

EXPLANATORY STATEMENT

Issued by the authority of the Australian Fisheries Management Authority

Torres Strait Fisheries Act 1984

Fisheries Management Notice No. 73

The proposed Fisheries Management Notice would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Subsection 16(1) of the *Torres Strait Fisheries Act 1984* (the Act) provides for the Minister for Fisheries, Forestry and Conservation to regulate fishing through a notice published in the *Gazette*.

By virtue of subsection 35(1) (a) of the Act, the powers of the Minister under section 16 of the Act are exercisable by the Protected Zone Joint Authority.

The fishery

The Torres Strait Tropical Rock Lobster Fishery is the second most valuable commercial fishery in Torres Strait and very important to many Torres Strait Islanders. The fishery is based on a single species, the ornate or tropical rock lobster (*Panulirus ornatus*). Lobsters are taken by hand or a short hand spear by divers working from dinghies. Most divers free dive on shallow reef tops but others use hookah (surface supplied air) to dive the large areas of open bottom (between the reefs) in the Torres Strait. Most fishing occurs during neap tides (a period that occurs between the new and full moons) when currents ease and underwater visibility improves. Commercial fishing occurs from December to September, inclusive, with a peak during March-August. Traditional fishers can catch up to 3 lobsters per person or six per boat at any time of the year.

Regulation Impact Statement

The Office of Regulation Review (ORR) advised AFMA that a Regulation Impact Statement was not required for the proposed Fisheries Management Notice No. 73 (ID 7395).

Consultation

This Fisheries Management Notice replaces Fisheries Management Notice No. 58, dated 22 November 2001, and Fisheries Management Notice No. 62, dated 24 December 2002.

The new content of this Fisheries Management Notice has been put through the approved Torres Strait Protected Zone Joint Authority (PZJA) consultative structure. It has been discussed at the Tropical Rock Lobster Fishery Working Group, the Torres Strait Fisheries Management Advisory Committee (TSFMAC), and the PZJA where the proposed notice was endorsed. The Working Group and TSFMAC memberships include both non indigenous fisher representatives and Torres Strait Traditional Inhabitants.

The Fisheries and Aquaculture branch of the Australian Government Department of Agriculture, Fisheries and Forestry has also been consulted on the general content of the proposed Notice.

Details of the Notice

The content of the proposed notice includes all existing arrangements that exist under Fisheries Management Notice Nos. 58 and 62, and a minor change to tropical rock lobster (TRL) measuring requirements, a reference to the area of the fishery, and a prohibition on the carriage of diving equipment between 1900 hours and 0600 hours each day unless stowed and secured.

Fisheries Management Notice No. 58 prohibits the taking, processing and carrying of TRL in the Torres Strait Tropical Rock Lobster Fishery. It also specifies a number of exemptions to the prohibitions. Paragraph 5.1 of this notice imposes a minimum size restriction on TRL taken, processed and carried. Paragraph 5.2 specifies how a TRL should be measured to ensure compliance with paragraph 5.1.

Over time the fishing industry has adopted a number of different measuring practises which have resulted in inconsistencies in tail lengths when measured. This has been addressed by adding a requirement to place downward pressure on the TRL tail as it is being measured, an approach supported by both the fishing industry and compliance officers.

In respect to the area of the fishery, the new notice includes a reference to the area of the fishery and that the prohibition applies to the area of the Torres Strait Tropical Rock Lobster Fishery.

A prohibition on carriage of diving equipment unless stowed and secured between 1900 hours and 0600 hours each day is also included in response to concerns that night diving may occur in the fishery. The TSF Act has provisions that allow the Minister to prohibit a person to have in possession gear of a specified kind for the taking of fish unless the equipment is stowed and secured.

This provision would allow a prohibition of night diving to be effectively implemented by prohibiting divers from having in their possession between certain hours dive gear of a specified kind unless it is stowed and secured. A very small commitment on the part of the divers would enable them to comply. On the basis that the divers' mask(s) and dive fins are secured in a bag they would be exempt from the proposed prohibition.

Clause 1	States that the notice may be cited as Torres Strait Fisheries Management Notice No. 73.
Clause 2	States that the notice commences on <i>Gazettal</i>
Clause 3	States that the notice applies in conjunction with other notices in the Tropical Rock Lobster Fishery.
Clause 4	States that Fisheries Management Notices numbers 58 and 62 are revoked.
Clause 5	Details how certain words and terms used in the notice are to be interpreted.
Clause 6	States that the taking, processing or carrying of tropical rock lobster is prohibited.
Clause 7	Details who is exempt from the tropical rock lobster prohibition based on licence type, seasonal closure dates or their engagement in traditional fishing.
Clause 8.1	States the minimum carapace (head) and tail lengths.

Clause 8.2	Details how a carapace should be measured, i.e. measured along the dorsal surface (top of the head) from the anterior mid-dorsal margin (middle front) to the posterior mid-dorsal margin (middle rear) of the carapace
Clause 8.3	Details how a tail should be measured, i.e. measured in a straight line along the dorsal surface (top surface of the tail) from the anterior margin of the first abdominal somite (first and largest tail segment) to the posterior margin of the sixth abdominal somite (last and smallest tail segment) when the tail is laid flat on a horizontal surface; and
Clause 9	States that persons engaged in traditional fishing are exempt from the size limits. This is in accordance with the terms of the Torres Strait Treaty.
Clause 10	Details the methods that can be used to take tropical rock lobster.
Clause 11	Specifies the period that hookah gear must not be used.
Clause 12	States that tropical rock lobster meat must not be removed from any part of a tropical rock lobster.
Clause 13	States that persons engaged in traditional fishing are exempt from the restriction on removing tropical rock lobster meat. This is in accordance with the terms of the Torres Strait Treaty.
Clause 14	States the period that diving equipment and tropical rock lobster is prohibited on boats.
Clause 15	Details exemptions to Clause 14 if diving equipment is stowed and secured or approval to carry equipment and tropical rock lobster has been granted.