

EXPLANATORY STATEMENT

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

Torres Strait Fisheries Act 1984

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

Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) (Total Allowable Catch) Amendment Determination 2025

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, and 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 powers of the Minister under section 15A are exercisable under that provision by the Protected Zone Joint Authority (the **Authority**). 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 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 to establish a quota management system in the TRL fishery.

Subsection 13(1) of the Management Plan stipulates 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 (Quotas for Tropical Rock Lobster (Kaiar)) (Total Allowable Catch) Determination 2024* (**the Determination**) is made by the Minister under subsection 13(1) of the Management Plan.

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 (Quotas for Tropical Rock Lobster (Kaiar)) (Total Allowable Catch) Amendment Determination 2025* (**Amendment Determination**) increases the TAC of tropical lobster in the TRL fishery as determined in the 2024 TAC Determination.

The Management Plan and the 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 (paragraph 44(1)(a) of the Legislation Act).

Purpose

The purpose of the Amendment Determination is to amend the Determination 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 464,400 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 Minister sought advice from the TRL Resource Assessment Group (TRLRAG) and the TRL Working Group (TRLWG) at their respective meetings in December 2024. The TRLRAG and TRLWG 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 (AFMA), Torres Strait Regional Authority (TSRA) and Queensland Department of Primary Industries and Fisheries (QDPIF), scientists (including an economist), and industry (from both the traditional inhabitant and non-traditional inhabitant fishing sectors). The TRLRAG and TRLWG advice takes into account relevant scientific information collected in the annual recurring stock surveys and catch and effort data from the fishery.

The PZJA Standing Committee is established under subsection 40(7) of the Act and is comprised of Authority agency heads of AFMA, TSRA and QDPIF, as well as a senior representative from the Department of Agriculture, Fisheries and Forestry.

The PZJA Standing Committee met on 7 February 2025 to discuss the global TAC and recommended the PZJA set the global TAC at 688 tonnes, taking account of the range of stakeholder views and reflecting scientific advice on catch options delivering precautionary and sustainable levels of catch. The PZJA, which takes into consideration the overall objectives of the Act and the TRL Fishery, met on 25 February 2025 and endorsed advice from the PZJA Standing Committee on the recommended global TAC.

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 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 paragraph 44(1)(a) 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. OIA advised that AFMA's carve-out can be used for determining a total allowable catch (TAC) under section 13 of the *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2018*, as such a detailed impact analysis is not required for this Determination (OIA reference numbers OIA 23-06107).

Details / Operation

Details of the Determination are set out in **Attachment A**.

Details of the Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) (Total Allowable Catch) Amendment Determination 2025

- Section 1** Provides that the name of the Determination is the *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) (Total Allowable Catch) Amendment Determination 2025*.
- Section 2** Provides that the Determination commences on the day after registration on the Federal Register of Legislation.
- Section 3** Provides that the Determination ceases on the day after 30 September 2025 unless revoked earlier.
- Section 4** Provides that the Determination is made under section 14 of the *Torres Strait Fisheries (Quotas for Tropical Rock Lobster (Kaiar)) Management Plan 2018*.
- Section 5** For purposes of subsection 14(1) of the Management Plan, subsection 6(1) determines the total allowable catch of tropical rock lobster in the TRL fishery for the fishing season commencing 1 December 2024 and ending 30 September 2025 is increased from 200,000 kilograms (unprocessed weight) to 464,400 kilograms (unprocessed weight)).