

EXPLANATORY STATEMENT

Issued by the authority of the Protected Zone Joint Authority

Torres Strait Fisheries Act 1984

Torres Strait Fisheries Amendment (Finfish) Management Instrument 2022

Purpose

The purpose of the *Torres Strait Fisheries Amendment (Finfish) Management Instrument 2022* (the Amendment Instrument) is to amend the *Torres Strait Fisheries (Finfish) Management Instrument 2020* (the Management Instrument) to update the definition for a *licensed person* to include a person who has been granted a licence under subsection 19(4A) of the Act (which authorises the taking of fish in the course of commercial fishing without the use of a boat in areas of Australian jurisdiction, and for carrying, or for processing and carrying that fish in areas of Australian jurisdiction); and to amend the *permanent closure* area as defined in Schedule 1 of the Amendment Instrument.

The Fishery

The Torres Strait Finfish fishery, also known as the Torres Strait reef line fishery, is a multi-species fishery targeting a range of reef fish. The fishery focuses primarily on the high value coral trout species (*Plectropomus spp.* and *Variola spp.*), barramundi cod (*Cromileptes altivelis*), mixed reef fish (*Lutjanus spp.* and *Lethrinus spp.*), and numerous species of rock cod (*Epinephelus spp.*).

Finfish are generally taken by handlines rigged with a single hook and sinker. Fishing generally occurs from either a primary or tender boat.

Legislative Authority

Subsection 16(1) of the *Torres Strait Fisheries Act 1984* (the Act) provides for the Minister to regulate fishing through a legislative instrument. Subsection 35(1) of the Act provides for the Protected Zone Joint Authority (the 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 Act (the PZJA Arrangement¹), made under Part V of the Act, provides that the PZJA is to have management of commercial fishing of any kind, other than certain exceptions, in the areas described in subsection 4(2) of the PZJA Arrangement. The finfish fishery, which is defined in section 4 of the Management Instrument by reference to the ‘area of the finfish fishery’ described in item 4 of the table in Schedule 2 to the *Torres*

¹ PZJA Arrangement means the document titled “*Arrangement between the Commonwealth and the State of Queensland under section 31 of the Torres Strait Fisheries Act 1984*” dated 17 March 1999 and published on the Federal Register of Legislation, as that document exists at the commencement of this Instrument.

Note: The PZJA Arrangement could in 2021 be viewed on the website of the Federal Register of Legislation at the following link: <https://www.legislation.gov.au/Details/F2008B00750>.

Strait Fisheries Regulations 1985 (the Regulations), is within the area described in subsection 4(2) of the PZJA Arrangement. It follows that commercial fishing for finfish 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 finfish fishery.

The PZJA is established under section 30 of the Act and consists of the Commonwealth 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.

Details of the Amendment Instrument

The Amendment Instrument will:

- Item 1: Amend the definition of a *finfish licensed person* in section 4 of the Management Instrument to include a person who has been granted a licence under subsection 19(4A) of the Act that authorises the taking of fish in the course of commercial fishing without the use of a boat in areas of Australian jurisdiction and for carrying, or for processing and carrying, in areas of Australian jurisdiction.
- Item 2: Amend the *permanent closures* area as defined in section 15 of the Management Instrument, pursuant to paragraph 16(1)(a) of the Act, to prohibit the taking of finfish by line fishing methods in that area of the finfish fishery commencing south of Latitude 09°34' 31" S and west of Longitude 142°31'49" E.
- Retain all other regulations relating to the finfish fishery.

Reason for the Amendments

There is interest from traditional inhabitant stakeholders to be able to hold a commercial fishing licence in the event they fish without the use of a boat. It is anticipated that a new Community Fishing Declaration, made under section 17 of the Act, will be remade at the same time, or shortly after this Amendment Instrument is made. The new Community Fishing Declaration will repeal and remake the existing *Torres Strait Community Fishing Notice No. 1*² and pursuant to section 17 of the Act, will declare that a licence under subsection 19(4A) of the Act is required for the purpose of the taking, in the course of community fishing without the use of a boat, of fish, or fish included in a class of fish specified in the instrument, from any area of Australian jurisdiction or from an area of Australian jurisdiction specified in the instrument.

Although there are currently no licences granted under subsection 19(4A) of the Act, that authorise the taking, processing or carrying of fish without the use of a boat, the Amendment Instrument will include an amendment to the definition of *licensed person* to include persons who have been granted a 19(4A) licence, which will cover off any future scenarios in which such licences are granted. This will provide a relevant exemption to the prohibitions within the Management Instrument and improve

² The *Torres Strait Community Fishing Notice No.1 - Community Fishing in the Torres Strait – Prohibition on Taking Fish Without a Licence* in February 2022 can be viewed on the website of the Federal Register of Legislation at the following link: <https://www.legislation.gov.au/Details/F2008B00622>

accessibility of traditional inhabitants wishing to undertake commercial fishing activities in the Protected Zone and adjacent waters who wish to do so without the use of a boat. This includes traditional inhabitants who may walk along reef flats collecting fish. Broadening access to commercial fishing activities is consistent with the objectives of the Act (in particular, paragraph 8(g) of the Act) in developing and implementing licencing policy, to the desirability of promoting economic development in the Torres Strait area and employment opportunities for traditional inhabitants.

The amendment to the *permanent closure* area is a result of stakeholder interest and consultations conducted over a ten year period. Wide level support to remove a portion of the *permanent closure area* fishery closure area (northwards from of the southernmost point of Turnagain Island) was received by the end of 2021. It is understood that the existing boundary line for the *permanent closure* area west of Longitude 142°31'49" E, was not in place for any direct fishery sustainability justification, rather a historical line between State and Commonwealth jurisdictions.

The Torres Strait Finfish Fishery Resource Assessment Group (FFRAG) and the Torres Strait Finfish Fishery Working Group (FFWG) reviewed the sustainability risks of the recommended opening, and subsequently advised on arrangements to support a responsible opening of the *permanent closure area*.

After considering the advice provided by the FFRAG, the FFWG recommended that the area of the finfish fishery north of the southernmost point Turnagain Island be opened for fishing in the pursuit of management objectives under the Act, specifically to the desirability of promoting economic development and employment opportunities for traditional inhabitants.

Details of the Amendment Instrument are set out in [Attachment A](#).

Publication and Commencement

Subsection 16(9) of the Act provides that the PZJA, by way of section 35, must publish or broadcast the contents of an instrument made under section 16 in a manner prescribed by sections 3 or 4 of the Regulations. 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 Instrument 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 islands of the Torres Strait and Cape York. The *Torres News* also has some circulation in Cairns where some licence holders 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.

Subsection 16(4) of the Act provides that a prohibition in an instrument made under section 16(1) comes into force on the day it is published under subsection 16(9), or a later day as specified in the instrument.

It follows that the Amendment Instrument will commence on the day specified, being 1 May 2022 (see section 2 of the Amendment Instrument).

Consultation

The PZJA and AFMA, which is delegated responsibility for the day-to-day management of Torres Strait fisheries under paragraph 38(1)(b) of the Act, are advised through several advisory committees established under subsection 40(7) of the Act, that incorporate advice from traditional inhabitants of the Torres Strait. The PZJA committees generally consist of an independent Chair and representatives from the government (Fisheries Queensland, AFMA and TSRA), scientific experts, economists, traditional inhabitant fishing industry and, where applicable, non-traditional inhabitant fishing industry. In addition, the Chairperson of the *Malu Lamar (Torres Strait Islander) Corporation Registered Native Title Bodies Corporate RNTBC* (Malu Lamar), which is a Registered Native Title Body Corporate (RNTBC) and representatives from the Papua New Guinea National Fisheries Authority also have standing invitation to attend meetings as an observer.

On 7 March 2022, the Finfish Fishery Working Group (FFWG), which is an advisory committee to the PZJA, considered and provided advice on the Amendment Instrument via a video conference. Having regard to FFWG advice, the PZJA agreed to amend the Management Instrument at their meeting on 16 March 2022.

Disallowance and sunseting

The Amendment Instrument is a legislative instrument for the purpose of the *Legislation Act 2003* (the Legislation Act) and is not subject to disallowance by way of parliamentary scrutiny because of the application of subsection 44(1) of the Legislation Act, as the PZJA is exercising its power to make the Amendment Instrument as an intergovernmental body involving the Commonwealth and the State of Queensland. The enabling legislation for the Amendment Instrument facilitates the operation of this intergovernmental body, who have authorised this instrument to be made for the purposes of PZJA's management of the finfish fishery.

The Amendment Instrument is also not subject to sunseting by application of subsection 54(1) and paragraph 54(2)(b) of the Legislation Act, read together with item 63AB(d) of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015*, which specifies that particular legislative instruments are not subject to sunseting, including a legislative instrument made by or on behalf of the PZJA in the exercise of a power under subsection 35(1) of the *Torres Strait Fisheries Act 1984*.

Native Title

This amendment of the Management Instrument by the PZJA 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, such as an Amendment Instrument, is a valid future act, insofar as it impacts upon native title rights and interests.

Statement of compatibility with human rights

As the Amendment Instrument 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 purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) advised that a Regulation Impact Statement was not required for the Amendment Instrument (OBPR ID: 44181).

ATTACHMENT A

Details of the *Torres Strait Fisheries Amendment (Finfish) Management Instrument 2022*

Section 1- Name

Provides that the name of the Amendment Instrument is the *Torres Strait Fisheries Amendment (Finfish) Management Instrument 2022*.

Section 2 - Commencement

Provides for the commencement of the Amendment Instrument. As outlined above, subsection 16(4) of the Act provides that any prohibition contained within an instrument made under subsection 16(1) of the Act does not take effect *inter alia* until the instrument is published in accordance with subsection 16(9) of the Act and section 3 of the Regulations. The PZJA authorised AFMA to publish the Amendment Instrument in the *Torres News* and register it on the Federal Register of Legislation. It follows that the commencement of the Amendment Instrument is the day specified in section 2, being 1 May 2022.

Section 3 - Authority

Provides that the Amendment Instrument is made under section 16 of the Act.

Section 4 - Schedules

This section provides authority for Schedule 1 to the Amendment Instrument, which amends the *Torres Strait Fisheries (Finfish) Management Instrument 2020*.

Schedule 1 - Amendments

- Item 1– This item amends the definition of “licensed person” by repealing the definition and substituting it with “licensed person means a person who has been granted a licence under subsection 19(2), 19(3) or 19(4A) of the Act, or transferred such a licence under section 25 of the Act, that authorises the taking, processing or carrying of fish”. This in effect, extends the exemption to the prohibitions outlined in Section 7 of the Management Instrument to include a person who has been granted a licence under subsection 19(4A).
- Item 2– This item amends the Prohibition – permanent closures area by repealing the section and substituting it with “Pursuant to paragraph 16(1)(a) of the Act, the taking of finfish is prohibited by line fishing methods in that area of the finfish fishery commencing south of Latitude 09°34’ 31” S and west of Longitude 142°31’49” E.” This in effect, reduces the area of waters that the permanent closure applies to.

It is noted at this section that the prohibition in section 15 does not apply to traditional inhabitants engaged in traditional fishing. This is because the PZJA, the body making the Amendment Instrument, does not have jurisdiction to regulate traditional fishing under the PZJA Arrangement.