

## **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. 15**

The *Torres Strait Fisheries Management Instrument No. 15* (the Instrument) is a legislative instrument for the purposes of the *Legislation 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 fishery**

The Torres Strait Sea Cucumber (bêche-de-mer) Fishery has a history that dates back to at least the 19th century. In 1916-17 567 tonnes of bêche-de-mer was exported from Thursday Island with 124 boats registered to collect it. The fishery is now accessed only by traditional inhabitants and it forms an important source of income for some Torres Strait traditional inhabitants.

Characteristic of sea cucumber fisheries throughout the world, there have been several “booms and busts” in the Torres Strait fishery. The life-history of sea cucumbers and the fact they are easily collected make them vulnerable to overfishing, which has occurred in the Torres Strait in the past. It is critical that commercial fishing for sea cucumber be regulated to prevent overfishing.

Sea cucumber is mainly collected by free-divers from dinghies or by people walking along reefs at low tide and picking them up by hand. Once collected, the animal is gutted, cleaned and graded, and then either boiled, smoked or dried. This is a labour-intensive process carried out on processing vessels or at shore-based facilities.

The Instrument replaces the *Torres Strait Fisheries Management Instrument No. 64* (the previous Instrument) which sunsets on 1 April 2017. The Instrument maintains the prohibitions of the previous Instrument.

#### **Details of the Instrument**

The Instrument includes all existing arrangements contained within the previous Instrument.

The Instrument prohibits the taking, processing and carrying of sea cucumber in the Torres Strait Sea Cucumber Fishery. The Instrument provides exemption to the prohibition for those who hold a sea cucumber licence, are engaged in traditional fishing or do not exceed a certain possession limit or boat limit of sea cucumber.

#### **Consultation**

Consultation about the Instrument was undertaken with the Protected Zone Joint Authority (PZJA) Hand Collectable Working Group and all license holders. No comments were received.

Native title notification was undertaken in relation to this Instrument.

### **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.

### **Regulation Impact Statement**

The Office of Best Practice Regulation (OBPR) advised that a Regulation Impact Statement was not required for the Instrument providing a letter from the agency head was provided certifying that the measures maintained from the sunseting Instrument efficiently achieved their objectives (**OBPR ID: 21506**). The letter is available for viewing on the OBPR website.

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. 15*.
- 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 for definitions of terms 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 5** Provides that taking of sea cucumber is prohibited.
- Clause 6** Provides for size limits which apply to certain species of sea cucumber taken.
- Clause 7** Provides for gear restrictions, i.e. collect only by hand and without the use of any underwater breathing apparatus.
- Clause 8** Provides that those who hold a sea cucumber licence, engaged in traditional fishing or take less than a certain number of sea cucumber are exempt from the prohibition contained in Clause 5.
- Clause 9** Provides for revocation of the previous Instrument that was due for sunseting on 1 April 2017, *Torres Strait Fisheries Management Notice No. 64*, and any existing licence or treaty endorsement granted under the revoked Instrument shall continue to operate as if it referred to this Instrument.

## **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. 15**

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 replaces the *Torres Strait Fisheries Management Notice No. 64* (the previous Instrument) which sunsets on 1 April 2017. The Instrument maintains the prohibitions of the previous Instrument.

#### **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.