

EXPLANATORY STATEMENT

Issued by the authority of the Protected Zone Joint Authority

Torres Strait Fisheries Act 1984

Torres Strait Prawn Fishery (Bycatch Reduction Devices) Instrument 2024

Legislative authority

Subsection 16(1) of the *Torres Strait Fisheries Act 1984* (**the Act**) provides for the Minister to regulate fishing through an instrument registered on the Federal Register of Legislation. Subsection 35(1) of the Act provides for the Protected Zone Joint Authority (**PZJA**) to exercise the powers of the Minister under subsection 16(1) 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 Arrangement**), made under Part V of the Act, provides that the PZJA is to have management of commercial fisheries in the areas described in subsection 4(2) of the Arrangement.

The Torres Strait Prawn Fishery (**the Fishery**) is defined in item 6 of Schedule 2 to the *Torres Strait Fisheries Regulations 1985* (**the Regulations**). It follows that commercial fishing for Prawn in the area of the Fishery is a ‘Protected Zone Joint Authority fishery’ for the purpose of subsection 28(1) of the Act and that the PZJA can exercise the power of the Minister under subsection 16(1) of the Act in relation to the Fishery.

The PZJA is established under section 30 of the Act and consists of the Minister administering the Act, the Queensland Minister administering the laws of Queensland relating to marine fishing in the Protected Zone and the Chairperson of the Torres Strait Regional Authority (**TSRA**), which is the Commonwealth agency established under the *Aboriginal and Torres Strait Islander Act 2005* that represents the interests of Torres Strait Islanders.

The Instrument is a legislative instrument for the purpose of the *Legislation Act 2003* and is:

- not subject to disallowance by way of parliamentary scrutiny, by application of subsection 44(1) of the Legislation Act, as the PZJA in making this instrument is an intergovernmental body involving Commonwealth and the State of Queensland; and
- 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*.

The Fishery

The Fishery is currently regulated through the Act, the Regulations, legislative instruments including the *Torres Strait Prawn Fishery Management Plan 2009* (**the Plan**) as well as through the imposition of conditions on licences under section 22 of the Act. The Fishery is a multi-species prawn fishery

(Endeavour, Tiger and King prawns) that operates in the eastern part of the Torres Strait. Brown Tiger prawn (*Penaeus esculentus*) and the Blue Endeavour prawn (*Metapenaeus endeavouri*) are the key target species. The Red Spot King prawn (*Melicertus longistylus*) is essentially a by-product species.

Prawn harvesting occurs at night, primarily using the otter trawl (quad) method, which involves towing four trawl nets behind a boat. The Fishery has restrictions on the type of gear and boat that can be used during fishing.

Commercial fishing in the Fishery occurs from 1 February to 1 December annually.

Purpose

The objectives of the Plan require the use of bycatch reduction devices (BRDs) in the fishery, which are efficient in reducing bycatch while minimising prawn loss. It also requires regular reviews by the PZJA to ensure that BRDs are updated across the fishery as deemed necessary, and to ensure the best devices are being used as new technology is developed.

In November 2022, the Torres Strait Prawn Management Advisory Committee (**TSPMAC**) recommended that changes be made to the allowable BRDs. The *Torres Strait Fisheries (Bycatch Reduction Devices) Instrument 2024 - (the Instrument)* repeals the *Torres Strait Fisheries Management Notice No. 82 (the Notice)* to remove the v-cut flap, the square mesh codend, the square mesh panel and the radial escape panel from the list of approved BRDs in the Fishery. These four BRDs are older designs which are less effective and seldom used by the licence holders.

Three new BRDs have been added to the list of approved BRDs for the Fishery and a further three have had their specifications modified to mirror the Queensland East Coast Otter Trawl Fishery BRD legislation, in which many fishers also operate.

The Instrument now specifies the six types of BRDs approved for use in the Fishery. These are the Fisheye, the Bigeye, Tom's Fisheye, Kon's Covered Fisheye, the FishEX 70 and the amended Popeye Fishbox. The specifications for each of these are outlined in Schedules 1 of the Instrument.

Consultation

The changes to BRDs were discussed at TSPMAC on 29-30 November 2022. The TSPMAC comprises representatives from Torres Strait Prawn licence holders and other industry representatives, Traditional Inhabitant industry members and Government. Licence holders in the Fishery were also provided information on the suggested changes via letter and invited to provide comment if they had any concerns with the changes.

No licence holders objected to the proposed changes in this instrument.

Native Title Considerations

The Instrument made by the PZJA is a future act for the purposes of the Native Title Act 1993 (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.

A native title notification process under section 24HA of the Native Title Act was undertaken for this instrument from 12 July to 14 August 2023. No comments were received.

Impact Analysis

The Office of Impact Analysis (**OIA**) has advised that an Impact Analysis (IA) was not required for the Instrument noting the proposal is unlikely to have a more than minor impact. OIA reference number is OIA23-05621.

Publication and Commencement

Subsection 16(4) of the Act provides that an instrument made under section 16 of the Act comes into force on the day it is published under subsection 16(9) or a later day as specified. Subsection 16(9) provides that the PZJA, by way of section 35, must publish or broadcast the contents of an instrument made under section 16 in such manner as is prescribed. In relation to the Instrument, the PZJA has elected to publish the Instrument. It follows that section 3 of the Regulations states that, for the purpose of subsection 16(9) of the Act, the manner of publication is by publication in such a newspaper as in the opinion of the PZJA is appropriate having regard to the nature of the contents of the notice.

In making the decision to make the instrument, the PZJA has considered the nature and the contents of the Notice and have determined that it would be appropriate for the Instrument to be published in the Torres News, which is the local newspaper in circulation across the Torres Strait. The Torres News also has some limited circulation in towns across Cape York as well as in Cairns where some licences are based.

The PZJA also authorised staff members of the Australian Fisheries Management Authority (AFMA) to register the Instrument on the Federal Register of Legislation.

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

The Instrument has been developed for the purposes of the intergovernmental scheme, it is exempt from disallowance through the process of parliamentary scrutiny, by application of subsection 44(1) 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 a statement of compatibility of human rights to be prepared for disallowable legislative instruments.

Details of the Instrument are set out in Attachment A.

Details of the Torres Strait Prawn Fishery (Bycatch Reduction Devices) Instrument
2024

Section 1 Provides that the name of the instrument is the *Torres Strait Prawn Fishery (Bycatch Reduction Devices) Instrument 2024*.

Section 2 Provides that the Instrument will commence on the day after it is registered on the Federal Register of Legislation.

Section 3 Provides that the instrument is made under paragraph 16(1)(c) of the Act.

Section 4 Provides definitions for the Instrument as follows.

"Prawns" means fish of the family Penaeidae spp.

"Bycatch Reduction Device" or BRD means a device that allows fish and other animals to escape immediately after being taken in the net and is constructed in accordance with Schedule 1.

"Try net" means a net, no longer than 10 metres, used for no longer than 25 minutes at a time for sampling or testing or to work out the abundance or presence of prawn.

"Turtle Excluder Device" or "TED" means a device fitted to a net, and modification made to a net, that allows turtles to escape immediately after being taken in the net, and is constructed in accordance with any instruments under section 16 of the Act that apply to the fishery.

Act means the *Torres Strait Fisheries Act 1984*.

Plan means the *Torres Strait Prawn Fishery Management Plan 2009*.

Net rigged for fishing means where part or all of a net is in the water, or if it is shackled, tied or otherwise connected to any trawl door or trawl board, or to any tow rope or cable, either on board the boat or attached in any manner to the boat.

Section 5 Prohibits taking, processing or carrying of fish by a method, or with the use of equipment or a boat in the area of the Fishery unless a BRD specified in Schedule 1 is installed in each of the concession holder's nets rigged for fishing. Further provides the requirement to use a BRD does not apply to the try net fishing method.

Section 6 Provides an exemption to section 5 of this instrument. This section states that a try net is exempt from the prohibition.

Section 7 Provides that each instrument that is specified in Schedule 2 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 Schedule 1 specifies the list of BRDs approved to be used in the Fishery and the specifications for each of BRDs are outlined in Schedule 1 of the Instrument.

Schedule 2 Repeals *Torres Strait Fisheries Management Notice No. 82*