEW, now DEWHA) to have the TSPF reassessed against all relevant parts of the EPBC Act (Parts 10, 13 and 13A) due to the pending



implementation of a management plan for the fishery by the end of 2008, start of 2009. The draft assessment report was released by DEWHA for public comment for a period of 28 days from November 22 to December 21, 2007 inclusive. No comments were received by DEWHA.

Subsequently, DEWHA provided draft conditions and recommendations to AFMA on April 8, and these were endorsed by the PZJA on May 1, 2008 (provided below).

Draft Torres Strait Prawn Fishery strategic assessment recommendations 2008:

Recommendation 1:

Within 12 months, the PZJA to develop a harvest strategy for the fishery that:

- includes a clear process for implementing appropriate management responses within specific timeframes in the event of a performance measure being triggered;
- sets the TAE at a level which will not result in higher than sustainable catches of key target and byproduct species; and
- is based on information gained through: stock assessments: scientific advice; analysis of changing fishing practices;; and the results of the Ecological Risk Assessment for the TSPF.

Recommendation 2: PZJA to continue to pursue a reduction in the composition and volume of bycatch taken in the TSPF through:

- refining bycatch mitigation technology;
- investigating and implementing methods for increasing the survivability of bycatch species; and
- investigating and then mitigating any found impacts of not using BRDs on Try Nets.

Recommendation 3: PZJA continue to mitigate protected species interactions through:

- promoting research into the impacts of the TSPF on protected species, and in particular, on protected species within the family Pristidae (sawfishes);
- protecting important nesting and feeding grounds of sea turtles from the impacts of trawling through spatial restrictions;
- promoting to other jurisdictions the importance of protecting important feeding and nesting sites of protected species; and
- investigating and then mitigating any found impacts of not using TEDs on Try Nets

Recommendation 4: PZJA to continue to refine spatial management arrangements within the TSPF that takes account of the impacts of fishing on:

- species and populations identified by the ecological risk assessment process as high risk;
- important feeding, spawning, breeding, and refuge grounds for key target, byproduct, bycatch and protected species; and
- benthic habitats.

In developing and implementing the spatial management system, the PZJA to consider regional marine planning processes for Northern Australia, outcomes of the Ecological Risk Assessment of the TSPF, and other scientific advice.

Recommendation 5: PZJA to develop and implement an ongoing, robust system to validate:

- catch and effort data (for target, byproduct and bycatch);
- protected species interactions; and
- impacts on the marine ecosystem.

Recommendation 6: PZJA to undertake a Compliance Risk Assessment of the TSPF and implement mechanisms to address high risk issues. In the interim, the PZJA to continue to manage known compliance risks in the Torres Strait region.

Recommendation 7: PZJA to continue to cooperate with other relevant jurisdictions to pursue complementary management and research of shared stocks for all target, byproduct and bycatch species, which may be affected by cross-jurisdictional issues.



PROMOTING TO OTHER JURISDICTIONS THE IMPORTANCE OF PROTECTING IMPORTANT FEEDING AND NESTING

OBJECTIVES

The legislative objectives of the PZJA, as determined by the Torres Strait Fisheries Act 1984 are as follows:

In the administration of this Act, regard shall be had to the rights and obligations conferred on Australia by the Torres Strait Treaty and in particular to the following management priorities:

- (a) to acknowledge and protect the traditional way of life and livelihood of traditional inhabitants, including their rights in relation to traditional fishing;
- (b) to protect and preserve the marine environment and indigenous fauna and flora in and in the vicinity of the Protected Zone;
- (c) to adopt conservation measures necessary for the conservation of a species in such a way as to minimise any restrictive effects of the measures on traditional fishing;
- (d) to administer the provisions of Part 5 of the Torres Strait Treaty (relating to commercial fisheries) so as not to prejudice the achievement of the purposes of Part 4 of the Torres Strait Treaty in regard to traditional fishing;
- (e) to manage commercial fisheries for optimum utilisation;
- (f) to share the allowable catch of relevant Protected Zone commercial fisheries with Papua New Guinea in accordance with the Torres Strait Treaty;
- (g) to have regard, in developing and implementing licensing policy, to the desirability of promoting economic development in the Torres Strait area and employment opportunities for traditional inhabitants.

The management objectives for the Torres Strait Prawn Fishery under the management plan will be:

The Objectives of the *Torres Strait Fisheries Act 1984* s8.

The PZJA is to have regard to the following objectives for the TSPF, in addition to and not inconsistent with, the objectives in the Torres Strait Fisheries Act 1984:

- Objective 1** Ensure the optimum utilisation of the fishery resources within the TSPF is consistent with the principles of ecologically sustainable development and the exercise of the precautionary principle.
- Objective 2** Promote economic efficiency in the utilisation of the fisheries resources within the TSPF.
- Objective 3** Ensure cooperative, efficient and cost effective management of the Fishery.
- Objective 4** Manage the fishery's interaction with the marine environment including the incidental capture of non-target species and impacts on demersal habitats.



OPTIONS

Two options have been proposed and discussed as possibilities for the future management of the TSPF, ranging from maintaining existing arrangements to introducing a system of fishing access rights in the form of input controls (units of fishing capacity, UFC). Each of these options was discussed during a comprehensive consultation process undertaken with stakeholders between 2003 and 2008 (see below for details). Stakeholders included traditional inhabitants of the Torres Strait, industry, state and Commonwealth fishery managers, and science agencies.

Option 1. Continue the current administrative system for the fishery and grant fishing licences annually (Maintain status quo).

This approach would involve continued short term limited entry management of the TSPF through the grant of annual Fishing Licences under section 19 of the TSF Act. Operators in the TSPF must hold a fishing licence authorising the taking of prawn by trawling. Fishing licences are currently granted for one year only but may be regranted upon application. Under the current arrangements, access to the prawn trawl fishery is limited to the existing 61 licence holders. Although granting annual fishing licences facilitates easy changing of licence conditions when required, it can also lead to uncertainty and destabilisation of the industry.

All management arrangements would continue to be implemented through conditions on transferable fishing licences. As outlined above, within the TSPF these licences place restrictions on the level of effort (days) that may be employed by a licence holder within the TSPZ.

In addition, it is well established that sustainable fishing practices by concession holders are more likely to occur in a fishery when those concession holders have secure, long term access to a known share of the resource. Annual fishing licences do not provide concession holders with secure, long term access to a known share of the resource but they do regulate fishing effort.

The PZJA could change its management arrangements, affecting the rights of individuals in the fishery without having to undergo a statutory consultation process. Under the current system there is only limited opportunity for appeal of decisions in the PZJA fisheries via judicial review (through ADJR in Federal Court). No allowance for an internal or AAT merits review process is provided for outside of a Plan of management (TSF Act). There is clear precedent that management arrangements such as these do not meet Government legislative objectives.

At present there are no licence conditions or other regulations relating to leasing in the TS Prawn fishery and as such, any licenses that do not fish their allocation in a given season (including those in no-boat status), cannot lease unused nights to other operators.

The existing consultative arrangements with the Torres Strait Prawn Management Advisory Committee (TSPMAC) would be retained as the method for developing management arrangements and the PZJA would continue cost recovery for the fishery through the levy base.



Option 2. Implement a Management Plan under the Torres Strait Fisheries Act 1984 that would provide for units of fishing capacity that would be allocated among licence holders, in addition to provision for internal leasing of effort units for the life of the management plan.

Unitisation of fishery effort allocations (units of fishing capacity)

The TSF Act system is based around units of fishing capacity and the granting of fishing licences. The maximum period a licence is granted for is set by regulation. Current Regulations set the maximum period as 1 year. The TSF Act (Section 15A) allows for a system of “units of fishing capacity” which may be translated into catch or use entitlements. While units of fishing capacity (UFC’s) must be attached to a licence in order to allow for fishing they are provided for by statute and can be traded as separate commodities. The TSF Act also allows the plan to establish the duration of these UFCs which could be set as the “duration of the plan”. There is provision (depending on the terms of the Management Plan) to be able to retain UFCs separate to the licences which may expire during the course of the plan.

A Management Plan determined under the TSF Act would allow for the application of a wide range of management measures needed to pursue ecosystem based fisheries management, for the allocation of units of fishing capacity, and the translation of those units into Annual Use Entitlement (UFCs, section 15A(6) of the TSF Act). UFCs can be in the form of input (i.e. Individual Transferable Effort, ITEs) or output (i.e. Individual Transferable Quota, ITQs) controls and provide long-term, secure, tradable access rights. Further, Management Plans will provide operators with a clear framework for management decisions; appeals processes and objectives and performance criteria are outlined. Once determined, Management Plans remain in force for a period of ten years, consistent with the *Legislative Instruments Act 2003* or until revoked.

Individual Transferable Effort units can be administered in a fishery in a number of forms including annual gear limitations (i.e. metres of trawl net), vessel storage capacity or fishing days. ITE units provide incentive to maximise efficiency of each shot, as each effort unit expended during a fishing event will come off the seasonal effort allowance. This system will also provide incentive to maximise catch and minimise interactions with unwanted/low value species. There is, however, the potential for effort creep as industry improves their efficiency under current gear restrictions.

Section 15A(6)(ga) provides for the management plan to translate these units of fishing capacity into catch or use entitlements. Under a Torres Strait Prawn Fishery Management Plan, it is anticipated that the PZJA will:

- Issue individual fishers with a unit of fishing capacity (units) which would represent a share of the Australian portion of the Torres Strait Prawn fishery (these units will be tradable);
- Determine the Total Allowable Effort based on the best available scientific advice. The Total Allowable Effort will be expressed in the number of days available to operators consistent with the full range of other effort restrictions in the Torres Strait Prawn fishery;
- On an annual basis (at the time of renewal of licenses) the PZJA will issue individual fishers with an Annual Use Entitlement (also expressed in days).



- The Annual Use Entitlement would be determined by a formula which divides the number of Australian units in the fishery by the Total Allowable (Australian) Effort to determine a translation value.
- The PZJA will then multiply the translation value against the number of individual units of fishing capacity to determine an individual's Annual Use Entitlement. The Annual Use Entitlement is also tradable, separately to the units of fishing capacity.

The PZJA believes this to be the most effective of the input regimes due to its adjustment flexibility and relationship to effective fishing effort (see Attachment A for details). However, the monitoring of effort remains an important element of effective management.

The proposed Management Plan sets out a process for determining annual TAE involving consultation between scientists, managers, industry and other stakeholders, using the latest available biological and economic data, as well as the input of fishing operators. Under the management system, fishing rights do not confer on entitlement holders the right to an absolute tonnage of fish, but rather to a clearly defined proportion of each annual TAE.

The need for administrative flexibility is incorporated into the proposed Management Plan for the fishery by way of Section 15 of the TSFA 1984. This provides that the PZJA may reconsider decisions made under a plan of management if provision for this has been made in the plan of management. Further flexibility may be available by amending conditions on licences, however Section 15A(9) provides that "while a plan of management is in force for a fishery, the performance of functions and the exercise of powers under this Act in relation to the fishery must be in accordance with the plan of management, and not otherwise."

'Internal' leasing for Australian entitlements

Leading up to and including 2003, Torres Strait Prawn licence holders were fishing at around 77% of the total number of fishing days allocated to Australian operators each year. Since then the proportion of days used has steadily declined to a low of 68% in 2006 (ca. 4,700 of 6,867 days). A contributing factor for low utilisation of the Total Allowable Effort (TAE) is that at present there are no licence conditions or other regulations relating to leasing in the TS Prawn fishery and as such, any licences that do not fish their allocation in a given season (including those in no-boat status), cannot lease unused nights to other operators. Thus, if TSPF licence holders spend their time in another fishery or are unable to fish their full quota of the TSPF TAE in, the fishery remains underutilised.

In an effort to increase the utilisation of the TAE in the TSPF, a flexible approach to leasing units of effort within the fishery was proposed by government to industry at the TSPMAC meeting in September 2006. At the time of the meeting industry representatives held conflicting opinions on whether leasing should be introduced in the fishery.

At the TSPMAC in February 2007, the issue of leasing was again raised, however industry requested that the response period for the feedback form be extended to the end of February, before further discussions were held. In June 2007, the TSPMAC again discussed leasing options with industry representatives strongly against external leasing. However, industry did support the concept of 'Internal' leasing of units of effort.

One of the main concerns repeatedly raised by industry representatives on the TSPMAC, since leasing was first raised is that the introduction of leasing could undermine the asset value of existing Australian entitlements. However, results from a recent industry survey showed that 9 of 14 respondents supported leasing arrangements in the fishery. ABARE have also indicated that it is highly unlikely that making an asset tradable on a temporary basis



would reduce overall market value. The introduction of more flexible trading arrangements (whether permanent or temporary) allows for the rights to flow to those that value them the most. This occurs in all open markets and provides the basis for trade.

The PZJA Standing Committee has already indicated that providing PNG were to agree, future access to unused PNG nights in the TSP fishery would be achieved through an annual leasing mechanism. The TSP industry subsequently accepted the proposal of leasing unused PNG nights.

A system of internal leasing is considered to be the most efficient method of ensuring that the TAE within the TSPF moves towards full utilisation, while preserving asset value for TSP licence holders. Thus, to lease effort units within the fishery individuals would have to already own a TSPF licence or purchase an existing licence (currently capped at 61) (see Attachment B for detail).

Appeal Mechanisms

Section 15A(6)(i) of the *Torres Strait Fisheries Act 1984* currently provides that a plan of management *may* make provision for the “reconsideration of decisions made under the plan of management”.

Merits Review by the AAT: As a plan of management is a legislative instrument, a plan of management itself can provide for AAT review of a decision made pursuant to the power which it grants.

Section 25(1)(a) of the *Administrative Appeals Tribunal Act 1975* (AAT Act) provides that an ‘enactment’ may provide for AAT review of a decision made under that enactment. Legislative instruments are included under the definition of enactment by section 3 of the AAT Act. Accordingly, as a plan of management is created by legislative instrument, it may provide for AAT review of decisions made under it. It should be noted that the jurisdiction of the AAT is not automatic. An enactment must explicitly grant the AAT jurisdiction.

Judicial Review: Decisions under a plan of management will be able to be judicially reviewed. Unlike AAT review, the right to judicial review does not need to be conferred by an enactment. Judicial review is available under the *Administrative Decisions (Judicial Review) Act 1997*, s39B of the Judiciary Act and s75(v) of the Constitution.

Merits review and judicial review are very different. When undertaking merits review, the AAT ‘stands in the shoes’ of the original decision-maker and can substitute its decision with that of the original decision-maker. Judicial review is undertaken by the court and the court cannot substitute its opinion with that of the original decision-maker nor remake a decision. A court can only decide if a decision has been made lawfully. If the court finds that the decision has not been made lawfully it sends the decision back to the original decision-maker to be made according to law.

Given the expense associated with applications for judicial review and the limited orders a court can make, persons wishing to challenge a decision made under a plan of management are far more likely to choose merits review in the first instance. It should be noted however, that judicial review is available from a decision of the AAT. A Management Plan and any instruments under the plan are disallowable instruments and decisions made under the management plan are subject to review of the Administrative Appeals Tribunal.



The following table outlines the four major changes proposed for the management of the TSPF under each of the Options described above.

Table 2. The major elements of a change in management structure of the TSPF.

Management element	Option 1	Option 2
	Current management arrangements	Changes as part of the TSPF Management Plan
Unitisation of fishery effort allocations (units of fishing capacity)	Currently, the fishery is divided into days of fishing effort, capped at 9,200 days per year (6,867 allocated to Australian Operators). Fishers hold days of effort and can buy and sell these days. Any government intervention to reduce the total effort usually results in a buyback of days or a pro-rata reduction in days.	Proposal to change the effort in the fishery to a unitized system whereby on an initial basis one day will equal one unit of effort. The formula that will be used to allocate effort on an annual basis will then be: $(\text{Units allocated}/9200) \times \text{Total Allowable Effort (TAE)}$ for a given year. TAE will be the Maximum Sustainable Effort in the fishery to ensure that the stock is not overfished, i.e. $< MSY (E_{MSY})$. Licence holders will be allocated a number of units in proportion to their % of the fishery, initially on a 1:1 basis, based upon holdings of allocated fishing days on the date immediately prior to the commencement of the management plan. The PZJA agreed to this approach in October 2006 (see Attachment A for details).
'Internal' leasing for Australian entitlements	Leasing is currently not allowed within the fishery. Licence holders must formally transfer their licence and/or effort allocation (days) to another individual to reallocate effort. At the same time, they sign a contract that ensures that the 'buyer' will sell back their licence and/or effort (days) back to the original holder at the end of a season.	Leasing will be allowed within the fishery for effort units only. However, individual licences will not be able to be leased (outside operators will still be able to purchase a TSPF licence to enter the fishery). The objective is to ensure that external interests cannot enter the fishery on a purely temporary basis. To lease within the fishery, individuals will have to own, or purchase a licence. Industry supports this method of 'Internal' leasing. The PZJA AGREED to provide for internal leasing of effort units in the TSP fishery in the TSPF management plan, at its meeting of August 28-29, 2007 (see Attachment B for details).
Appeal Mechanisms	Under the current system there is only limited opportunity for appeal of decisions in the PZJA fisheries (through ADJR in Federal Court).	At its 21 st meeting on August 28, 2007, the PZJA agreed to an appeals mechanism for decisions made under management plans comprising an internal merits review as a first step and an external merits review to be made by the Administrative Appeals Tribunal, consistent with arrangements set out in Section 15A of the <i>Torres Strait Fisheries Act 1984</i> and the <i>Administrative Appeals Tribunal Act 1975</i> . DAFF are currently sponsoring a review of appeals mechanisms available under both the <i>Fisheries Management Act 1991</i> and the <i>Torres Strait Fisheries Act 1984</i> . Further, if there are grounds on points of law, then further appeals can be made to the Federal Court.



IMPACT ANALYSIS

Affected sectors

Community (including traditional and non-traditional inhabitants)

In general, members of the Australian public are consumers and protectors of fishery resources.

The key interest of the community in fisheries resources comes from:

- long and short term impacts on supply and price of commercially caught fish;
- the stock of future wealth that can be gained from the resource if it is managed cost-effectively, including the recovery of the attributable costs of management from those that directly benefit financially from the use of fishery resources;
- access to recreational and sport fishing, diving and visiting experiences if the marine ecosystem is conserved under good management; and
- the intangible benefits associated with knowing the marine ecosystem is conserved under good management.

Business (industry)

The main business stakeholders are the fishers/fishery operators. The fishery is based on high volume low value species. The gross value of production of the TSPF in 2006 was estimated to be approximately \$13 million.

The key interests of fishers are:

- secure access rights to fisheries resources;
- management that will maximise the economic efficiency of the fishery resources;
- cost-effective management;
- accountability of the management process; and
- long term sustainability of the fishery.

Government (PZJA agencies – AFMA, QDPI&F, TSRA and DAFF)

The PZJA agencies are bound by legislative objectives in the TSF Act and while not involved in day-to-day management, the Minister for Fisheries, Forestry and Conservation provides overarching strategic guidance. The PZJA agencies while not directly required to manage fisheries in accordance with provisions of the *Environment, Protection and Biodiversity Conservation Act 1999* that are designed to ensure activities such as fishing do not have significant impact on protected matters of national environmental importance, there is a general commitment to adhere to the provisions where possible. AFMA is accountable to the Australian parliament and public for the management of fisheries that ultimately exploit a community owned resource. In addition, the Torres Strait Treaty requires additional accountability to traditional inhabitants and PNG.

AFMA (in conjunction with other PZJA agencies) must pursue the management of fisheries under its jurisdiction in a manner that:

- is efficient and cost-effective;
- is consistent with the principles of ecologically sustainable development and the precautionary principle;



- maximises economic efficiency;
- is accountable; and
- achieves government targets for cost recovery.

The impact of each regulatory option has been assessed in terms of costs and benefits to the community, business and government in Table 3 and 4.



Table 3. Option 1 - Continue the current administrative system for the fishery and grant fishing licences annually (Maintain status quo).

Benefits	Community	Business (industry)	Government
	-	Operators will not have to participate in trading allocations of ITE which is known to be difficult (at present there are no licence conditions or other regulations relating to leasing in the TS Prawn fishery and as such, any licences that do not fish their allocation in a given season (including those in no-boat status), cannot lease unused nights to other operators.	Flexibility in changing management arrangements as licence conditions may be changed every year.
No additional financial costs such as those associated with developing and implementing a Management Plan under option 2:			
	There is less chance of an increase in prawn prices or decrease in supply which can be associated with increased costs to industry.	Stable management costs in the short term.	Stable management costs in the short term.
Costs	Lack of long-term secure access rights may deter fishers from taking greater responsibility for the long-term sustainability of the resource (ESD objective).	High probability of overcapitalisation due to the level of unused effort in the fishery. This may result in reduced economic return.	PZJA (including AFMA as the lead management agency) does not satisfy its policy requirements to develop and implement Management Plans and long-term on-going access rights in all Commonwealth Fisheries.
	Likely consequences are reductions in quality and availability of prawns and increases in market prices due to decreased supply.	Uncertainty of long-term access rights due to the short life of fishing licences (1 year) reduces security for industry.	May lead to overcapitalisation which will prevent PZJA agencies from meeting their economic efficiency objectives.
Appeals can be made every time a licence condition is changed or a licence is issued. This may lead to uncertainty and destabilisation of the fishery, and may increase levy costs due to increased AFMA resources (i.e. management staff will be dealing with litigation instead of dealing with other management issues).			
		Increased levy costs will decrease profits for industry.	Increased litigation will require more government time and reduce the potential for the AFMA to achieve its Economic Efficiency Objective.

Table 4. Option 2 – Implement a Management Plan under the Torres Strait Fisheries Act 1984 that would provide for units of fishing capacity that would be allocated among licence holders, in addition to provision for internal leasing of effort units for the life of the management plan.

Benefits	Community	Business (industry)	Government
	Secure access rights promote sustainable fishing practices as fishers have a long term stake in the fishery. This reduces the risk of overcapitalisation/ (as it is in industries best interest) and helps maintain the fishery for the medium to long-term.	UFCs provide a long-term stake in the fishery which promotes the use of sustainable practices and long-term economic returns for industry.	UFCs provide a long term stake in the fishery which promotes the use of sustainable practices due to industry's long term investment in the fishing resource. This reduces the risk of overcapitalisation and will help the AFMA to achieve its ESD and economic efficiency objectives.
		Long term access rights make investment in the fishery less risky, which promotes efficient development of the fishery.	Granting UFCs in the TSPF helps the PZJA to achieve its policy objectives to develop a management plan for all PZJA managed fisheries.
			UFCs provide market driven incentives for autonomous restructuring. UFCs in the form of input (i.e. Individual Transferable Effort, ITE) controls provides long-term, secure, tradable access rights which are more secure than providing access rights as a licence condition. While units of fishing capacity (UFC's) must be attached to a licence in order to allow for fishing they can be traded as separate commodities. This will maximise economic efficiency over time (economic efficiency objective).
Appeal of allocations is limited to one litigation process when UFC's are initially allocated, which reduces the costs associated with litigation (in contrast to licences which may be appealed annually upon grant). Further Restrictions to UFCs can be issued through directions and determinations, which can not be changed/appealed by industry:			
	This may reduce costs for industry which may result in a better supply of the resource, and better market prices.	This reduces costs to industry as increased litigation may lead to an increased levy base. It also provides more security in access rights which promotes autonomous restructuring within the fishery.	This reduces Government costs and management demands associated with litigation.
ITEs encourage industry to maximise the efficiency of each shot, reducing bycatch species and small and other unmarketable species			
		ITE's give individual licence holders access to a given portion of resources each season, providing some economic security. This should lead to more rational fishing and minimise the costs of fishing over time.	Assuming ITE's provide operators with greater ownership of decisions over the resources, it may cause them to take responsibility for the health of the Fishery and lead to improved compliance outcomes (i.e. less compliance costs – cost effective fisheries management objective).
		This system will also provide incentive to maximise catch and minimise interactions with unwanted/low value species (bycatch).	ITE's units are readily traded and provide a market-driven mechanism for a fishery to adjust itself towards maximum economic efficiency over time.
		Excessive bycatch collected in trawl nets,	ITE's are usually valued by the market in a relationship

		decreases fuel and sorting time efficiency. Thus, licence holders are more likely to install efficient bycatch reduction devices (BRD's) to decrease fuel costs.	closer to the costs of production than other forms of fishing rights. This is an important aspect of a potential fishery restructure.
Costs	The community resource is assigned to industry for the life of the Management Plan, i.e. indefinitely (however the plan can be revoked through due process).	Less opportunity to appeal conditions which industry are not happy with (only on initial grant of ITE units).	Less flexibility to adjust conditions as more information becomes available (only on initial grant of allocation).
	There are additional management costs associated with the UFC grant process and development of the Plan, however this is only a one off cost for the implementation of the Management Plan, and you need to consider the reduced ongoing costs due to fewer opportunities for litigation and more effective fisheries management.		
	May filter through to increased fish prices, or decreased supply of the resource.	Management Plans can be costly to implement and under the revised AFMA cost recovery process; these costs are fully borne by industry, meaning a lower economic return for industry initially.	This may not assist AFMA or other PZJA agencies in achieving their cost effective fisheries management objective.
	Implementing a management plan of the TSPF will have an approximate one off development cost of \$50,000. This includes the costs to the PZJA agencies management and licensing, as well as the costs of drafting the management plan.		
	This may lead to increased market prices or decreased supply.	Costs of implementing a management plan are fully borne by industry, thus these costs will be distributed between the 61 licences in the TSPF. This will reduce profits to industry in the short term.	As management costs are fully paid by industry there will be no direct cost to Government. However it may inhibit AFMA and other PZJA agencies from achieving their costs effective management objectives, and if industry were unable to see the ongoing benefits associated with this upfront cost it may have a negative impact on the relationship between the PZJA and industry.
	It is difficult to determine what level of effort will result in a given (sustainable) level of catch when using ITEs. There is also potential for fishers to become more efficient over time, increasing the catch associated with the initial effort constraints. Although provisions can be made which allow ITEs to be changed with increased efficiency, there is increased chance of overcapitalisation and overfishing if increased efficiency is not detected. Also, ITEs do not eliminate competition between fishers, as there is competition to increase gear efficiency.		
	This may put long term sustainability at risk.	Overcapitalisation has the potential to cause the fishery to crash, thus long term economic return is uncertain.	Possibility of overexploitation of fish stocks and overcapitalisation.

CONSULTATION

The management of the TSPF falls under the jurisdiction of the PZJA. At the time of publication the PZJA comprised of the Commonwealth Minister for Fisheries, Forestry and Conservation, Senator the Honourable Eric Abetz (Chair), the Queensland Minister for Primary Industries and Fisheries, the Honourable Tim Mulherin MP, and the Chair of the Torres Strait Regional Authority, Mr John (Toshie) Kris. Under the current structure the TSPMAC develops the management arrangements in the prawn fishery, which are put forward to the PZJA for approval.

The PZJA's management philosophy involves a partnership approach to the management of marine resources under its jurisdiction. Cooperation with relevant stakeholders, such as the fishing industry, government agencies, the community and others with an interest in the sustainable management of fisheries resources, is a vital part of this approach. The TSPF provides opportunities for stakeholders to have input into the management process through the TSPMAC. The TSPMAC meets two to three times annually and is the link between fishery's managers and industry. This is the forum where management recommendations are discussed for presentation to the PZJA. PZJA decisions leading to the development of the TSPF Management Plan are provided at Attachment C.

Significant consultation has occurred with all effected stakeholders in relation to the future management of the TSPF, and the proposition to implement a Plan of Management, details of which are described below:

2003/2004 Stakeholder consultation

In November 2003 the agencies involved in the Torres Strait Protected Zone Joint Authority (PZJA) released a discussion paper on future management for comment (*Torres Strait Prawn Fishery Effort Reduction/Adjustment, November 2003*). That paper and the associated comments were considered by the Prawn Working Group (PWG) and the Torres Strait Fishery Management Advisory Committee (TSFMAC). After those discussions a further discussion paper was prepared by the PZJA in December 2003 and released for further comment.

It was intended to have an open forum to receive verbal comments on the paper followed by a further PZJA meeting to make a decision in the issue, in January 2004. However the calling of an election in Queensland and the elections for the Torres Strait Regional Authority delayed this process. Written comments were invited but none were received by PZJA agencies on the revised version.

Since the release of the first discussion paper further legal advice on issues in relation to the sharing of catches and related matters specified by the Torres Strait Treaty were received and incorporated into a discussion paper prepared by PZJA agencies (*Future management arrangements for the Torres Strait Prawn Fishery, May 2004*). The paper was released for public comment in May 2004. The proposals contained within the paper were considered at subsequent PWG, TSFMAC and PZJA meetings. It was reported that 253 submissions were received. Most of the management issues presented were to do with effort reduction in the fishery. As this process is now complete, the results are not presented in this Statement.

2005/2006 Stakeholder consultation

Following repeated concerns expressed by the Torres Strait Prawn Entitlement Holders Association (TSPEHA) leading up to 2006, the PZJA endorsed the elevation of the TSPFWG



to a MAC at PZJA 19, 2006. This had the added benefit of better representing the opinions of industry during the management plan development process.

At the June 2006 TSPMAC meeting members were presented with a preliminary draft of the proposed TSPF Management Plan. Members discussed the draft document at length and made several suggestions for recommended changes. At the June 2006 TSPMAC meeting it was proposed, that with the move to the Management Plan, that levies for the fishery be calculated on a per unit basis.

Members were informed of the rationale behind unitising the fishery. Unitisation of the fishery would allow greater flexibility for adjusting individual licences when changes to the Total Allowable Effort (TAE) were made. This would effectively reduce that administration required when a change was made as a decision would not need to be made on every licence. Members discussed the strengths and weaknesses of a unitisation system in depth. Industry members expressed a view that the fishery already had a form of unitisation with allocated fishing days per licence and pointed out that changes to individual licences had already been made when the TAE was adjusted. Further concerns were raised regarding the possibility that financial institutions would need to reassess mortgages if a significant change to the current system occurred.

The four options for a unitisation system within the TSPF and the nature of each were presented and discussed at the meeting. These included:

- Individual Transferable Quotas
- Tradable Time units
- Gear based units (as used in NPF)
- Effort units

After an in-depth discussion regarding the unitisation of the fishery, members agreed that the preferred option at this time would be to formalise the current system as “time based effort units”. Members recommended that the time-based effort unit should be allocated to existing operators in the TSPF on a 1:1 basis dependant on the number of days allocated on the individual TSPF fishing licences at the time the management plan is implemented. Time based effort units are acknowledged to equate to an overall percentage of the sustainable total fishing effort in the TSPF, also known as a TAE that will be set for the fishery. The TAE will be set by the PZJA. Further clarification of the unit based system is detailed in Attachment A.

Members recommended that in the case where partial days are calculated based on the time based effort units held by individual licences, allocated days will only be issued as whole days. A system for rounding up or down the allocated fishing days was to be considered by a management plan working group and it was recommended that the possible systems be tested against the existing fishery data.

The TSPMAC also agreed that a small working group be set up to progress the draft Management Plan out-of-session. The working group was tasked with expanding the “measures by which objectives are to be attained” and the “performance criteria/indicators to assess measures taken” sections of the draft plan. The aim was to complete the work via email/phone conference as much as possible. The working group proved to be a successful concept. It conducted two teleconferences on 24 July and 31 August 2006 and resolved some outstanding issues with the proposed management arrangements under the draft management plan.

The second draft of the Management Plan was presented at the TSPMAC meeting of September 2006, for comment and decision on sections of the Management Plan that required TSPMAC consultation. The members reached agreement on the sections of the



Management Plan that required decision and agreed that once the amendments in relation to the decisions made were completed, the draft Management Plan could be provided to the Office of Legislative Drafting (OLD) as drafting instructions.

In an effort to increase the utilisation of the TAE in the TSPF, a flexible approach to leasing units of effort within the fishery was proposed by government to industry at the TSPMAC meeting in September 2006. At the time of the meeting industry representatives held conflicting opinions on whether leasing should be introduced in the fishery. One industry representative advised that the industry members he represents would be in favour of leasing in the fishery, provided that units could only be leased to other licensee's within the fishery.

It was decided that a paper and/or a newsletter be prepared discussing leasing within the TSPF and requesting feedback from industry in regard to leasing. This document would be sent to all current license holders in the TSPF. This would provide a clearer way forward and enable the TSPMAC to determine if leasing arrangements should be implemented in the TSPF.

2007/2008 Stakeholder consultation

At the TSPMAC in February 2007, the issue of leasing was again raised, however industry requested that the response period for the feedback form be extended to the end of February, before further discussions were held. In June 2007, the TSPMAC again discussed leasing options with industry representatives strongly against external leasing. However, industry did support the concept of 'Internal' leasing of units of effort.

One of the main concerns repeatedly raised by industry representatives on the TSPMAC, since leasing was first raised is that the introduction of leasing could undermine the asset value of existing Australian entitlements. However, results from a recent industry survey showed that 9 of 14 respondents supported leasing arrangements in the fishery (Attachment D). ABARE have also indicated that it is highly unlikely that making an asset tradeable on a temporary basis would reduce overall market value. The introduction of more flexible trading arrangements (whether permanent or temporary) allows for the rights to flow to those that value them the most. This occurs in all open markets and provides the basis for trade.

Subsequently, AFMA requested that the TSPEHA prepare a paper outlining their

At the June 2007 TSPMAC meeting, at the request of AFMA, members were presented with a paper prepared by the TSPEHA outlining Industry's continued opposition to the 31.8% effort cut which took effect in the 2006 season; the TSPEHA's alternative management proposals; and their concerns over government proposals to introduce leasing in the fishery as part of the TSP management plan.

Members discussed the TSPEHA's document at length and made several suggestions for progressing the issues raised. To further consider industry's proposed alternative management arrangements, TSPMAC members agreed to convene a working group in July 2007 to evaluate options for increased access for the 2007 and future seasons. Industry were invited to participate in the meeting, however were unable to attend due to other commitments. Subsequently, a meeting involving government representatives was held on July 10, 2007 to "*review industry access to the TS Prawn fishery with a view to development of a harvest strategy that will provide increased capacity for industry to access the resource without impacting on resource sustainability in line with the draft Commonwealth Harvest Strategy policy.*"

The workshop discussed four possible avenues that may lead to additional days being available to fish in the Torres Strait Prawn Fishery:



1. *Unused days* – It was noted that any additional quota issued on the basis of unused days would reduce demand for days through leasing arrangements and undermine the whole intent of introducing such a scheme. Consequently the workshop participants did not support issuing of additional quota on the basis of unused days.
2. *Area management* – The workshop discussed a spatial management option which was based on allowing fishing to occur throughout the fishery area until a trigger point was reached where upon the fishery north of 10 degrees latitude south would be closed to additional fishing. The area south of 10 degrees would remain open for an additional period of time until a second trigger point is reached. The area management would result in effort in excess of the current TAE of 9,200 days being able to be fished.

The trigger points would be designed to facilitate the targeting of endeavour prawns south of the 10⁰ latitude whilst protecting the more vulnerable tiger prawn stocks. The southern area is considered to have less tiger prawn broodstock than the northern area.

The workshop participants recommended that additional modelling of the area management possibilities should be undertaken with comments provided as to the risks associated with each option.

3. *Healthy prawn stocks* – The workshop participants discussed the possibility of increasing the total allowable effort in the fishery on the basis that the tiger prawn biomass was at high levels relative to previous years. The meeting agreed that an additional allocation based on a positive stock assessment would be temporary in nature and was therefore not supported at this time, given that the TSP Management Plan is due for implementation in early 2008.
4. *Availability of PNG Days* – The meeting discussed the recent decision by PNG to make available its share of the nights on the Australian side of the protected zone to Australian fishers for the remainder of the 2007 season. The meeting noted that some industry members had taken up the opportunity to use these nights and that if this had occurred earlier in the season more boats may have entered the fishery. The meeting supported a proposal to discuss with PNG utilising their share of the available days each year, if they had not taken up their right by April/May (with a suitable date/trigger point to be agreed upon).

Soon after the June 2007 TSPMAC meeting, the Australian Government negotiated access to unused 2007 season fishing days in the TSPF allocated to PNG under the Torres Strait Treaty. As a result, there was an additional allocation of fishing days in the fishery to Australian operators for the 2007 fishing season. As of 1 August 2007, 24 operators had been allocated a total of 777 additional fishing days. A further 17 licence holders responded advising they did not want additional fishing days.

Concerning leasing in the TSPF, the TSPEHA discussed two options in their paper to the TSPMAC, External and Internal leasing.

External leasing: Industry expressed strong concern over the potential negative effects external or open access leasing would have on the asset value of TSPF licences. Specifically, concerns were raised that if external leasing was allowed, new entrants to the fishery could lease effort without ever having to buy a licence. Subsequent to these concerns, industry indicated that they would not support external leasing.

Internal leasing: Industry indicated that internal leasing ‘*may have some benefit in that days can be leased from licence holder to licence holder to continue fishing*’. At the TSPMAC meeting, TSPEHA representatives advised that they would only support internal leasing within the fishery.



Government representatives agreed that there was a strong case for internal leasing. Subsequent to this, government prepared a paper outlining a proposal for internal leasing in the TSPF for PZJA decision.

In developing a process for internal leasing of effort units, industry representatives requested that the government detail under what arrangements leasing would be allowed in the TSPF. Specifically, the TSPEHA posed a series of questions to government during the TSPMAC meeting in June 2007. Both the questions by industry and answers from government members of the TSPMAC are provided below:

Q1: Can only unused days to be used?

A1: Yes, only unused units of effort will be allowed to be leased in a given year.

Q2: Will leasing only be for the given licencing year?

A1: Yes.

Q3: Who pays the Government management costs for the leased days?

A3: All units of effort will remain the property of the Lessor, and as such, all annual components of the TS Prawn Levies (fixed and variable) will continue to be charged to the owner of the units prior to the season commencing.

Q4: Can the days leased be given back and released if they haven't (all) been used by the lessee?

A4: No.

Q5: Can the lessee sub-lease the days?

A5: No.

Q6: Who is going to keep a register of the leasing and who pays for the cost of keeping the register (the lessee or the lessor or all of Industry)?

A6: The licencing delegate will keep all records – currently QDPI&F. The TSPF is a cost recovered fishery and any additional costs associated with leasing arrangements will be recovered from industry as part of the annual levies.

The PZJA, at its meeting of 28-29 August 2007, agreed to provide for internal leasing of effort units in the TSP fishery in the TSPF management plan based on support from both government and industry (see Attachment B for details).

The rationale for internal leasing arrangements is consistent with the cap on new entrants to the fishery and maintenance of the full range of effort controls that currently apply. This fishery will remain for the foreseeable future managed by input controls.

At TSPMAC No. 5 in December 2007, TSPMAC members agreed that once the drafter had finalised the draft Plan that it should go through the TSPMAC for a two week consultation period out-of-session and for comments to be forwarded on to AFMA, before it is released for wider public consultation. The PZJA Standing Committee made a similar request in February 2008.

The draft Plan was subsequently provided to all TSPMAC members, the PZJA Standing Committee, PZJA agency staff (AFMA, QDPI&F, TSRA, DAFF) and the Department of Environment, Water, Heritage and the Arts (DEWHA) on March 11, 2008 for a two week comment period (March 11-25, 2008).

Comments were received from the following groups:

- AFMA – Legal, Regulation Review, Foreign Compliance.
- QDPI&F – Licencing.
- TSRA – Including comments from CFG representatives.
- DEWHA – Sustainable Fisheries Section.
- TSPEHA – Torres Strait Prawn Entitlement Holders Association.



Comments received were considered by PZJA agency staff and provided to the drafter for inclusion in the draft Plan as appropriate. Changes were relatively minor and included changes to definitions and inclusion of additional geographic coordinates in the schedules to the draft Plan. Some members of industry expressed their desire not to have a unitised fishery.

Final stakeholder consultation

The revised draft Plan was made available for a period of public comment from June 2 to July 2, 2008. The Plan was provided to all TSPF boat licence holders and interested parties with a covering letter, an explanation of the Plan and the draft Plan itself. Notices advising of the public comment period were also placed in local (Torres news) and State newspapers (Cairns Post).

Comments were received from the following groups:

- AFMA – Legal.
- QDPI&F – Licencing.
- TSRA – Including comments from CFG representatives.
- DAFF – Legal.
- TSPEHA – Torres Strait Prawn Entitlement Holders Association (verbal only).

Comments received were again relatively minor and consisted of changes to some wording in the draft Plan to ensure consistency with the Torres Strait Fisheries Act 1984. In addition, indigenous stakeholders requested that additional performance criteria were added to the Plan. Changes were subsequently included by the drafter. Some members of industry again expressed their desire not to have a unitised fishery.

Meetings held that have discussed Management Plan options to date:

- TSPFWG October & December 2003, June 2004, July 2005;
- TSPMAC June & September 2006, February, June & December 2007;
July 2008;
- TSFMAC December 2003, July & November 2004;
- PZJA/Stakeholder December 2003, February & July 2005, April & October 2006,
August 2007, May 2008.

The current target date for implementation of the TSP Management Plan is March 1, 2009 to coincide with the opening of the 2009 TSPF season. All aspects of the management plan would be subject to review at the time the management plan is reviewed.

In order for the TSPF Management Plan to come into effect the following steps must be taken:

1. the Minister for Environment and Water Resources (formally Department of Environment and Heritage) must signal his intention to accredit the TSPF Management Plan;
2. the Chair of the PZJA must sign (determine) the TSPF Management Plan;
3. the Minister for the Environment and Water Resources must accredit the TSPF Management Plan;



4. the plan must be registered with the Federal Register of Legislative Instruments (FRLI);
5. the TSPF Management Plan, RIS, explanatory statement and the strategic assessment report must be tabled in Parliament for 15 sitting days.

Summary of stakeholder views

In general, there is broad support for moving to a Management Plan as it is recognised that the current arrangements did not provide protection against overfishing with significant increases in fishing effort. There was strong in principle support for ITEs as the primary management measure for the TSPF. However, Industry has expressed their desire not to move to a system of unitisation.

CONCLUSION AND RECOMMENDED OPTION

Continuing the grant of annual fishing licences as the primary management tool (Option 1 - maintaining status quo) is not considered a viable option for the future management of the TSPF. It has the potential to put the fishery at risk of overcapitalisation. Further, the potential for annual litigation upon the grant of licences and associated variation to licences, has the potential to increase costs, thereby reducing the PZJA's ability to meet its economic efficiency and cost effective fisheries management objectives. Also, licences do not optimize the long-term benefits for the fishery or provide certainty in the ongoing access for stakeholders in the fishery. Finally, as outlined in the 1989 (revised in 2003) policy statement, the preferred management option for AFMA managed fisheries is through the implementation of a management plan and grant of SFRs (units of fishing capacity in the case of the TSPF). This option should be implemented unless there is adequate evidence that this approach is inappropriate for a specific fishery. This is not the case in the TSPF, despite being managed under the TSF Act.

The preferred option for future management of the TSPF fishery is the implementation of a Plan of Management and issuing UFCs (Option 2). The recommendation of this option is the result of an extensive consultation process with external stakeholders and the TSPMAC, and has the capacity to achieve the PZJA's legislative objectives under the TSF Act. UFC management allows for a direct control over effort with effort limits set according to the sustainability of individual species. Further, these amounts can be changed between years as further stock information is obtained. The option also provides stronger access rights for industry giving them added security in the future of the fishery. Finally, due to the reduced opportunities for litigation under a management plan, there is potential for decreased costs allowing the PZJA agencies to achieve economic efficiency and cost effective fisheries management objectives.

The draft *Torres Strait Prawn Fishery Management Plan 2008* provides a comprehensive management regime for the future, which contains adequate controls for managing a highly variable and short lived species in a cost effective way. The use of a unitised system of TAE (Attachment A) is a simple approach which provides coarse tools for adjustment which can be supported by cost effective regulation and compliance.

The proposed Plan provides a clear and precautionary process for future management of prawns within the Torres Strait. The proposed Plan provides effective pre-emptive controls to prevent overcapitalisation and overfishing.

Based on the consultations conducted, the PZJA agencies conclude that the ITE option, run in tandem with a system of Internal Leasing (Attachment B) is the most cost effective



management tool for the TSPF in terms of pursuing the Government's legislative objectives. Consequently, the PZJA agencies believe that this option will promote certainty for industry by allocating secure and tradable fishing rights. The key benefits identified by the PZJA agencies for managing the fishery under ITE include:

- direct control over fishing effort that can accommodate environmental and oceanographic influences on variability in prawns available to the fleet;
- ability to focus resources on species most at risk of overexploitation via time and spatial management of effort;
- flexibility for operators to choose the amount of fishing effort;
- strong access right granted under a management plan;
- minimum intervention by the managing agency and maximum flexibility for operators to make rational investment decisions – low risk of over-capitalisation;
- autonomous adjustment (no requirement for Government driven restructure); and
- will meet all international management obligations associated with the Torres Strait Treaty.

The PZJA has placed great emphasis upon management through a partnership approach with industry under its legislative objective of providing transparency to the fisheries management process. By adopting the management approach preferred by industry and the management advisory committee, individual fishers may feel greater ownership of management decisions. It should also be noted that the loss of community access rights to the fisheries resource in assigning those rights to individuals is outweighed by community returns from sustainable exploitation of that resource.

It should be noted that the PZJA, in light of TSP Act (1984) legislative objectives and advice from TSPMAC and operators and other stakeholders, determines the preferred option. The PZJA believes implementing the preferred option will assist management in pursuing its objectives and encourage efficient fishing practices by assigning rights and managing fishery resources on an ecosystem basis.

The stated move to a unitised system of management (Attachment A) should facilitate adjustment of effort up or down. Building decision rules will add security and certainty to the fishery by ensuring that any changes in the cap are made according to clear and pre-determined rules, and with an overall aim of minimising the variation from one year to the next. The cap on days in the fishery should continue to be reviewed on an annual basis in light of changing fishing practices in the fishery and in light of additional stock assessment advice.



Unitisation and allocation of effort in the TSPF

Clarification on the “unit system”

Note: There are a total of 9,200 days currently in the fishery. The 9,200 days are split between Australia (6,867 days), PNG (2,070 days) and 263 days held in trust by the Australian Government.

Currently Australian operators have allocated fishing days on licences equating to a total of 6,867 fishing days. In 2009 those fishing days will be converted on a one-for-one basis to “time based effort units”, assuming all licences are renewed for the 2009 fishing season that would result in the allocation of a total of 6,867 units in the fishery. Following the allocation process the total number of units issued to Australian operators in the fishery would be fixed at 6,867 units under the management plan for the fishery. Each unit issued to an operator would thus equate to 0.01456% ($1/6867 \times 100$) of the Australian share of the Total Allowable Effort (TAE) in the TSPF.

For an operator holding 100 nights in 2008, that would equate to an allocation of 100 units in 2009, worth 1.456% of the Australian share of the TAE for the fishery.

By definition, the conversion of the number of units held by an operator under a time based effort unit system to a percentage holding in the fishery would be used to calculate the number of fishing days that can be fished in any given season. Assuming the TAE in 2009 is set at 6,867 nights, every time based effort unit held by an operator would equate to 1 allocated fishing day under the following equation.

$$(1 \text{ unit} / 6,867 \text{ units}) \times \text{TAE} = \text{days held}$$

TAE changes

Any changes to the TAE in the fishery would be made as required by the PZJA, according to scientific information and through consultation with the TSPMAC.

Trading

The time based effort units will be transferable under the new unit system. All operators would be entitled to trade units to other operators, in a similar way to that currently used by operators to trade fishing days. Following the allocation of units in 2009, operators would trade units with a value of 0.01456% of the Australian share of the TAE, such that someone trading 100 units will trade 1.456% of the TAE, (equating to 100 nights assuming the TAE is maintained at 6,867 nights).

Banks and wording on licences

Industry members informed the TSPMAC how important it was to be able to take their licences to bank managers to illustrate and borrow money against a number of “allocated fishing days”, as this is the system that has been used historically in the fishery. They requested that licences issued following the move to the unitised management system should indicate the number of allocated fishing days. The TSPMAC recognised this and suggested that statements be issued on licences that nominated “XXX allocated fishing days which equates to X.XX% of the TAE for the fishery”. The calculation of “XXX allocated fishing days” would be made by licensing staff based on the number of units held by the operator at the time the licence was issued.



Internal leasing of effort units in the Torres Strait Prawn Fishery (TSPF), via the 'temporary transfer' process

The proposed internal leasing model would allow TSPF licence holders to lease any effort units that they are not going to use for a given season, to another person holding a TSPF licence. Specifically, the following process involving a 'Temporary Transfer' of effort units would apply:

- 1) The holder of a TSPF licence that has unused effort units for a fishing season may, subject to the limitations described in this section, lease the effort units to another person holding a TSPF licence (the *lessee*);
- 2) The holder (the *lessor*) must, before the transfer of effort units takes effect, apply to the relevant government agency (QDPI&F) to register the leasing arrangement and pay the relevant fee (both parties to the leasing agreement will have to complete the appropriate application form);
- 3) The lease entitles the lessee to use only the number of whole days of fishing effort determined by the PZJA agreed formula to convert units to days for that season, rounding down any part days (*currently $1/6867 * TAE$; the TAE for the Australian sector is 6867 days*).
- 4) The lease of an effort unit has effect:
 - a. Only if all levies payable for both the lessor and lessees licences have been paid in full, including the variable component for the effort units owned by the lessor; and
 - b. Only for the fishing season in which the lease is granted.

Other limitations/conditions:

- 1) Two TSPF licence holders ('party/ies') would need to agree on the number and price of the units to be leased prior to contacting QDPI&F.
- 2) The lessor (owner of the units) should ensure that continued fishing activities while the application is being processed, will not use up effort units that have been agreed to be leased (unused units).
 - If records held by the relevant government agency show that the lessor does not have enough unused effort units to meet the agreement with the lessee in full, processing the application will be delayed while the relevant agency contacts both parties to obtain their approval to vary the application to reflect recorded usage.
- 3) Lessors do not need to retain a minimum number of effort units to retain the fishery symbol, as the leasing arrangement is temporary (for one season only) and will revert back to the original licence at the end of the season.
- 4) Only unused units can be leased.
- 5) All effort units will remain the property of the Lessor, and as such, all annual components of the TS Prawn Levies (fixed and variable) will continue to be charged to the owner of the units prior to the season commencing.
- 6) Sub-leasing of effort units will not be allowed by the lessee.



PZJA decisions leading to the development of the TSPF management plan

In respect of the Torres Strait Prawn fishery, the PZJA:

- (a) **AGREED** that, consistent with scientific advice, licences will be granted for the 2006 season with pro-rata reductions to an overall cap of 9197 days;
- (b) **NOTED** that fishing effort in recent years has been significantly below this level;
- (c) **AGREED** that the fishery will move to modern management arrangements including the adoption of a unitised system where effort levels in the fishery are adjusted in accordance with sustainable catches and that the system of unitisation will be developed over the course of 2006 to commence in 2007;
- (d) **NOTED** that, in relation to a sustainable level of the fishery and as announced on 27 July 2005, the Australian Government will fund payments to non-islander commercial fishers to ensure that the Australian Government is able to fully meet its obligation to Papua New Guinea under the Torres Strait Treaty without making further calls on fishing entitlements allocated to domestic operators;
- (e) **NOTED** that the Australian Government is scheduled to conduct a voluntary open tender process in the first half of 2006 to fulfill this commitment.

At PZJA 20 in September 2006, the PZJA made the following decisions in regard to the Prawn Fishery:

The PZJA **AGREED** that management arrangements for the Torres Strait Prawn Fishery (TSPF) for 2006 be rolled over for the 2007 season, while the Management Plan for the fishery is being developed. Specific roll-over provisions, which will be resolved in the long term through the development of the management plan and the introduction of an effort-based unit system, include:

- (a) a total allowable effort cap of 9,200 days for the fishery;
- (b) allowing the trade in any quantity of whole days;
- (c) a minimum holding of 34 days during 2007; and
- (d) the boat replacement policy being suspended during 2007 in order to further assist the industry to restructure itself.

The PZJA **AGREED** that the draft Management Plan be provided to the Office of Legislative Drafting (OLD) subject to further revision in light of TSPEHA comments and a further review by the PZJA agencies in order to produce a draft Management Plan that can be used for wider consultation and provide the basis of a Regulatory Impact Statement.

The PZJA:

- (a) **NOTED** the TSPEHA request that the days system established by the 1992/93 and 1993/94 PZJA decisions be rolled over into the management plan such that allocated fishing days continue to be the time based effort unit in the Torres Strait Prawn Fishery; and



- (b) **REAFFIRMED** its decision on PZJA 15.15.4 (c) that the management plan will adopt a unitised system where fishing access units are a proportion of the sustainable effort meaning that a unit will be 1/9200th of the TAE and this may result in units worth part days; and
- (c) **NOTED** that accommodation of industry concerns about banks had been made by allowing the conditions on licences to be expressed as the full multiplication of units by their unit value resulting in a number of days.

At PZJA 21 in August 2007, the PZJA made the following decisions in regard to the Prawn Fishery:

The PZJA **AGREED** to provide for internal leasing of effort units in the TSP fishery in the TSPF management plan.

The PZJA **AGREED** to an appeals mechanism for decisions made under management plans comprising an internal merits review as a first step and an external merits review to be made by the Administrative Appeals Tribunal, consistent with arrangements set out in Section 15A of the *Torres Strait Fisheries Act 1984* and the *Administrative Appeals Tribunal Act 1975*.

At PZJA 22 on 30 April-1 May 2008 the PZJA made the following decision in regard to the Prawn Fishery:

The PZJA **AGREED** to implement the Torres Strait Prawn Fishery Management Plan before 1 March 2009.

The PZJA **NOTED** the consultation undertaken with stakeholders regarding the proposed prohibition on the taking, processing or carrying of prawn in the Territorial Seas of Kerr Islet, Deliverance Island and Turu Cay.

The PZJA **AGREED**:

- (a) to a permanent prohibition on the taking, processing or carrying of prawn in the Territorial Seas of Kerr Islet, Deliverance Island and Turu Cay is to be implemented.
- (b) to write to the Papua New Guinea Minister for Fisheries and Marine Resources seeking complementary closures to the surrounding waters.

The PZJA **AGREED** that the Torres Strait Prawn Management Advisory Committee will formally develop a long term Harvest Strategy with a range of rules that control the intensity of fishing activity according to the biological and economic conditions of the fishery consistent with the determination of reference points under the TSPF Draft Management Plan.



Report on the responses to the *TSPF Update* Issue One Leasing Feedback Form

The *TSPF Update* newsletter is an initiative of the Torres Strait Prawn Management Advisory Committee (TSPMAC), which aims to keep industry informed of management changes in the fishery and provide an additional mechanism for industry to give feedback to the TSPMAC on issues affecting the fishery.

In issue one of the *TSPF Update* newsletter, dated 12 January 2007, stakeholders were asked to provide feedback in regard to two issues that TSPMAC members had conflicting advice over. These issues were in regard to leasing within the TSPF and US TED accreditation for the TSPF.

The newsletter was sent to approximately 70 stakeholders, which included every TSPF licence holder and all of the TSPMAC members. A total of 14 responses were received, 13 of which were from TSPF licence holders. The other response was received from one of the Government agencies.

Although the response rate to the feedback forms was not high (21% of licence holders responded), the results showed that there are very different views in regard to the issue of leasing within the TSPF.

Leasing Feedback Form

Figure 1 below provides the results in regard to question one of the “Leasing Feedback Form” included in *TSPF Update* issue 1.

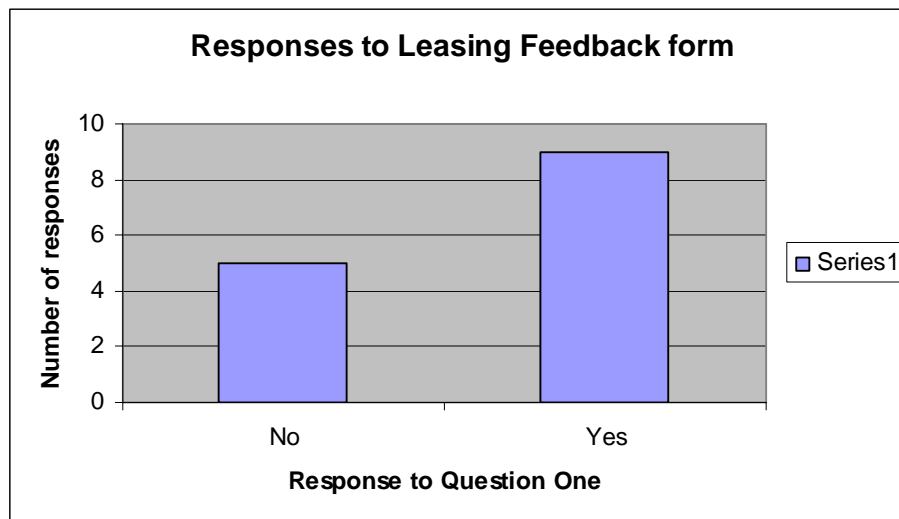


Figure 1: Responses to Question one of the Leasing Feedback Form

Question one of the Leasing Feedback Form posed the question – “Do you support leasing in the Torres Strait Prawn Fishery?” Of the responses received, nine of the 14 respondents answered yes to question one. This indicates that there are sections within the TSPF industry that support leasing within the fishery. Additionally many respondents provided comments in support of their position, whether it is for or against leasing.



Some of the comments received from respondents that answered **no** to question one were as follows:

“Since the Gulf of Carpentaria has gone to leasing and the East Coast has gone to leasing the licence value in both fisheries has dropped dramatically. So why would you do the same thing again when it has had such a negative effect on previous fisheries and fishers assets.” Two other respondents’ comments echoed this thought.

Another respondent doesn’t support leasing in the TSPF until the Management Plan is up and running.

Some of the comments received from respondents that answered **yes** to question one were as follows:

“As the fishery is well managed, we support leasing in the Torres Strait, but only to other current licence holders.”

“The ownership of TS prawn fishing nights has recognised property rights and the commercial reality of this (leasing) should be allowed...It is appropriate that this fishery adopt similar rules to numerous other fisheries in Australia and allow the leasing of the entitlements to harvest a product.”

It is worth noting that some of the respondents that answered yes to question one also commented that they believed they should be able to lease their licence as well as nights.

