

EXPLANATORY STATEMENT

Issued by authority of the Protected Zone Joint Authority

Torres Strait Fisheries Act 1984

Torres Strait Prawn Fishery Management Plan 2009

Torres Strait Fisheries (Torres Strait Prawn Fishery Total Allowable Effort) Determination 2020

Legislative authority

Section 15A of the *Torres Strait Fisheries Act 1984* (the Act) provides that the Minister may, by legislative instrument, determine a plan of management for a fishery in an area of Australian jurisdiction. A management plan made under the Act is to set out, amongst other things, the objectives of the plan of management and measures by which the objectives are to be attained.

Subsection 15A(4) of the Act provides that the Minister may in a plan of management for a fishery, determine the manner in which the fishing capacity of the fishery is to be measured; and provide for the periodic determination of the fishing capacity, measured in that manner, permitted for the fishery.

Subsection 35(1) of the Act provides for the Protected Zone Joint Authority (PZJA) to exercise the powers of the Minister under subsection 15A of the Act in respect of a ‘Protected Zone Joint Authority fishery’.

Subsection 28(1) of the Act provides that a ‘Protected Zone Joint Authority fishery’ is a fishery in respect of which an arrangement under Part V of the Act is in place. The *Arrangement between the Commonwealth and the State of Queensland under section 31 of the Torres Strait Fisheries Act 1984* (the PZJA Arrangement¹), made under Part V of the Act, provides that the PZJA is to have management of commercial fishing of any kind other than certain exceptions, in the areas described in subsection 4(2) of the PZJA Arrangement.

Subsection 2.5(1) of the *Torres Strait Prawn Fishery Management Plan 2009* (the Management Plan) stipulates that at least every 3 years the PZJA will determine the TAE for the fishery, based on the reference points determined under section 2.4, or other management strategy.

The *Torres Strait Fisheries (Torres Strait Prawn Fishery Total Allowable Effort) Determination 2020* (the Determination) is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Due to application of subsection 44(1) of the Legislation Act, the Determination is exempt from parliamentary scrutiny and is not subject to sunseting by application of subsection 54(1) and paragraph 54(2)(b) of the *Legislation Act*, read together with item 63AB of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

¹ PZJA Arrangement means the document titled “*Arrangement between the Commonwealth and the State of Queensland under section 31 of the Torres Strait Fisheries Act 1984*” dated 17 March 1999 and published on the Federal Register of Legislation, as that document exists at the commencement of this Instrument.

Note: The PZJA Arrangement could in 2020 be viewed on the website of the Federal Register of Legislation (<https://www.legislation.gov.au/Details/F2008B00750>).

Purpose

The purpose of the instrument is to determine the TAE for the Torres Strait Prawn fishery for the 2021, 2022 and 2023 fishing seasons. The fishing season is determined under subsection 2.3(2) of the Management Plan. Pursuant to subsection 2.5(1) of the Management Plan, the PZJA determines the TAE for the 2021, 2022 and 2023 fishing seasons in the Torres Strait Prawn Fishery to be 9,200 fishing days for each fishing season.

Consultation

Subsection 2.5(2) of the Management Plan stipulates that before determining the TAE, the PZJA will consult the TSPMAC and consider the TSPMAC's views; and may consult and consider the views of interested persons.

The Authority, on behalf of the PZJA, consulted the TSPMAC at its January 2020 meeting. In making a recommendation about the TAE, the committee considered the TSPF Harvest Strategy 2011 (the harvest strategy), along with catch and effort data from the fishery, and recommended the TAE be set for the next three years (2021, 2022 and 2023) at 9,200 days. These advisory committees were established under subsection 40(7) of the Act. Memberships of these advisory committees comprise of an independent Chair, Authority agencies (Australian Fisheries Management Authority, Torres Strait Regional Authority, and Queensland Department of Agriculture and Fisheries), a scientist, and industry (from both the traditional inhabitant and non-traditional inhabitant sectors).

Further, a determination under this section must be published on the PZJA website and, if practicable, notified to all holders of TSPF boat licences and TSPF Treaty endorsements.

Native Title

The determination of the TAE by the PZJA is a future act for the purposes of the Native Title Act. Section 24HA of the Native Title Act relevantly provides that the making of legislation in relation to the management or regulation of living aquatic resources is a valid future act, insofar as the instrument is validly made.

As the instrument is not a future act consisting of "the grant of a lease, licence, permit or authority under legislation", subsection 24HA(2) of the Native Title Act does not apply, and native title notification is not required under subsection 24HA(7). For this reason, Native Title notification under section 24HA of the *Native Title Act 1993* (Native Title Act) has not been undertaken.

Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

As the instrument is exempt from disallowance through the process of parliamentary scrutiny, by application of subsection 44(1) of the Legislation Act, a statement of compatibility with human rights does not have to be prepared for the purpose of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Regulation impact statement

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required for this instrument consistent with agreed carve out arrangements (OBPR reference number 14421).

Details of the instrument are set out in **Attachment A**.

ATTACHMENT A

Details on provisions

Torres Strait Fisheries (Torres Strait Prawn Fishery Total Allowable Effort) Determination 2020

- Section 1*** Provides that the name of the instrument is the *Torres Strait Fisheries (Torres Strait Prawn Fishery Total Allowable Effort) Determination 2020*.
- Section 2*** Provides that the instrument commences on the day after registration on the Federal Register of Legislation.
- Section 3*** Provides that the instrument is made under section 15A of the *Torres Strait Fisheries Act 1984* and section 2.5 of the *Torres Strait Prawn Fishery Management Plan 2009*.
- Section 4*** Provides for the definitions used in the Instrument.
- Section 5*** Provides that the total allowable effort for the Torres Strait Prawn Fishery for the 2021, 2022 and 2023 fishing seasons is a total of 9,200 fishing days.