

Class Notification under the Commonwealth *Native Title Act 1993*

Proposed endorsement of one Papua New Guinea licence to permit commercial fishing in the Torres Strait Tropical Rock Lobster Fishery

Date of Issue: 3 June 2019

SECTION OF NTA	Section 24HA(2) of the Commonwealth <i>Native Title Act 1993</i>
DEPARTMENT/AGENCY	Australian Fisheries Management Authority (AFMA) on behalf of the Torres Strait Protected Zone Joint Authority (PZJA)
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REFERENCE NO.	Proposed endorsement of one Papua New Guinea (PNG) licence to permit commercial fishing in the Torres Strait Tropical Rock Lobster (TRL) Fishery – NT2019-06

The Protected Zone Joint Authority intends to do the following act:

TYPE OF APPROVAL	Endorsement of one PNG licence (with up to seven associated tenders), making of entries and imposition of conditions under sections 20-22 of the Commonwealth <i>Torres Strait Fisheries Act 1984</i> (the Act)
NUMBER OF APPROVALS	Endorsement of one PNG licence (with up to seven associated tenders), making of entries and imposition of conditions
UNDER WHAT ACT	Commonwealth <i>Torres Strait Fisheries Act 1984</i>

The approvals, if granted, will permit the following activity to happen:

NATURE OF ACTIVITY	<p>TRL is distributed across both Australian and PNG waters in the Torres Strait Protected Zone (TSPZ). The Torres Strait Treaty, ratified in 1985, between Australia and PNG recognises the rights of both countries to the fisheries resources of the TSPZ and describes a framework as to how these resources are to be shared. This recognition is implemented through cooperative management and catch sharing provisions of Articles 22-23 of the Treaty. Australia and PNG have agreed to share the total allowable catch (TAC) for a number of commercial fisheries, including for TRL, in accordance with the formula provided under Article 23(4) or as otherwise agreed under other provisions of the Treaty. This provides that both Australia and PNG are entitled to a certain proportion of the TAC in their own waters as well as the other country's waters. Access to the entitlement in the other country's waters involves a process whereby each country can nominate a boat or boats to be endorsed by the other country to commercially fish a defined TAC share in that country's waters. This is often referred to as cross-endorsement.</p> <p>For the 2018-19 TRL fishing season, AFMA and the PNG National Fisheries Authority have agreed that PNG's TAC share to be taken by PNG cross-endorsed vessels in Australian waters will be 50 tonnes. In coming to this agreement, PNG advised that they may nominate one boat with up to seven associated tenders to commercially fish this TAC share.</p>
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	<p>Pursuant to Article 26 of the Torres Strait Treaty, and subject to AFMA granting appropriate approvals under the Act as the PZJA delegate, the proposed management action would, in accordance with:</p> <ul style="list-style-type: none"> • section 20(1) of the Act, endorse one PNG licence so as to authorise the specified boat and up to seven associated tenders to take TRL in the course of commercial fishing in areas of Australian jurisdiction as well as the carrying, or processing and carrying, in areas of Australian jurisdiction, TRL that have been taken with the use of the PNG boat. This is referred to as a Treaty endorsement under the Act; • section 21(1) of the Act, make an entry in the Treaty endorsement so as to authorise the specified boat and associated tenders to commercially fish in the Australian TRL Fishery for the remainder of the 2018-19 fishing season; and, • section 22(1) of the Act, impose conditions to which the Treaty endorsement made under section 20 is to be subject. One specific condition would be to limit the allowable catch of TRL that can be taken by the specified boat and associated tenders, to a maximum of 50 tonnes, which is equivalent to PNG's allowable catch share in Australian waters. <p>Further information on the proposed management action, including details of the cross-endorsement process and conditions to which the Treaty endorsement will be subject, is provided in Attachment B.</p>
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The above activity will be located within:

LOCATION OF ACTIVITY	The Treaty endorsement of the one PNG licence that is the subject of this notification would authorise fishing for TRL within the TRL Fishery. The extent of the TRL Fishery is described in Item 9, Schedule 2 to the <i>Torres Strait Fisheries Regulations 1985</i> (the Regulations). The Regulations can be accessed online at: https://www.legislation.gov.au/Details/F2016C00633
MAPS/PLANS	Attachment C shows the area of the TRL Fishery, as described in Item 9, Schedule 2 to the Regulations.
NAME OF REGISTERED NATIVE TITLE CLAIMANT GROUP/S OR NAME OF REGISTERED NATIVE TITLE BODY CORPORATE	Cape York Land Council Carpentaria Land Council Aboriginal Corporation Kaurareg People #1 Kaurareg People #2 Kaurareg Native Title (Aboriginal) Corporation RNTBC Malu Lamar (Torres Strait Islander) Corporation RNTBC The applicant for the Torres Strait Sea Claim (Part B)
NAME OF NATIVE TITLE REPRESENTATIVE BODY	Torres Strait Regional Authority

If approved, after consideration of all comments, the proposed management action will be implemented for the following period of time:

DURATION OF APPROVAL	The proposed management action would apply during the 2018-19 fishing season of the TRL Fishery, which runs from 1 December 2018 until 30 September 2019.
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You are invited to comment upon the class of proposed future act outlined above by close of business 3 July 2019. Comments need to be received at AFMA by this time. If you would like to extend the response period, please contact AFMA by 3 July 2019.

Any comments must be **in writing** to:

By mail addressed to:
Australian Fisheries Management Authority
PZJA Secretariat
PO Box 7051
Canberra Business Centre
CANBERRA ACT 2610
Or by email to: fisheriesTI@afma.gov.au

Background Information

What will the proposed management action involve?

1. The jurisdiction and management framework for commercial and traditional fishing in the Torres Strait is governed by the provisions of the Torres Strait Treaty, ratified in 1985, between Australia and Papua New Guinea (PNG). The Treaty describes an area in the Torres Strait known as the Torres Strait Protected Zone (TSPZ). The TSPZ consists of areas in which Australia and PNG have jurisdiction over certain non-sedentary and sedentary marine species. Articles 20-28 of the Treaty set out a framework to guide both countries in providing for the management, conservation and sharing of fisheries resources, and inspection and enforcement, in the TSPZ.
2. The Treaty recognises the rights of both countries to the commercial fisheries of the TSPZ. This recognition is implemented through cooperative management and catch sharing provisions of Articles 22 and 23 of the Treaty. Since the Treaty was ratified, Australia and PNG have entered into formal arrangements under Article 22 of the Treaty to cooperatively manage six fisheries, often referred to as 'Article 22 fisheries'. These are the commercial fisheries for prawns, tropical rock lobster (TRL), Spanish mackerel, pearl shell, and traditional fisheries for turtles and dugong. Australia and PNG have agreed to share the allowable catch for Article 22 fisheries in accordance with the formula provided under Article 23(4) or as otherwise agreed under other provisions of the Treaty.
3. This provides that both Australia and PNG are entitled to a certain proportion of the allowable catch in their own waters as well as the other country's waters. Access to the entitlement in the other country's waters involves a process whereby each country can nominate a boat or boats to be endorsed by the other country to commercially fish a defined allowable catch share in that country's waters. This is often referred to as cross-endorsement.
4. For the TSPZ TRL Fishery, catch sharing under the Treaty is undertaken in two tiers as detailed in the figure below. For other Article 22 fisheries, the formula under Article 23(4) generally applies.

Tier 1	
Article 22(1) Australia 85% : PNG 15% Based on agreed stock distribution	How can this allocation be varied: Article 22(2) One country can notify the other of a proposed amendment, and both countries need to enter into consultations within 90 days
	
Tier 2	
Article 23(4) Each country is entitled to 25% of the catch share in the other country's jurisdiction	How can this allocation be varied: Article 25 Countries can agree to transfer all or part of the catch apportionment to the other country (preferential entitlement) <u>or</u> Article 23(7) Countries can agree to vary the catch apportionment in accordance with an Article 22(1) arrangement

5. On 24 May 2019, the Australian Fisheries Management Authority and PNG National Fisheries Authority (NFA) reached final agreement, as per the terms of the Treaty, on catch sharing arrangements for the TRL Fishery for the 2018-19 fishing season. Specifically, the final agreement was:
 - a. a final total allowable catch (TAC) of 641 tonnes for the TSPZ commercial TRL Fishery for the 2018-19 fishing season;
 - b. under Article 22(1) of the Treaty, final TAC shares of 544.85 tonnes in Australian waters (85% of the TAC) and 96.15 tonnes in PNG waters (15% of the TAC) divided as follows:
 - i. within Australian waters – 408.637 tonnes for Australian boats in Australian waters, remaining 136.212 tonnes subject to cross-endorsement;
 - ii. within PNG waters – 72,112 tonnes for PNG boats in PNG waters, remaining 24.037 tonnes subject to cross-endorsement;
 - c. under Article 25 of the Treaty, with regards cross-endorsement:
 - i. Australian boats can take in Australian waters 24.037 tonnes of the 136.212 tonnes of PNG's TAC share in Australian waters (24.0375 tonnes is equivalent to Australia's TAC share in PNG waters);
 - ii. PNG can take Australia's TAC share in PNG waters of 24.0375 tonnes in PNG waters. The Australian Government will not apply for cross-endorsement, meaning that no Australian boats will operate in PNG waters for the 2018-19 fishing season;
 - iii. Noting that less than half of the fishery season remains, PNG agreed to take only 50 tonnes of PNG's TAC share in Australian waters;
 - iv. Australia may take the remaining 62.175 tonnes of PNG's TAC share in Australian waters.
6. In coming to agreement for the 2018-19 fishing season, the PNG NFA advised that they wish to nominate one boat with up to seven associated tenders to commercially fish for the 50 tonne PNG TAC share in Australian waters. This is the subject of this Native Title notification.
7. This means that, for the 2018-19 fishing season in the TSPZ commercial TRL Fishery, the arrangements under the Treaty are that:
 - a. Australian boats can take up to 494,850 tonnes of TRL in Australian waters;
 - b. Australian boats cannot take any TRL in PNG waters;
 - c. PNG boats can take up to 96,150 tonnes in PNG waters; and
 - d. a cross-endorsed PNG boat, with up to seven associated tenders, can take up to 50 tonnes of TRL in Australian waters.
8. To give effect to the cross-endorsement of the PNG boat, and subject to a nomination being received and AFMA granting appropriate approvals under the Act as the PZJA delegate, it is proposed, in accordance with:
 - a. section 20(1) of the Act, endorse one PNG licence so as to authorise the specified boat and up to seven associated tenders to take TRL in the course of commercial fishing in areas of Australian jurisdiction as well as the carrying, or processing and carrying, in areas of Australian jurisdiction, TRL that have been taken with the use of the PNG boat. This is referred to as a Treaty endorsement under the Act;
 - b. section 21(1) of the Act, make an entry in the Treaty endorsement so as to authorise the specified boat and associated tenders to commercially fish in the Australian TRL Fishery for the remainder of the 2018 19 fishing season; and,
 - c. section 22(1) of the Act, to impose conditions to which the Treaty endorsement made under section 20 is to be subject.
9. Conditions to which the Treaty endorsement will be subject, are likely to include:
 - a. a limit on the allowable catch of TRL that can be taken by the specified boat and associated tenders, up to a maximum of 50 tonnes, which is equivalent to PNG's TAC share in Australian waters;
 - b. Treaty endorsement is only valid for 2018-19 fishing season;
 - c. a requirement for any tenders to operate in conjunction with the specified boat;

- d. requirements for the marking of the specified boat and associated tenders;
 - e. requirement to carry a measuring device;
 - f. requirement to complete daily fishing logbooks;
 - g. requirement to provide a report to AFMA of intent to enter and exit the Australian fisheries jurisdiction as well as enter the PNG port of Daru;
 - h. requirements concerning transshipment;
 - i. requirement to carry an operational vessel monitoring system.
10. Whilst operating in Australian waters, the PNG boat and associated tenders will also be subject to all other applicable State and Commonwealth legislative requirements including those, as relevant, under the Queensland *Torres Strait Islander Cultural Heritage Act 2003* as well as Commonwealth biosecurity, customs and immigration requirements.
11. Australia's TAC share in Australian waters can only be taken by Australian boats. Australian operators will be notified shortly regarding final arrangements for accessing Australia's TAC share in the coming weeks. These arrangements were the subject of Native Title notification 2019-04 issued on 16 May 2019.

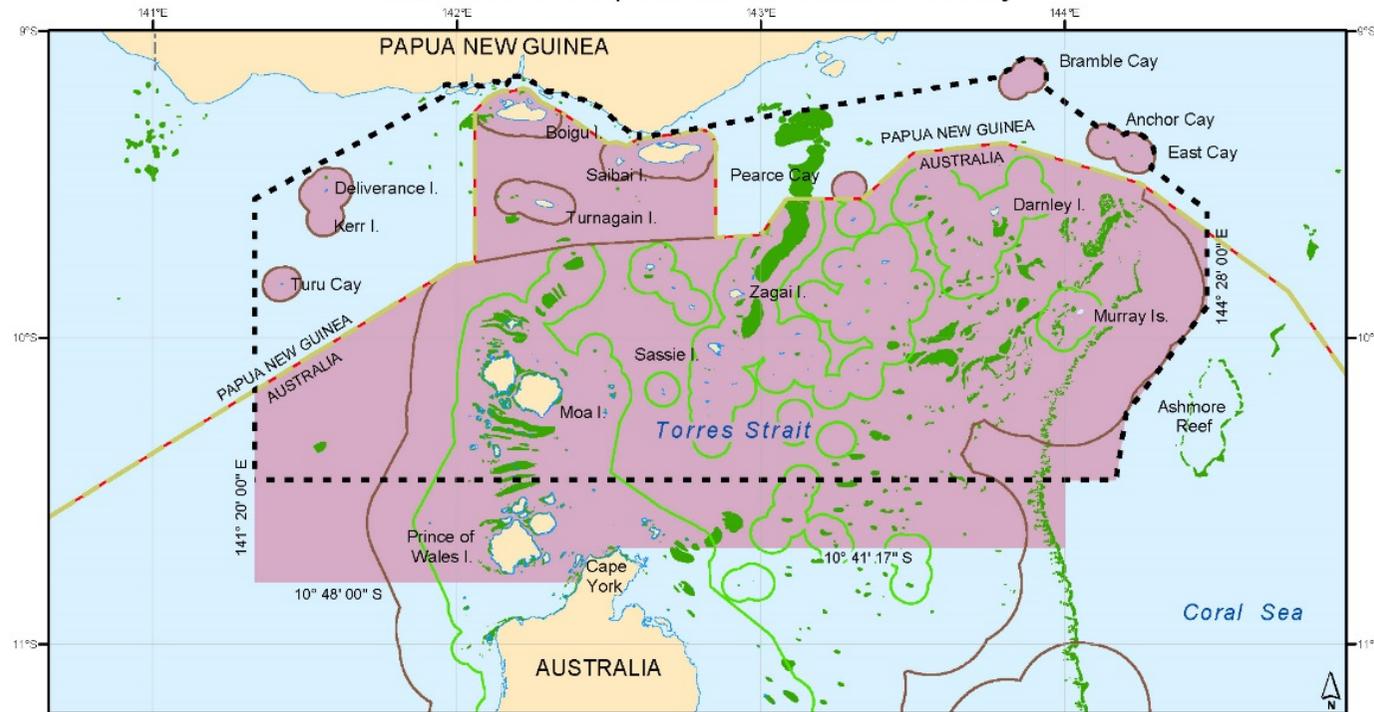
Why is this management action being proposed?

12. Each season, the TAC for the TSPZ TRL Fishery is shared between Australia and PNG as per the terms of the Torres Strait Treaty. The Australian TAC is Australia's TAC share of the final TAC (641 tonnes this season), as agreed with PNG. Final agreement on catch sharing arrangements for the TRL Fishery for the 2018-19 fishing season was reached on 24 May 2019. This management action is being proposed to give effect to that agreement as per the terms of the Treaty.

How will the proposed management action benefit Traditional inhabitants?

13. The Torres Strait Treaty recognises the rights of both PNG and Australia to the commercial fisheries of the TSPZ. The proposed management action gives effect to these rights under Treaty.
14. The proposed management action is anticipated by both Traditional Inhabitant (TIB) and non-Traditional Inhabitant (TVH) licence holders. On 28 November 2018, AFMA advised all licence holders of the PZJA decision to implement sectoral catch shares and an interim TAC with the interim TAC to be updated following completion of the stock assessment process. On 18 March 2019, AFMA advised all licence holders of the revised TAC, noting pending agreement between Australia and PNG on cross-endorsement arrangements and a possible increase in the TAC depending on the nature of the final agreement.
15. The final agreement between Australia and PNG results in an increase in the Australian TAC from 408.637 tonnes to 494.85 tonnes – an increase of 86.212 tonnes. This additional TAC share will be made available to Australian operators and shared between the TIB and TVH sectors of the Australian TRL Fishery in line with the agreed interim sectoral catch sharing arrangements. This was the subject of Native Title notification 2019-04 issued on 16 May 2019.
16. The TRL Fishery is the most valuable fishery in the Torres Strait worth approximately \$12.9 million in 2016-17. Further, it has the highest participation rate of Traditional Inhabitants for the Torres Strait commercial fisheries.

Torres Strait Fisheries Area of the Tropical Rock Lobster Fishery



- Coastal Waters limit (3nm)
- Exclusive Economic Zone limit (200nm)
- Fisheries Jurisdiction line
- Protected Zone Boundary
- Territorial Sea limit (12nm)
- Low tide elevations and reefs
- Torres Strait Fisheries**
- Tropical Rock Lobster Fishery



Produced by Geoscience Australia
for the Australian Fisheries Management Authority, August 2006
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Geographic
Datum: WGS84

NOTES:

1. The area of the Fishery is sourced from the Torres Strait Fisheries Regulations 1985
2. Within this fishery, arrangements exist between the Commonwealth and QLD, whereby the Coastal Waters of that State are deemed part of the AFZ.
3. The Fisheries Jurisdiction Line and Protected Zone shown on this map are established under the Treaty between Australia and the Independent State of Papua New Guinea. This Treaty entered into force on 15 February 1985
4. The maritime zone boundaries shown on this map are sourced from the 'Australian Maritime Boundaries (AMB) v2.0'

GeoCat #: 64848