

EXPLANATORY STATEMENT

Issued by authority of the Minister

Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2018

Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Amendment Determination (No. 1) 2021

Legislative authority

Subsection 14(1) of the *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2018* (Management Plan) provides that the Minister may increase the total allowable catch determined for a fishing season.

The *Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Amendment Determination (No. 1) 2021* (Amendment Determination) is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act). Due to application of subsection 44(1) of the Legislation Act, the Amendment Determination is exempt from parliamentary scrutiny.

Purpose

The Amendment Determination amends the *Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Determination 2020* to increase the total allowable catch (TAC) of tropical rock lobster determined in the TRL fishery for the 2020/21 fishing season which commenced on 1 December 2020. The TAC for the TRL fishery is determined to be increased from 200,000 kilograms (unprocessed weight) to 420,863 kilograms (unprocessed weight).

Consultation

Subsection 14(2) of the Management Plan provides that the consultation processes set out in subsections 13(2) and 13(3) of the Management Plan apply to determining an increase in the TAC. Subsection 13(2) of the Management Plan stipulates that in making a TAC determination, the Minister must consult with any advisory committee that the Protected Zone Joint Authority (the Authority) has established under subsection 40(7) of the *Torres Strait Fisheries Act 1984* (Fisheries Act) to provide advice relating to the TRL fishery; and have regard to Australia's obligations under the Torres Strait Treaty¹. Further, subsection 13(3) of the Management Plan provides that in making the determination, the Minister may consider the views of any person with an interest in the TRL fishery or the ecological sustainable use of the TRL fishery; and take into account the amount of tropical rock lobster taken as a result of other fishing such as traditional or recreational fishing.

The Authority, on behalf of the Minister, consulted the Torres Strait Tropical Rock Lobster Resource Assessment Group (TSTRLRAG) and Torres Strait Tropical Rock Lobster Working Group (TSTRLLWG) on 16-17 December 2020, concerning an increase of the TAC determined for the TRL Fishery. These advisory committees were established under subsection 40(7) of the Fisheries Act. Memberships of these advisory committees comprise an independent Chair, Authority agencies (Australian Fisheries Management Authority, Torres Strait Regional Authority and Queensland Department of Agriculture and Fisheries), scientists (including an economist), and industry (from both the traditional inhabitant and non-traditional inhabitant

¹ *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.*

sectors). The advice from these advisory committees takes into account relevant scientific information, including the previous five-year average catch, catch and fishing effort data and results of the pre-season dive survey undertaken in November 2020.

The increase of the TAC determined for the TRL fishery is consistent with catch sharing arrangements between Australia and Papua New Guinea (PNG) agreed under the Torres Strait Treaty. Subject to PNG's utilisation of its catch entitlements in Australian waters, the Minister may determine a further increase of the TAC determined for the TRL fishery.

Native Title

The determination of the increase in the TAC by the Minister is a future act for the purposes of the *Native Title Act 1993* (the Native Title Act). Subsection 24HA(1) of the Native Title Act relevantly provides that the making, amendment or repeal of legislation in relation to the management or regulation of living aquatic resources is a valid future act, insofar as the Amendment Determination is validly made.

However, the prior notification requirement under subsection 24HA(7) of the Native Title Act does not apply because the Amendment Determination is not a future act consisting of the grant of a lease, licence, permit or authority under legislation.

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

As the Amendment Determination 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

Consistent with agreed carve-out arrangements, the Office of Best Practice Regulation advised that a Regulation Impact Statement was not required for the Amendment Determination, (OBPR reference numbers 14421 & 25743).

Details of the Amendment Determination are set out in **Attachment A**.

ATTACHMENT A

Details on provisions

Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Amendment Determination (No. 1) 2021

- Section 1*** Provides that the name of this instrument is the *Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Amendment Determination (No. 1) 2021*.
- Section 2*** Provides that this instrument commences on the day after registration on the Federal Register of Legislation.
- Section 3*** Provides that this instrument is made under section 14 of the *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2018*.
- Section 4*** 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*** Sets out the amendment to the *Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Determination 2020*.
- Item 1 of Schedule 1*** Omits 200,000 kilograms and substitutes 420,863 kilograms.