



# **Torres Strait Fisheries (Tropical Rock Lobster) Management Instrument 2018**

made under section 16 of the

*Torres Strait Fisheries Act 1984*

## **Compilation No. 1**

**Compilation date:**

1 December 2018

**Includes amendments up to:**

Torres Strait Fisheries Amendment (Tropical  
Rock Lobster) Management Instrument 2018

Prepared by the Australian Fisheries Management Authority, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Torres Strait Fisheries (Tropical Rock Lobster) Management Instrument 2018* that shows the text of the law as amended and in force on 1 December 2018 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### **Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### **Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Contents

1 Name.....	1
3 Authority.....	1
4 Definitions .....	1
4A TAC for the TIB sector .....	3
6 Prohibition on taking, processing or carrying Tropical Rock Lobster.....	4
7 Licence holders within the TIB Fishing Season.....	4
7A TVH licence holders authorised to take Tropical Rock Lobster.....	5
7B TVH licence holders not authorised to take Tropical Rock Lobster.....	5
7C First fishing season after the allocation day .....	5
8 Treaty endorsements .....	6
9 Prohibition on taking, processing or carrying undersize Tropical Rock Lobster .....	6
10 Prohibition on the use of certain methods.....	7
11 Prohibition on the use of certain equipment.....	7
12 Prohibition on the use, possession or control of hookah gear .....	7
13 Hookah gear.....	8
14 Prohibition on carrying Tropical Rock Lobster that has been processed .....	8
15 Prohibition on the use, possession or control of diving equipment .....	8
16 Permission to use, possess or control diving equipment .....	8

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## 1 Name

This instrument is the *Torres Strait Fisheries (Tropical Rock Lobster) Management Instrument 2018*.

## 3 Authority

This instrument is made under section 16 of the Act.

## 4 Definitions

Note: A number of expressions used in this instrument are defined in section 3 of the Act, including the following:

- (a) boat;
- (b) fish;
- (c) Torres Strait Treaty;
- (d) Treaty endorsement.

In this instrument:

**Act** means the *Torres Strait Fisheries Act 1984*.

**Administration Act** means the *Fisheries Administration Act 1991*

**AFMA staff member** means a member of staff assisting the CEO as described in section 68 of the Administration Act.

**allocation day** has the meaning given by the Management Plan.

**boat** means a boat licenced under the Act to operate in the TRL fishery.

**CEO** means the Chief Executive Officer of the Australian Fisheries Management Authority appointed under section 10B of the Administration Act.

**diving equipment** means a face mask and fins.

**fishing season** means the period commencing on 1 December and ending on 30 September in the following year.

Note: This definition does not, by implication or otherwise, affect the interpretation of the TIB Fishing Season in subsection 7(2).

**hold**, in respect of a licence granted under subsections 19(2) or 19(3) of the Act, includes where a person:

- (a) has been granted the licence; or
- (b) has been transferred (whether or not on a temporary basis) the licence under section 25 of the Act.

**hookah gear** means equipment to enable a person to breathe underwater where the air is supplied from either an air compressor or one or more air cylinders above the surface of the water, and includes equipment which may described as surface supplied breathing equipment or surface supplied breathing apparatus.

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**implement** means a tool or utensil, including lobster scissors and forceps, but not including nets, explosives and poisons.

**Management Plan** means the management plan determined by the PZJA under section 15A of the Act in relation to the TRL fishery as may be in force from time to time.

**officer** means:

- (a) an AFMA staff member who is responsible for management of fisheries in the Torres Strait; or
- (b) a person appointed as an officer under subsection 83(1) of the *Fisheries Management Act 1991*.

**primary boat licence** means a commercial fishing licence that:

- (a) authorises the use of an Australian boat for taking Tropical Rock Lobster in the TRL fishery; and
- (b) is not a commercial fishing licence that is described as a Torres Strait traditional inhabitant fishing boat licence; and
- (c) is not a tender boat licence.

**purchased licences**: see paragraph 4A(2)(a).

**PZJA** means the Protected Zone Joint Authority established under section 30 of the Act.

**PZJA Arrangement** means the *Arrangement between the Commonwealth and the State of Queensland under section 31 of the Torres Strait Fisheries Act 1984*.

**Regulations** means the *Torres Strait Fisheries Regulations 1985*.

**scoop net** means a net not more than 1.5 metres in any dimension having a handle or shaft not longer than 3 metres.

**TAC for the TIB sector** (short for Total Allowable Catch for the traditional inhabitant boat sector): see section 4A.

**tender boat licence** means a commercial fishing licence that:

- (a) is granted in respect of an Australian boat that is a boat generally known as a tender; and
- (b) authorises the use of the boat for taking tropical rock lobster in the TRL fishery; and
- (c) specifies a primary boat, that is the subject of a primary boat licence, with which the tender must operate.

**TIB Fishing Season** (short for traditional inhabitant boat Fishing Season): see subsection 7(2).

**Total Allowable Catch** means Australia's share of the allowable catch of Tropical Rock Lobster which is apportioned to Australian boats under article 23 of the Torres Strait Treaty.

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**Tropical Rock Lobster** means fish of the species *Panulirus* spp.

**TRL fishery** (short for tropical rock lobster fishery) means the area of Australian jurisdiction described by item 9 of Schedule 2 to the Regulations.

**TRL fishing licence** has the meaning given by the Management Plan.

**TSRA** has the meaning given by subsection 28(1) of the Act.

**TVH licence** (short for transferrable vessel holding licence) means a primary boat licence or a tender boat licence that is not held by the TSRA.

**unused quota unit** has the meaning given by the Management Plan.

#### 4A TAC for the TIB sector

- (1) The **TAC for the TIB sector** is:
- (a) 66.17% of the Total Allowable Catch; and
  - (b) the percentage of the Total Allowable Catch (if any) that the CEO has determined under subsections (2) or (3).

*Purchase of primary boat licences or tender boat licences by the TSRA before the snapshot day*

- (2) If:
- (a) the TSRA has been permanently transferred a primary boat licence or tender boat licence, or primary boat licences and tender boat licences, under section 25 of the Act (the **purchased licences**); and
  - (b) the transfer occurs before the snapshot day

the CEO may determine, by instrument, a percentage of the Total Allowable Catch that the CEO reasonably believes represents the number of quota units that would be allocated to the TSRA under section 15 of the Management Plan having regard to the number of quota units which may be provisionally allocated to the TSRA under subsection 20(6) of the Management Plan.

Note: The CEO may only make a determination under subsection (2) after a Management Plan has been determined for the TRL fishery.

*Purchase of primary boat licences or tender boat licences by the TSRA on or after the snapshot day*

- (3) If:
- (a) the TSRA has been permanently transferred the purchased licences;
  - (b) the transfer occurs on or after the snapshot day
- the CEO may determine, by instrument, a percentage of the Total Allowable Catch that the CEO reasonably believes represents the number of quota units that would be allocated to the transferor of the licence under section 15 of the Management Plan having regard to the number of quota units which may be provisionally allocated to the transferor of the licence under subsection 20(6) of the Management Plan.

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Note: The CEO may only make a determination under subsection (2) after a Management Plan has been determined for the TRL fishery.

*Notification*

- (4) An instrument determined by the CEO under subsections (2) or (3) must:
  - (a) be sent to all persons who hold a licence granted under subsections 19(2) or 19(3) of the Act which authorise the taking, processing or carrying of tropical rock lobster; and
  - (b) be published on the PZJA's website.
- (5) The CEO may exercise his or her powers under subsections (2) or (3) from time to time as occasion requires.

## **6 Prohibition on taking, processing or carrying Tropical Rock Lobster**

Subject to sections 7, 7A, 7B, 7C and 8, the taking, processing or carrying of Tropical Rock Lobster in the area of the TRL fishery is prohibited.

Note: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.

## **7 Licence holders within the TIB Fishing Season**

- (1) A person is exempt from the prohibition in section 6 where:
  - (a) the person holds a licence granted under subsection 19(2) of the Act; and
  - (b) the licence is:
    - (i) not a primary boat licence or a tender boat licence; or
    - (ii) a primary boat licence or a tender boat licence held by the TSRA; and
  - (c) the licence is not suspended under section 26 of the Act; and
  - (d) the licence authorises the person to take, process or carry Tropical Rock Lobster in the TRL fishery; and
  - (e) the person takes, processes or carries Tropical Rock Lobster within the period described in subsection (2) (***TIB Fishing Season***).
- (2) The TIB Fishing Season is from 1 December 2018 until the earlier of:
  - (a) 30 September 2019; or
  - (b) the TIB Total Allowable Catch Date.

Note: A person is not exempt from the prohibition in section 6 by way of subsection (1) at any time after 30 September 2019.

- (3) Subject to subsection (5), the ***TIB Total Allowable Catch Date*** is a date determined by the CEO in respect of the TIB Fishing Season.
- (4) The CEO must not make a determination under subsection (3) in respect of the TIB Fishing Season unless:
  - (a) the CEO reasonably believes that the TAC for the TIB sector will be taken on or before the date to be determined as the TIB Total Allowable Catch Date; and

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- (b) before the determination is made, the CEO notified the Queensland Department of Agriculture and Fisheries and the TSRA of his or her intention to make the determination.
  - (5) If the CEO determines the TIB Total Allowable Catch Date in respect of the TIB Fishing Season, the CEO must send written notice (*TIB TAC Notice*) of the determination to all persons who hold a licence referred to in paragraphs (1)(a) to (d).
  - (6) In the event that a TIB TAC Notice is not sent at least 5 days before the TIB Total Allowable Catch Date determined under subsection (3), the TIB Total Allowable Catch Date is 5 days after the day on which the notice is sent.

#### **7A TVH licence holders authorised to take Tropical Rock Lobster**

A person is exempt from the prohibition in section 6 where:

- (a) the person holds a licence granted under subsection 19(2) of the Act; and
- (b) the licence is a primary boat licence or a tender boat licence, other than a primary boat licence or a tender boat licence held by the TSRA (a *TVH licence*); and
- (c) the TVH licence is not suspended under section 26 of the Act; and
- (d) the person takes, processes or carries Tropical Rock Lobster:
  - (i) in the period commencing 1 December 2018 and ending at the end of the day on 30 September 2019; and
  - (ii) in accordance with the conditions to which their TVH licence is subject under section 22 of the Act.

Note: Conditions will be imposed on TVH licences limiting the amount of Tropical Rock Lobster that can be taken from the TRL fishery by the TVH licence holder.

#### **7B TVH licence holders not authorised to take Tropical Rock Lobster**

A person is exempt from the prohibition in section 6 where:

- (a) the person holds a licence granted under subsection 19(3) of the Act that authorises the person to carry, or to process and carry, Tropical Rock Lobster that have been taken with another boat;
- (b) the licence is not suspended under section 26 of the Act; and
- (c) the licence does not authorise the person to take Tropical Rock Lobster in the TRL fishery; and
- (d) the person carries, or processes and carries, Tropical Rock Lobster in the period commencing 1 December 2018 and ending at the end of the day on 30 September 2019.

#### **7C First fishing season after the allocation day**

- (1) This section applies from the first day of the first fishing season after the allocation day.



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*Person holding unused quota units*

- (2) A person is exempt from the prohibition in section 6 where:
- (a) the person holds a TRL fishing licence; and
  - (b) the person has unused quota units within the meaning given by the Management Plan; and
  - (c) the person takes, carries or processes tropical rock lobster within a fishing season.

*Traditional inhabitant sector*

- (3) A person who is a traditional inhabitant is exempt from the prohibition in section 6 where:
- (a) the person holds a TRL fishing licence; and
  - (b) the person takes, carries or processes tropical rock lobster within a fishing season; and
  - (c) a notice under section 11 of the Management Plan is not in force for the fishing season.

*Person not required to hold quota*

- (4) A person is exempt from the prohibition in section 6 where:
- (a) the person holds a licence granted under subsection 19(3) of the Act that authorises the person to carry, or to process and carry, Tropical Rock Lobster that have been taken with another boat;
  - (b) the person carries or processes tropical rock lobster within a fishing season.

Note: A person holding a licence granted under subsection 19(3) of the Act is not required to hold quota units under the Management Plan.

## **8 Treaty endorsements**

A person is exempt from section 6 where:

- (a) he or she takes, carries or processes Tropical Rock Lobster on a boat for which a Treaty endorsement is in force;
- (b) the person takes, processes or carries Tropical Rock Lobster between 1 December in any given year and 30 September of the following year; and
- (c) the Tropical Rock Lobster is taken, processed or carried in accordance with conditions specified by the PZJA on the Treaty endorsement under section 22 of the Act.

## **9 Prohibition on taking, processing or carrying undersize Tropical Rock Lobster**

- (1) The taking, processing or carrying of Tropical Rock Lobster that have a dimension less than those specified in subsection (2) in the TRL fishery is prohibited.

Note: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.

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- (2) For the purpose of subsection (1), the dimensions are that:
    - (a) the length of the carapace of the Tropical Rock Lobster is 90 millimetres when measured in accordance with subsection (3); and
    - (b) the length of the tail of the Tropical Rock Lobster is 115 millimetres when measured in accordance with subsection (4).
  - (3) For the purpose of paragraph (2)(a), the length of the carapace of a Tropical Rock Lobster is to be measured along the dorsal surface from the anterior mid-dorsal margin to the posterior mid-dorsal margin of the carapace.
  - (4) For the purpose of paragraph (2)(b), the length of the tail of a Tropical Rock Lobster is to be measured:
    - (a) in a straight line along the dorsal surface from the anterior margin of the first abdominal somite to the posterior margin of the sixth abdominal somite when the tail is laid flat on a horizontal surface; and
    - (b) with firm downward pressure placed on the third abdominal somite.

## **10 Prohibition on the use of certain methods**

- (1) The taking, processing or carrying of Tropical Rock Lobster in the TRL fishery using methods to which subsection (2) applies is prohibited.

Note: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.
- (2) This subsection applies to all fishing methods apart from collecting by hand or with the use of a spear, scoop net or other implement held in the person's hand at all times.

## **11 Prohibition on the use of certain equipment**

- (1) The taking, processing or carrying of Tropical Rock Lobster in the TRL fishery with the use of equipment to which subsection (2) applies is prohibited.

Note: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.
- (2) This subsection applies to:
  - (a) any kind of mechanical equipment that provides underwater propulsion; and
  - (b) any kind of equipment that provides for breathing underwater, excluding hookah gear.

## **12 Prohibition on the use, possession or control of hookah gear**

Subject to section 13, a person is prohibited from using, from having in his or her possession, or from having under his or her control, on a boat in the TRL fishery, any quantity of hookah gear.

Note: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.

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### **13 Hookah gear**

- (1) A person is exempt from section 12 where:
  - (a) the person uses, possesses or has under his or her control, on a boat, hookah gear to take, process or carry Tropical Rock Lobster between 1 February and 30 September in any one year (*Hookah Season*); and
  - (b) the CEO has not sent the person a notice under subsection (2).
- (2) The CEO may send notice to a person that the use, possession or control, on a boat, of hookah gear to take, process or carry Tropical Rock Lobster is not permitted during a specified period, or specified periods, within the Hookah Season (*Hookah Moontide Notice*).
- (3) Before sending a Hookah Moontide Notice to a person under subsection (2), the CEO must provide a copy of the notice to the Queensland Department of Agriculture and Fisheries and the TSRA.
- (4) The specified period, or first specified period, in which the use, possession, or control, on a boat, of hookah gear is not permitted in a Hookah Moontide Notice must not be earlier than 5 days after the date the CEO sends the notice to the person.

### **14 Prohibition on carrying Tropical Rock Lobster that has been processed**

The carrying on a boat in the area of the TRL fishery of any part of a Tropical Rock Lobster that has been processed by removing the meat from the shell is prohibited.

Note: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.

### **15 Prohibition on the use, possession or control of diving equipment**

Subject to section 16, a person is prohibited from using, having in his or her possession, or having under his or her control, on a boat, any quantity of diving equipment for taking, processing or carrying Tropical Rock Lobster in the TRL fishery between 1900 hours and 0600 hours (Australian Eastern Standard Time) unless the diving equipment is stowed and secured.

Note: This prohibition does not apply to traditional inhabitants engaged in traditional fishing due to application of the PZJA Arrangement.

### **16 Permission to use, possess or control diving equipment**

A person is exempt from section 15 where an officer has given written permission to a person to use or to have in his or her possession, or under his or her control on a boat, diving equipment between 1900 hours and 0600 hours in the following day (Australian Eastern Standard Time).

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	
exp = expires/expired or ceases/ceased to have effect	reloc = relocated
F = Federal Register of Legislation	renum = renumbered
gaz = gazette	rep = repealed
LA = <i>Legislation Act 2003</i>	rs = repealed and substituted
LIA = <i>Legislative Instruments Act 2003</i>	s = section(s)/subsection(s)
(md) = misdescribed amendment can be given effect	Sch = Schedule(s)
(md not incorp) = misdescribed amendment cannot be given effect	Sdiv = Subdivision(s)
mod = modified/modification	SLI = Select Legislative Instrument
No. = Number(s)	SR = Statutory Rules
	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

**Endnote 3—Legislation history**

<b>Name</b>	<b>Registration</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Torres Strait Fisheries Amendment (Tropical Rock Lobster) Management Instrument 2018	30 November 2018 (F2018L01643)	1 December 2018	—

**Endnote 4—Amendment history**

<b>Provision affected</b>	<b>How affected</b>
s 2	rep s 48D LA
s 4	am F2018L01643
s 4A	ad F2018L01643
s 5	rep s 48C LA
s 6	rs F2018L01643
s 7	rs F2018L01643
s 7A	ad F2018L01643
s 7B	ad F2018L01643
s 7C	ad F2018L01643
s 9	am F2018L01643
s 10	am F2018L01643
s 11	am F2018L01643
s 12	rs F2018L01643
s 14	am F2018L01643
s 15	am F2018L01643
Sch 1	rep s 48C LA