

EXPLANATORY STATEMENT

Issued by the authority of the Torres Strait Protected Zone Joint Authority

Torres Strait Fisheries Act 1984

Torres Strait Fisheries Management Instrument No. 10

The *Torres Strait Fisheries Management Instrument No. 10* (the Instrument) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Subsection 16(1) of the *Torres Strait Fisheries Act 1984* (the Act) provides for the Minister to regulate fishing through an instrument registered on the Federal Register of Legislative Instruments. Subsection 35(1) of the Act provides for the Protected Zone Joint Authority (PZJA) to exercise the powers of the Minister under Subsection 16(1) of the Act.

The Torres Strait Prawn Fishery (TSPF) is one of the most valuable commercial fisheries in the Torres Strait. The fishery focuses primarily on brown tiger prawns (*Penaeus esculentus*), blue endeavour prawns (*Metapenaeus* spp) and red spot king prawns (*Melicertus longistylus*). Prawns are taken by trawling at night.

The *Torres Strait Prawn Management Plan 2009* (the Plan) was made under section 15A of the Act on 12 February 2009. The Plan provides for a unitised allocation system representing a share of the total available effort and replaces the current system of fishing days.

Fisheries management instruments are required to support the Plan. In general, they deal with prohibitions and management arrangements that are expected to change more frequently than those contained in management plans. In addition, they may be used to prescribe things that by virtue of the Act cannot be prescribed in a management plan.

The Instrument revokes the Torres Strait Fisheries Management Instrument No. 1 (the previous Instrument). The Instrument maintains all the prohibitions and exemptions of the previous Instrument while allowing for a change in the fishing season dates.

Subclause 7(4) of the previous Instrument states:

- (4) The carrying of prawns is prohibited absolutely in the area of the fishery during the period commencing at 0600 hours local time on 15 December in a year and ending at 1700 hours local time on 1 March in the following year.

The PZJA decided to amend the starting date of the TSPF fishing season starting from the 2016 fishing year. The current fishing season commences on 1 March in a calendar year. The new starting date of the TSPF fishing seasons will be 1 February each year. This

decision required the revocation of the previous Instrument to allow for the inclusion of the new season date in subclause 7.4 of the Instrument.

Consultation

At the PZJA meeting on 5 August 2015, the PZJA agreed to an earlier opening date (1 February) in the TSPF starting in the 2016 season. The decision initiated the process for changing the season dates, which also required, and included a Native Title notification period, under the requirements of the *Native Title Act 1993* allowing Native Title holders to comment on the proposed changes.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) advised that a Regulation Impact Statement was not required for this Determination due to it being minor in nature. (OBPR ID: 19680)

Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

The PZJA assesses under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* that this legislative instrument is compatible with human rights. The PZJA's Statement of Compatibility is attached.

Details of the Instrument are set out below:

- Clause 1** Provides for the Instrument to be cited as the Torres Strait Fisheries Management Instrument No. 10.
- Clause 2** Provides that the Instrument commences on the day after registration on the Federal Register of Legislative Instruments.
- Clause 3** Provides that the Instrument is repealed on 31 December 2025 unless earlier revoked.
- Clause 4** Provides that the Instrument revokes Torres Strait Fisheries Management Instrument No. 1 from the date of commencement of the Instrument.
- Clause 5** Provides that a term used in the Instrument and in the Plan or Act has the same meaning in the Instrument as in the Plan or Act.
- Clause 6** Provides for a description of the area of the transit zone in Schedule 1 by reference to the Australian Geodetic Datum 1966 (AGD66) and the anchorage zones in Schedule 1 by reference to the World Geodetic Datum 1984 (WGS84).

For convenience of the use of navigational aids, Schedule 2 also provides a description of the area of the transit zones by reference to WGS84.

Any inconsistencies in coordinates between the AGD66 and the WGS84 description will be resolved by referencing Schedule 1.

The Guidelines for Describing Maritime Boundaries 2006, Geosciences Australia provides good reference material on how maritime boundaries are described and where possible, should be used in conjunction with the Instrument and this explanatory statement.

Clause 7 Describes the prohibitions on taking, processing or carrying of prawns and prawn trawling equipment in the area of the fishery unless an exemption is in force. Subclause 7(4) outlines a prohibition on the carrying of prawns, during the period commencing 06:00 hours local time on 15 December to 17:00 hours local time 1 February every year.

Clause 8 Provides guidance on how to assess a person who will be exempt from the prohibitions mentioned in Clause 7.

This person will have to be the holder of or acting on the behalf of the holder of a current TSPF boat licence.

This Clause also distinguishes, for monitoring and reporting purposes, the difference between a boat having been deemed as fishing, a boat described as at anchor and not fishing, and a boat described as undergoing maintenance and a boat that has undergone maintenance.

All boat movement reporting is monitored in the TSPF by the mandatory use of the VMS.

Clause 9 Describes how a holder of a TSPF boat licence may apply for an exemption from reporting via the VMS during a period if the boat will not be used for fishing during that period.

Clause 10 Describes how a TSPF boat licence holder may apply to the PZJA for an exemption from reporting via the VMS during a period where the boat will be steaming (moving) from one designated place to another.

The designated places permitted for such a move only include designated anchorage areas in Schedule 3 and areas that are outside the fishery. The area of the fishery is stated in the Plan as referred to in Schedule 5. During the move the boat will not be permitted to carry out any fishing operations.

This Clause also outlines the information required to be tendered to the PZJA on application and provides direction on how to configure all fishing gear on board the boat whilst in transit.

Clause 11 Describes how a TSPF boat licence holder may apply to the PZJA for an exemption from reporting via the VMS during a period where the boat will be testing fishing apparatus.

This Clause is designed to assist the operator to make better use of new technology in regards to fishing apparatus without incurring any impact on the fishing days allocated to that operator.

Fish are not allowed to be retained and all gear that will be tested is to be configured in such a way to ensure, where physically possible, that no fish will be able to be retained in the course of gear trialling.

This Clause also sets out all the information required to be tendered to the PZJA on application as well as defining a set linear testing distance allowed for the trial. The VMS must be in working condition and switched on during trialling to ensure that monitoring can be achieved.

Clause 12 Describes how a TSPF boat licence holder may apply to the PZJA for an exemption of no more than 6 hours, from reporting via the VMS during a period where the boat will be carrying out maintenance.

This Clause is designed to ensure the operator is not penalised for failing to meet the reporting requirements as set out in part 5.6 of the Plan.

This Clause also sets out all the information required to be tendered to the PZJA on application as well as the configuration of all fishing gear on board the boat whilst that boat is in transit.

Clause 13 Provides that a person may be exempt from the prohibition from processing and carrying prawns within the fishery, if they hold a current licence to receive fish granted under section 19 (3) of the Act.

It provides an exemption for a person who holds a Papua New Guinea (PNG) license and the boat holds a Torres Strait Protected Zone Treaty endorsement, for the purpose of commercial fishing in the Australian jurisdiction.

Clause 14 Provides prohibitions on the taking of prawns and the possession of equipment capable of taking prawns in the transit zone. The transit zone is set out in Schedule 1 and is only to be used for the purposes of traversing into and out of the area of the fishery. The fishery area is described in Clause 5.

All TSPF boats are prohibited from carrying fishing gear while traversing through the transit zones unless all the fishing gear is out of the water. If the gear is in the water the operator must ensure all cod ends are open and drawn to the boat so that the cod ends are visible from an aircraft or another boat and the boards are at the blocks.

This Clause ensures that compliance agencies are able to positively ensure that operators abide by the conditions that govern transit zones in the TSPF.

Schedule 1 Defines the boundary of the transit zone area of waters, by reference to the AGD 66.

Schedule 2 Defines the boundary of the transit zone area of waters, by reference to the WGS84.

Schedule 3 Defines the boundary of designated anchorages around Aureed, Yorke, Dugong and Coconut Islands.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Torres Strait Fisheries Management Instrument No. 10

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

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Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues. The Instrument allows for the change in fishing season dates as decided by the PZJA.