**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. 12**

The *Torres Strait Fisheries Management Instrument No. 12* (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*), endeavour prawns (*Metapenaeus* spp) and red spot king prawns (*Melicertus longistylus*). Prawns are taken in the Torres Strait Prawn Fishery 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 contains objectives and the measures by which the objectives are to be attained.

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

In order to pursue the objective of the Plan ‘to manage the fishery’s interaction with the marine environment, including the incidental capture of non-target species and impacts on demersal habitats’ the Plan seeks to use fishing gear that is fitted with a turtle excluder device (TED) to minimise the capture and harm to marine turtles, which are protected species of conservation concern. The Instrument will require licence holders operating a boat in the fishery to fit an approved TED to their fishing net. The TED must meet minimum design standards to ensure that turtles are not captured and or harmed.

The Instrument revokes the *Torres Strait Fisheries Management Instrument No. 81* (the previous Instrument). The Instrument maintains the prohibitions of the previous Instrument but implements a change in the TED design standards to maintain best practice.

**Regulation Impact Statement**

The Office of Best Practice Regulation (OBPR) has advised Australian Fisheries Management Authority that a Regulation Impact Statement is not required for the *Fisheries Management Instrument No. 12* as the new Instrument contains only minor modifications relating to requirements on the use of TEDs in fishing nets in Fisheries Management Instrument No.81 (OBPR ID number 21626).

**Consultation**

The Instrument brings TED requirements in line with standards that will provide import access to the United States under Section 609 of United States Public Law 101 – 162 which prohibits imports of prawns harvested in ways that are harmful to sea turtle species.

The content of the Instrument has been considered and supported by the Torres Strait Protected Zone Joint Authority (PZJA) consultative groups. It was discussed at the Torres Strait Prawn Management Advisory Committee (TSPMAC) in June 2015. The TSPMAC membership includes commercial fishing industry members, Torres Strait traditional inhabitants, government agencies and scientists. There was broad consensus on the changes. The suggested amendments to the Instrument were also sent to all license holders for consideration. No comments were received.

**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. 12*.

***Clause 2*** Provides that the Instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

***Clause 3*** Provides that the Instrument is repealed on 31 December 2026 unless earlier revoked.

***Clause 4*** Provides that the Instrument revokes *Torres Strait Fisheries Management Instrument No. 81* from the date of commencement of the Instrument.

***Clause 5*** Provides for definitions of terms, specified dimensions and other design characteristics contained within the Instrument, and 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*** Prohibits the use or possession of otter trawl equipment in the Torres Strait Prawn Fishery unless each net that is used is fitted with a Turtle Excluder Device.

**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. 12**

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**

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 Instrument revokes the *Torres Strait Fisheries Management Instrument No. 81* (the previous Instrument). The Instrument maintains the prohibitions of the previous Instrument while allowing for a change in the TED design standards.

**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 modification in the TED design standards to improve protection of marine turtles.