

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. 11

The *Torres Strait Fisheries Management Instrument No. 11* (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. 3* (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 4(1) of the previous Instrument states:

The “*closure period*” means the period commencing at 1700 hours local time on 1 March in a year and ending at 1700 hours local time on 31 July in the same 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 the definition of ‘closure period’ in subclause 5.3 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. 11.
- 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. 3 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 a description of the closed areas east of Warrior Reef in Schedule 1 by reference to the Australian Geodetic Datum 1966 (AGD66) Geoscience Australia.

For convenience of the use of navigational aids Schedule 2 also provides a description of the closed areas east of Warrior Reef by reference to World Geodetic System 1984 (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 Details prohibitions on the taking of prawns in the closed area described in Schedules 1 and 2 during the closure period set out in Clause 5.

All TSPF boats are prohibited from carrying fishing gear in the closed areas during a closure period 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 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 closed areas by reference to WGD66.

Schedule 2 Defines the boundary of the closed areas by reference to WGS84.

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. 11

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.