

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 2

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

Fisheries Levy Act 1984

Fisheries Levy (Torres Strait Prawn Fishery) Amendment Regulations 2009 (No. 1)

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Section 8 of the *Fisheries Levy Act 1984* (Levy Act) provides that the Governor-General may make regulations for the purposes of sections 5 and 6 of the Levy Act. Section 5 of the Levy Act imposes a levy on, amongst other things, the grant or renewal of a licence and of the allocation and renewal of units of fishing capacity issued under the *Torres Strait Fisheries Act 1984* (TSF Act). Section 6 of the Levy Act provides that the amount of levy imposed on the grant or renewal of a licence or on the allocation or renewal of units of fishing capacity is such an amount as is specified in the Regulations. Section 7 of the Levy Act provides that the levy is payable at the time of the grant or renewal of the licence or at the time of the allocation or renewal of units of fishing capacity.

The Torres Strait Prawn Fishery (TSPF) is a Protected Zone Joint Authority (PZJA) fishery under the TSF Act pursuant to an arrangement under section 31 of the TSF Act which came into effect on 1 April 1999. The Torres Strait PZJA was established under the *Torres Strait Fisheries Act 1984* to manage Torres Strait fisheries on behalf of the Commonwealth and Queensland under Commonwealth law, and in accordance with the Torres Strait Treaty with PNG. Subsection 36(2) of the TSF Act provides that the powers of the Minister under Part IV (Licences, endorsement and entries) of the TSF Act are exercisable under those provisions by the PZJA as if references to the Minister were references to the PZJA.

Subsections 19(2) and 19(3) of the TSF Act provide that the Minister may, at his or her discretion, grant to a person a licence authorising the use of a specified boat for taking fish in the course of commercial fishing and for carrying, or processing and carrying, fish taken with the use of the licensed boat in areas of Australian jurisdiction. The “area of Australian jurisdiction” is defined in section 3 of the TSF Act and includes areas of waters within the Torres Strait Protected Zone, as defined in the Torres Strait Treaty at Schedule 1 of the TSF Act an area “outside but near” the Protected Zone. Section 24 of the TSF Act provides that the Minister may renew a licence granted under section 19.

The fishery is currently managed through restrictions on the number of licences and fishing days. The number of days held varies between licensees in the fishery. So as to provide an equitable recovery of the costs the levy has a fixed (per licence) and a variable (per day) component which are collected upon renewal of the licence before the season begins on 1 March each year.

A Management Plan is under development for the fishery. The Management Plan provides for the allocation of units of fishing capacity. The units of fishing capacity are then converted annually into a number of fishing days depending on the total allowable effort (TAE) for the fishery in a given season. The Management Plan is expected to be implemented in time for the commencement of the prawn fishing season on 1 March 2009.

The purpose of the Regulation is to be able to charge a 'fixed' levy (per licence granted, renewed or varied) and a 'variable' levy (per unit allocated to each licence at the commencement of the season under the new Management Plan) and a levy for additional days/units which may be allocated to licence holders during the season.

Although fishing days will be used in the fishery, the variable component of the levies will be charged on a per unit basis under the new Management Plan. While the Management Plan is expected to be implemented in time for the 2009 fishing season, any delays with implementation will result in a continuance of the existing management system of licences and fishing days for the 2009 fishing season. Accordingly, the levy regulations provide for the variable component of the levies to be charged either on a per unit basis if the fishery is operating under the Management Plan, or on days issued if the Management Plan does not operate during the 2009 season. This will ensure the Commonwealth is able to recover the associated costs of managing the fishery in accordance with the PZJA's cost recovery policy for the Torres Strait Prawn fishery.

The Regulation amends the *Fisheries Levy (Torres Strait Prawn Fishery) Regulations 1998* (Principal Regulations) increasing the levy for licences granted or renewed in respect of the Torres Strait Prawn Fishery from \$2,786.78 to \$5,833.39 per licence (fixed component) and an increase in the levy for each individual allocated fishing day (or unit under the Management Plan) authorised by licences from \$9.88 to \$32.35 per unit (variable component).

The substantial increase in both the fixed and variable component of the levy is principally due to the conclusion of the Australian Government's \$500,000 levy relief program. The levy relief subsidy does not apply for the 2008-2009 financial year. The levy relief program funding was appropriated in 2006 to support a structural adjustment process. The program provided a \$250,000 levy relief subsidy for the 2006-2007 and 2007-2008 financial years and aimed to minimise the redistribution of fishery costs on the remaining licensees. The overall budget for the fishery for 2008-2009 only increased by 1.7% (\$9,400) from the 2007-2008 financial year, prior to the application of an unspend of \$64,376 from the 2006/2007 financial year which was applied to the 2007/2008 budget as a credit and an overspend of \$16,339 from the 2007/2008 financial year which has been applied to the 2008/2009 budget as a debit (total \$80,715) – total change \$90,115.

The attributable costs of managing the Torres Strait Prawn Fishery are recovered from industry pursuant to a decision of the PZJA. The PZJA agreed to the splitting of the costs to be recovered on the basis of fixed (per boat) and variable (per day) components so providing an equitable division of expenses depending on operators' investment in the fishery. The Prawn Fishery is the only Torres Strait fishery currently subject to cost recovery arrangements.

The levy costs for the Prawn Fishery are attributable to services provided by the Australian Fisheries Management Authority (AFMA) and the Queensland Department of Primary Industries and Fisheries (QDPI&F). QDPI&F is responsible for administering the licensing component in management of this fishery and distributing the annual levy invoices. AFMA is responsible for general management and consultation in relation to the fishery.

Attachment A describes the basis for the levy costs in accordance with previous practice and indicates the changes from the levy collected for 2007-2008.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Attachment A – Basis of the levy

Table 1 describes the basis for the levy costs in accordance with previous practice and indicates the changes from the levy collected for 2007-2008.

Table 1. Levy Calculation

	Licence Component 2009	Unit (or day)¹ Component 2009	2008-2009 levy	2007-2008 levy	Increase/ (Decrease)
Logbook data – AFMA		\$16,377	\$16,377	\$18,805	(\$2,428)
Other logbook - AFMA	\$15,345		\$15,345	\$39,045	(\$23,700)
Surveillance					
- QB&FP	\$32,100	\$32,100	\$64,200	\$62,336	\$1,864
- AFMA	\$1,939	\$1,939	\$3,878	\$5,833	(\$1,955)
Sub-total	\$34,039	\$34,039	\$68,078	\$68,169	(\$91)
Administration and Licensing					
- AFMA	\$211,343	\$140,895	\$352,238	\$319,980	\$32,258
- QDPI&F	\$65,748	\$43,832	\$109,580	\$106,219	\$3,361
Sub-total	\$277,091	\$184,727	\$461,818	\$426,199	\$35,619
Total Budget	\$326,475	\$235,143	\$561,618	\$552,218	\$9,400
Levy relief			\$0	(\$250,000)	
(Surplus)/deficit	\$29,362	(\$13,023)	\$16,339	(\$64,376)	
Total levy base	\$355,837	\$222,120	\$577,957	\$237,842	\$340,115²

¹ The TSPF Management Plan is currently on track for implementation for the commencement of the 2009 fishing season, however any delays with implementation of the Plan would mean the fishery would continue to operate under the existing system of licenses and fishing days for the 2009 season. To allow for this, the levy regulations include both a per unit and a per day charge for the variable component of levies.

² The significant increase in the total levy base is principally the result of the end of the levy relief of \$250,000 that applied for the 2007-2008 financial year. The 2007-2008 levy was further reduced by a \$64,376 underspend from 2006-2007.

The total levy base for the fishery for 2009 is \$577,957 comprising \$355,837 in 'fixed' licensing costs and \$222,120 in 'variable' costs for the fishing unit component.

The levy cost per licence for 2009 is \$5,833.39. This is derived by dividing the total 'fixed' licence component of \$355,837 by the total number of licences in the fishery (61).

The levy cost per unit allocated for 2009 is \$32.35. This is derived by dividing the total 'variable' unit component of \$222,120 by the total number of units allocated in the fishery (6867).

There has been an overall increase in the 2008-2009 TSPF budget of \$9,400 (1.7%) when compared to the 2007-2008 financial year.

Increases to the budget have occurred in the following areas;

- *AFMA – administration* – due to an increase in staff salaries and overheads (this was an AFMA wide increase) as well as travel (attributed to increased airfares) and meeting expenses; and

- *QB&FP and QDPI&F - surveillance and administration/licensing costs* – due to salaries and associated costs in line with enterprise bargaining agreements.

Decreases to the budget have occurred in the following areas;

- *AFMA logbook data entry* – this is a result of changes to the structure within AFMA resulting in less FTE time being apportioned to the TSPF;
- *Observer program* – due to a reduction in administration Full Time Equivalent costs following the internal AFMA restructure and reduced operational costs. Despite the budget decrease there is a 15% increase in the number of observer days; consistent with the Ministerial Direction for enhanced monitoring;
- *Data management* - due to changes to salaries and AFMA overheads; and
- *Surveillance and compliance* – due to decreased salaries, on-costs and overheads from the AFMA compliance portion.

Consultation

The Torres Strait Prawn Management Advisory Committee (TSPMAC), composed of management, industry representatives and other key stakeholders, considered and noted the draft budget for the 2008 – 2009 financial year at an OOS meeting on 6 May 2008. Further, the TSPMAC noted that PZJA agencies would endeavour to minimise management costs throughout the 2008-09 financial year.

The Torres Strait Prawn Management Advisory Committee considered and noted the 2008-2009 fishery budget on which the levies are based at its 10-11 July 2008 meeting and at an out-of-session meeting in August 2008. As a way of minimising management costs, additional savings were identified and the draft budget reduced by an amount of \$37,447.

The levy amounts have been set in accordance with cost sharing arrangements between the Commonwealth and Queensland outlined in the 'Agreement between the Commonwealth and Queensland relating to the cost of management of fisheries in the area of Australian jurisdiction in the TSPZ'. The TSPMAC will be informed of the levy amounts at the MAC's December 2008 meeting and all licence holders will be formally notified of the levy amounts following the MAC meeting.

The Office of Best Practice Regulation has determined that a Regulation Impact Statement is not required for the Regulations (ID9768).

The PZJA is not an agency to which the Commonwealth Cost Recovery Policy applies and, accordingly, a Cost Recovery Impact Statement is not required for these Regulations.

Details of the Regulation, which commenced on the day after they were registered on the Federal Register of Legislative Instruments, are set out below.

Regulation 1 provides for the Regulations to be cited as *Fisheries Levy (Torres Strait Prawn Fishery) Amendment Regulations 2009 (No. 1)*.

Regulation 2 provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 provides that Schedule 1 amends the Principal Regulations.

Schedule 1 Item 1 amends regulation 4 of the Principal Regulations to change the amount of levy imposed.