

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture, Fisheries and Forestry

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

*Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Amendment Determination (No. 1)
2023*

Legislative Authority

Subsection 15A(1) of the *Torres Strait Fisheries Act 1984* (Fisheries Act) provides that the Minister may, by legislative instrument, determine a plan of management for a fishery in an area of Australian jurisdiction. Under subsection 15A(2) of the Fisheries Act, a plan of management made under subsection 15A(1) must set out the objectives of the plan of management, measures by which the objectives are to be attained, the performance criteria against which and time frames within which, the measures taken under the plan of management may be assessed.

Subsection 15A(4) of the Fisheries 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.

Paragraph 35(1)(a) of the Fisheries Act relevantly provides in respect of a Protected Zone Joint Authority fishery, the power of the Minister under section 15A is exercisable under that provision by the Protected Zone Joint Authority (Authority). The TRL (tropical rock lobster) fishery is a Protected Zone Joint Authority fishery. The *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2018* (Management Plan) is a plan of management made by the Authority under subsection 15A(1) of the Fisheries Act in respect of commercial fishing for tropical rock lobster in the TRL fishery.

Subsection 13(1) of the Management Plan provides that the Minister must, before the start of the fishing season determine the total allowable catch (TAC) of tropical rock lobster in the TRL fishery for that season. The *Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Determination 2022* (2022 TAC Determination), registered on 18 October 2022 and commenced on 19 October 2022, was made to satisfy this requirement.

Subsection 14(1) of the Management Plan provides that the Minister may increase the TAC of tropical rock lobster in the TRL fishery determined for a fishing season. The *Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Amendment Determination (No. 1) 2023* (Amendment Determination) increases the TAC of tropical lobster in the TRL fishery as determined in the 2022 TAC Determination.

The Authority, established under subsection 30(1) of the Fisheries Act, consists of the Commonwealth Minister, the Queensland Minister and the Chairperson of the Torres Strait Regional Authority. The Management Plan, as enabled by the Fisheries Act, was enacted for the purposes of giving effect to decisions of the Authority to establish and review a quota management system in the Torres Strait TRL fishery. Altogether, the Management Plan, the 2022 TAC Determination and the Amendment Determination are made for the purposes of facilitating the operation of the Authority, that being an intergovernmental scheme between the Commonwealth and Queensland.

The Amendment Determination is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act). As the Amendment Determination is made for the purposes of the intergovernmental scheme, section 42 of the Legislation Act (disallowance) does not apply to the Amendment Determination.

Purpose

The purpose of the Amendment Determination is to amend the *Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch Determination) 2022* to determine an increase to the TAC of tropical rock lobster in the TRL Fishery. The Amendment Determination determines that the TAC for the TRL Fishery be increased from 200,000 kilograms (unprocessed weight) to 351,675 kilograms (unprocessed weight).

Consultation

Subsection 14(2) of the Management Plan provides that the consultation processes set out in subsections 13(2) and 13(3) of the Management Plan applies to determining an increase in the TAC. Subsection 13(2) of the Management Plan stipulates that in making a TAC determination, the Minister must consult with any advisory committee that the Authority has established under subsection 40(7) of the Fisheries Act to provide advice relating to the TRL fishery; and must have regard to Australia's obligations under the Torres Strait Treaty¹. Further, subsection 13(3) of the Management Plan provides that in making a TAC 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 in the TRL fishery 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 and Torres Strait Tropical Rock Lobster Working Group on 13-15 December 2022, concerning an increase of the TAC determined for the TRL Fishery. The advice from these advisory committees takes into account relevant scientific information collected in November 2022. These advisory committees were established under subsection 40(7) of the Fisheries 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 fishing sectors).

The increase of the TAC determined for the TRL Fishery is consistent with catch sharing arrangements between Australia and Papua New Guinea (PNG) agreed under the Torres Strait Treaty. Subject to PNG's utilisation of its catch entitlements in Australian waters, under subsection 14(1) of the Management Plan, the Minister may increase the TAC determined for the TRL Fishery for a fishing season.

Impact and Effect

The increase in the TAC by the Minister for a fishing season 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 Amendment Determination is validly made.

Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

As the Amendment Determination has been developed for the purposes of the intergovernmental scheme, it is exempt from disallowance through the process of parliamentary scrutiny, by application of subsection 44(1) of

¹ *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*

the Legislation Act. Therefore, a statement of compatibility with human rights, prepared under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is not required, as paragraph 15J(2)(f) of the Legislation Act only requires statement of compatibility of human rights to be prepared for disallowable legislative instruments.

Regulation impact statement

Consistent with agreed carve out arrangements, the former Office of Best Practice Regulation (now known as the Office of Impact Analysis) previously advised that a Regulation Impact Statement was not required for Determinations of this nature (OBPR reference numbers 14421 & 25743).

Details / Operation

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

ATTACHMENT A

Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Amendment Determination (No. 1) 2023

- Section 1** Provides that the name of this instrument is the *Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Amendment Determination (No. 1) 2023*.
- Section 2** Provides that this instrument commences on the day after registration on the Federal Register of Legislation.
- Section 3** Provides that this instrument is made pursuant to sections 13 and 14 of the *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2018* (Management Plan).
- Section 4** Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.
- Schedule 1** Schedule 1 sets out the amendment to the *Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Determination 2022*.
- Item 1 of Schedule 1** This item repeals section 4 and substitutes a new section. The new section 4 clarifies that the *Torres Strait Fisheries Tropical Rock Lobster (Total Allowable Catch) Determination 2022* (the 2022 Determination) and the amendments being proposed via this instrument are enabled by sections 13 and 14 of the Management Plan.
- Item 2 of Schedule 1** This item repeals section 6 and substitutes a new section comprising of two subsections. The new subsection 6(1) provides that the total allowable catch of tropical rock lobster in the TRL fishery determined for the fishing season commencing on 1 December 2022 as 200,000 kilograms (unprocessed weight), as determined by the 2022 Determination, is enabled by subsection 13(1) of the Management Plan. The new subsection 6(2) provides that the increase to the total allowable catch of tropical rock lobster in the TRL fishery from 200,000 kilograms (unprocessed weight) to 351,675 kilograms (unprocessed weight) is enabled by subsection 14(1) of the Management Plan.