

## **EXPLANATORY STATEMENT**

### **Torres Strait Prawn Fishery Management Plan Amendment 2017**

Section 15A of the *Torres Strait Fisheries Act 1984* (the Act) provides that the Protected Zone Joint Authority (PZJA) may determine written plans of management for each fishery that it manages.

The PZJA has determined the *Torres Strait Prawn Fishery Management Plan Amendment 2017* (the Plan Amendment) to amend the *Torres Strait Prawn Fishery Management Plan 2008* (the Plan).

The Plan Amendment is made pursuant to subsection 33(3) of the *Acts Interpretation Act 1901*.

The Plan Amendment is a legislative instrument for the purposes of the *Legislation Act 2003*.

#### **Need for Amendment**

The purpose of the Management Plan is to pursue the PZJA's legislative objectives whilst providing a comprehensive framework for the regulation of fishing for prawns in the fishery.

Amendments include simplifying the wording of some provisions, correcting previous drafting errors (including the date of the Plan) and removing provisions which are no longer applicable or have been replaced by other legislative instruments.

The most significant amendment provides for the cancellation of units of fishing capacity in the fishery if a licence is surrendered or if a levy is not paid.

The Plan currently provides for the expiry of fishing boat licences, pursuant to the Act, but is silent in relation to cancellation of units of fishing capacity once a licence expires.

Licences must be renewed annually and can only be renewed with payment of the annual management levy. Under the Plan, the renewal of a fishing boat licence is linked with the allocation of units of fishing capacity for the upcoming season. This process also takes account of any transfers of units of fishing capacity. If a fishing boat licence is not renewed (it is either surrendered or the levy is not paid), the units of fishing capacity cannot be dealt with by the holder (used or transferred) – they are rendered unusable. In this scenario, the Plan makes no provision for dealing with the units of fishing capacity, including their cancellation. The units of fishing capacity simply cease to be held.

S15A(6)(g) of the Act provides that a management plan may make provisions for the suspension and cancellation of units of fishing capacity. The Plan provides that the licence can only be renewed if levy is paid but this does not extend to units of fishing capacity. The Plan Amendment provides for the same provision to extend to units of fishing capacity if they are not renewed by the payment of levy - the units of fishing capacity will then be cancelled. Similarly, if the units are surrendered, they would also be cancelled.

The main disadvantage of not cancelling units which “cease to be held” from the fishery is that remaining licence holders pay an unrecovered levy debt from the expired licence and

associated units, but do not benefit from a redistribution of the fishing capacity associated with the units.

While units of fishing capacity are intended to provide ongoing access to the fishery, it is equally intended that certain costs of managing the fishery are recovered against those units.

The absence of a mechanism in the Plan to cancel units of fishing capacity if a license holder fails to pay a levy, or chooses to “surrender” is an apparent oversight in the initial development of the Plan. This oversight places an unfair financial burden on remaining licence holders who gain no increase in access from units in limbo, and leaves units of fishing capacity unable to be dealt with by anyone, including the regulator.

There is always sensitivity around the concept of cancelling access rights to a fishery. However, the consequences under which proposed cancellation would take place will be limited and defined in the Plan (in accordance with the Act). This has been communicated to all licence holders along with the licence renewal procedure. Cancellation is the only practical means of dealing with an unpaid levy, allowing for the redistribution of units of fishing capacity and administration of the units which “cease to be held”.

## **Consultation**

While there is no statutory requirement under the Act to conduct consultation in relation to PZJA managed fisheries, the PZJA’s management philosophy is to be highly consultative in the management of marine resources under its jurisdiction. The Torres Strait Prawn Management Advisory Committee (TSPFMAC) has considered the Plan Amendment and has endorsed the changes therein.

A public consultation process requesting comments on the proposed amendments was undertaken from 26 May to 30 June 2016, following the TSPMAC consideration. There were no substantial comments made.

Native Title notification of the proposed amendments has also been undertaken. One submission was received from Malu Lamar (Torres Strait Islander) Corporation RNTBC. No comments specific to the Plan Amendment were made in the submission.

## **Regulation Impact Statement**

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required for this legislative instrument (ID: 20906).

## **Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011***

AFMA assesses under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* that this legislative instrument is compatible with human rights. AFMA’s Statement of Compatibility is attached as a supporting document.

Details of the Plan Amendment are set out below:

**Part 1** provides for the Plan Amendment to be called the *Torres Strait Prawn Fishery Management Plan Amendment 2017*.

**Part 2** provides that the Plan Amendment commences on the day after it is registered on the Federal Register of Legislative Instruments.

**Part 3** provides that the Management Plan is to be amended in accordance with Schedule 1.

**Schedule 1 Item 1** amends section 1.1 of the Management Plan to amend the name of the Management Plan.

**Schedule 1 Item 2** Omits subsection 2.3(1).

**Schedule 1 Item 3** amends subsection 2.3(2) of the Management Plan to remove a specific season date, allowing the PZJA to determine the fishing season in a particular year.

**Schedule 1 Item 4** Omits subsection 3.2(2).

**Schedule 1 Item 5** Omits subsection 3.5(4).

**Schedule 1 Item 6** Omits subsection 3.7(5).

**Schedule 1 Item 7** amends section 4.2(2) of the Management Plan allowing the number of units of fishing capacity in the fishery to decrease if people leave the fishery and surrender or cancel units.

**Schedule 1 Item 8** amends section 4.3(1) of the Management Plan by changing the formula used to calculate the annual use entitlement for licence holders.

**Schedule 1 Item 9** omits subsection 4.3(2).

**Schedule 1 Item 10** amends subsection 4.9(3) by omitting the word ‘will’ and inserting the word ‘may’.

**Schedule 1 Item 11** inserts a new section 4.10 to allow Australian units of fishing capacity to be surrendered by licence holders who no longer wish to operate in the fishery.

**Schedule 1 Item 12** inserts a new section 4.11 to allow Australian units of fishing capacity to be cancelled if surrendered or ceased to be held.

**Schedule 1 Item 13** amends section 5.1(1)(c) to simplify the licence conditions pertaining to the use of logbooks.

**Schedule 1 Item 14** amends section 5.1(1)(e) to simplify the licence conditions pertaining to the use of a vessel monitoring system.

**Schedule 1 Item 15** omits subsection 5.1(2).

***Schedule 1 Item 16*** omits subsection 5.1(3).

***Schedule 1 Item 17*** omits subsection 5.2.

***Schedule 1 Item 18*** amends section 5.6 to simplify the licence conditions pertaining to the use of a vessel monitoring system.

***Schedule 1 Item 19*** amends subsection 6.3(4) to change the requirements for notifying the PZJA licensing delegate regarding matters relating to licences.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Torres Strait Prawn Fishery Management Plan Amendment 2017**

This 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 Legislative Instrument**

The Legislative Instrument amends the *Torres Strait Prawn Fishery Management Plan 2009* to provide for fishing access rights (units of fishing capacity) to be removed from the fishery if a license holder surrenders the rights or fails to pay the associated management levy. The amendments also simplify wording of the management plan, correct previous drafting errors, and remove redundant provisions now covered by other legislative instruments.

#### **Human rights implications**

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

#### **Conclusion**

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

**Senator the Hon. Anne Ruston  
Parliamentary Secretary to the Deputy Prime Minister and  
Minister for Agriculture and Water Resources**