

EXPLANATORY STATEMENT

Issued by Authority of the Assistant Minister for Forestry and Fisheries
Parliamentary Secretary to the Minister for Agriculture, Drought and Emergency
Management

Fisheries Levy Act 1984

*Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations
(No. 2) 2020*

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 are such amounts as specified in, or calculated in accordance with, the regulations. .

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 *Fisheries Levy (Torres Strait Prawn Fishery) Amendment (Levy Amount) Regulations (No 2) 2020* (the Regulations) is to decrease the levy amount applicable to licences and units held in the Torres Strait Prawn Fishery (the Fishery).

The total amount of levy to be paid in the 2020-21 financial year by licence and unit holders that is prescribed by the proposed regulations is \$211 740. This is a decrease of 43.08 per cent (\$160 239) compared to the 2019-20 levy of \$371 979.

The Regulations decrease the annually-calculated levy for licences granted or renewed for the Fishery from \$3,506.43 to \$1,787.18 per licence (a \$1,719.25 decrease per licence) for the 2021 fishing season. The levy for an allocated unit, or for the renewal of an allocated unit, also decreases from \$23.65 to \$15.29 per unit (an \$8.36 decrease per unit).

Background

The attributable costs of managing the Fishery are recovered from the holders of licences and units pursuant to a decision of the Protected Zone Joint Authority (PZJA), which is established by the TSFA and has responsibility for managing all Torres Strait commercial fisheries.

Levy rates for the Fishery are determined annually in line with the Australian Fisheries Management Authority's (AFMA's) budgeting process and 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 PZJA must allocate Australian units to the 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 the Fishery licence holders.

The decrease in the levy for 2020-21 is primarily due to two factors: an over-spend in fisheries management costs for the 2018-19 financial year, which increased the levy amount in 2019-20, and an under-spend in costs in 2019-20.

Consultation

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

The TSPMAC was generally supportive of the draft cost-recovered budget. Comments received from TSPMAC members were addressed prior to the cost-recovered budget being finalised.

The Commonwealth Fisheries Association (CFA) was also consulted on AFMA's total annual cost-recovered budget. The CFA did not object to the final budget.

Impact and Effect

The levy amount collected from all of the Fishery licence holders reflects the level of activity required by the PZJA 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 2021 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 (No. 2) 2020*

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 (No. 2) 2020*.

Section 2 - Commencement

This section provides that the proposed Regulations 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 that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 - Amendments

Fisheries Levy (Torres Strait Prawn Fishery) Regulation 2016

Item [1] - Subsections 8(2) and (3)

This item omits the amounts “\$3,506.43 plus \$23.65” and substitutes them with the amounts “\$1,787.18 plus \$15.29” to reflect the decrease to the amount of levy imposed on the grant of, or on the renewal of, a licence prescribed by section 7 of the Levy Regulation.

Item [2] - Subsections 8(4) and (5)

This item omits the amount “\$23.65” and substitutes it with the amount “\$15.29” to reflect the decrease to the amount of levy imposed on the allocation of, or by the renewal of, an 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 (No. 2) 2020

This Disallowable 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 Disallowable Legislative Instrument

This Disallowable Legislative 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.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

Senator the Hon. Jonathon Duniam
Assistant Minister for Forestry and Fisheries
Parliamentary Secretary to the Minister for Agriculture, Drought and Emergency Management

Note: The name of this instrument was amended on registration as the instrument as lodged did not have a unique name (see subsection 10(2), *Legislation Rule 2016*).