

EXPLANATORY STATEMENT

Issued by Authority of the Assistant Minister for Agriculture and Water Resources
Parliamentary Secretary to the Minister for Agriculture and Water Resources

Fisheries Levy Act 1984

*Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations
2018*

Legislative Authority

The *Fisheries Levy Act 1984* (Levy Act) provides for the imposition of a levy with respect to certain fisheries licences granted and renewed under the *Torres Strait Fisheries Act 1984* (TSFA) and certain units of fishing capacity (units) allocated and renewed under a plan of management determined under that Act.

Section 8 of the Levy Act provides that the Governor-General may make regulations for the purposes of sections 5 and 6 of the Levy Act. Section 5 of the Levy Act imposes a levy on, amongst other things, the grant or renewal of a licence and the allocation and renewal of units issued under the TSFA. Section 6 of the Levy Act relevantly provides that the amount of levy imposed on the grant or renewal of a licence or on the allocation or renewal of units as specified in the *Fisheries Levy (Torres Strait Prawn Fishery) Regulation 2016* (Levy Regulation).

Section 7 of the Levy Act provides that the levy is payable at the time of the grant or renewal of the licence and at the time of the allocation or renewal of units.

Purpose

The purpose of the of the *Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations 2018* (the Regulations) is to:

- amend the Levy Regulation to decrease the levy amount applicable to licences and units held in the Torres Strait Prawn Fishery (the Fishery); and
- make minor technical amendments to the Levy Regulation.

The Regulations decrease the annually calculated levy for licences granted or renewed for the Fishery from \$2,412.86 to \$2,053.32 per licence (a \$359.54 decrease per licence) for the 2019 fishing season. The Regulations also decrease the levy amount for an allocated unit, or for the renewal of an allocated unit, from \$17.78 to \$14.18 per unit (a \$3.60 decrease per unit).

Background

Levy rates for the Torres Strait Prawn Fishery (the Fishery) are determined annually in line with the Australian Fisheries Management Authority (AFMA) budgeting process, accounting for the annual renewal of licences and the allocation of units pursuant to AFMA's cost recovery implementation statement (CRIS). The recoverable costs of

administering the fishery are levied against the licence(s) and/or the units of fishing capacity held by a person or entity.

The *Torres Strait Prawn Fishery Management Plan 2009* is a legislative instrument made under section 15A of the TSFA, which provides for the allocation of units to the Fishery licence holders. The units are then converted annually into a number of fishing days (referred to as an ‘annual use entitlement’) depending on the total allowable effort for the Fishery in a given season.

The units in the Fishery are divided into Australian units and Papua New Guinea (PNG) units. The Protected Zone Joint Authority, which is established by the TSFA and has responsibility for the management of all Torres Strait commercial fisheries, must allocate Australian units to Fishery licence holders. The PNG units are held in trust by the Australian Government for the purpose of meeting its obligation under the *Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and Related Matters* (Torres Strait Treaty) for catch sharing arrangements with PNG, although may be temporarily transferred to Fishery boat licence holders.

The attributable costs of managing the Fishery are recovered from the holders of licences and units pursuant to a decision of the PZJA.

The decrease in the levy for the 2019 fishing season is primarily due to an under-spend in fisheries management costs for the 2018 fishing season of \$45,172 and to account for the shift in responsibility for compliance activities in the Torres Strait from the Queensland Department of Agriculture and Fisheries (QDAF) to AFMA. On that basis, AFMA no longer needs to collect levy amounts for compliance purposes on behalf of QDAF. The decrease in the levy also reflects reduced fishing activity during 2017 and 2018 fishing seasons. The reduced activity resulted in fewer observer days required in the fishery, which in turn resulted in lower costs in managing logbook data and the postponement of planned work to investigate ways of reducing the take of non-target species in the Fishery.

Consultation

AFMA consulted the Torres Strait Prawn Management Advisory Committee (TSPMAC) on the cost recovered budget for the Fishery, which includes members from the commercial fishing industry (including 45 levy payers), traditional inhabitants and State and Commonwealth Government members. There is no peak industry body for the Fishery.

At their 18th meeting in June 2018 TSPMAC supported:

- the final budget costings for the Fishery for the 2018-2019 financial year, which will be implemented through the proposed Regulations; and
- a revised method for recovering Fishery management costs to ensure equitable division of cost recovery between fishers with differing levels of fishing capacity. Costs primarily driven by fishing effort will be attributed to the unit levy while costs that are not primarily driven by fishing effort will primarily be recovered against the licence. The application of this revised method impacts

how the levies are attributed between licence and unit levy for the 2019 fishing season.

AFMA also consulted the Commonwealth Fisheries Association on the annual cost-recovered budget and the implementation of the revised cost recovery method.

Impact and Effect

The levy amount collected from all of the Fishery licence holders reflects the level of activity the PZJA is required to manage the fishery, such as setting allowable fishing effort levels and monitoring the condition of the prawn stocks. Renewal of licences under the legislation is subject to payment of levy, which in turn will allow fishers to use their fishing entitlements in the 2019 fishing season. The amount of levy payable by each holder depends on the quantity of licences and units held.

Consistent with the carve-out agreement made with the Office of Best Practice Regulation on 30 June 2014, AFMA is not required to complete a Regulation Impact Statement in relation to the Regulations. Under this agreement the annual setting of levies is considered machinery in nature (ID 14421).

The Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Secretary) Act 2011*. A full statement of compatibility is set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Regulations

Details of the *Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations 2018*

Section 1 – Name of Regulations

This section provides that the name of the proposed Regulations is the *Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations 2018*.

Section 2 – Commencement

This section provides that the Regulations would commence on the day after they are registered.

Section 3 - Authority

This section provides that the authority for making the proposed Regulations is the *Fisheries Levy Act 1984*.

Section 4 - Schedules

This section provides for the *Fisheries Levy (Torres Strait Prawn Fishery) Regulation 2016* to be amended as set out in the Schedule.

Schedule 1 – Amendments

Item 1 – Subsection 5(1) (definition of reporting area)

This item repeals the definition of ‘reporting area’ from subsection 5(1). This is consequential to the repeal of paragraph 7(d) of the Levy Regulation.

Item 2 – Subsection 5(1)

This item inserts a new definition for ‘Torres Strait Prawn Fishery’. The item provides that Torres Strait Prawn Fishery means the fishery to which the *Torres Strait Prawn Fishery Management Plan 2009* applies. The definition is to be inserted because the Levy Regulation previously did not contain an express definition referring to the area of the Fishery to which the Levy Regulation applies.

Item 3 – Paragraph 7(c)

This item omits the words “Fishery; and” and substitute the word “Fishery;”. This is a technical amendment that is consequential to the amendment made by item 4.

Item 4 – Paragraph 7(d)

This item repeals the paragraph, which relates to a type of prescribed licence (one that is subject to a condition under subsection 22(1) or 22(2) of the Torres Strait Fisheries Act that limits the number of fishing days in a year that the boat may be in the ‘reporting area’ as prescribed by the *Torres Strait Fisheries Management Notice No. 43* (Notice No. 43).

The paragraph is now redundant because Notice No. 43 and has been repealed and replaced with a new instrument, the *Torres Strait Fisheries Management Instrument No.17* (Instrument No. 17). Instrument No. 17 does not prescribe a “reporting area” as it is no longer relevant to management arrangements in the Fishery. Therefore, this item repeals the paragraph as it relates to a type of prescribed licence which is no longer required.

Item 5 – Subsection 8(2)

This item omits the amounts “\$2,412.86 plus \$17.78” and substitutes them with the amounts “\$2,053.32 plus \$14.18” to reflect the reduction to the amount of levy imposed on the grant of a licence prescribed by section 7 of the Levy Regulation.

Item 6 – Subsection 8(3)

This item omits the amounts “\$2,412.86 plus \$17.78” and substitutes them with the amounts \$2,053.32 plus \$14.18 to reflect the reduction to the amount of levy imposed on the renewal of a licence prescribed by section 7 of the Levy Regulation.

Item 7 – Subsection 8(4)

This item omits the amount “\$17.78” and substitutes it with the amount “\$14.18” to reflect the reduction to the amount of levy imposed on the allocation of a unit of fishing capacity prescribed by section 6 of the Levy Regulation.

Item 8 – Subsection 8(5)

This item omits the amount “\$17.78” and substitutes it with the amount “\$14.18” to reflect the reduction to the amount of levy imposed by the renewal of the allocation of a unit of fishing capacity prescribed by section 6 of the Levy Regulation.

Statement of Compatibility with Human Rights

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

Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations 2018

This 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

The instrument amends the *Fisheries Levy (Torres Strait Prawn Fishery) Regulation 2016* to decrease the levy amount applicable to licences and allocated units of fishing capacity held in the Torres Strait Prawn Fishery and to make minor technical amendments.

Human rights implications

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

Conclusion

This instrument is compatible with human rights as it does not raise any human rights issues.

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