

EXPLANATORY STATEMENT

Issued by the Protected Zone Joint Authority

Torres Strait Fisheries Amendment (Minor Updates to Management Plans) Instrument 2024

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.

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 Tropical Rock Lobster (**TRL**) 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.

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. The Management Plan is made for the purposes of facilitating the operation of the Authority, being an intergovernmental scheme between the Commonwealth and Queensland.

The *Torres Strait Fisheries Amendment (Minor Updates to Management Plans) Instrument 2024* (**The Instrument**) is a legislative instrument for the purposes of the *Legislation Act 2003* (**Legislation Act**) and is not subject to disallowance by way of parliamentary scrutiny, by application of subsection 44(1) of the Legislation Act, as the PZJA in making this instrument is an intergovernmental body involving the Commonwealth and the State of Queensland (see subsection 30(2) of the Fisheries Act for the composition of the Authority).

The Instrument is an amending instrument and is automatically repealed in accordance with section 48A of the Legislation Act. However, the Instrument adds ongoing measures into a principal instrument (i.e. the Management Plan) that is exempt from sunseting under subsection 54(1) of the Legislation Act read together with item 63AB of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (**Regulations**). In other words, the Instrument contains measures that will remain in force within a principal instrument that is exempt from sunseting.

Paragraph 54(1)(b) of the Legislation Act provides that Chapter 3 Part 4 of that Act (Sunsetting of legislative instruments) does not apply in relation to a legislative instrument if the enabling legislation (in the case the Fisheries Act) authorises the instrument to be made by the body or for the purposes of the body or scheme. Further, item 63AB(d) of the Regulations specifically provides that a legislative instrument made by or on behalf of the Protected Zone Joint Authority in the exercise of a power under subsection 35(1) of the Fisheries Act is exempt from sunseting. The Fisheries Act authorises the Management Plan to be made by the Authority for the purposes of the scheme and further the Management Plan was made by the Authority in the exercise of a power under subsection 35(1) of the Fisheries Act (see section 15A, subsection 30(2) and subsection 35(1) of the Fisheries Act).

The Instrument merely makes consequential amendments to the Management Plan.

Purpose

On 14 October 2024, the Administrative Appeals Tribunal (AAT) was replaced by the Administrative Review Tribunal (ART). The 3 Acts that establish the ART are now in force, namely:

- 1) The *Administrative Review Tribunal Act 2024 (ART Act)*; and
- 2) The *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024*; and
- 3) The *Administrative Review Tribunal (Consequential and Transitional Provisions No. 2) Act 2024*.

The ART Act which gave effect to the new ART, received Royal Assent on 3 June 2024.

The purpose of the Instrument is to amend the Management Plan to make consequential amendments as a result of the replacement of the AAT with the new ART. The Instrument will amend the Management Plan to omit references to the AAT and substitute these references with ART. Further, it will make amendments to refer to the relevant section of the ART Act as opposed to the *Administrative Appeals Tribunal Act 1975*.

The amendments are consequential and minor. The Instrument does not impose or amend any existing fisheries management rules.

Consultation

AFMA engaged with the Attorney General's Department (AGD) and the Department of Agriculture, Fisheries and Forestry (DAFF) regarding the consequential amendments as a result of the replacement of the AAT with the new ART.

In accordance with consultation under section 17 of the Legislation Act, as the Instrument does not impose or amend any existing fisheries management rules, and merely makes consequential amendments the Authority considers that engaging with AGD and DAFF regarding the amendments is appropriate consultation in these circumstances.

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

As the Instrument 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 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.

Impact Analysis

The Office of Impact Analysis (OIA) was consulted in preparation of this instrument. The OIA has advised AFMA that a detailed impact analysis is not required under the Australian Government's Policy Impact Analysis Framework for this Instrument (Reference OIA24-08027).

Details / Operation

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

ATTACHMENT A

Torres Strait Fisheries Amendment (Minor Updates to Management Plans) Instrument 2024

- Section 1** Provides that the name of this instrument is *Torres Strait Fisheries Amendment (Minor Updates to Management Plans) Instrument 2024*.
- Section 2** Provides that this instrument commences on the day after registration.
- Section 3** Provides that this instrument is made under sections 15A and 35 of the *Torres Strait Fisheries Act 1984*.
- Section 4** Provides that 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 amendments to the *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2018*.
- Item 1 of Schedule 1** This Item repeals the definition of AAT in section 4 of the Management Plan.
- Item 2 of Schedule 1** This Item omits the reference to “AAT” and substitutes “Administrative Review Tribunal” in section 4 (paragraph (b) of the definition of allocation day) of the Management Plan.
- Item 3 of Schedule 1** This Item omits the reference to “AAT” and substitutes “Administrative Review Tribunal” in paragraph 20(7)(f) of the Management Plan.
- Item 4 of Schedule 1** This Item omits “Section 27A of the *Administrative Appeals Tribunal Act 1975*”, and substitutes “Section 266 of the *Administrative Review Tribunal Act 2024*” in subsection 20(7) (note) of the Management Plan.
- Item 5 of Schedule 1** This Item omits the reference to “AAT” and substitutes “Administrative Review Tribunal” in Subdivision C of Division 3 of Part 3 (heading) in the Management Plan.
- Item 6 of Schedule 1** This Item omits the reference to “AAT” and substitutes “**Administrative Review Tribunal**” in section 21 (heading) in the Management Plan.
- Item 7 of Schedule 1** This Item omits the reference to “AAT” and substitutes “Administrative Review Tribunal” in section 21.