

EXPLANATORY STATEMENT

Issued by authority of the Minister for Agriculture, Fisheries and Forestry

Torres Strait Fisheries Act 1984

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

Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) (Total Allowable Catch) Determination 2023

Legislative authority

Subsection 15A(1) of the *Torres Strait Fisheries Act 1984* (**Fisheries Act**) provides that the Minister may, by legislative instrument, determine a plan of management for a fishery in an area of Australian jurisdiction. Under subsection 15A(2) of the Fisheries Act, a plan of management made under subsection 15A(1) must set out the objectives of the plan of management, measures by which the objectives are to be attained, and the performance criteria against which and time frames within which, the measures taken under the plan of management may be assessed.

Subsection 15A(4) of the Fisheries 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.

Paragraph 35(1)(a) of the Fisheries Act, relevantly, provides in respect of a Protected Zone Joint Authority fishery, the powers of the Minister under section 15A are exercisable under that provision by the Protected Zone Joint Authority (the **Authority**). The Authority, established under subsection 30(1) of the Fisheries Act, consists of the Commonwealth Minister, the Queensland Minister and the Chairperson of the Torres Strait Regional Authority.

The TRL (tropical rock lobster) fishery is a Protected Zone Joint Authority fishery. The *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2018* (**Management Plan**) is a plan of management made by the Authority under subsection 15A(1) of the Fisheries Act to establish a quota management system in the TRL fishery.

Subsection 13(1) of the Management Plan stipulates that the Minister must, before the start of the fishing season, determine the total allowable catch (**TAC**) of tropical rock lobster in the TRL fishery for that season. The *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) (Total Allowable Catch) Determination 2023* (the **Determination**) is made by the Minister under subsection 13(1) of the Management Plan.

The Management Plan and the Determination are made for the purposes of facilitating the operation of the Authority, that being an intergovernmental scheme between the Commonwealth and Queensland.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003* (**Legislation Act**). As the Determination is made for the purposes of the intergovernmental scheme, section 42 of the Legislation Act (disallowance) does not apply to the Determination.

Purpose

The purpose of the Determination is to determine the TAC of tropical rock lobster in the TRL fishery. The TAC for the tropical rock lobster is determined by the Minister to be 200,000 kilograms (unprocessed weight) for the fishing season commencing on 1 December 2023 and ending on 30 September 2024.

Consultation

Subsection 13(2) of the Management Plan stipulates that in making the Determination, the Minister must consult with any advisory committee that the Authority has established under subsection 40(7) of the 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 ecologically sustainable use of the TRL fishery and take into account the amount of tropical rock lobster taken in the TRL fishery as a result of other fishing, such as traditional fishing or recreational fishing.

The Authority, on behalf of the Minister, consulted the Torres Strait Tropical Rock Lobster Resource Assessment Group (**TSTRLRAG**) and the Torres Strait Tropical Rock Lobster Working Group (**TSTRLWG**) in October and November 2018 respectively, concerning determination of an initial TAC before the start of a fishing season. TSTRLRAG and TSTRLWG were established under subsection 40(7) of the Fisheries 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), scientists, an economist and industry (from both the traditional inhabitant and non-traditional inhabitant sectors).

Having regard to the timing of the scientific assessment process of the TRL fishery and the negotiation of TAC sharing arrangements under the Torres Strait Treaty between Australia and Papua New Guinea, it is recognised that the outcomes of the scientific process and the sharing arrangements are not available, before the fishing season starts on 1 December each year, to support the determination of a final TAC figure. Due to these constraints, the TSTRLRAG and the TSTRLWG, at the October and November 2018 meetings respectively, recommended that at the start of every fishing season, a TAC be determined at 200,000 kilograms², covering the period from 1 December through to the end of February of the following year. The TSTRLRAG and TSTRLWG at those meetings also recommended that the TAC determination may be increased by the Minister to take into account the outcomes of the scientific process and the TAC sharing arrangements under the Torres Strait Treaty, if required.

The TAC as determined in subsection 6(1) of the Determination is consistent with the recommendations made to the Minister by the TSTRLRAG and the TSTRLWG. Papua New Guinea was notified of the Minister's intent to determine the TAC, in accordance with the terms of the Torres Strait Treaty.

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

² The 200,000 kilograms is based on the maximum catch amount for the period 1 December through to the end of February of the following year, in the years 2005-2018.

Impact and Effect

The determination of the TAC by the Minister is a future act for the purposes of the *Native Title Act 1993* (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 Determination is validly made.

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

As the Determination has been developed for the purposes of the intergovernmental scheme, it is exempt from disallowance through the process of parliamentary scrutiny, by application of paragraph 44(1)(a) of the Legislation Act. Therefore, a statement of compatibility with human rights, prepared under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is not required, as paragraph 15J(2)(f) of the Legislation Act only requires statement of compatibility of human rights to be prepared for disallowable legislative instruments.

Regulation impact statement

The Office of Impact Analysis (**OIA**) advised that a Regulation Impact Statement was not required for this Determination which is consistent with agreed carve out arrangements (OIA reference numbers 14421 and 25743).

Details / Operation

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

Details of the Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) (Total Allowable Catch) Determination 2023

Section 1 Provides that the name of the Determination is the *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) (Total Allowable Catch) Determination 2023*.

Section 2 Provides that the Determination commences on the day after registration on the Federal Register of Legislation.

Section 3 Provides that the Determination is repealed on the day after 30 September 2024 unless revoked earlier.

Section 4 Provides that the Determination is made under section 13 of the *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2018 (Management Plan)*.

Section 5 Subsection 5(1) provides definitions for the Determination as follows:

a) **fishing season** means the period specified in an instrument made under section 16 of the *Torres Strait Fisheries Act 1984* during which a person who holds a TRL fishing licence is permitted to take, process or carry tropical rock lobster.

i. The *Torres Strait Fisheries (Tropical Rock Lobster) Management Instrument 2018* was made under section 16 of the *Torres Strait Fisheries Act 1985* and its section 4 specifies **fishing season** to mean 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).

b) **total allowable catch**, for a fishing season, means the total allowable catch determined under subsection 13(1) of the Management Plan.

c) **TRL Fishery** means the area of Australian jurisdiction described by item 9 of Schedule 2 to the *Torres Strait Fisheries Regulations 1985*.

d) **tropical rock lobster** means fish of the species *Panulirus* spp.

Section 6 For purposes of subsection 13(1) of the Management Plan, subsection 6(1) determines the total allowable catch of tropical rock lobster in the TRL fishery for the fishing season commencing 1 December 2023 and ending 30 September 2024 as 200,000 kilograms (unprocessed weight).