

## EXPLANATORY STATEMENT

Issued by authority of the Minister

*Torres Strait Fisheries Act 1984*

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

***Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Determination 2021***

### **Legislative authority**

Section 15A of the *Torres Strait Fisheries Act 1984* (the Act) provides that the Minister may, by legislative instrument, determine a plan of management for a fishery in an area of Australian jurisdiction. A management plan made under the Act is to set out, amongst other things, the objectives of the plan of management and measures by which the objectives are to be attained.

Subsection 15A(4) of the 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.

Subsection 13(1) of the *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2018* (the Management Plan) stipulates that before the start of a fishing season, the Minister must determine for the fishing season the total allowable catch (TAC) of tropical rock lobster in the tropical rock lobster fishery (the TRL fishery).

The *Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Determination 2021* (the Determination) is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act). Due to application of subsection 44(1) of the Legislation Act, the Determination is exempt from parliamentary scrutiny.

### **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 to be 200,000 kilograms (unprocessed weight) for the fishing season commencing 1 December 2021.

## Consultation

Subsection 13(2) of the Management Plan stipulates that in making the 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 Act to provide advice relating to TRL fishery; and have regard to Australia's obligations under the Torres Strait Treaty<sup>1</sup>. 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) in October and November 2018 respectively, concerning the determination of a TAC before the start of a fishing season. These advisory committees were established under subsection 40(7) of the 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 (including 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 a final TAC figure is not available before the season starts on 1 December each year. Due to these constraints, TSTRLRAG and TSTRLLWG recommended that at a start of fishing season a TAC be determined at 200,000 kilograms<sup>2</sup> each season, covering the period 1 December through to the end of February, at which time the recommended TAC determination may be increased to take into account the outcomes of the scientific process and the TAC sharing arrangements under the Torres Strait Treaty. The TAC as determined in section 6 of the Determination is consistent with the recommendations made to the Minister by the TSTRLRAG and TSTRLLWG.

Papua New Guinea was notified of the Minister's intent to determine the TAC, in accordance with the terms of the Treaty.

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<sup>1</sup> *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*

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

## *Native Title*

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 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**

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required for this Determination consistent with agreed carve out arrangements (OBPR reference numbers 14421 & 25743).

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

## ATTACHMENT A

### Details on provisions

#### ***Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Determination 2021***

- Section 1*** Provides that the name of the Determination is the *Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Determination 2021*.
- 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 2022 unless revoked earlier.
- Section 4*** Provides that the Determination is made under section 15A of the *Torres Strait Fisheries Act 1984* for the purpose of section 13 of the *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2018* (Management Plan).
- Section 5*** Subsection 5(1) provides a definition for the Determination.
- Section 6*** Subsection 6(1) determines the total allowable catch (TAC) of tropical rock lobster in the TRL fishery for the fishing season commencing 1 December 2021 as prescribed by section 13 of the Management Plan. The TAC of tropical rock lobster is 200,000 kilograms (unprocessed weight).